

Caught in the Safety Net:

the costs of Centrelink debt recovery and prosecution

Camilla Hughes Social Action and Research Centre Anglicare Tasmania

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For further information contact:
The Social Action and Research Centre
Anglicare Tasmania
GPO Box 1620
Hobart 7001

Tel: 03 6213 3567

Fax: 03 6231 9589

Email: c.hughes@anglicare-tas.org.au

Website: www.anglicare-tas.org.au



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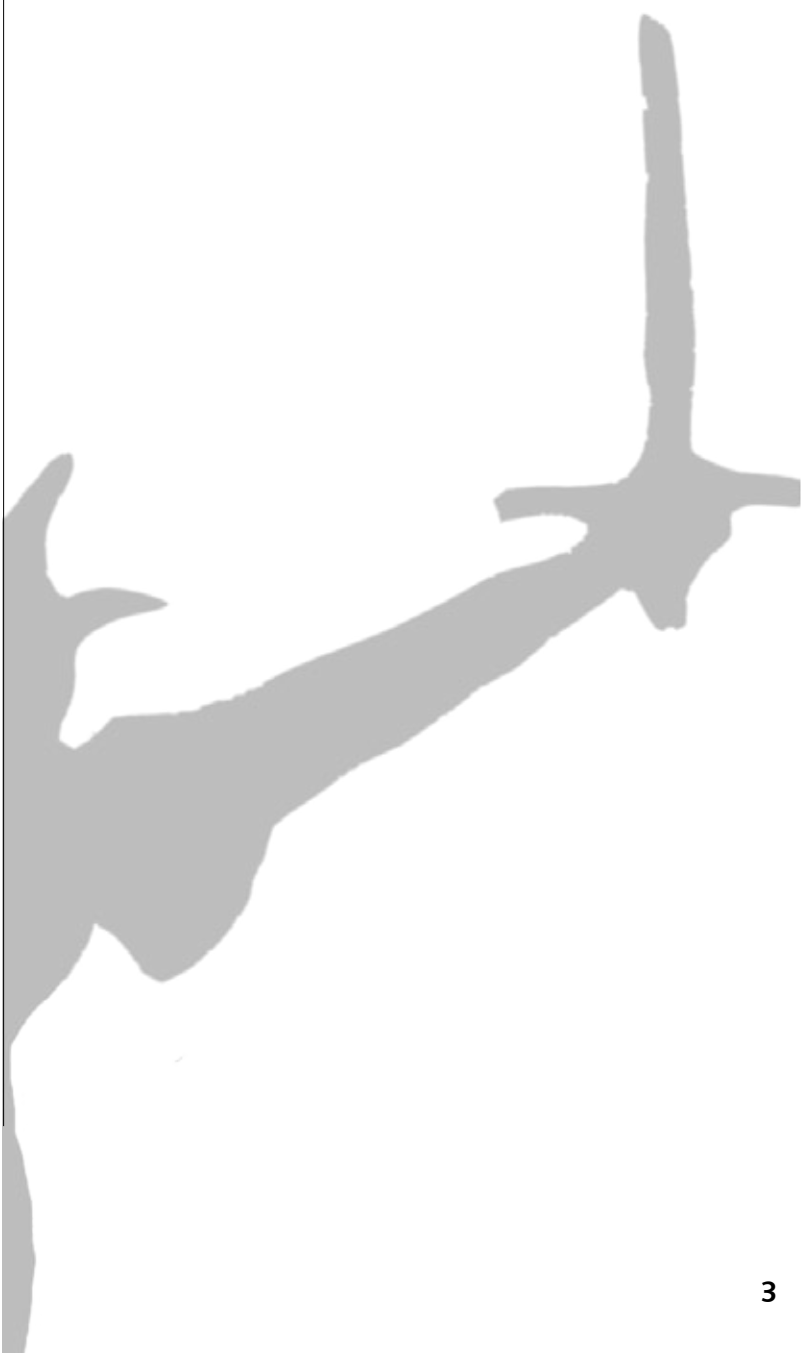
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their life stories and in some cases to times best forgotten, but they went there with courage and humour and we thank them.

Centrelink should just look at their customers in a human way and see how they try to survive... (Sylvia, casual worker receiving Newstart Allowance)



Glossary of Terms

Assurance of support

An assurance of support is a commitment by an Australian resident to provide financial support to a new resident for a set period. It is also a legal commitment to repay the Commonwealth certain social security payments if the new resident falls into hardship and these payments are made to them in that period.

Centrelink customers

While the use of the term 'customer' is problematic, this report adopts the terminology 'Centrelink customers' to refer to people who utilise Centrelink's products and services, rather than 'Centrelink client'. The reasons for this were (a) to include those research participants who do not receive income support from Centrelink (such as those providing an Assurance of Support) and (b) because Centrelink defines its clients as the Commonwealth Government Departments, such as the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), on whose behalf they deliver products and services.

Centrelink debt

This report uses the term 'Centrelink debt' to describe the situation where Centrelink customers owe money to Centrelink, or at least Centrelink claims that money is owed. Most commonly people will incur a debt because they have been overpaid due to an error by Centrelink or by the customer. But overpayment may also occur in situations less easily typified as an error.

Civil law

Civil law is the law that applies to private rights, regulating the activities between individuals or entities (this includes Government entities such as Centrelink), for example the law relating to recovering debts.

Criminal law

Criminal law deals with crimes and their prosecution.

Earnings Worksheet

These are worksheets designed to help Centrelink customers work out their gross

earnings each fortnight, and to keep a record of what they have earned and reported to Centrelink. In order to complete a worksheet, a customer must know their Centrelink Reporting Period (found on the Reporting and Income Statement), the total amount of hours worked in the Centrelink Reporting Period, and their hourly rate of pay. Overtime or other work that is paid at a different hourly rate must be included as well.

Marriage-like relationship

For the purposes of the *Social Security Act 1991*, a marriage-like relationship exists if two people of the opposite sex are considered to be living together as husband and wife.

Abbreviations

AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
ARO	Authorised Review Officer
CDPP	Commonwealth Director of Public Prosecutions
CSA	Child Support Agency
DEEWR	Department of Education, Employment and Workplace Relations
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FTB	Family Tax Benefit
HCLS	Hobart Community Legal Service Incorporated
LCLC	Launceston Community Legal Centre
ODM	Original Decision Maker
SSAT	Social Security Appeals Tribunal



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1. Executive Summary

Centrelink debt has been attracting substantial media coverage across Australia through Centrelink's 'Support the System that Supports You' campaign, frequent newspaper reports of Centrelink customers appearing in court and being sent to prison, and media releases about "welfare cheats" issued regularly by the previous Commonwealth government¹.

This report looks at the experiences of Tasmanian Centrelink customers who are in debt to Centrelink. It provides an overview of one state's experience of a decade of changes in social security law, declining legal aid funding and mounting social and economic pressures – such as the 'churning' of the low wage and casual labour market and the growing affordable housing crisis. The research captures a particular moment in Australian history, when the social security system, dramatically reshaped and no longer rooted in concepts of entitlement to support, has ceased to be the 'safety net' of marginalised or impoverished citizens.

Interviews conducted with clients of Tasmania's two community legal centres and a review of their case files revealed disturbing findings: patterns of overpayments, poor communication with Centrelink staff and a lack of assistance to deal with the problem of mounting Centrelink debt. In a number of instances this combination of pressures had led to customers being prosecuted and facing criminal conviction when there was little evidence of criminal intent to defraud.

Overpayments had accrued for a number of common reasons. Centrelink processes are poorly matched to the working world of its income support customers, which for many is characterised by irregular and unpredictable casual work. The research found that forms and reporting requirements are complex and difficult for people with linguistic barriers, with literacy and/or numeracy problems or who are experiencing the particular life stresses associated with mental illness or providing care for a child with a disability. Participants reported debts accrued over long periods with no communication from Centrelink

about the problem that was mounting. While overpayments were commonly due to customer error, there was also some evidence of error on the part of Centrelink officers which resulted in overpayments and subsequent debt recovery from clients and little or no accountability from Centrelink itself. Centrelink customers dealing with overpayments were often not aware of services to help them with advice, such as Centrelink social workers or the welfare rights lawyers available through the community legal centres.

Disturbing consequences of funding constraints to both legal aid commissions and community legal centres were evident in the research, with participants identifying a trend toward pleading guilty in the absence of legal advice and representation. This means that people may be prosecuted without the question of criminal intent – that is, the question of whether the customer intended to act dishonestly – being fully examined.

This research found that the consequences of Centrelink debt for the participants was devastating. Participants, some with dependent children, described the consequences of having significant proportions of their income summarily removed and the resulting physical, emotional and financial vulnerability.

Anglicare proposes a range of recommendations to deal with the issues raised above. Some address the issue of access to legal representation, some, communication issues between Centrelink and its clients and others, debt prevention systems within Centrelink.

¹For an example see the 2006 media release 'Can you catch welfare cheats? Extra staff to boost complex Centrelink fraud investigations' (Department of Human Services 2006a).

Perhaps the most important recommendation, however, is that a review of the policy widely summarised in the public arena as 'dob in a dole bludger' is desperately required. A point rarely made in the public domain is that, while many people are overpaid by Centrelink and are repaying debts, statistically few overpayments are fraudulent. The stigmatisation of Centrelink customers who receive overpayments as welfare cheats is of concern and has long been protested against, both by those whose lives have been criminalised by this policy discourse and by those who have advocated on their behalf, fighting a long hard campaign over the last decade against a "hardening of attitude towards the whole concept of provision of the welfare safety net" (St Vincent de Paul 1999).

The more particular people or groups are cast as "the other", the easier it becomes for policies and practices to discriminate against them. Sound familiar? Just think of "welfare cheats" or "queue jumpers". Justice cannot exist without respect.

(Hatfield Dodds 2007)



2. Recommendations

Recommendation 1

Anglicare supports the recommendation of the Independent Review of Breaches and Penalties in the Social Security System (Pearce et al 2002: Recommendation 17) that Centrelink should simplify its rules and practices about customers notifying income, especially in relation to income that may have been 'earned or derived' but has not yet been 'received'.

Recommendation 2

That Centrelink should enable customers who indicate that they have 'earned or derived' income in a particular reporting period to delay reporting the precise amount until they have actually received it.

Recommendation 3

That Centrelink employs more social workers to work with customers identified as being at risk of overpayments.

Recommendation 4

That Centrelink provides ongoing training for its officers in the interpretation of marriage-like relationship provisions.

Recommendation 5

That the Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs conducts regular reviews of the policy guidelines for the assessment of marriage-like relationships in the *Guide to Social Security Law* (FaHCSIA 2008) to ensure it captures relevant and changing social trends such as the affordable housing crisis.

Recommendation 6

That Centrelink ensures that its customers are made aware of options for obtaining independent legal advice and assistance when they are advised of proposed decisions that they are in a marriage-like relationship.

Recommendation 7

Anglicare supports the recommendation of the Commonwealth Ombudsman that the Department of Families, Housing, Community Services and Indigenous Affairs

amends its policy guidelines in relation to marriage-like relationships to address procedural fairness by advising customers in writing of a proposed decision (including detailed reasons) and providing customers with an opportunity to respond.

Recommendation 8

That the Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs reviews the option of individual entitlement to income support without reference to relationship status.

Recommendation 9

That the requirement that it is necessary for a customer to be in 'severe financial hardship' for Family Tax Benefit debts to be waived where the cause of the debt is 'sole administrative error' be removed.

Recommendation 10

That the word 'solely' be removed from s 1237A (1) of the *Social Security Act 1991* debt waiver provisions and be replaced with the word 'substantially'.

Recommendation 11

Anglicare supports the recommendation of the Independent Review of Breaches and Penalties in the Social Security System (Pearce et al 2002: Recommendation 8) that wherever possible, customers should be provided with the name or position identification, and the direct phone number, of an appropriate officer with whom queries or difficulties about Centrelink communications can be discussed.

Recommendation 12

That Centrelink adopts the benchmark of \$1,000 of debt as a trigger point for contacting customers. The communication with customers should offer the opportunity for an interview, a review of how to fill in forms, a discussion of repayment options and information about support options and the right of review.

Recommendation 13

That Centrelink ensures that its staff are trained in appropriate and sustainable repayment options for customers.

Recommendation 14

That sustainable repayment schedules which do not cause financial hardship are routinely offered to customers who have debts with Centrelink and that the right to negotiate these be acknowledged, and flagged on letters to customers advising them of the existence of debts.

Recommendation 15

That the Commonwealth Attorney-General increases funding to Welfare Rights Services through the Community Legal Services Program by \$3 million per annum as recommended by the National Welfare Rights Network (NWRN 2007) to enable Welfare Rights Services to meet the level of need for information, advice and representation in relation to social security law.

Recommendation 16

That the Tasmanian Attorney-General supports Welfare Rights Services in Tasmania as occurs in other states by funding the full cost of one welfare rights lawyer in the south and one in the north of the state (to provide services to the north and north-west) at the rate of \$90,000 per lawyer (standard community legal centre funding levels: NWRN 2007).

Recommendation 17

That all relevant communication with Centrelink customers should contain information about Centrelink support services such as social workers and independent sources of advice on social security matters.

Recommendation 18

That the Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs increases funding to the Commonwealth Financial Counselling Program (CFCP) to meet increased client need.

Recommendation 19

That Centrelink, in accordance with the Centrelink Customer Service Charter (Centrelink 2008) and relevant case law, responds promptly to customers indicating they would like a decision reviewed by an Authorised Review Officer, including when the request is made informally.

Recommendation 20

That additional funding be provided to Centrelink to implement its internal administrative review overhaul and enable all requests for review by an Authorised Review Officer to be conducted by the Officer without first going through the Original Decision Maker. This will require funding to increase the number of Authorised Review Officers.

Recommendation 21

That the Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs orders a review of Social Security Appeals Tribunal decisions to identify how the phrase 'special circumstances' is currently being interpreted.

Recommendation 22

That the Commonwealth Minister for the Department of Education, Employment and Workplace Relations orders a review of the Department's litigation policy in relation to social security appeals.

Recommendation 23

That the Commonwealth Attorney-General increases funding to Legal Aid Commissions to enable a higher proportion of defendants in Centrelink-related prosecutions to be legally represented.

Recommendation 24

That Centrelink's National Case Selection Guidelines be amended so that referral to the Australian Federal Police and the Commonwealth Director of Public Prosecutions is triggered where alleged offenders have incurred debts to Centrelink in excess of \$10,000 rather than \$5,000.

Recommendation 25

That in cases where a customer has lost eligibility to income support Centrelink ensures that consideration is given to continuing a payment pending the outcome of any review of the customer's circumstances.

Recommendation 26

That the Commonwealth Government conducts a review of the impact of Centrelink debt recovery strategies on workforce participation.

Recommendation 27

That the Commonwealth Attorney-General ensures that, in line with the recommendation of the Senate Legal and Constitutional References Committee's Inquiry into Legal Aid and Access to Justice (Senate Legal and Constitutional References Committee 2004), a legal aid impact statement be prepared for any new legislation which increases the emphasis on law enforcement and that supplementary funding is provided to legal aid commissions to counter increased demand for their services.

3. Introduction

3.1 Aims of the research

The research set out to explore the issues of Centrelink debt and debt recovery processes by:

- determining the characteristics of clients of Tasmanian community legal centres who have Centrelink debts;
- determining patterns of debt recovery among these clients;
- providing information on the consequences for individuals and communities of the emphasis on prosecution of social security fraud; and
- developing recommendations for Centrelink debt recovery policies.

3.2 Research methods

The research was undertaken in partnership with Hobart Community Legal Service (HCLS) and Launceston Community Legal Centre (LCLC). Both centres are members of the National Welfare Rights Network and are funded by the Commonwealth Attorney-General's Department to provide welfare rights advice and assistance. HCLS provides advice in the south of Tasmania and LCLC in the north and north-west. Agreements about research methodology and, in particular, protocols to maintain client confidentiality were developed at the start of the project with HCLS and LCLC.

There were three strands to the research:

- **interviewing legal centre clients.** The legal centres contacted all their welfare rights clients who had sought advice or assistance in relation to a Centrelink debt during 2006. Clients were invited to take part in an interview and to grant permission for the researcher to review their legal file. In-depth interviews were conducted with 21 participants using a semi-structured interview format. The interviews took one to two hours and were conducted face to face in various locations around Tasmania. Two were conducted by telephone. Interviews were recorded, transcribed and analysed. All interviewees

signed a consent form for the release of information and they were all reimbursed for costs involved in their participation. All interviews took place between December 2006 and May 2007.

- **interviewing other stakeholders.** Interviews and discussions were held during 2007 with a range of people who come into contact with Centrelink debt issues in their professional life. The researcher spoke to Centrelink employees, financial counsellors and social policy analysts as well as people working in the legal system such as Judges, Magistrates, legal practitioners and past and present members of the Social Security Appeals Tribunal (SSAT).
- **collating policy and research information.** This included a review of relevant literature including policy documents and any available statistics.

In producing the final report all names and identifying details have been changed to protect participants' privacy.

3.3 Demographic profile of the research participants

Of the 21 legal centre clients interviewed:

- Twelve were female and nine were male.
- Fourteen lived in the south of the State, four in the north and three in the north-west.
- Ages ranged from 22 to 75 years with a large group of participants aged in their 40s and 50s.
- Sixteen were born in Australia and five were born overseas. For 19 participants English was their first language and for two it was not.
- Nine were either married or in a de facto relationship and 12 were single. (We note that two of the participants who considered they were single people were viewed by Centrelink as living in a marriage-like relationship).

- Five participants lived in single person households, four in shared households, three with their partner and six with their partner and children. There were also three single parents with children. (Again we note that two of the participants who considered they were single people living in a shared household were viewed by Centrelink as living in a marriage-like relationship.)
- At the time of interview 13 participants were working (either full-time, part-time, casual or self-employed) and eight were not working (for a variety of reasons including retirement, parenting and caring responsibilities, undergoing rehabilitation or unemployed).

All participants were asked to state the type or types of Centrelink income support they were receiving when they were overpaid. Their responses are shown in Table 1.

At the time of their interview, some participants had been advised by Centrelink that they had a debt, but not of the amount. Other participants were not aware of the exact amount of their debt. Gleaning information from participants' community legal centre files as well as through interviews, the size of debts faced by participants was in the range of \$200 to \$24,000, with the average amount of debt being \$8,200. These are extremely large sums for people dependent on income support. For example, \$8,200 represents 73% of the annual income of a Newstart Allowance recipient².

Table 1: Payment type received when overpayment made

Type of Benefit	Number of recipients in research sample
Newstart	7
Parenting Payment	3
Family Tax Benefit	3
Age Pension	2
Disability Support Pension	2
Carer Allowance	1
Youth Allowance	1
Widow Allowance	1
Abstudy	1
Austudy	1
Not in receipt of income support	1

Note: Participants may have had more than one debt, or one series of events could lead to an overpayment of two kinds of income support, most commonly Parenting Payment and Family Tax Benefit.

²Based on the maximum fortnightly rate of Newstart Allowance for a single person of \$429.80 in January 2008 (Centrelink 2008b: 16).

3.4 Limitations of the research

Firstly, it must be noted that this research was not designed to gauge levels of satisfaction or dissatisfaction with Centrelink by their customers as a whole. It was not a random survey of customers; all research participants had sought the advice or assistance of a welfare rights lawyer and had experienced some level of difficulty with Centrelink. The research sought to focus on Centrelink customers who had a debt and explore the challenges they had faced.

Secondly, recruiting research participants in this way posed another difficulty in that all participants had contact with a community legal centre and at least some advice about their situation. That is, the research did not reach people who had Centrelink debts but had no advice or assistance. It is likely that this second group experienced greater problems with Centrelink than the group interviewed. On the other hand, a number of the research participants had dealt with Centrelink on their own for a period of time (in some cases a considerable period of time) prior to becoming aware of the assistance available through the community legal centres and so were able to contrast the experience of dealing with the system with and without an advocate.

Thirdly, it became clear in the course of the research that a number of participants had experienced or were experiencing difficulties with their mental health. The participants discussed the mental health challenges they faced or mentioned psychiatric treatment they were receiving, medication they were using and/or discussed suicidal thoughts or intentions they had experienced. However it was outside the scope of this research to assess participants' mental health so it is not possible to state the prevalence or severity of mental illness amongst the participants.

They were not asked to identify whether they were Aboriginal or Torres Strait Islander but in some instances this was mentioned by the participant in the interview.

Lastly, not many young people participated in the research. This may be because the

number of young people seeking welfare rights assistance is generally low. This has been suggested by the Welfare Rights Centre in Sydney when analysing the numbers of young people seeking their assistance in New South Wales (Welfare Rights Centre 2002: 9).

In addition the research did not particularly target young people as previous research by the Welfare Rights Centre in Sydney has looked specifically at Youth Allowance recipients and Centrelink debt (Welfare Rights Centre 2002).

3.5 Context of the research

As we are often reminded, Australia has enjoyed a long period of uninterrupted economic growth, with the economy in its eighteenth year of continuous growth and unemployment levels at a 33 year low. But not all Australians are prospering and a significant proportion continues to suffer disadvantage. The latest figures available from the ABS show that Australia-wide, government pensions and allowances are the principal source of income for 26.1% of households, while in Tasmania this proportion is higher at 31.5% (ABS 2007: 30)³. This is accompanied by significant increases in housing costs and high levels of personal debt (see for example Flanagan 2007).

Accompanying these trends have been some dramatic transformations in social security policy during the years of the Howard government which have had an impact on Centrelink debt levels.

3.5.1 What is Centrelink and what is Centrelink debt?

Centrelink was created in 1997 as a 'one stop shop' for social security matters, combining services previously provided by the Department of Social Security and the Commonwealth Employment Service. The agency is responsible to the Minister for Human Services.

³These figures may have reduced slightly given that unemployment nationally dropped in the last year by 2.1% (ABS 2007b).

Centrelink administers products and services on behalf of 25 government agencies (Centrelink 2007a) but its largest role is administering social security payments for a number of departments, most significantly the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Department of Education, Employment and Workplace Relations (DEEWR).

It is a very large organisation. In 2006-07 Centrelink had a recurrent budget of \$2.3 billion (Centrelink 2007b), distributed \$66.3 billion in payments on behalf of policy departments and had 6.5 million customers (Centrelink 2007a), which is approximately one third of the Australian population.

This report uses the term 'Centrelink debt' to describe the situation where Centrelink customers owe money to Centrelink, or at least Centrelink claims that money is owed. Most commonly people will incur a debt because they have been overpaid due to an error by Centrelink or by the customer. But overpayment may also occur in situations less easily typified as an error. The example that arose most often in this research was where Centrelink and their customer differed in their assessment of relationships that Centrelink decided were 'marriage-like'. If Centrelink decides a relationship is marriage-like, a debt can be incurred because their customer is no longer eligible for the income support they were receiving, or is eligible for a lesser rate of payment. Debt can arise in other situations, for example where a person has provided an Assurance of Support to a friend or relative – that is, effectively going guarantor for a person arriving in Australia through the migration program. Should the person fall into hardship and require financial support from Centrelink, the money is recouped from the guarantor. This means that a person need not necessarily be receiving income support from Centrelink to incur a debt (see Chapter 4, How do debts arise?).

3.5.2 Pursuing Centrelink debt and fraud

During the period 1996 to 2007 Australian Government policies aimed to minimise the risk of fraud and incorrect Centrelink payments through a framework of prevention, detection and recovery, and deterrence (FACS 2005: 276). Compliance was encouraged by raising public awareness of the risks and penalties involved in receiving incorrect payments. This led to an increased emphasis on systems such as identity checks, data-matching, tip-offs provided by the public, data analysis and selecting customers for review based on their circumstances, duration of payments or a specific event (Centrelink 2007a: 31).

Another key technique used in the strategy was 'inter-agency compliance activities' such as joint field operations between a number of agencies including Centrelink and the police which targeted people suspected of participating in the cash economy such as taxi drivers and fruit pickers (Centrelink 2007a: 32). In the context of major announcements of funding directed towards "combating fraud in welfare and health" (\$282 million in the 2006-07 Budget), some of these strategies revealed surprisingly small returns for the level of investment in investigation and monitoring. For example, 'Operation Marcellus', announced by the Minister for Human Services as a "major Centrelink operation" to "crackdown on cash economy activity in the harvesting and taxi industries" resulted in 16 customers having their Centrelink payments cancelled or suspended, saving an estimated \$112,000 (Department of Human Services 2006b: 1).

3.5.3 Family Tax Benefit payments

Over the last decade there have been significant increases in payments to families with dependent children, utilising the tax system as the primary mode of delivery. The Family Tax Initiative was introduced in January 1997 and the Family Tax Benefit (FTB) Program was launched in 2000 and then significantly boosted in the 2004 Budget with the 'More Help for Families' package.

FTB payments are means-tested and adjusted according to the number, age and income of children for whom it is paid. The rate of payment is also affected by the family's actual income, including child support payments. FTB payments can be made annually, fortnightly or through a reduction of Pay-As-You-Go tax, claimed through the Australian Tax Office. FTB Part A is the most common payment. FTB Part B gives extra assistance to single parent families and two parent families with one income. Both forms of FTB also provide a supplement paid after the end of the financial year.

Enormous sums are distributed to low- and middle-income Australian families through the FTB program. In 2004-05, the program delivered a total of \$13.9 billion to approximately 2.2 million customers (Auditor-General 2007: 30). Debt management is an inherent part of the FTB system, particularly for the 90% of FTB customers who opt to receive fortnightly payments (Auditor-General 2007: 14). For many low income families, the regular FTB payment is an essential part of their fortnightly income.

FTB debts can arise due to changes in the family's circumstances, because an assessment of the family's annual income determines that their entitlements were less than the payments they received, because a customer and/or their partner fail to lodge a tax return within the prescribed time, or because of errors in Family Assistance Office administrative processes (Auditor General 2007: 36). The program has always had significant debt management concerns.

3.5.4 Debt prevention strategies

The centrepiece of debt prevention in relation to Centrelink benefits and allowances has been the 'Support the System that Supports You' campaign, which began in 2002. The campaign aims to "increase the level of voluntary compliance by customers to avoid getting into debt" (Centrelink website 2008). The emphasis is on reminding customers via advertising campaigns, mail-outs and so on of their obligation to advise Centrelink of any change in their circumstances such as finding a job or starting or ceasing study.

However, the size of the Family Tax Benefit debt problem, and its dramatic reduction over subsequent years, demonstrates clearly how much of Centrelink debt can be due to systemic causes and addressed by systemic responses when there is a political will to do so.

The Auditor-General's report on the FTB system indicates that in 2000-01, the first year of the FTB program, 34% of the 1.96 million customers who received fortnightly FTB payments incurred a debt, creating a total debt burden of \$584 million (Auditor-General 2007: 39). At the time this debt problem was largely attributed to the problem working families had in predicting their earnings. In response to growing political pressure about this, in 2004 the Government announced a one-off debt waiver of \$1,000. A total of \$359 million in debts were waived, leaving a net debt of \$225 million (ibid: 39).

Since that time, the Family Assistance Office (FAO) has introduced a range of measures to help families avoid or reduce the risk of incurring a debt. These include

- the provision of information to help customers understand eligibility requirements and reporting obligations;
- improved communication with customers;
- identification of customers at high risk of incurring FTB debts and direct intervention to assist those customers to reduce their risk; and
- legislative and policy changes, many of which provide customers with options for reducing the likelihood of incurring a debt (Auditor-General 2007: 50).

The FAO has particularly targeted reducing the incidence of debts known as reconciliation debts. These are debts identified through the process of comparing the FTB payments a customer received, which are based on their estimated income, with their final entitlement, which is based on their actual income. This targeting has seen a reduction in the proportion of FTB customers experiencing a reconciliation debt from 33% to under 10%. However, the Auditor-General has noted that more attention is required to reduce the

incidence of debt arising from the failure by a customer or the partner of a customer to lodge a tax return in support of an FTB claim (called non-lodger debt) (Auditor-General 2007: 16).

In light of the findings of this research it should also be pointed out that the current communication strategies emphasise web-based and written communication, although alternative methods aimed at reaching particularly at-risk groups such as refugee communities have been trialled in regional areas.

3.5.5 Welfare to Work

The Commonwealth Government's Welfare to Work changes were rolled out from 1 July 2006 with the aim of increasing workforce participation rates. This meant that certain groups of people who were previously on Parenting Payment and Disability Support Pension would now be placed on the lower rates of Newstart Allowance and, if they were assessed as being able to work at least 15 hours per week, required to work at least part-time or to seek work and be subject to "mutual obligation" activity test requirements. The changes affect

- single parents when their youngest child turns eight;
- partnered parents when their youngest child turns six; and
- people with a disability who are assessed as being able to work between 15 and 29 hours per week.

These changes increased the risk for a significant number of Centrelink customers of acquiring a Centrelink debt. Firstly, the move from pensions to allowances meant lower levels of income support and secondly, combining paid work with income support and being required to declare fortnightly income or to provide regular estimates of income for FTB pushes customers into an increased risk of making errors with their income declarations and estimates.

3.5.6 Marriage-like relationships

In relation to debt, whether a person is single or a 'member of a couple' is significant under social security law in two ways. Firstly,

Centrelink will jointly assess the income and assets of a couple, so one partner's income and assets can reduce or nullify the other partner's entitlement to income support. A Centrelink customer will incur a debt if they claimed income support as a single person in a period when Centrelink considers they were a member of a couple together with a person whose income or assets reduces the customer's income support entitlement. Secondly, a number of Centrelink payments are paid at a single or married rate (the 'partnered rate'). The partnered rate is less per person, so a Centrelink customer will incur a debt if they were paid the single rate for a period when Centrelink considers they were only entitled to the partnered rate.

Community perceptions of what constitutes a 'marriage-like relationship' do not match the definition used for social security purposes, which is broad and complex and potentially embraces a range of modern living arrangements. The full text of the relevant provisions of the *Social Security Act* has been included below to illustrate the complexity facing Centrelink officers in assessing whether or not a relationship is marriage-like.

s 4(3)

Member of a couple – criteria for forming opinion about relationship

In forming an opinion about the relationship between 2 people for the purposes of paragraph (2)(a) or subparagraph (2)(b)(iii), the Secretary is to have regard to all the circumstances of the relationship including, in particular, the following matters:

(a) the financial aspects of the relationship, including:

- (i) any joint ownership of real estate or other major assets and any joint liabilities; and
- (ii) any significant pooling of financial resources especially in relation to major financial commitments; and
- (iii) any legal obligations owed by one person in respect of the other person; and
- (iv) the basis of any sharing of day to day household expenses;

- (b) the nature of the household, including:
 - (i) any joint responsibility for providing care or support of children; and
 - (ii) the living arrangements of the people; and
 - (iii) the basis on which responsibility for housework is distributed;
- (c) the social aspects of the relationship, including:
 - (i) whether the people hold themselves out as married to each other; and
 - (ii) the assessment of friends and regular associates of the people about the nature of their relationship; and
 - (iii) the basis on which the people make plans for, or engage in, joint social activities;
- (d) any sexual relationship between the people;
- (e) the nature of the people's commitment to each other, including:
 - (i) the length of the relationship; and
 - (ii) the nature of any companionship and emotional support that the people provide to each other; and
 - (iii) whether the people consider that the relationship is likely to continue indefinitely; and
 - (iv) whether the people see their relationship as a marriage like relationship.

The logic of treating marriage-like relationships similarly to marriages to ensure equity between married and heterosexual de facto couples is clear enough. With no marriage-like relationship provisions, the heterosexual de facto partners of wage earners who were themselves not in the work force would very likely be eligible for income support such as Parenting Payment Single and FTB, at a considerably higher amount than if they were legally married. This could be seen as unfair and possibly as a disincentive to formalise marriage arrangements. However, the marriage-like relationship provisions can also cause considerable unfairness. For a start, being in a marriage-like relationship does not necessarily translate into a person being financially supported by their partner. This factor prompted the Australian Law Reform Commission (ALRC 1994 cited in Commonwealth Ombudsman

2007: 7) as far back as 1994 to note that:

... the assumption that a marriage-like relationship will provide equal financial support for the parties is inaccurate and that there is a need to address entitlement to independent income.

The marriage-like relationship provisions as currently legislated, interpreted and administered, are drawing a very wide group of relationships into the marriage-like net. Additionally there are some external factors influencing the way modern Australians arrange their households. In recent years there has been increasing recognition given to the important role played by both parents in the care of children, whether the parents are separated or not. This has led some parents to design their post-separation domestic arrangements around the needs of their children and this may involve parents living under one roof for some or all of the week or for extended periods. It could be difficult to differentiate these arrangements from those of a married couple. The crisis in housing affordability is yet another factor driving cooperative living arrangements.

3.5.7 Prosecution

Centrelink is required to devote considerable energies into developing and managing systems to detect and prevent incorrect payments. Once detected more resources are devoted to manage and recover debts and where deemed necessary to prosecute. The strategies used to achieve these goals have resulted in an increased media focus on people receiving pensions (aged, disability and parenting) and allowances (including Austudy, Newstart Allowance and Youth Allowance). While it appears that a great deal of debt recovery work involves adjustments to Family Tax Benefits received by working families and the recovery of money from compensation payouts, media attention has focused on more flamboyant cases of identity fraud and undeclared earnings by Newstart Allowees – cases highlighted by media releases by the Minister for Human Services, presumably in line with strategies to promote compliance.

3.5.8 Funding for legal aid and welfare rights advice

A Centrelink customer having problems with overpayment or Centrelink debt has few options of where to turn for legal advice. Private practitioners are generally unaffordable. The other options are to get legal advice from the Legal Aid Commission's free advice line, but no ongoing assistance or representation, or to get Welfare Rights advice from a Community Legal Centre. The Community Legal Centres are non-profit organisations that complement the work of Legal Aid Commissions by providing a range of general and specialist legal services. However, the Community Legal Centres are only funded to employ one welfare rights lawyer in southern Tasmania and one lawyer covering both the north and north-west of the state. If a Centrelink customer is being prosecuted for Centrelink debt, they would apply to the Legal Aid Commission for representation.

Funding restraints to both the Legal Aid Commission and Community Legal Centres has greatly restricted their capacity to act for disadvantaged clients. Under the Howard Government funding for legal aid commissions changed from a cooperative model to a 'purchaser-provider' arrangement with the Commonwealth setting the priorities, guidelines and accountability requirements regarding the use of Commonwealth funds. This was accompanied by a decision that the Commonwealth would no longer accept responsibility for the funding of any matters arising under state and territory laws. These changes were accompanied by a steady reduction in Commonwealth funding to legal aid between 1996 and 2000. An increased funding package between 2000 and 2004 failed, in real terms, to return overall levels of funding to pre-1996 levels. National Legal Aid has argued that the increased costs of service delivery and the additional layers of administration and financial accountability required by the Commonwealth has reduced the quantity and extent of legal services offered (Senate League and Constitutional Reference Committee 2004: 5). While most states and territories have responded to this crisis with increased contributions to legal aid, Tasmania has not (ibid: 6).

The funding to Legal Aid has been described as being in crisis by bodies such as the Law Institute of Victoria, who have warned that funding shortages have resulted in a loss of skilled practitioners leaving the field, cost overruns in the administration of cases in the Magistrates Court, and an increase in people representing themselves and placing themselves at risk of being convicted of a crime for which with proper representation they may have been found guilty without conviction or have received a bond without conviction (Law Institute Victoria 2002).

A Senate inquiry into access to the legal advice and representation available through legal aid commissions and community legal centres expressed serious concerns. The inquiry committee commented on the worrying trend toward self-representation by litigants and found "much evidence to suggest that various groups are particularly restricted in gaining access to justice, due to such factors as socio-economic disadvantage, cultural background and remoteness from mainstream legal services". Key groups identified as being particularly disadvantaged included women, Indigenous Australians, people living in regional, rural and remote Australia, migrants and refugees, homeless people, people with mental illness and young people (Senate Legal and Constitutional References Committee 2004). The inquiry quoted various reports and research projects by groups such as the Australian Law Reform Commission and the Family Law Council which established that the trend to self-representation is linked to cuts to legal aid funding.

The Committee also expressed concern, which is worrying in view of the Welfare to Work changes and continued constraints on legal aid funding which followed,

that when new legislation increases the emphasis on crime and law enforcement, there appears to be no supplementary funding to legal aid commissions to counter increased demand for their services. The Committee considers that a legal aid impact statement should be required for such legislation and that supplementary funding should be provided (Senate Legal and Constitutional References Committee 2004: xvi)

4. Findings: How do debts arise?

This section describes how Centrelink debts arise. The main reasons identified in the research are Centrelink customers incorrectly declaring their income, interactions of income support with other systems such as child support, the complexities of determining marriage-like relationships and Centrelink errors.

4.1 The challenge of correctly declaring income

The research identified that the most common single reason for incurring a Centrelink debt was a Centrelink customer incorrectly estimating or declaring their (or their partner's) income from paid employment. Centrelink customers who are in low-paid employment and also eligible for varying amounts of income support are most likely to be overpaid and incur a debt in this way.

It was clear from interviews with research participants that the context for this problem is changes in the way people work and, in particular, the casualisation of the workforce. The shift towards part-time employment in Australia has been accompanied by a strong trend towards casual work which has been more pronounced in Tasmania than other states. Recent research has estimated that about 25% of the Tasmanian labour force is casual (using as its definition both self-identified casuals and employees without paid entitlements who do not identify as casual) (Madden 2003: 20). Typically, Tasmanian casual workers are women (60% of all casuals) and, unlike in mainland states, the majority of Tasmanian casual workers, both men and women, are people aged over 35 years (Madden 2004: 21-22). The highly seasonal tourism industry is seen as a key growth industry in Tasmania, but it is also one with a high concentration of casual labour.

In this research participants reported working fragmented, intermittent and constantly changing hours which made estimating income or declaring income complex and mathematically challenging. People may be working different hours each week, have more than one employer at a time, or be moving from one period of employment to another several times in a year. Participants described being required to

telephone their employer on a weekly basis to find out which days and hours they were working or if they were working at all. One young research participant working in the retail industry described his hours in this way:

Yes it was different every fortnight, anywhere from 10 and 20 hours a week and it changed each week. (Nathan, working casually and receiving Youth Allowance)

Centrelink customers working irregular shifts have to make a new calculation of how much they earn each fortnight. The Centrelink payment period is unlikely to coincide with their employer's pay period and that can make the mathematics of calculating their fortnightly income difficult.

Yes it did make it complicated. We worked on a Tuesday to Tuesday roster and when I filled in my form it went Friday to Friday. (Nathan, working casually and receiving Youth Allowance)

I'd turn up each day and they would let me know if I was coming in. It wasn't like you are starting 8.30 every single day this week for good. (Brett, working casually and receiving Newstart Allowance)

I had three part-time jobs that didn't add up to being a full time job. Every fortnight you would put your time sheet into [the employer]. For years there I would have two timesheets, and I had three jobs. Yes it was confusing. If it was a stable amount of pay you wouldn't have a problem, but like this... (Susan, working casually and receiving Newstart Allowance)

The complexities of declaring income earned in the Centrelink-determined income periods caused immense frustration to some of the Centrelink customers interviewed.

So I declared everything I earned but it wasn't in the right dates so I got penalised for that, which was a debt of \$200. That may as well have been \$10,000 at the time, I was in tears, on the phone, absolutely having a breakdown... (Lena, working casually and receiving Newstart Allowance)

The unpredictable nature of casual work also caused difficulties for students in receipt of Austudy who had to estimate their income.

I was studying and working at the time and I had a couple of jobs, I was working with [employer] and I had a job with them over the summer for a couple of years and that was a bit ad hoc. They would call up and say we've got two weeks' work or whatever. I did a couple of seasons of that and then after that finished I had some work at [employer] doing administration and so I worked when I could then and I had time off when I was sick. It was a bit sporadic. (Tina, now working, previously studying and working casually)

Working parents reported the difficulty of estimating income for the purposes of Family Tax Benefit when they did not have permanent or full-time employment. For families eligible for FTB the choices are to claim FTB fortnightly based on an estimate of how much they will earn in that financial year, or to claim their FTB in a lump sum at the end of the financial year when they file their tax return. Low income families are far more vulnerable to incurring an FTB debt as they are more likely to claim FTB fortnightly, needing the money to cover basic expenses, while at the same time they are also more likely to have an irregular income which makes estimating annual income in advance extremely difficult.

You have to ring up every fortnight and tell them what you earned, you have to have a pin number and go through the rigmarole of talking to someone. They say we'll reimburse you 12 months down the track – oh yeah, 52 weeks later. I need it now, not then, so you ring up every week and say, "I want to change my earnings, I want to change my earnings." (Tracey, low income sole parent receiving Parenting Payment and Family Tax Benefit)

That year in particular I was moving jobs, and working casually and it is hard to estimate exactly what you are going to earn when you've got to do it a year in advance. It's extremely difficult, because when you are working short-term you don't know if you are going to get another job or when it is going to be, or at what salary it is going to be at, it is

easy to miscalculate. The whole issue for me was that it's about being a working parent. The reason I have worked like that is because of the children, fitting in around school and so on. The whole thing is difficult, juggling work and children. I've always tried to minimise the impact of work on my family – it is all those issues. (Jan, low income working parent receiving Family Tax Benefit)

Another area that causes difficulty is a lack of understanding of the difference between gross pay and nett pay. Centrelink clients are expected to declare their gross (or before tax) income but may instead provide the nett (or after tax) amount when declaring income. Interviews revealed that the nett amount can seem more 'real' or honest to Centrelink clients, because 'this is the amount I really got' rather than a theoretical amount including tax they had never received. Some participants also reported that they found it hard to understand the terms:

That was confusing. I wasn't putting my gross... er... my nett... well it wasn't like what I was paid... like without tax... like I was putting down what I was getting. That is where I stuffed up. (Nathan, working casually and receiving Youth Allowance)

Struck by the irony that her incorrectly declared income was discovered when Centrelink linked up with her employer's computer system and frustrated with the difficulty of correctly declaring income each fortnight, one participant suggested that Centrelink should extract pay information directly from her employer or the Australian Tax Office:

Well if Centrelink could link up to the tax department, they know how much tax you lose each week don't they? Or your employer, surely with modern day technology a big business like [company] who I work for, a multi-million dollar empire, why can't they see how much you are earning? And just get the right pay? Well it is probably too hard for them. (Tracey, low income sole parent receiving Parenting Payment and Family Tax Benefit)

It was noted by some participants that on certain kinds of income support, most notably Newstart Allowance, customers were required to lodge a fortnightly declaration of income. This requirement served as a constant reminder to advise Centrelink of all sources of income. On other kinds of income support, such as Austudy or the Age Pension, Centrelink clients had to remember their obligation to report income without this fortnightly cue to report.

Delays in getting paid for casual work can also cause real cash flow problems for Centrelink clients who are employed but are still eligible for some level of income support.

Well it was [the employer] – they pay you behind all the time, so say I did two weeks' work it would be two and a half weeks after that I got paid. But because it was Centrelink, before you've got paid they want to know what your hours are, so you declare it, they penalise you, and if you work too many hours you get nothing from Centrelink and you are still waiting on this pay down the road here – to buy petrol to go to work! Plus in your spare time please go to four job interviews plus go to [Job Network provider]. (Susan, working casually and receiving Newstart Allowance)

Overall there could be multiple challenges in declaring income for any one individual or family. One couple interviewed had numerous problems declaring their income and had incurred a sizeable debt, despite being well-organised and diligent about advising Centrelink about every detail. The family received a mixture of earned casual wages and Carer Payment (child) as the mother provided full time care to a child with a severe disability. The father had more than one job at a time and was earning different amounts each week. The calculation of how much was earned in the Centrelink income period was complex and exacerbated by a period when the father did not receive payslips from one of his employers. In an effort to avoid any problem with Centrelink the couple had tried to over-declare their income but even that had not enabled them to avoid Centrelink debt.

That is where it became confusing because [Centrelink] admitted that while I did [over-

declare income], I did it late or something? I don't know, or they recorded it late or something? (Melanie, receiving Carer Payment (child))

In addition some participants felt that Centrelink staff were not always able to explain why a particular income declaration was incorrect.

4.2 Literacy and numeracy

Problems were exacerbated for income support recipients who had difficulties with literacy or numeracy. A number of research participants noted the difficulties they had filling in Centrelink forms to declare their income.

I find the forms hard, the way they word them sometimes. You think oh yes I know what that means but you know it in a different way. I mean I'm not stupid, but, well when it comes to Centrelink I am. (Narelle, low income worker receiving Parenting Payment)

It's because I'm a bit dyslexic. People say look at your payslip but I don't know what it means half the time, the gross and the nett, I got them confused; now I know to take the highest one. [I started to understand it] once Centrelink staff showed me and my daughter went through it with me. When Centrelink sent me the file we were going through it all and my daughter showed me and says this is what you've done wrong and I said well how did I get into that mix? And she says I think you've done this. She could see it, and I said thank God you've got brains... and you know I have tried to improve my reading and writing by doing studies... (Mary, working casually and receiving Newstart Allowance)

They felt that some assistance from Centrelink when completing their forms would have been very useful and could have helped them avoid much larger problems down the track.

You just fill [the form] in and take it to the counter. They don't help you with that and they don't check it. It would be better if they checked it to see it was right before they actually paid you. They don't do anything like that. It would have kept me out of court! (Nathan, working casually and receiving Youth Allowance)

Some Centrelink clients interviewed felt that their level of understanding was such that they required assistance to complete each and every fortnightly declaration of income. In each case they reported that they were able to access only sporadic or no assistance from Centrelink staff.

The thing was it was on my file that I needed assistance, filling out forms and such. I never got it. (Mary, working casually and receiving Newstart Allowance)

Interviews with research participants facing prosecution for Centrelink debt revealed that in many instances these Centrelink customers had made efforts to report their correct income to Centrelink. They had used strategies such as asking for assistance from Centrelink staff and family members and even over-estimating their income to avoid error. Difficulties had arisen however, due to the complex nature of the information required and the lack of congruence between Centrelink reporting requirements and the realities of working in casual and irregular work. The risk of error was heightened where Centrelink customers had literacy and numeracy problems. Once an error has occurred it is immaterial, from Centrelink's perspective, whether a customer has asked for assistance or not – the debt is still required to be repaid.

In spite of the complexity of this situation for customers, a number of research participants were not simply required to repay the amounts they were overpaid by Centrelink, they were also prosecuted and convicted of fraud.

4.3 Complex interactions with other systems

Centrelink overpayments can arise out of interactions between Centrelink and other systems. For example, interviews revealed that self-employed people on incomes low enough to still qualify for income support can be caught in the nexus between the taxation system and the income support system. A further example is the interaction between the income support system administered by Centrelink and payments from non-custodial parents received through the child support system. Parenting Payment recipients are the most likely to be affected.

In one case in the research the Child Support Agency assessed that higher amounts of child support were payable by the father. This resulted in a reduction to the Family Tax Benefit payable to the mother who was a sole parent receiving Parenting Payment Single. The father did not in fact ever pay the higher amount of Child Support so the mother suffered a reduction to her income when her FTB was reduced, and also had to repay as a debt to Centrelink the amount of FTB she was 'overpaid' in the period prior to Centrelink reducing her FTB.

My ex-husband hadn't been putting in tax returns, hadn't put one in since about 1996-97, and every year the CSA would re-assess the amount and say because he hasn't put in a tax return, we have to estimate how much he should be paying. I had to ring them every year and say, he's not putting in tax returns, what are you going to do about it? Finally I got a guy at the Child Support Agency who said we can actually go on what the employer stated was his income for the year, and he did warn me that Centrelink might take some money off me because of this. But I had rung Centrelink and they said no, if you haven't received the [child support] money, we are not going to take [FTB] off you... It is just so totally unfair to take money off you when you didn't receive it. You have no recourse. Is there some way they could change their by-laws for these odd few cases? I gather there aren't that many of them... (Rosemary, sole parent receiving Parenting Payment and Family Tax Benefit)

4.4 Marriage-like relationships

Almost a quarter of the research participants interviewed had incurred significant debts to Centrelink after it was determined they were in a 'marriage-like relationship' at a time when they considered themselves to be single people. Where the broader community might consider a sexual relationship central to the judgement of whether two people were in a 'marriage-like relationship', for social security purposes the definition has become more complex and can potentially embrace people who consider themselves to be friends sharing a house if they are of the opposite gender.

The Commonwealth *Social Security Act 1991* defines a person to be a 'member of a couple' (s 4(2)) where he or she is

- legally married and not separated, or
- in a de facto or 'marriage-like relationship' with a person of the opposite sex.

Neither 'separation' nor 'marriage-like relationship' is defined in the legislation; instead the legislation sets out the criteria for Centrelink officers to form an opinion about the relationship. The legislation directs Centrelink staff to give regard to all the circumstances of the relationship, including the matters set out in the *Social Security Act* which include:

- the financial aspects of the relationship;
- the nature of the household;
- the social aspects of the relationship;
- any sexual relationship between the parties; and
- the nature of the people's commitment to each other (s 4(3), summarised in Nelson 2003: 99).

The marriage-like relationship provisions as currently legislated, interpreted and administered are drawing a very wide group of relationships into the marriage-like net. One reason is that the domestic arrangements for some types of relationships may look very similar to domestic arrangements for married couples. Shared households for example, whether they are shared by students, friends or flatmates, may share rent or buy a house together, share expenses, shop together, eat together and socialise together. These expressions of living cooperatively may in fact be the reason for sharing a household. Carer/caree relationships could also share many characteristics of a married relationship. The relationship between two people who were previously married or in a de facto relationship and are now living separately but under one roof can be particularly difficult to distinguish from the domestic arrangements of a married couple, although to the people concerned it may seem a world away.

Most of the research participants interviewed in relation to marriage-like relationships were in a relationship, such as carer/caree or housemates,

that had been drawn into the ever widening net of marriage-like relationships as discussed above. Research participants talked about the reasons they were living with a person of the opposite sex at the time Centrelink assessed them as living in a marriage-like relationship. They had various reasons, but a common factor was the need to share living expenses to survive on a low income, and in particular the prohibitive cost of housing (to either rent or buy) was raised as an issue.

You share a house together. Well these days you have to share a house together, it's the only way you can survive in the rental market. Yet it's illegal according to Centrelink. (Matthew, receiving Newstart Allowance)

David's story

David was undergoing rehabilitation for a serious work-related industrial accident. He was on the Disability Support Pension and having trouble covering the rent in private rental accommodation. He and an old friend Suzi decided to share a house in suburban Hobart and share rent and other household expenses like the power bill. Suzi and David had a long history together going back well over a decade: they previously worked together and at one time were boyfriend/girlfriend although they had never lived together. The romantic relationship had ceased many years before; they were now just good friends.

Suzi was a sole parent and had just accepted a promotion into a new job. She appreciated having someone she knew and trusted at home looking out for the children after school and when she was held up late at work. The living arrangement was also good for David and good for his rehabilitation as he was learning to live independently and interact with people again. Suzi helped him with transport to the shops, to physically do the shopping and gave him emotional support when he was experiencing episodes of post-traumatic depression.

Centrelink contacted David to say it had been determined that he was living in a marriage-like relationship and he was ineligible for DSP based on Suzi's income. David was cut off from the

DSP and was informed that he had a debt to Centrelink of around \$20,000. Suzi and the children had to move out and David described it as “a terrible time”.

Months later the SSAT reversed the decision after David applied for a review with the assistance of a welfare rights lawyer. But that mutually beneficial living arrangement could not be recreated. David considers his rehabilitation has been set back a few years both because of the stress of resolving the issue with Centrelink, the loss of income and more importantly the loss of an arrangement that was for him a halfway house to independent living.

Two factors that Centrelink considers as part of the process of evaluating the social aspects of an allegedly marriage-like relationship are whether the people present themselves to the world as married to each other, and the assessment of friends and regular associates of the people about the nature of their relationship (*Social Security Act 1991* (Cwlth) s 4(3)(c)). This issue arose in the research as a problem for Centrelink customers who were single but sharing a house with a friend of the opposite sex and same approximate age. The Centrelink customers interviewed did not consider they were in a marriage-like relationship or that they had presented themselves to be married, but conceded that others in the community might have formed that perception. The problem seems to be that the people who have these perceptions are not friends and regular associates – they are neighbours or community members who are making assumptions based on the age and gender of the people sharing the house. There is no reason why the information these people hold should be deemed to be accurate. In the following instance a Centrelink customer interviewed for this project had been informed by the Social Security Appeals Tribunal that one of the factors taken into consideration in raising a debt against him had been his elderly neighbour’s assumption that he and his flat mate were a couple.

Up the back there is one of our neighbours, she calls us mister and missus although we have never introduced ourselves. We have

never corrected her because she’s a quiet lovely old lady and what is the point? We would just say, how are you? (Matthew, receiving Newstart Allowance)

Another participant reported how he had moved house to an area where nobody knew him, and that people in that community may well have come to assume he was in a de facto relationship with his house-mate, an assumption which didn’t concern him. He felt that the opinions of local people that he lived in a de facto relationship were a big factor in Centrelink later deciding he was in a marriage-like relationship. Care needs to be taken in interpreting this section of the legislation (*Social Security Act 1991* (Cwlth) s 4(3)(c)(ii)) so that the term ‘regular associates’ (of an alleged couple) is not defined too broadly to include people who have no real understanding of the domestic arrangements of an alleged couple.

The other area where public perceptions of the domestic status of a ‘couple’ could be mistaken is where people are trying to act in a way that respects religious or cultural mores.

I guess for people in our church we didn’t want to advertise that we were living apart, so if someone was coming over it would be like “be at my place at this time”. I think we got dobbed in. (Jack, receiving the Age Pension)

Felicity’s story

Felicity was living with her three children in Launceston and was receiving Parenting Payment Single. She had only recently broken up with her ex-partner who had been violent. She was desperately trying to meet the mortgage payments so she could stay in her house which was close to the children’s school. She felt that the stability of staying in the family home and their school was important to the children. But financially that was a struggle, so the house went onto the market and was only withdrawn when a good friend, Adam, concerned about her and the children, said he could help with the mortgage temporarily.

Months later Adam was in need of housing and came to stay for a couple of weeks. An intimate

relationship developed between Felicity and Adam which she immediately advised Centrelink about. A Centrelink investigating officer visited and decided that not only were Felicity and Adam in a marriage-like relationship, but that they had been since Adam started to help out with the mortgage, months prior to taking up residence. Felicity was immediately cut off from her income support and advised she owed Centrelink around \$15,000 for overpayments of Parenting Payment and Family Tax Benefit.

Felicity was also still attending regular post-accident rehabilitation for an acquired brain injury. She got stressed when under pressure and worried that she didn't always understand things properly. For example, she had not agreed with everything in the statement the Centrelink investigating officer prepared but felt she should sign it anyway.

Following the decision by Centrelink Felicity had no income and was forced to rely on Adam to keep her and the children. The pressure nearly ended their fledgling relationship and Felicity became clinically depressed. Her hospital social worker told Felicity about the community legal centre and she was able to get the Centrelink decision reviewed. The review determined that she was only considered to be in a marriage-like relationship from the time she had advised Centrelink about her relationship with Adam.

This research also found that a further issue for people found to be in marriage-like relationships – if they are both on income support – can be that Centrelink and the Social Security Appeals Tribunal (SSAT) will deal with their case as a single matter. This means that one party might be denied access to review or appeal if the SSAT feels the matter has already been dealt with through the other party.

As Felicity's story illustrates, the effect of a determination by Centrelink that a person is in a marriage-like relationship can be dramatic, even traumatic. Such a determination can immediately reduce a Centrelink customer from a position of relative independence and autonomy to financial dependence and vulnerability. If for example Centrelink determines a person has for a period of time been in a marriage-like relationship

with another person who is working, then their income support is not only reduced to zero, effective immediately, but they may also be advised they have been overpaid for some time (possibly months or years) and so must also repay a debt.

We went to Centrelink prior to signing the house up [the lease] to get their permission and everything was alright and there was no problem. But later Centrelink said that because you were being paid [income support] on the single not on the married rate, there is a difference so therefore we are going to sue you for \$20,000 dollars and leave you with no pension, no money, no nothing. (David, receiving Disability Support Pension)

The suddenness with which customers are removed from income support is cause for concern, particularly where income support is their sole or main income, and the decision about the marriage-like relationship reduces their income substantially. Research participants spoke of the great difficulties caused by suddenly having no money to pay rent or the mortgage or to buy food, and of having all their direct debits dishonoured and incurring bank fees when no income was paid into their bank account. Participants also described the shock and depression they experienced.

I went to get some money out of the bank and there wasn't what I expected in there... and I rang Centrelink and they said my payment had been cancelled because I was in a marriage-like relationship... I didn't know what the hell was going on... (Felicity, receiving Parenting Payment Single)

It destroyed my life; it absolutely wrecked it. (David, receiving Disability Support Pension)

Furthermore, it is not Centrelink's policy to advise customers in writing that they have determined they are in a marriage-like relationship. Current procedure is to advise of adverse marriage-like relationship decisions face-to-face or by phone (Commonwealth Ombudsman 2007: 23). However, interviews with research participants revealed occasions where customers had their income support reduced to zero with no notification.

4.5 Centrelink error

Overpayments occur when an error is made either by Centrelink or by Centrelink customers. This research was not designed to examine the number of errors or the proportion of cases where there was evidence of an error made by Centrelink. However, the research did identify a number of cases where errors were made or where Centrelink office and call centre staff gave the wrong advice, both of which had severe implications for customers. Examples of agency error revealed by this research included:

- errors in properly assessing the level of income support to which the customer was eligible after earnings;
- overpayments continuing after the customer alerted Centrelink to the problem;
- errors made in determining a marriage-like relationship existed; and
- errors in the payment of Family Tax Benefit.

One research participant, who received a substantial lump sum of Family Tax Benefit in error, alerted Centrelink to the payment but was assured that it was correct. Despite this, Centrelink raised the overpayment as a debt against her. FTB debts, even when caused solely by Centrelink error, will not be waived unless the customer is able to prove they are in "severe financial hardship" (NWRN n.d.: Ch. 43 Pt. 7.6). As a sole parent and low income earner the customer found repaying the debt a considerable financial burden, but would not meet the prerequisite of "severe financial hardship" so was ineligible to apply for the debt to be waived. The "severe financial hardship" requirement would exclude most FTB recipients who are on low and middle-incomes and many who receive only income support payments. The National Welfare Rights Network rightly points out that such requirements remove all care and responsibility for errors from Centrelink and place them solely with the customer.

The balance of risk is also firmly with customers who receive overpayments with other forms of income support. Section 1237A of the *Social Security Act* requires a customer to prove that an error was solely caused by Centrelink

administrative error. This means that even if Centrelink is 99% responsible for the debt, any slight contributory error by the customer makes the customer responsible and ineligible for a debt waiver. The National Welfare Rights Network has commented that such an approach "encourages a 'no care, no responsibility' attitude and is not conducive to good administration. It shifts the emphasis from 'debt prevention' to 'debt collection'" (NWRN 2007: 3).

4.6 Summary

Anglicare's research clearly illustrates the ease with which Centrelink customers can find themselves in debt, not through any intention to defraud the system, but through difficulties associated with calculating their income from earnings, interactions with other systems and particularly the complexities of defining marriage-like relationships. Claims by participants interviewed in this research that they had attempted to inform Centrelink of their correct earnings or that they were not, in fact, living in marriage-like relationships were upheld in a number of instances when their cases were reviewed by the Social Security Appeals Tribunal.



5. Findings: Dealing with Debt

This section describes Centrelink processes for dealing with debt and the legal and administrative processes which may follow.

5.1 Debt recovery processes

When Centrelink decides that a customer has been overpaid, resolving the matter may be a simple administrative process or it could set off a chain of complex administrative and legal processes involving both civil and criminal law. The customer's experience could fall anywhere along this continuum. An undisputed overpayment by Centrelink can be sorted out promptly by a customer who does not dispute the decision and has the funds to repay. However, some research participants reported overpayment matters that had not been resolved in a decade.

The process begins when the customer finds out that Centrelink considers they have incurred a debt. The usual procedure is for Centrelink to advise the customer of the debt in writing. Different processes will then come into play depending on whether the customer accepts or questions the decision by Centrelink.

Debt repayments and debt recovery make up the first strand of administrative and legal processes that come into play. Typically a customer will be given 14 days to repay a debt and the usual modern day repayment options such as electronic funds transfer are offered. Generally if the amount is not paid in that timeframe repayments will be compulsorily deducted from the customer's income support payments at a rate determined by Centrelink in accordance with their policy guidelines. The customer or their advocate may be successful in negotiating a different rate of repayment. If the customer is not in receipt of income support then Centrelink will seek to negotiate a repayment plan or if that is unsuccessful may seek to garnishee any wages.

Centrelink may refer debt recovery to their contracted private debt collection agency. Centrelink may also initiate civil legal proceedings to recover a debt and these could result in court proceedings.

Centrelink can, and generally will, proceed with debt recovery even if a customer is seeking a review of the decision on which the debt is based. A customer or their advocate may be able to successfully request that the customer continue to be paid income support while the review is determined.

A customer who questions Centrelink's decision may wish to query either the circumstances allegedly resulting in a debt, the amount of the debt claimed by Centrelink, or both. In most cases decisions made by Centrelink may be reviewed and appealed. Requests for decisions to be reviewed or appealed must be made by Centrelink customers or their representatives within specified timeframes. To summarise a complex area briefly, the usual pathway for review/appeal is:

1. A decision may be reviewed first by the person in Centrelink who made the original decision, known as the Original Decision Maker (ODM).
2. If the ODM does not change their decision, or the client is unhappy with any new decision, the case will be reviewed by an Authorised Review Officer (ARO). Alternatively, a client can request that their case be reviewed by an ARO without first speaking to the ODM.
3. If a client believes the ARO's decision is incorrect they may appeal to the Social Security Appeals Tribunal.
4. If a client believes the SSAT has made an incorrect decision an appeal may be made to the Administrative Appeals Tribunal (AAT).
5. Decisions of the AAT may be appealed on a question of law initially to the Federal Court and to the High Court where leave to appeal is granted.

A Centrelink overpayment could also result in criminal prosecution of the Centrelink customer, depending on the circumstances in which they are overpaid. Prosecution occurs when

a person is charged with a criminal offence and taken to court. This process will begin if Centrelink decides to refer the matter to the Commonwealth Director of Public Prosecutions (CDPP) and the CDPP decides the matter should be prosecuted.

Only a very small proportion of Centrelink debt matters will result in a prosecution. In 2006-2007 Centrelink raised 2,168,019 debts (Centrelink 2007a: 35) and the CDPP prosecuted 3,400 Centrelink cases for fraud (Centrelink 2007a: 32), so 0.16% (less than 1 in 600) of debt matters were prosecuted. In general only those debt matters where fraud or other criminal behaviour is alleged would be prosecuted.

Centrelink guidelines stipulate the following types of cases will be investigated for possible referral to the CDPP:

- where there are dual and multiple claims;
- where forged documents have been used to support claims;
- where false names have been used to obtain payment;
- where there was no entitlement to the income support claimed at the time it was granted;
- internal fraud;
- where alleged offenders have previously been convicted of offences under legislation administered by Centrelink;
- where alleged offenders have previously been issued a warning letter in respect of alleged offences under legislation administered by Centrelink;
- where alleged offenders have incurred debts arising under legislation administered by Centrelink in excess of \$5,000, but the circumstances do not meet any of the above criteria (cases of less than \$5,000 in this category may also be investigated if Centrelink has the resources to do so at the time); or
- where the case otherwise involves serious misconduct and Centrelink is of the view that there is a need to convey a message to the community that such conduct will not be condoned (NWRN n.d.: Ch. 44 Pt. 3.3).

In terms of the possible legal consequences of a

Centrelink overpayment, prosecution is the third strand alongside debt recovery and review and appeal of decisions. These three legal processes are relatively independent of each other and may occur in no particular order to those Centrelink customers who experience all three.

5.2 Experiences of Centrelink debt recovery process

Research participants raised a number of issues in relation to Centrelink's debt recovery process and a number of barriers preventing them from obtaining a reasonable outcome for themselves. These included not knowing they had a debt, not being given information about how they could repay the debt and not being advised of their rights, of the review process or of any assistance or advice that might be available to them.

5.2.1 Lack of awareness that a debt exists

The first and perhaps most surprising finding when examining experiences of the debt recovery process was the high number of research participants who reported that they had not been advised they had a debt. These participants reported that they had only found out about the existence of the debt when their income support was either cut altogether or reduced when Centrelink commenced deducting repayments from their regular income support. These clients found out about their debt via their bank account and were advised by Centrelink of the debt only later when they rang to query why their payment had been cut.

[Centrelink] just immediately started taking money off me. I think the first payment was \$45, and I rang them up and said hey what is going on? They hadn't told me about it, they just took it off me. (Rosemary, sole parent receiving Parenting Payment and Family Tax Benefit)

Centrelink customers interviewed for this research were also not informed that their payment could be cut while they were going through the review process.

[Centrelink] were taking \$15 a week out of my pay and I didn't know they were doing that, until later I got a statement saying 'less debt repayment' and I thought it hasn't even been reviewed yet. Nobody told me it was to be taken out. It was in the review process and I thought, can they do this? (Melanie, receiving Carer Payment (child))

Finding they had a debt to Centrelink via a reduced bank account was particularly dramatic for clients where their income support was reduced to zero.

I went to get some money out of the bank and there wasn't what I expected in there, and I rang Centrelink and they said [my payment] had been cancelled because I was in a marriage-like relationship. I didn't know what the hell was going on because as far as I knew [the Centrelink employee] was going to write down what she had decided and let me know before anything else was going to happen – then it all went boom. Yes, [the Centrelink employee] said to me she had explained that to me, but I don't think she did. I would have known if she had said my payment would be cut off. I really don't think she told me at all. (Felicity, receiving Parenting Payment Single)

5.2.2 Information about repaying the debt

Interviews revealed that Centrelink customers are not routinely advised of the options they may have for repaying a debt, or they were not advised of the full range of options. Some participants said they had only been given a letter, perhaps better described as a statement, demanding full repayment of the debt by a certain date, typically in 14 days' time. Participants expressed surprise that this letter or statement from Centrelink contained no information about options for repayment if they were unable to pay within 14 days.

Centrelink is able to adjust the amount of the deduction initially requested for debt repayments. However, research participants had had extremely varied experiences of negotiating debt repayments with Centrelink. When asked

during the research interview about negotiating repayments some participants expressed surprise that Centrelink was able to do so. They did not realise they were able to request a different level of repayment and had struggled on to try to make the original repayments. Other customers had found it relatively easy to negotiate on their own behalf to have their debt repayments reduced to a manageable level.

[Centrelink] wanted to start taking \$80 a fortnight and I said you can't because that won't leave me enough to pay the rent. Back then I was paying I think \$160 a week. It would have left me with no money for rent let alone Hydro or food. So I did an agreement for \$20 a fortnight. (Karen, working casually and receiving Parenting Payment Single)

In some cases Centrelink staff took the initiative and offered the option of reducing debt repayments to those experiencing financial hardship. However, other clients reported that the possibility of renegotiating their repayment schedule was not explained or presented to them. In one case in the research Centrelink did not offer a different repayment schedule to a client facing hefty repayments, even after the client had formally written to Centrelink giving details of his difficult financial situation.

This research found that the following factors had enabled some Centrelink customers to negotiate a reasonable debt repayment schedule: the customers were willing and able to advocate for themselves to Centrelink, were fluent in English, were willing to disclose their financial crisis, and had, in addition, encountered a helpful member of staff. The following factors had been barriers to others' ability to negotiate a debt repayment schedule: linguistic and cultural barriers, vulnerability due to mental illness and a lack of confidence in advocating for themselves. The research indicates that there are a wide range of responses from Centrelink staff to payment schedules. Some staff were unwilling to change payments, others were proactive in suggesting that the payment schedule be reviewed downwards in light of the customer's circumstances. Which staff member the

customer encountered was therefore a critical factor but one which was beyond their control. Some of the research participants were only able to have their debt repayments reduced when their lawyer intervened.

Well [Centrelink] said no it had to be \$100 a fortnight but then my lawyer got involved. And she made arrangements with the debt collector people that I pay \$50 a week. (Margaret, receiving Family Tax Benefit)

At first Centrelink wanted to take \$135 a fortnight! I went in there and said how are we to live? They said that was my problem, they wouldn't shift. But really we would have had nothing once we had paid the house. [The community legal centre] helped me to get it down to \$35 which I could manage. (Jack, receiving Age Pension)

5.2.3 Lack of awareness of the review process

Centrelink does go to some effort to make information about the availability of reviews and appeals accessible to their customers, providing the information on their website, in a pamphlet and on the back of letters from Centrelink that advise customers of a decision.

Nonetheless, interviews with Centrelink customers revealed very high levels of confusion about reviews and appeals of decisions. A surprisingly high number of research participants had not realised or had not understood that they could ask to have a Centrelink decision reviewed until this was explained to them by an independent advocate such as a welfare rights lawyer. This group included the participants discussed in the previous section that did not receive, or did not have any recollection of receiving, any written notice of a debt from Centrelink. If they did not get a letter advising them of a debt this meant they also did not get the notice, typically on the reverse side of a letter from Centrelink, of their right to review.

Another group of research participants had received written notice of a debt and could therefore be expected to have been given the

information about options for having their decision reviewed. But a number of these Centrelink clients also said they were ignorant of these options.

No I didn't know anything like that, and by the time I saw [the community legal centre] I had paid most of the debt back, all except \$1,000 or so, because it was about a year later. (Nathan, working casually and receiving Youth Allowance)

No I had no idea; I don't remember getting anything, any follow-up letter about that. I am sure I didn't get any correspondence about that, and it wasn't said to me on the phone. I'm sure it wasn't in my letter. (Jan, low income working parent receiving Family Tax Benefit)

The apparent contradiction between Centrelink providing information about review rights and a widespread lack of information about review rights among their customers was explained this way by a participant:

I received the [account payable from Centrelink] and I just about flipped. I rang [the Centrelink employee named on the account] and said "I've got no way of paying it" and I think she said something about "there are reviews" but I didn't understand what she was talking about. It is all very well saying "there are reviews" but if your customers don't know what you are talking about... It says all this stuff on the back of [the form] ... "if you think this decision is wrong they can review it" and so on but legalese doesn't really help most of the general public – it is too difficult to comprehend. I don't find any of it clear. (Terry, running a small business, receiving Age Pension)

Another research participant had been misinformed or had clearly misunderstood the information she had been given by Centrelink about the review process:

I was told to get through to appeals I had to get [the ODM] to change her decision and that really confused me. I had rung her

and she said she wasn't going to change her decision and if I wanted to discuss it further she could, you know, come down and talk about it, but I remember thinking there is absolutely no point taking this any further. I'll just have to wear it because she is not going to change her decision. You know at that stage I had no payment, I had no money, I had to pay my mortgage. (Felicity, receiving Parenting Payment Single)

A number of research participants reported having requested Centrelink to review a decision but the decision had either not been reviewed or not been reviewed until a welfare rights lawyer had intervened and made another, more formal, request for review. A review of the legal centre files of the research participants revealed that some had not had their case reviewed by an ODM or an ARO, or at least no outcome of a review had been communicated to the client, until the client was legally represented and their legal representative had formally requested a review. This was the case even for a couple of research participants who had written to Centrelink and clearly detailed the reasons they thought the decision was incorrect. Even these customers saw no comprehensive review by Centrelink of their case until a lawyer became involved. This is very unsatisfactory particularly as so few Centrelink customers have the opportunity to be represented by a welfare rights lawyer.

One customer had her case reviewed in a seemingly cursory way by a call centre employee rather than having it reviewed by the ODM or an ARO.

In the November of that year I suddenly found an extra \$2,000 in my bank account, so I rang the credit union and they said it had come from Centrelink and so I rang Centrelink and I queried it and said why have I got this extra money? And they said it is backdated to when your children were little and you are entitled to it. And I said well are you sure? I don't think I'm entitled to this payment. And the girl said well wait a minute and evidently she looked up records or something and she said yes it's fine, have a Merry Christmas, it will be fine. I said I don't

want to spend it and next year get a bill for the same amount and do you know what? That is exactly what happened. (Margaret, receiving Family Tax Benefit)

According to Centrelink literature and policy there is no requirement for clients to use a particular form of words when requesting a review of a decision. The website, for example, says that a client can download, complete and post the form 'Review of a Centrelink Decision' but can also ask for a review by telephoning Centrelink or visiting a Centrelink office (Centrelink 2007c). Legally, a request for a review need not be in writing or on the appropriate Centrelink form, nor does a person need specifically to ask for 'a review' (Nelson 2003: 172).

5.2.4 Communicating with Centrelink

Some research participants noted positive experiences when communicating with Centrelink. For example, they appreciated being able to update their income estimate for the purposes of FTB by phone or on-line rather than needing to visit a Centrelink office. But participants also described problems in attempting to communicate with Centrelink. In particular they found they had been told different things by different staff and that trying to sort out difficulties through a call centre was problematic.

Participants expressed high levels of frustration at being told different things by different Centrelink staff.

I remember ringing them up three times about it and each person I spoke to gave a different piece of information. I noted it was different every time. Then they sent me a letter and that was different again. (Lena, working casually and receiving Newstart Allowance)

Perhaps more training for the front desk staff is needed, because I found you could go in to say the Sorell office, Rosny office or Glenorchy and you will be told three different things, and you could call on the phone and

you'll be told another different thing again about your situation. Say you want to find out how much you can earn in a fortnight, you'll be told different figures and I think that is so frustrating. You are out here trying to do the right thing and abide by their rules but how can you when you keep getting told different things? (Karen, working casually and receiving Parenting Payment Single)

For example, one participant found it difficult to get advice as to whether she was earning income as an employee or as a sub-contractor.

So I had to find out what I had to do with the ABN number. Then Centrelink was very mixed up about the ABN number. They said it is not a business and I said well I don't know what it is but whatever it is, it is sub-contracted work, and it was a big fuss about that. Some people from Centrelink said you can have a business and some said no you can't. Some said it's a job and the other party was saying the absolute opposite. (Sylvia, casual worker receiving Newstart Allowance)

Clients also found communicating via call centres very difficult when there was a problem to sort out. Some participants reported that when they were dealing with the distress of an overpayment and Centrelink debt they wanted a person to sit down with them and explain what had happened or they wanted to have the opportunity to go through the relevant paperwork with somebody. For Aboriginal customers and customers from culturally and linguistically diverse communities, cultural preferences for modes of communication also played a part.

It is like fighting cotton wool, trying to deal with Centrelink. They are very hard to get through to, you never get any direct numbers and you're always on the phone for at least an hour. It took me four or five days to actually get a response back from Centrelink by phone, ringing every day and leaving messages etc. I was trying to find [name omitted] as she was the responsible Centrelink officer. (Alex, working part-time)

When I did get that [notice of a debt] I went

and rang them up. I didn't have the phone on here so I rang from Mum's and I said I have to speak to someone in Hobart. She said no you don't you'll be right, we'll just organise payment. I said no I'm not paying anything off this account until I speak to somebody in Hobart and she just said no you don't have to and I said yes I do have to. I had to argue with this woman on the phone to try to put me through to Hobart so I could make an appointment to go and see somebody, and that is how I got to see [a Centrelink Indigenous consultant]. (Chris, working casually and receiving Newstart Allowance)

Clients also reported that their interactions by phone with Centrelink when they were distressed about a debt seemed impersonal and unsympathetic. The Centrelink staff they spoke to did not appear to have any understanding of the enormous impact a debt of thousands of dollars would have on a person or family on income support or on a low income.

Centrelink told me on the phone. It took me by surprise and I was devastated. I recall they were very cut and dried about it, saying oh well, you underestimated your income, your income was X, so now you have to pay it back. They had already taken the lump sum child payment and I still had more to pay, the whole thing was an absolute wipe-out. It was just "we'll take this and you pay this", I didn't feel there was any sympathy – I suppose sometimes there isn't. I felt stunned by the whole thing. (Jan, low income working parent receiving Family Tax Benefit)

5.3 Getting assistance with Centrelink debt

5.3.1 Assistance available from Centrelink

Centrelink has a range of supports available for clients. These include, but are not restricted to, social workers, psychologists and Indigenous Service Officers. Centrelink social workers have a wide brief to provide extra support to clients. They can provide counselling and support to Centrelink customers with difficult personal or family issues, provide information about,

or refer customers to, community support services and help with claims for payments from Centrelink (Centrelink 2007d).

A number of research participants discussed how they needed assistance from Centrelink to deal with the complex range of issues they faced, but how the pathways to assistance were not clear or that they had been unable to get the help they needed in a timely way. For example, only one research participant reported consulting a Centrelink social worker. It is not clear why the take up of this service was so low, particularly given the complexity of the issues faced by the research participants. Some participants were unaware of the availability of social workers, while concerns about eligibility or a lack of knowledge about how the social workers could assist them may have been barriers for others.

Centrelink does advertise the availability of social workers through its website and in written material. This research has highlighted the importance of face to face information sharing for vulnerable Centrelink customers, particularly in difficult and stressful situations. For example one participant explained how he had made no progress getting a decision reviewed until a Centrelink employee gave him 'off the record' information about legal advice and social work support.

The [Centrelink employee] who had been handling most of the stuff to do with [our small business] said come on in and talk to me. So I went in and talked and she said according to the rules there is nothing I can do, but off the record do this, do this, do this and that is basically how I got through to the community legal centre. She sent me upstairs in Centrelink to their social worker and they told me about the welfare rights lawyer and eventually I made it into getting this lot reviewed but without somebody in Centrelink saying what I had to do – I'd still be up to my ears in it. (Terry, running a small business, receiving Age Pension)

Another participant discussed how she only discovered that social work support was available after she had pursued her complaint all

the way to the Social Security Appeals Tribunal, by which time she had experienced serious stress-related problems threatening her health and capacity to work, and was experiencing suicidal thoughts.

I didn't know that they had counsellors at Centrelink. They told me in the Tribunal [SSAT] that on one of the forms when I applied for the pension it said did I need any help? Well, I didn't know they had all that help – it's not in black and white on any form that they have psychologists or psychiatrists and social workers. I didn't know they had any of that. The only help I thought they could give me was to have a bit of money coming in so I could survive. If they don't tell people how are people meant to know? If they are in trouble, or not sure about something... and then when you get to the counter and you get somebody that's rude you think oh what's the point. Before I went to the Tribunal I put a form in and they gave me a booklet [an Earnings Worksheet], and I said well how long have they been around for and she said they've been around for a long time. Yes it just helps you, I could have got my bosses to fill that in or I could have got someone to help me with that, then maybe I wouldn't have been in that trouble. Centrelink needs to advertise what is there for people, the help they have got, and it should be on the forms, and say "if you have problems", or you should get another letter with your form. There definitely should be another letter to say this is what is available, and contact numbers, not to Brisbane or somewhere but actually to Hobart, you know, this is where the downfall is. And I think everyone should have a caseworker. Everyone should have someone they talk to. Years ago it used to be like that but they changed it. (Mary, working casually and receiving Newstart Allowance)

5.3.2 Independent legal assistance

Broadly speaking there are three sources of independent legal advice about Centrelink matters. Firstly, community legal centres provide information, advice and representation about social security law and administration termed

'welfare rights advice'. Community legal centres that provide specialist advice on social security law are members of the National Welfare Rights Network. From them Centrelink customers can get advice about their entitlements, about breaches and about debts. Secondly, there is legal aid provided by statutory authorities in each state and territory, usually known as Legal Aid Commissions (for example the Legal Aid Commission of Tasmania) or simply Legal Aid. They are each independent bodies and have their own guidelines, but there are broad similarities in the services they provide. The Legal Aid Commission of Tasmania offers free telephone advice and provides some criminal representation for prosecutions, within the parameters of their legal aid guidelines (Legal Aid Commission of Tasmania 2008). Thirdly, the private legal profession can also advise and provide representation about civil or criminal social security matters.

Because research participants were recruited from among the clients of the Hobart Community Legal Service and the Launceston Community Legal Centre all had received at least some assistance from community legal centres. However, as funding for community legal centres is very limited some participants had only been able to receive some initial legal advice or information rather than on-going representation. Therefore, even among the participants in this research who had all made contact with a community legal service, not everyone had been able to access all the legal assistance they needed. In Tasmania community legal centres would only have the capacity to help a small proportion of Centrelink customers requiring advice about welfare rights and social security law.

Research participants were asked how they found out that they could obtain assistance through a community legal service. It was clear from their responses that information about the availability of independent advice is not readily available and that the pathways to obtaining advice were varied and in some cases convoluted. The most common sources of information were via the electoral office of a local Member of Parliament or Senator or advice from a friend, neighbour or relative. Other

participants were referred to a community legal centre by a hospital-based social worker, a financial counsellor, private lawyer or by the Legal Aid Commission of Tasmania. Two participants reported that they were referred by Centrelink.

Whatever the pathway, many had not found out they could access independent legal advice at the start, when a problem had been identified by themselves or by Centrelink. In a number of cases 12 months or more had passed before they received assistance. For some clients this meant that their debt problem had become an enormous issue for them; for example they had ended up in court, when possibly legal intervention at an earlier stage could have seen the matter resolved or the impact contained. However research participants did speak of their relief once they were able to obtain advice and assistance from a community legal centre lawyer. They were grateful that somebody had listened to their story. In particular, they were very grateful that someone could provide a pathway through the maze of social security law and administration. Many felt that prior to obtaining assistance they were floundering in the system and that the community legal centre lawyer had made a difference to their case.

One participant described how grateful he was that a community legal centre lawyer had accompanied him to the Social Security Appeals Tribunal. Centrelink literature suggests "it is not necessary to bring a lawyer" to a SSAT hearing (Centrelink 2008a) but this customer saw it as essential. He had successfully told his story directly to the members of the Tribunal and agreed that the process adopted by the Tribunal was fairly informal. However when asked if could have appeared by himself, he insisted:

No, I'd rather go with someone. I think people should go with someone who knows how the system works and about Centrelink law. (Tim, working casually and receiving Newstart)

A few research participants had sought advice from private legal practitioners. Some found it was expensive to obtain private legal help or they didn't pursue the advice because they couldn't afford it:

After charging me a nice fee my lawyer told me just pay the money. And she made arrangements with the debt collector people that I pay \$50 a week. (Margaret, receiving Family Tax Benefit)

I started ringing around for a solicitor and the solicitor wanted a \$1,000 in advance for paperwork alone, and said you can't really afford it but I said I'm not going to let [Centrelink] get away with it, no way on this earth ever. So the solicitor said I understand your position and he was the one who gave me the phone number for the community legal centre solicitor. (Sylvia, casual worker receiving Newstart Allowance)

Other research participants stated they had consulted private legal practitioners but had found that they were not able to get the assistance they needed. One difficulty is that there is very little work for private practitioners in social security law because people on income support cannot generally afford lawyers and therefore very few lawyers specialise in this area. Social security law is also complex, contained in multiple pieces of legislation and in a volume of Government policy that is relevant to the interpretation of the law. Practising in the area requires a solid grounding in administrative law as well as legislative interpretation and comparisons have been made between the complexity of social security and taxation law. Few private practitioners would be motivated to keep up with the detail of social security law when they have so few clients in the area.

5.4 Customers' experiences of tribunals

This section considers the experiences of research participants who had a decision of Centrelink relating to their debt reviewed by the Social Security Appeals Tribunal. The findings of the research reveal examples of harsh interpretations of the law by the SSAT and an aggressive appeals policy pursued by the Government under the former administration.

5.4.1 Special circumstances

Centrelink customers who have a debt and are facing hardship may ask that Centrelink waive the debt due to special circumstances, and if refused they can request the SSAT to review the decision. Family Tax Benefit debts may also be waived where there are special circumstances (*A New Tax System (Family Assistance Administration) Act 1999* (Cwlth) s 101).

However, the issue that arose repeatedly when interviewing research participants and reviewing their legal files was the interpretation of the phrase 'special circumstances' by members of the Social Security Appeals Tribunal. How the phrase 'special circumstances' is interpreted is important because Centrelink may waive a debt where there are:

- special circumstances other than financial hardship alone; and
- the debt did not arise through a person knowingly making a false statement or representation or failing to comply with a requirement of the *Social Security Act (Social Security Act 1991* (Cwlth) s 1237AAD).

The term 'special circumstances' is not defined in the legislation. In a case often referred to in the SSAT, the Federal Court determined (*Dranichnikov v Centrelink* [2003] FCAFC 133) that for special circumstances to exist there must be circumstances that would distinguish the case from the usual case. This raises an interesting question of interpretation: what is the usual case? If the 'usual' Centrelink client faces difficult circumstances, then it appears a person must be able to show extraordinarily difficult circumstances to qualify as 'special'. Given the findings of this research about the various challenges faced by Centrelink customers this is of real concern. The 'usual case' test appears to set a standard of hardship that becomes more and more difficult to meet as Centrelink customers present to the SSAT with accounts of the challenges they face. Some of the SSAT decisions concerning the research participants raised a real concern that SSAT interpretation of special circumstances had fallen out of line with general community expectations of how the phrase would be interpreted or understood.

Angela's story

Angela, from Burnie, was unable to work as she was caring for her disabled daughter who had very high needs. She was receiving about \$100 a fortnight of Carer Payment. The exact amount of Carer Payment she received depended on how much her husband earned. Angela contacted Centrelink each fortnight to declare her husband's income. The income calculations were difficult as her husband was working casually for a couple of different employers. His pay periods didn't coincide with Centrelink income periods and at one stage she was unable to get payslips from one of his employers so that she didn't have a figure for his gross pay and there was some guesswork in the calculations.

In an attempt to avoid an overpayment Angela over-declared her husband's income from one employer. Angela felt that she was diligent in calculating and reporting her husband's income, however it seemed Centrelink did not have records of all the times she had contacted them. The calculations were complicated and they appeared to be complex for Centrelink as well since it took months for the Original Decision Maker to review the decision. While all this was happening Angela was diagnosed with cancer and commenced chemotherapy. As a result of the chemotherapy her bones were weakened and she was re-hospitalised after she broke both her ankles and then had to wear special boots. As soon as she came out of her boots she re-broke one ankle so chemotherapy had to be discontinued. Her husband also required surgery on his shoulder in this period. The SSAT decided that Angela faced no special circumstances and the debt should be recovered.

5.4.2 Government appeals

Anglicare's research also revealed an example of a disturbing trend of increases in Government appeals against decisions made by the Social Security Appeals Tribunal. One research participant reported that his case, involving a debt of just over \$5,000, had been successfully appealed to the SSAT which had waived the debt in view of special circumstances. The special circumstances included that the customer, an income support recipient, had responsibility for a child with disabilities. The customer

was then notified that the SSAT decision had been appealed by the Government to the Administrative Appeals Tribunal (AAT).

Figures provided in Centrelink's Annual Report (Centrelink 2007a) suggest that decisions of the SSAT are being appealed more frequently. Appeals to the AAT increased by 19.7% from 2005-06 to 2006-07. Significantly, it was appeals by the Government which were responsible in large part for this increase. Government appeals⁴ accounted for 80.4% (469 appeals, up from 260) of the increase while appeals by Centrelink customers grew by 9.5%. Looking back to the previous year the results are even more startling; from 2004-05 to 2005-06 the increase in government appeals of AAT decisions was 162.6%, admittedly off a smaller base: the government appealed 99 decisions in 2004-05 and 260 in 2005-06 (Centrelink 2006: 85).

Yet as the Government appeals more decisions of the SSAT they are winning a decreased proportion of their appeals – from 49% in 2005-06 down to 28% of cases in 2006-07⁵ (Centrelink 2007: 39). This suggests that the legal basis for the Government's appeals against SSAT decisions is not always sound.

The nature of decision-making in the SSAT has traditionally been to give its members room for discretion to respond to considerations such as special circumstances or where they perceive a customer has acted in good faith. If they are concerned that any decision they make adverse to the Government may be appealed there is a worrying possibility that Tribunal members will become unresponsive to individual circumstances in their decision-making. The SSAT is an independent Tribunal; it is not clear why the Government, under the former administration, would have needed to appeal so many of its decisions or whether this trend will continue under the Rudd Government.

⁴Appeals lodged by Centrelink in the name of the Secretary of the relevant policy department and in accordance with policy department instructions.

⁵Where the Government obtains a changed decision in the AAT on a government-initiated application it is described as a win for the Government.

5.5 Prosecutions

Media reports conflating general debt management issues faced by Centrelink with deliberate fraud, and highlighting the prosecution of 'welfare cheats' have created a widespread community belief in the pervasiveness of such crime. In reality, the number of Centrelink customers being prosecuted does not appear to have increased greatly over recent years.

Anglicare's research revealed some key concerns with the prosecution of Centrelink cases. The first is an unacceptable risk that Centrelink customers may be prosecuted when it is not in the public interest to pursue the prosecution. The second concern is that, regardless of whether or not there are too many prosecutions, it is clear that a disproportionately high number of prosecutions result in convictions - 98.7% (Centrelink 2007a: 32). A key finding of this research is that Centrelink customers do not have access to the legal advice and representation they need and this results in too many pleading guilty. The consequence is that there are few defended hearings and therefore the important question of criminal intent is often not tested.

Participants interviewed for this research who had been to court were all prosecuted in relation to incorrectly declaring their income. The research has identified a number of reasons why Centrelink recipients may incorrectly declare their income. These include:

- finding forms very difficult to understand or complete because of literacy issues, learning difficulties or an intellectual disability;
- finding income calculations difficult or impossible because of numeracy problems;
- finding income calculations complex because they are working sporadic and irregular hours;
- not understanding the difference between gross and nett pay; and/or
- having a mental illness or facing other significant challenges in their life such as caring for a disabled child. Periods of significant stress mean that they do not deal properly, or at all, with paperwork such as Centrelink forms.

The issue of criminal intent is the difference between a Centrelink customer 'getting it wrong' or making errors in any one of these ways and committing a crime. That is, in very general terms, for a person to have committed an offence they must have intended to deceive Centrelink. If the customer made a false statement (for example, a statement of earnings) due to a misunderstanding or an error, then the necessary intention is absent and they cannot be found guilty.

The National Welfare Rights Network (NWRN) has produced a summary of the complex issue of criminal intent in relation to Centrelink fraud. In the NWRN *Independent Social Security Handbook* it states:

Even where it appears that an offence of "intentional misrepresentation" has been committed, Centrelink needs evidence to prove the matter in court (e.g. false documents, a confession or a statement from a witness). Where evidence is unavailable or weak, it is less likely that prosecution will be commenced.

In general, Centrelink will need to prove that:

- the person who is charged, obtained a payment to which they knew they were not entitled; and
- the person made a statement, or presented a document, to Centrelink; and
- the statement or document was false in some way; and
- the person charged knew that the statement or document was false or acted "recklessly" (that is, deliberately ignored whether it was true or not).

These factors show the existence of "intention".

If the case reaches court and the person pleads "not guilty", the DPP will have to prove each of these matters. In particular, it must prove that the person *intended* to deceive Centrelink. This can be difficult. Often the real cause of an inaccurate statement is a misunderstanding or error. If a person is prosecuted in circumstances where there is doubt whether they understood or realised that they were making a false statement, they should plead "not guilty". Criminal Code Act prosecutions also require that the accused had "intended" to commit the fraud or other offence (NWRN n.d.: Ch. 44 Pt. 2.3).

Anglicare's research found that all participants who had been prosecuted had pleaded guilty although they said that they had not wished to. The explanation they gave was that they could not afford the legal representation they needed for a defended criminal trial. The circumstances of each case gave rise to a question of whether the accused had the necessary criminal intent.

When I went to court, we had it adjourned a few times. I said I'd never plead guilty but I was left with no choice, because they were going to pull the pin on my legal aid as I wasn't going to gaol and [my legal aid lawyer] suggested I'd be better off taking what the judge [Magistrate] said because I was never going to win against the government. Yes [my legal aid lawyer] was pretty good, but I think if she'd acted a bit quicker, I mean we tried to get in touch with her before we went to court, you know it was urgent to me – she had a lot on her plate, she's a busy lady of course and I understand that. But I feel that I failed because I had to give in. I didn't have the money to fight it, I didn't have the money to get a criminal lawyer. When the judge said that it would be three month suspended sentence and a good behaviour bond, I wasn't able to discuss how I had got into that mess to the judge. I wasn't allowed to say to him I got here because I'm not real good at filling out forms and my reading and writing is poor. I didn't get to explain how I got there. (Mary, working casually and receiving Newstart Allowance)

In terms of legal representation the research participants fell into two groups: those who were eligible for legal aid and those who were not. The means test for legal aid eligibility is quite restricted. Low-paid workers, including casual workers, may not qualify (LACT 2008). Without legal aid the only option for legal representation is to engage a criminal lawyer, and criminal representation is expensive. A plea of not guilty to test the question of intent would require a fully defended hearing, with spiralling costs. Anglicare's research indicated it was prohibitively expensive for Centrelink recipients to pay for a full criminal trial.

In my court case, I was pleading not guilty the whole way through and then in December or

whatever I said to [my private lawyer] this is it, no more adjournments, I want it finished. And he says, okay, are you still pleading not guilty? And I said, my word. And he says, okay well that's going to cost you, I think, \$2,000 to go through with that one. I said why? I've been pleading not guilty all the way through, why the sudden expense? Oh he said, because of all the litigation, I think he said, that will go with it to fight it, all the work. Well, I said, what choice have I got? And he said, plead guilty or come up with another \$2,000. I said, you know I haven't got the money. And he said, so plead guilty and we'll see how we go. As the judge [Magistrate] read out each plea he asked "how do you plead?" And I said "guilty" 19 times I think it was. And the judge said, is there anything you would like to add? And my lawyer got up and said, well my client here was told on two separate occasions by social security employees, when he questioned the payment he was receiving from them and said it was too much, he was told everything is fine, leave it, it is their job to check. And the judge turned to the social security lawyer and said, do you challenge those accusations? And the lawyer got up and said, no we accept that. The judge said, well then I would like a full court hearing on this. And I turned to my lawyer and said, what is a full court hearing? He said, in money terms about \$5,000. And I said, get over the money, what is a full court hearing? That's when every person involved, the two people who told you at Centrelink and everyone you know comes in and they go through everything. I said, I can't afford it, finish it. And the lawyer got up and said, my client would like to not go any further with these proceedings, he wants it finished as of now. Well the judge says I find you guilty of blah blah blah and sentence you to 18 months imprisonment and then he added wholly suspended on the condition you do not commit a single offence for two years. (Brett, working casually and receiving Newstart)

Other research participants interviewed were eligible for legal aid under the means test and were represented by a legal aid lawyer for their guilty plea, but did not consider that they had an option to have a fully defended hearing. In interviews participants repeatedly stated that "you can't get legal aid unless you plead

guilty". This is a misunderstanding of the legal aid guidelines, but appears to be a widely held misconception. It seems that legal aid applicants form this view because it is very difficult to get legal aid funding for a defended trial from the Legal Aid Commissions which are rationing out the very limited funding resources they have at their disposal, but if an accused person wishes to plead guilty it is comparatively easy to obtain representation by the 'duty solicitor' – the legal aid lawyer who is rostered to cover the particular criminal court on that morning and who will represent unrepresented defendants on short matters. In this situation the research participants interviewed felt pressured or felt it was really their only option to plead guilty to the matters they were charged with.

These findings raise serious concerns about the access low income Centrelink customers have to proper legal advice and representation at a trial.

Another issue raised by research participants relates to Centrelink's compliance system and whether Centrelink is doing enough to support customers to avoid overpayments and debt, and in particular to avoid prosecution. This issue was raised by participants who were prosecuted in relation to incorrectly declaring income. Invariably they had been working casually and declaring their income incorrectly by small amounts in any one income period. This means that the Centrelink client may have been regularly overpaid by a relatively small amount, perhaps \$20-\$40 a week, over a long period of time. Over the years it seems these amounts had built up to a sufficient amount for Centrelink to consider referring them for possible prosecution. Centrelink guidelines suggest that a debt of over \$5,000 should be investigated and considered for prosecution (NWRN n.d.: Ch. 44 Pt. 3.3).

The research participants queried why debts were allowed to build up to this significant amount, which then invited investigation for prosecution. They acknowledged they were making mistakes when declaring their income but expressed the need for a system to warn them that they were making errors. They felt that the situation should not have been left to get to the point where they faced prosecution.

For them to turn up on my doorstep with a summons without warning me – I think they should have got me in to talk to me. The prosecution said in court that they'd been watching or keeping an eye on me or words like that. I can't understand why, if they knew I was having trouble, why did they leave it and not get me in and say we need to fix this, why wait a couple of years? If they could see that I was making a mistake, and it kept on occurring, why did they let me get to that high debt? (Mary, working casually and receiving Newstart Allowance)

I put in my tax returns, so why didn't it come out earlier? Why did it take five years? I wish [Centrelink] had picked it up in the first 12 months and then it would never have got as far as it got. (Susan, working casually and receiving Newstart Allowance)

There would be a number of ways that Centrelink could manage this issue. For example, Centrelink is able to send a warning letter to customers when they have investigated a matter but decided not to send the matter to the CDPP for possible prosecution (NWRN n.d.: Ch. 44 Pt. 3.2), and this research suggested that greater use could be made of these warning letters as an appropriate step prior to prosecution.

The Prosecution Policy of the Commonwealth Director of Public Prosecutions applies a two-stage test to be satisfied in determining whether to institute proceedings in a particular case. Specifically,

- there must be sufficient evidence to prosecute the case; and
- it must be evident from the facts of the case, and all the surrounding circumstances, that the prosecution would be in the public interest (CDPP 2007b).

The Prosecution Policy goes on to list a number of factors that may be relevant to whether the prosecution being considered would be in the public interest. One factor to be considered is the age, intelligence, health or any special infirmity of the alleged offender, any witness or victim. Centrelink will also consider these, or very similar, factors when deciding whether to refer a case to the CDPP for possible prosecution (NWRN n.d.: Ch. 44, Pt. 3.4). The particular cases considered

as part of the research did not raise concerns that cases were being prosecuted without due regard to the Prosecution Policy. However, the research found that there was an unacceptable risk that the CDPP may not be aware of factors relevant to a decision to prosecute, and therefore be unable to properly apply the guidelines to Centrelink customers, which means that Centrelink customers could be prosecuted when it is not in the public interest to do so. In general the CDPP will become aware of factors relevant to the application of the Prosecution Policy such as a customer's health, mental health or intelligence if these factors are raised by Centrelink in their referral of the matter, or by the customer or their representative. Making representations to the CDPP about the application of Prosecution Policy on behalf of a client facing investigation and possible prosecution comes squarely within the role of a welfare rights lawyer or other lawyer. This research highlights that very few Centrelink customers are legally represented or have an advocate so these representations will only be made in a small number of cases.

It is reasonable to assume that Centrelink is diligent in raising matters relevant to the Prosecution Policy when they refer matters to the CDPP. However Centrelink staff may not be aware of all the factors that are having an impact on a client's life. In particular, this research indicated that Centrelink customers may be experiencing episodes of mental illness that may not be fully diagnosed, treated, or disclosed to Centrelink.

Although the CDPP prosecutes cases for a number of Commonwealth agencies, including the Australian Tax Office, the Australian Securities and Investments Commission, the Department of Immigration and Citizenship, the Australian Federal Police and others, Centrelink refers the largest number of cases to the CDPP of any agency (CDPP 2007a: 13). In 2006-07 the CDPP dealt with 3,618 defendants referred by Centrelink, which made up 61.1% of all matters referred. In the same period the CDPP prosecuted only 307 cases referred by the Australian Taxation Office, 71 cases referred by the Australian Securities and Investments Commission, and 1

defendant referred by the Australian Competition and Consumer Commission (CDPP 2007a: 72).

In 2006-2007 the CDPP had a conviction rate of 98.7% in Centrelink matters. The CDPP has asserted that the high conviction rate it enjoys across all matters is "due to defendants pleading guilty", meaning that the cases do not go to a fully defended trial (former CDPP quoted in Garnaut 2006: 1). Certainly the findings of this research suggest that this is the case in Centrelink matters.

As stated, all the research participants who had been to court had been prosecuted for wrongly declaring income. Clear parallels exist with the misreporting which would be expected to be found in declaring income on taxation returns. This raises the concern that Centrelink matters are prosecuted disproportionately to tax matters and corporate crime.

5.6 Summary

Anglicare's research included Centrelink customers who had been prosecuted for wrongly declaring income. In all these cases they had been convicted and the consequences for them and their families were extreme.

Whether too many Centrelink customers are being prosecuted may be a matter for debate. However, this research raises the real concern that the chances of Centrelink customers who are prosecuted obtaining a fair trial are very small unless they can fund their own legal defence. Often Centrelink recipients are facing criminal hearings without access to the legal advice they need to formulate their defence and are being offered extremely limited or no legal representation at those hearings. Accordingly they are not experiencing a fair trial or any real justice.

This research has also identified a risk that the Commonwealth's Prosecution Policy is not always followed in the prosecution of Centrelink matters. The research explored the possibility that Centrelink matters are far more likely to be prosecuted than other 'white collar' crimes in areas like taxation and corporations.

6. Findings: The impact of debt

When considering the impact of overpayment, debt recovery and prosecution on Centrelink customers it is important to recall the particular challenges faced by many of them. While conducting this research it became apparent that almost without exception the participants faced significant challenges in their lives and in most cases, multiple challenges. These meant that at the time they were acquiring and dealing with Centrelink debt they might also be experiencing family violence, depression and/or other mental illness, significant health problems and bereavement. They might also be battling with poor English and recent migration, illiteracy, sole parenthood and long term poverty as well as traumatic life events.

Research participants were facing up to as many as six of these significant challenges at the same time. The only individuals who did not appear to be facing so many challenges were the small group who were in stable or relatively stable employment and who had incurred a debt through an overpayment of Family Tax Benefit.

The research indicated that Centrelink debt would have a significant impact not just on individuals but also on their dependents. Nearly half the participants had dependent children and of those, a third were caring for a child with a disability. Participants shared their concerns of how they could not always afford nutritious food or other basic expenses like school shoes for their children. The additional challenges imposed by Centrelink debt resulted in short term problems as well as having serious long term impacts.

6.1 Initial reactions

Almost without exception participants in the research reported being completely unaware that they were acquiring a debt during the time they were being overpaid by Centrelink. When the letter arrived advising they had incurred a debt it was a considerable surprise. The initial reactions described by people were expressed in very strong language: it was not just unwanted bad news but for many a distressing shock.

Centrelink told me and it took me by surprise. I was devastated. (Jan, low income working parent receiving Family Tax Benefit)

I got the bill. I went into shock with that really and thought it's not possible. (Susan, working casually and receiving Newstart Allowance)

Since I got the big bill for \$4,200 debt my daughter just picked me up off the floor, I couldn't believe it. I was just really having a bad time emotionally when they sent me the bill. I collapsed and I thought well I may as well go and end it now. (Chris, working casually and receiving Newstart Allowance)

A big envelope turned up in the post and I don't know about you but sometimes you look at an envelope and you say that is bad, you are not expecting anything like this and you think this is really bad. I flicked through it and I thought at first it was \$900 overpayment, but I looked again and it was \$9,000. I thought I've been set up here, someone's having a joke. And I stuck my head out to see if one of my neighbours was there laughing his head off, saying oh we gotcha. Then I came back in and I was looking at it, and I thought it must be a joke and so I rang up Centrelink. I was just stunned. The whole world seemed to be more or less collapsing. (Brett, working casually and receiving Newstart)

The findings of this research suggest that Centrelink can take some time to raise a debt and this delay can add to the shock felt by Centrelink customers receiving notice of a debt. For example, one research participant received a letter from Centrelink raising a debt almost exactly 12 months after receiving an overpayment:

My eldest son was here when I got the letter [from Centrelink] saying you must pay [repay an overpayment]. And we rang again, and I was crying and he took over and he said to the girl we know it's not your fault, but Mum told you from the very beginning [the payment was incorrect] and it just seems unfair. (Margaret, receiving Family Tax Benefit)

Centrelink customers are generally on a fixed and very tight budget, just managing to cover costs each fortnight. They are unable to plan for or budget for debts that are unanticipated or where the timing is unexpected, and this exacerbates both the shock and the challenge of repaying the debt.

6.2 Repaying the debt

Every Centrelink customer interviewed talked about the challenge they faced in repaying their debt to Centrelink, or for those who had not yet commenced repayments, the enormity of the task they contemplated. Participants talked about the impact on themselves as individuals and on their families. The debts faced by the research participants (in the range of \$200-\$24,000) in each case appeared huge to the participants, especially when considered relative to their income.

Recent research by Anglicare Tasmania⁶ found that, in November 2007, the cost of basic needs would consume a very high proportion of the income of people living on Centrelink income support. Housing costs, electricity, transportation, medication and groceries were included as basic needs. It was found that basic needs would consume 77.7% of the income of a couple living on income support if they were in public housing and 98.7 % of the Centrelink income of a family (two adults and two children) purchasing their own home. This indicates how rising costs, particularly for housing, are putting pressure on low income households and how little discretionary income households may have to repay debt.

It's \$420 a fortnight and you take \$58 out of that, I mean that's my food money. I told Centrelink that yesterday, that's my food money. I pay rent and Hydro, I have a card payment once a fortnight that's \$100 a fortnight, then you try to buy personal stuff, though I haven't bought clothes for so long it's not funny. I buy all my stuff at op shops and even op shops are getting too dear for me. I have my knitting and a little bit of study now, and walking, I go walking around. I'd love to join a walking club but I just can't afford to, at the moment I can't afford

another \$5, I really can't and that's looking at reality and surviving. (Mary, working casually and receiving Newstart)

For some participants debt repayments had caused them to trim their budgets in ways that were quite unsustainable, resulting in high levels of anxiety about the household budget.

We have nothing spare, I pay the house, we buy some food that is about it. But for my wife we also have to buy a lot of medicine, it is about 14 tablets in the morning and another 9 at night. It costs \$4.99 or \$5.99 per script. I just spent \$74.50 on medicine; we pay for it up to that limit. I wish I could save a little bit away, in case anything went wrong. I only have a couple of hundred in the bank that is all, that's not enough. I mean what if someone dies? We don't have money to even bury me. (Jack, receiving Age Pension)

It was a financial battle. Centrelink were taking \$1,600 a year, doesn't sound like a lot but when you add it up it is property rates, car registration, and our insurance – car insurance, house insurance, contents insurance – all in together. So from an already reduced pension we had to find that money all over again. (Warren, receiving Disability Support Pension)

Participants reported complex juggling acts to try to meet basic expenses on the income support they had left once their debt repayment had been deducted.

I still owe the landlord; he was really, really good and sympathetic to me because he knows I'm a good tenant and try to look after the house. I'm still about \$2,000 roughly behind in my rent or whatever it exactly is. I stumble, stumble, stumble and he's been really good but I still owe that and have to find some means of repaying it. The food, well I just had to be 'starving Marvin' and go to the

⁶Anglicare Tasmania calculated the cost of essentials for families for the Tasmania Together Benchmarks for 2007. Tasmania Together Progress Board 2007, *Snapshot of Progress for 2007*, State of Tasmania, Hobart, viewed 12 December 2007, www.tasmaniattogether.tas.gov.au/our_progress/2.

charities, and I thought oh I know I'll grow a garden and I can eat and so I did all these kind of things. I was left with a Hydro bill and I negotiated a debt repayment program and that is what I'm still doing but I'm still in arrears of \$900 or so and I defaulted a few times because you have to change your cash flow around to pay other things. There's rent and then there's MBF and the telephone and things like that. (David, receiving Disability Support Pension)

Some participants got pushed further into debt while trying to repay their Centrelink debts, and expected that it would take years rather than months to get back on track financially.

I'm in debt up to my ears – and over, just rates and stuff that had to be paid. I've just borrowed \$5,000 off someone that I'll have to pay back and I've borrowed \$5,000 off the family. I have a personal loan, a credit card. I'm worried if I default I'll wear it [gaol] if any of the debts I have now go into 90 days or go on to collectors. (Susan, working casually and receiving Newstart Allowance)

I took a home loan as the bills were coming down on my ears and then unfortunately I had to have a credit card, a personal loan, a home loan, just to be able to survive. I was paying \$20 and after the Tribunal [SSAT] it became \$15 a fortnight which is not much but it's all I can afford. It is not easy. I had to get another credit card a few weeks ago, another \$1,000 credit card. Now I have to think of changing banks as I've had enough of [my bank] that's for sure. I'll bring my home loan to the new bank as I have to have fixed interest you know? My bank won't do it and interest rates are going up all the time. I used to pay \$108 a fortnight on my home loan and now it's become \$116. (Sylvia, casual worker receiving Newstart Allowance)

Research participants with children felt the pinch on the family budget and expressed their concern about the impact debt repayments would have on their children.

When you are a mother bringing up children every cent counts. (Margaret, receiving Family Tax Benefit)

It was just less money for groceries, because I hate bills. To me, bills have to be paid first. I thought, as long as we have enough food to eat... we didn't have meat and vegies seven nights a week, we probably had a proper cooked tea three or four nights a week and otherwise we'd have cereal or sandwiches for tea. We never went hungry, but for me a proper cooked tea for my kids is meat and vegetables. (Rosemary, sole parent receiving Parenting Payment and Family Tax Benefit)

It is not only people living solely on income support but also working families that commented on the impact of debt repayments. Families where the breadwinners are working part-time, casually, sporadically or in a low paid job found debt repayments very difficult. A reduction in the amount of anticipated family tax benefit and the additional costs of repaying amounts that have been overpaid could leave a big hole in the budget.

We weren't starving, we didn't lose our house, but it put another constraint on. When you are already straining, well \$20 is heaps. Plus I didn't get that lump sum for the kids which was like \$1,200! I was relying on that lump sum to get clothes and things and shoes and school fees, or even for Christmas. It was going to help out with all those basic things, not like a holiday or anything, just basic needs, and making things a bit easier for a few months. I was depending on that. But I guess when they say severe [financial hardship] they are looking at much worse than that. (Jan, low income working parent receiving Family Tax Benefit)

It was apparent from the research participants interviewed that many Centrelink customers need to be able to negotiate quite lengthy repayment periods for income support debts. Some participants had been advised by Centrelink that they were required to repay debts at very high repayment rates, in some cases clearly not leaving them with sufficient income to meet even basic essentials like food and housing.

It is a substantial amount and Centrelink said they would take it back from my pension at the rate of \$179 per pension. If you

are only getting \$193 per fortnight plus pharmaceutical allowance plus rent assistance, and they take off \$179 – I was left with \$63 for a fortnight! (Terry, running a small business, receiving Age Pension)

When I was put back on the pension it was reduced and reduced substantially – what are you going to do with \$65? That is your fortnightly pay. What are you going to do? (David, receiving Disability Support Pension)

This highlighted the importance of customers being able to negotiate, or being assisted to negotiate, manageable debt repayment schedules with Centrelink.

One group of research participants who felt the impact of debt in a very dramatic way were those who Centrelink decided were in a marriage-like relationship. Where the other person in the alleged relationship was working it was particularly dramatic as according to Centrelink that meant they were financially supporting the person on income support, rendering the Centrelink customer ineligible for any pension or allowance. Centrelink could decide that their customer had in fact been ineligible for assistance for some time due to the relationship and on that basis both reduce their income support to zero and simultaneously give them a sizeable repayment account.

I was hit with a \$20,000 debt and zero income at the same time. They cut me off two weeks before Christmas time I think it was, and that was it, no income no money, that's it... bang. How the hell do you survive? (David, receiving Disability Support Pension)

6.3 Long term impacts

The research found that the process of debt recovery had in some cases more serious and longer term effects than the financial hardship of repaying the debt. The stories of some participants indicated detrimental effects on their emotional well-being or mental health. Worryingly it was clear that some participants were traumatised by the process of debt recovery and this was particularly so where they had been prosecuted in relation to the debt. In a number of

cases it was clear that dealing with a Centrelink debt had a negative impact on the participant's ability to care for their children or other family. Bankruptcy and longer term financial hardship was also experienced by a group of participants.

Like I said I had pills in my hand twice, I was going to take my life – and only for Lifeline... (Chris, working casually and receiving Newstart Allowance)

I tried to keep everything away from the kids because things had been so mucked up [with ex-partner], and I was going to rehabilitation [for an injury] and I was really depressed. I got to a point where, well there was no point getting out of bed, too much had happened, I didn't want to accept A's [person Centrelink alleged was her spouse] help but I couldn't do anything. I'd asked Mum's help, if she could loan me some money and she lent me as much as she could but you know it was a very dark time. (Felicity, receiving Parenting Payment)

Participants reported that the process of overpayment, debt recovery, loss of income and dealing with Centrelink had caused them significant distress and had caused them to question the value of attempting to take up casual, part-time or low-waged work. In effect these processes, designed to underpin systems to promote workforce participation, had created significant psychological barriers to participation in the workforce.

I'm on really strong sleeping pills as it is and I'm on anti-depressants and I just thought I can't deal with it anymore, I just can't. They've drained me, they've drained absolutely every bit of energy out of me and I can't. I'm alright for a couple of weeks then I'm down again. Because I haven't been working for a couple of weeks I haven't had to put in forms. The first time I went in [to Centrelink] after I went to court I broke down, and she [Centrelink employee] said you haven't filled it in and I said I'm too scared to. I was just too scared to fill it in. I mean, I don't want to go to gaol. (Chris, working casually and receiving Newstart Allowance)

The stress of debt recovery processes and of facing the threat of prosecution had had the consequence of making customers fearful of undertaking the small amounts of work available to them as the earnings from these would only have been a supplement to their income support payments and would have opened up the possibility of making further errors in declarations to Centrelink. In some cases they were still unable to contemplate work or study in some cases for long periods (over 12 months) after the resolution of the debt matter.

It is pointless to work if you are going to have all these problems, because for a small overpayment Centrelink makes you go through all this hell. You are paying left right and centre, you are trying to survive and look after your health which is deteriorating quite considerably. And ever since I thought to myself what the hell am I working for then? Centrelink needs to have a better relationship with their customers, a more constructive one. We are looking for people to do something here, to become something, not to destroy them – that is what Centrelink is doing. (Sylvia, casual worker receiving Newstart Allowance)

I'm not going to work for them again, I'm not going to make the same mistake twice [incorrectly declaring income]. No I haven't worked at all for 12 months. It might be a bit impossible [getting me back into the workforce]. (Susan, working casually and receiving Newstart Allowance)

This was particularly the case where a Centrelink customer had incurred an overpayment from incorrectly declaring income and had subsequently been prosecuted. In this situation participants also noted that the fact they now had a criminal record made them less employable.

Like I said, no-one wins – who wins? The taxpayer loses for a start because they have to support somebody and someone like me at my age. Who is going to employ me if I have to have a police check? I did a security course and I was keen to do it, my friend has a job down at the hospital and it's a pretty

good job. But I can't do that now... even for cleaning jobs you need a police check. (Mary, working casually and receiving Newstart Allowance)

6.4 Bankruptcy

The need to repay Centrelink debt catapulted some research participants into serious long-term financial stress. Where the debt was not the direct catalyst for financial stress it was a significant factor. For example, participants reported that they had gone bankrupt as a consequence of their Centrelink debt, or that they were contemplating bankruptcy.

I was working and Centrelink was garnisheeing my pay \$100 a fortnight, that was leaving me with no money. I was grossing say \$600 and taking home about \$450 and Centrelink were taking \$100 of that and we were going downhill fast. We had debts galore and I thought I'd better do something and I went to [financial counsellor]. I had to declare bankruptcy, we just couldn't do it. (Brett, working casually and receiving Newstart Allowance)

I can't get a loan anyway, I'm about to declare myself bankrupt. It will be a fresh start, not much I can do about it. (Tracey, low income sole parent receiving Parenting Payment and Family Tax Benefit)

Bankruptcy has significant consequences. Until the time their bankruptcy is discharged, a bankrupt person must face restrictions including their access to credit, their right to certain employment, and their right to travel overseas. While being declared bankrupt might address some debt crises, it does not discharge all forms of Centrelink debt.

7. Conclusions and recommendations

For low income households the news that they owe Centrelink money – sometimes thousands of dollars – is a devastating blow with far-reaching consequences. In a society which demonises ‘dole-bludgers’ little is known about the nature of the debts – how they arise, or how they are dealt with by both Centrelink and the debtor.

This research illustrates that Centrelink debts occur for a number of reasons. They arise out of the arrangements of the current labour market and the particular circumstances of customers but also out of Centrelink processes themselves. Irregular and unpredictable earnings make people vulnerable to errors in calculating income. At the same time, a trend towards a more commercially orientated and aggressive debt recovery strategy on Centrelink’s part has coincided for many customers with decreased access to independent legal advice and representation. This research found evidence that this advice and representation has become critical for a customer to navigate their way through the complex Centrelink system: for example, reviews of case files revealed that in a number of cases customers’ requests for reviews were not addressed by Centrelink until they were made by a legal representative.

As the main source of income for 31% of Tasmania’s population, it is critical that Centrelink policies respond to the dynamic changes in social mores and the socio-economic context in which its customers live. The findings of this report suggest that work needs to be done to ensure that the policies and frameworks of Centrelink reflect community assumptions and norms. For example, careful analysis is required of the interpretation of ‘marriage-like relationships’. And, at the tribunal level, the Social Security Appeals Tribunal should show the level of support that the community would reasonably expect to be extended to a customer of Centrelink who has not intentionally intended to defraud Centrelink but who nevertheless has a debt and is in a situation of particular hardship.

Current public discourse about Centrelink debt recovery is dominated by stories of welfare fraud, and focuses on the ‘welfare cheat’. This research reveals that many debts to Centrelink

arise quite legitimately – for example, they may be funds advanced to customers waiting on compensation payments. Of the rest, most debts are caused by errors. The proportion of people with a Centrelink debt prosecuted for deliberate fraud, even under the current aggressive drive to pursue customers to court, is very low indeed. The impact of this level of aggression however, has been the high level of anxiety which dealings with Centrelink engender in the lives of its customers. This is most acute for customers when they are trying to make calculations of their earnings – a constant process for those people stuck in the bottom end of the labour market, dependent on a mixture of casual and irregular work and top-ups of income support payments. Ironically, this research has found that this anxiety has led Centrelink customers to minimise their interactions with Centrelink, and their margin for error, by minimising their participation in the workforce.

The social security system has long been described as the Australian ‘safety net’, a support system in times of illness, unemployment, old age or to people in need of support while they care for family members. In recent years a dramatic reshaping of the safety net has occurred. This research maps some of the destructive effects of its redesign.

7.1 Correctly declaring income

The most common single reason for incurring a Centrelink debt was a Centrelink customer incorrectly estimating or declaring their (or their partner’s) income from paid employment. The context for this problem is changes in the way people work and, in particular, the casualisation of the workforce. Participants reported working fragmented, intermittent and constantly changing hours which made estimating income or declaring income complex and mathematically challenging. Anglicare’s research found that incorrectly declaring income often occurred due to irregular and fluctuating earnings and pay periods. Some payments, such as pensions or Austudy, do not have the reminder to report fortnightly which is built into payments such as Newstart Allowance. Eligibility for Family Tax Benefit is difficult to predict on a fortnightly basis,

but most low income families will seek fortnightly payments because they need the money. In addition to these complexities, customers reported literacy and numeracy problems and confusion about the difference between gross and nett pay.

Recommendation 1

Anglicare supports the recommendation of the Independent Review of Breaches and Penalties in the Social Security System (Pearce et al 2002: Recommendation 17) that Centrelink should simplify its rules and practices about customers notifying income, especially in relation to income that may have been 'earned or derived' but has not yet been 'received'.

Recommendation 2

That Centrelink should enable customers who indicate they have 'earned or derived' income in a particular reporting period to delay reporting the precise amount until they have actually received it.

7.2 Debt prevention

Australian Government policies aim to minimise the risk of fraud and incorrect Centrelink payments through a framework of prevention, detection and recovery and deterrence (FaCS 2005: 276). Centrelink is required to devote considerable energies to developing and managing systems to detect and prevent incorrect payments. Once detected more resources are devoted to manage and recover debts and where deemed necessary to prosecute. However, the findings of this research suggest that a greater emphasis needs to be placed on debt prevention, because current systems appear to have customers falling through the gaps and because debt recovery and deterrence come at such great personal and public cost.

The findings of this research underline the fact that most Centrelink customers are Centrelink customers because of some level of personal disadvantage and that increased resources are required to offer a customer-focussed service from the agency which identifies 'at-risk'

customers quickly and picks up problems early. The implications of the use of call centres as a response mechanism for customer queries around debt, debt prevention and debt recovery should be seriously questioned.

Recommendation 3

That Centrelink employs more social workers to work with customers identified as being at risk of overpayments.

7.3 Marriage-like relationships

Nearly one quarter of the participants interviewed for this research had incurred significant debts to Centrelink after it was determined they were in a marriage-like relationship when they considered themselves to be single people. The marriage-like relationship provisions as currently legislated, interpreted and administered are drawing a very wide group of relationships into the marriage-like net, for example people living in shared households, carer/caree relationships and people who were once married but now separated and living under one roof.

The issue of defining marriage-like relationships is fraught with difficulties. Anglicare's research found that the assumptions of neighbours and acquaintances, assumptions based on the age and gender of the people sharing a house, had been used as evidence of a marriage-like relationship. Care needs to be taken in interpreting this section of the legislation so that the term 'regular associates' (of an alleged couple) (*Social Security Act 1991* (Cwlth) s 4(3)(c)(ii)) is not defined too broadly to include people who have no real understanding of the domestic arrangements of an alleged couple.

This research highlights the need for consistency in the way the criteria for forming an opinion about a marriage-like relationship are interpreted and applied by Centrelink officers. Anglicare's research identified the need for Centrelink officers to be able to evaluate a range of relationships that may be very similar to, but are not, marriage-like relationships. This involves high level skills including the ability to conduct sensitive investigations and interpret complex domestic

arrangements. How the community perceives an alleged relationship also calls for careful analysis. To undertake these tasks in a professional way the relevant Centrelink officers require both ongoing training and clear policy guidelines that keep abreast of shifting social contexts and social mores. Centrelink faces a growing challenge and will require additional resources to accurately and equitably assess the status of their customers' relationships.

Recommendation 4

That Centrelink provides ongoing training for its officers in the interpretation of marriage-like relationship provisions.

Recommendation 5

That the Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs conducts regular reviews of the policy guidelines for the assessment of marriage-like relationships in the *Guide to Social Security Law* (FaHCSIA 2008) to ensure it captures relevant and changing social trends such as the affordable housing crisis.

It should be noted that this is a complex area of policy and law and Centrelink customers need access to independent and expert advice about how it is determined that a marriage-like relationship exists, and how the criteria are likely to be applied to their own situation. Not all customers would be aware, nor could they be expected to be aware, of all the relevant factors. They should also have access to advice about how to have the decision reviewed if they consider they are not in a marriage-like relationship. A high proportion of customers may also need to be legally represented for reviews and appeals. A recommendation relating to the need for adequate funding to the Welfare Rights Network is discussed later in this section.

Recommendation 6

That Centrelink ensures that its customers are made aware of options for obtaining independent legal advice and assistance when they are advised of proposed decisions that they are in a marriage-like relationship.

The issue of procedural fairness for Centrelink customers who Centrelink alleges are in a marriage-like relationship also requires consideration. It should be possible for Centrelink to administer these decisions in a more reasonable way. The Commonwealth Ombudsman has recently recommended that Centrelink's policy guidelines be amended to require that customers be advised in writing (including detailed reasons) of a proposed decision in relation to them being a member of a couple, and be provided with an opportunity to respond (Commonwealth Ombudsman 2007, Recommendation 3: 17). Anglicare's research findings support the need for this reform.

Recommendation 7

Anglicare supports the recommendation of the Commonwealth Ombudsman, that the Department of Families, Housing, Community Services and Indigenous Affairs amends its policy guidelines in relation to marriage-like relationships to address procedural fairness by advising customers in writing of a proposed decision (including detailed reasons) and providing customers with an opportunity to respond.

Ultimately however, discouraging low income people from sharing houses during an affordable housing crisis is poor public policy. A policy option to resolve this inconsistency would be to give each individual an entitlement to income support without reference to their relationship status. This would involve a considerable shift in the direction of social security policy, but deserves consideration.

Recommendation 8

That the Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs reviews the option of individual entitlement to income support without reference to relationship status.

7.4 Centrelink error

A number of participants in this research had acquired debts because of errors made by Centrelink. These were both errors in the assessment of whether the customer was in a marriage-like relationship and administrative errors which resulted in customers receiving the wrong level of payments. However, even when Centrelink acknowledges that the error was its own, the balance of risk rests almost entirely with the customer who is almost invariably required to pay the debt which is raised against them. This can cause great hardship in low income families where the overpayment may have accumulated over a long period and have been expended as part of the family's weekly budget.

People seeking waiver of Family Tax Benefit debts are required to demonstrate that they are experiencing 'severe financial hardship', a very high bar of distress which automatically excludes most FTB recipients – even many who are dependent on income support payments. The National Welfare Rights Network rightly points out that such requirements remove all care and responsibility for errors in FTB payments from Centrelink and place them solely with the customer.

Other customers who receive overpayments with other forms of income support also find themselves bearing the burden of risk. Section 1237A of the *Social Security Act* requires a customer to prove that a debt was 'solely' caused by Centrelink administrative error in order to have it waived. This means that even if Centrelink is 99% responsible for the debt, any slight contributory error by the customer makes them responsible, and ineligible for relief of the debt. A fairer measure would be if the error was 'substantially' caused by Centrelink administrative error.

Anglicare supports the proposals put forward by the National Welfare Rights Network which aim to increase Centrelink's accountability to its customers and shift its emphasis from debt collection to debt prevention.

Recommendation 9

That the requirement that it is necessary for a customer to be in 'severe financial hardship' for Family Tax Benefit debts to be waived where the cause of the debt is 'sole administrative error' be removed.

Recommendation 10

That the word 'solely' be removed from s 1237A (1) of the *Social Security Act 1991* debt waiver provisions and be replaced with the word 'substantially'.

7.5 Debt recovery processes

Research participants raised a number of issues in relation to Centrelink's debt recovery process and a number of barriers preventing them from getting a reasonable outcome for themselves. These included not knowing they had a debt, not being given information about how they could negotiate repayments, a widespread lack of understanding about how to have Centrelink decisions reviewed and some cases where customers had requested a review of a decision but this had not happened. Customers found communicating with Centrelink could be difficult when they were given inconsistent information by different Centrelink staff. They also reported that staff could be very off-hand or unsympathetic. Some participants found trying to deal with overpayment and debt problems through the Centrelink call centre frustrating and found they needed a local Centrelink person to sit down and help them resolve the problem face-to-face. Requests for review are difficult to initiate when customers do not have access to the phone numbers of Centrelink staff. Some research participants reported that without direct numbers it very difficult to locate the person in Centrelink who had made the decision regarding their case.

A lack of clear communication between Centrelink and its customers was repeatedly identified as a problem by the research participants. In a number of cases participants reported that the first communication they received about the debt was when it exceeded \$5,000 and notification of the debt arrived accompanied with a warning that matters might proceed to prosecution. At times the debt had increased over a lengthy period, increasing

with time and multiplying their repayment difficulties. Participants identified delays as long as 12 months before overpayments were identified and debts raised against them. Better communication is required for warning people that they are wrongly declaring their income and that their income declarations will be monitored. Better communication would also detect cases where people are unaware that they are wrongly declaring income. Given the level of customer error in declaring income it would also be an opportunity to offer a face-to-face meeting with a Centrelink officer to receive instruction in how to complete declaration forms. The goal of these administrative systems would be debt prevention, or where debt is incurred, to ensure that the overpayment does not exceed a level which attracts the possibility of prosecution.

Issues with ongoing contact and communication with customers were identified as a central problem for Centrelink by the Independent Review of Breaches and Penalties in the Social Security system, which found that breakdowns in contact and communication accounted for a very large proportion of the breaches (fines) being experienced by those Centrelink customers who were jobseekers. The Independent Review recommended that Centrelink place a greater emphasis on the use of plain English and accessible formats in written communications, and even of warning symbols and graphics, with special strategies in place for customers whose first language is not English. The Review also made comment on the need for customers to be able to contact Centrelink officers directly with queries, recommending that the provision of this be mandatory in relation to especially vulnerable customers, a finding confirmed by this research.

Recommendation 11

Anglicare supports the recommendation of the Independent Review of Breaches and Penalties in the Social Security System (Pearce et al 2002: Recommendation 8), that wherever possible, customers should be provided with the name or position identification, and the direct phone number, of an appropriate officer with whom queries or difficulties about Centrelink communications can be discussed.

Research participants also identified that in the debt recovery process they had not been given information about options for repayment of the debt, of their rights to a review process or of any assistance or advice that might be available to them. Centrelink already has a system where a warning letter can be sent to a person where Centrelink has decided not to refer a case to the Commonwealth Director of Public Prosecutions, or where the CDPP has decided not to prosecute (NWRN n.d.: Ch. 44 Pt. 3.2). It would seem to be beneficial to use these warning letters more frequently, or a similar system.

A debt of even \$1,000 can potentially cause a financial crisis for an individual or family dependent on Centrelink benefits as their main source of income, and even has the potential to cause significant budgeting problems for middle income families in receipt of Family Tax Benefit. It is to be hoped that Centrelink will detect overpayments as early as possible, but Anglicare recommends that a \$1,000 debt be seen as a significant problem for customers, who are then identified as being in need of information and possibly assistance. Anglicare recommends that the figure of \$1,000 in overpayments be used as the trigger for a review of a customer's situation. It is recommended that it is when a customer's debt reaches this level that the customer is contacted, the opportunity of an interview offered, discussions about repayment options explored and information about support options and right of review given.

Recommendation 12

That Centrelink adopt the benchmark of \$1,000 of debt as a trigger point for contacting customers. The communication with customers should offer the opportunity for an interview, a review of how to fill in forms, a discussion of repayment options and information about support options and the right of review.

Centrelink describes debt recovery in commercial terms with a focus on maximising the debts recovered. The Federal Court has directed Centrelink to consider the financial hardship that may result for their customers when undertaking debt recovery action (DGSS v Hales (1983) 78 FLR

373 cited in Nelson 2003: 132) but our research did not indicate that avoiding financial hardship was uniformly a consideration for Centrelink. This places it out of line with commercial debt collectors who are constrained by the debt collection guidelines produced by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission. These guidelines state that recovery practices should make 'reasonable allowance for a debtor's ongoing living expenses' (ACCC/ASIC 2005).

Anglicare's research found that research participants had widely differing experiences of debt repayment schedules. These ranged from Centrelink officers proactively offering to adjust repayment schedules in order to make them financially sustainable to imposed repayment schedules of 60% of a pension income – a schedule which was clearly going to precipitate a financial crisis. The delivery of a quality service to its customers requires Centrelink to invest in training to ensure consistency of service with regard to debt repayment schedules. It is also imperative that the repayment schedules recognise that a high proportion of the budget of a low income households is committed to essentials – for example, 30% of income is considered the benchmark level of housing affordability for households in the two lowest income quintiles, a level regularly exceeded in the current housing market.

Recommendation 13

That Centrelink ensures that its staff are trained in appropriate and sustainable repayment options for customers.

Recommendation 14

That sustainable repayment schedules which do not cause financial hardship are routinely offered to customers who have debts with Centrelink and that the right to negotiate these be acknowledged, and flagged on letters to customers advising them of the existence of debts.

7.6 Accessing advice and information

Injustice can easily occur if Centrelink customers don't have access to independent advice and assistance and support to review decisions where necessary. The *Social Security Act* covers complex areas of the law and is open to inconsistent interpretations by Centrelink officers. In this context, Centrelink customers should be able to access independent information and advice about their situation. Anglicare's research found that very few Centrelink customers were able to access the independent legal advice they needed about their entitlements or get the legal representation they needed if they were prosecuted. This is because the welfare rights lawyers who can provide free legal advice about social security matters through the community legal centres can only assist a very small proportion of Centrelink customers and private lawyers are too expensive for most Centrelink customers. The availability of legal representation through the Legal Aid Commission is also extremely restricted, and customers accused of Centrelink-related offences reported that they felt they had no real option but to plead guilty.

Independent and expert advice is particularly required for customers who disagree about the decision that they are in a marriage-like relationship. Customers require information about how it is determined that a marriage-like relationship exists, and how the criteria are likely to be applied to their own situation. They should also have access to advice about how to have the decision reviewed if they consider they are not in a marriage-like relationship. A high proportion of customers may also need to be legally represented for reviews and appeals at the SSAT and higher tribunal and courts as interpreting and applying the law correctly can be difficult in this area. Not all customers would be aware, nor could they be expected to be aware, of all the relevant factors.

Recommendation 15

That the Commonwealth Attorney-General increases funding to Welfare Rights Services through the Community Legal Services Program by \$3 million per

annum as recommended by the National Welfare Rights Network (NWRN 2007) to enable Welfare Rights Services to meet the level of need for information, advice and representation in relation to social security law.

Recommendation 16

That the Tasmanian Attorney-General supports Welfare Rights Services in Tasmania as occurs in other States by funding the full cost of one welfare rights lawyer in the south and one in the north of the State (to provide services to the north and north-west) at the rate of \$90,000 per lawyer (standard community legal centre funding levels: NWRN 2007).

In addition to information about review processes and legal advice, more general information and support was required by the Centrelink customers interviewed. Many of the people interviewed for this research were experiencing one or more significant life stresses. These included providing care for children or adults with physical and intellectual disabilities, dealing with chronic physical illness, living with episodic mental illness and literacy and numeracy problems and long-term unemployment. There is a concern that few participants had been given information about the existence of Centrelink social workers when this would have been a useful service. Some participants reported they had benefited from support from Centrelink officers such as social workers and Indigenous Service Officers – but they indicated that they had required this support earlier than they had received it.

Recommendation 17

That all relevant communication with Centrelink customers should contain information about Centrelink support services such as social workers and independent sources of advice on social security matters.

Underlying issues for many of the participants in Anglicare's research were their literacy and numeracy problems. Financial literacy was repeatedly identified as a problem by customers with participants identifying their difficulty in

doing the mathematics required to complete Centrelink forms. Interviews also revealed that a number of participants had high levels of personal debt and difficulties managing budgets on their low incomes. Services such as financial counselling programs can assist people to learn financial literacy skills, to negotiate their way through financial crises and to develop and manage budgets. However, these services are poorly funded, with the Australian Financial Counselling and Credit Reform Association (AFCCRA) last year describing funding as "patchy, insufficient and diminishing in real terms" (AFCCRA 2007: 16).

Recommendation 18

That the Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs increases funding to the Commonwealth Financial Counselling Program (CFCP) to meet increased client need.

7.7 Reviews

The research findings indicate that little information gets through to Centrelink customers about the nature of reviews of Centrelink decisions or how to request one. It is essential that Centrelink staff interpret requests for a review broadly. While clearly not every customer enquiry about a decision can be interpreted as a request for a review of a decision the onus must properly be on Centrelink staff to explain the options to customers and clarify if they are requesting a review.

Research findings in this area reinforce the critical importance of people getting independent legal advice and representation. A review of the legal centre files of the research participants revealed that some had not had their case reviewed by an Original Decision Maker or an Authorised Review Officer, or at least no outcome of a review had been communicated to the customer, until the customer was legally represented and their legal representative had formally requested a review. This was the case even for a couple of research participants who had written to Centrelink and clearly detailed the reasons they thought the decision was incorrect. Even these customers

saw no comprehensive review by Centrelink of their case until a lawyer became involved. This is very unsatisfactory particularly as so few Centrelink customers have the opportunity to be represented by a welfare rights lawyer.

The National Welfare Rights Network has urged Centrelink to carry its share of the responsibility for errors which result in overpayments by operating "a rapid, readily accessible and consistent review system as provided for under the legislation", which would, among other reforms, ensure that a request to have a decision reviewed by an Authorised Review Officer would actually be referred to an ARO. The NWRN argued that the right to review by an ARO "is a critical part of managing the risks associated with wrong decisions" and addresses the injustice caused by blocking people from accessing ARO appeals, their right under the Act, by insisting they go back to the Original Decision Maker first.

However, the NWRN has noted that although these reforms were to be in place in May 2007, the new model is still not operating and that the stated reason for this is lack of funding. The NWRN has concluded that referring all requests for ARO review to an ARO, a right under the Act, would require the funding of new ARO positions (NWRN 2007).

Recommendation 19

That Centrelink, in accordance with the Centrelink Customer Service Charter (Centrelink 2008) and relevant case law, responds promptly to customers indicating they would like a decision reviewed by an Authorised Review Officer, including when the request is made informally.

Recommendation 20

That additional funding be provided to Centrelink to implement its internal administrative review overhaul and enable all requests for review by an Authorised Review Officer to be conducted by the Officer without first going through the Original Decision Maker. This will require funding to increase the number of Authorised Review Officers.

7.8 Tribunals

The Social Security Appeals Tribunal has the power to waive debts in 'special circumstances' where the debt did not arise out of any deliberate action by the customer. However, it appears that the SSAT has adopted a very restricted meaning for that phrase so that research participants who experience quite extraordinary hardship were found by the SSAT to not be in special circumstances.

Some of the SSAT decisions concerning the research participants raised a real concern that SSAT interpretation of special circumstances had fallen out of line with general community expectations of how the phrase would be interpreted or understood.

Recommendation 21

That the Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs orders a review of Social Security Appeals Tribunal decisions to identify how the phrase 'special circumstances' is currently being interpreted.

A decision by the independent Social Security Appeals Tribunal to waive a customer's debt can be challenged by the Government in the Administrative Appeals Tribunal. Anglicare's research found evidence of a trend, evident under the former administration, of a high number of decisions of the SSAT being appealed by the Commonwealth Government to the AAT, and even in some cases to the Federal Court. Why the decisions of an independent tribunal are being challenged in this way is not clear. The level of failure to win these appeals suggests that the legal basis for the Government's appeals against SSAT decisions is not always sound.

While these appeals can be initiated by any department, it has been suggested by both lawyers representing social security recipients and welfare advocates that the Department of Education, Employment and Workplace Relations is particularly aggressive in its legal campaign to recover debts, sometimes debts as low as \$1,300, and that the goal of its pursuit of cases even where there was no legal merit was "not

to create legal precedents, but to set a tone it hoped would percolate down the line into Centrelink, which implements departmental welfare policy" (Raper, quoted in SMH 2008). Questions have been raised, even in the AAT itself (DEWR and Cleary [2007] AATA 1979), about whether particular applications by DEEWR are consistent with the Commonwealth Government policy requiring government departments to be 'model litigants' (that is, the obligation to act with complete propriety, fairly and in accordance with the highest professional standards).

The consequence of this trend for the research participants who may have had their debt waived by the SSAT is that they then had to fight for the decision to be upheld in the Administrative Appeals Tribunal with all the stress and cost that entailed.

The consequences for the decision-making of the independent SSAT can only be guessed at, but it is possible to conjecture that, if members are concerned that any decision they make adverse to the Government may be appealed, there is a worrying possibility that they will become unresponsive to individual circumstances in their decision-making.

Recommendation 22

That the Commonwealth Minister for the Department of Education, Employment and Workplace Relations orders a review of the Department's litigation policy in relation to social security appeals.

7.9 Prosecutions

Anglicare's research indicated that few prosecutions for Centrelink matters proceeded to a defended hearing. This was worrying as the important question of criminal intent may not be fully examined in these cases. As discussed earlier, the research also highlights worrying inadequacies in access to legal advice and, once matters had proceeded to prosecution, to legal representation.

Recommendation 23

That the Commonwealth Attorney-General increases funding to Legal Aid Commissions

to enable a higher proportion of defendants in Centrelink-related prosecutions to be legally represented.

The research also found that there were a number of cases where a substantial debt had built up over years as customers made errors with calculating income. Rather than warning customers they were making errors the debt was referred to prosecution once the debt reached a certain size, typically \$5,000, even though the customer may have been given no warning that they were making errors. This is not a sensible or fair compliance regime. Anglicare's recommendations from this research are geared towards ensuring that processes are set in place to ensure that problems are identified early and debts are prevented, with a goal of preventing prosecution.

Centrelink's National Case Selection Guidelines determine which cases the agency will investigate and, if there is sufficient evidence, refer to the Australian Federal Police for investigation or the Commonwealth Director of Public Prosecutions for possible prosecution. Currently the relevant guideline states that cases will be referred where alleged offenders have incurred debts arising under legislation administered by Centrelink in excess of \$5,000 (NWRN n.d.: Ch. 44 Pt. 3.3)

Recommendation 24

That Centrelink's National Case Selection Guidelines be amended so that referral to the Australian Federal Police and the Commonwealth Director of Public Prosecutions is triggered where alleged offenders have incurred debts to Centrelink in excess of \$10,000 rather than \$5,000.

7.10 Impact

None of the research participants had been aware they were accumulating a debt to Centrelink and almost invariably they reported that notification of the debt had been unanticipated and came as a shock. Those most vulnerable were people who were determined to have been in a marriage-like relationship and who were deemed to have been ineligible for Parenting Payment because of the income level of the person determined to be their partner. This decision meant a complete

cessation of payments to people with dependent children. For one research participant, who had just left a violent relationship, it meant complete financial dependence on a male friend even through the period when the decision was being reviewed by the Social Security Appeals Tribunal. This was a situation of great vulnerability for both her and her children.

Centrelink customers who have had their payments removed are entitled to a payment pending the outcome of any review of their circumstances but few customers are aware of this and without independent social security legal advice they are unlikely to ask for it. Centrelink must ensure that this is automatically offered to customers who are awaiting the outcome of reviews.

Recommendation 25

That in cases where a customer has lost eligibility to income support Centrelink ensures that consideration is given to continuing a payment pending the outcome of any review of a customer's circumstances.

For all the research participants the challenge of repaying a debt to Centrelink was considerable. Even where they had some income from employment it was often low paid or unreliable. In some cases Centrelink had imposed repayment schedules that did not leave customers with enough money to cover essential expenses like food, housing or medicine. Most recipients reported that the debt had caused stress and worry in the short-term, and some participants reported serious long-term effects such as being unable to care properly for their children or other family members. The long term stresses had had a very detrimental effect on their emotional well-being and mental health with some participants reporting experiences of longer-term depression and suicidal thoughts. Some participants reported that they had been made bankrupt.

Anglicare believes that the range of recommendations in this report, if adopted, would help ameliorate the more destructive effects of the current debt recovery strategies employed by the Government. An important end-note however is the clear contradiction between these strategies

and the Government's goal of increased workforce participation, particularly under the Welfare to Work reforms. Participants in this research reported that their ability to participate in the workforce had been undermined by Centrelink's debt recovery strategies or because of the aggressive promotion of prosecution for debts. The research participants reported that these strategies had resulted in them having a criminal record which affected their employability or that they were fearful of again making a mistake in declaring their income and so felt that it was better for them not to work.

Recommendation 26

That the Commonwealth Government conducts a review of the impact of Centrelink debt recovery strategies on workforce participation.

There is also an onus on the Commonwealth to provide checks and balances to mitigate against the unintended consequences of legislative change. Anglicare supports the view of the Senate Legal and Constitutional References Committee that a legal aid impact statement should be required when new legislation is brought into effect which increases the emphasis on crime and law enforcement. The goal of such a legal aid impact statement would be to ensure that adequate supplementary funding is provided to legal aid commissions to meet increased demand for their services.

Recommendation 27

That the Commonwealth Attorney-General ensures that, in line with the recommendation of the Senate Legal and Constitutional References Committee's Inquiry into Legal Aid and Access to Justice (Senate Legal and Constitutional References Committee 2004), a legal aid impact statement be prepared for any new legislation which increases the emphasis on law enforcement and that supplementary funding is provided to legal aid commissions to counter increased demand for their services.

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