



# Prosecution of Social Security Offences

**The information contained in this factsheet explains Social Security and prosecutions.**

## What does prosecution mean?

Prosecution is the process of going to court when you have been charged with a criminal offence. At the end of the process the court decides if a person should be convicted of an offence, and what penalty should be imposed. It is a criminal offence to intentionally tell Centrelink something that is not true in order to obtain a payment or to get a higher amount, or to help someone else to do this. It is also an offence to intentionally mislead a Centrelink officer by not telling them something which would affect a payment, for example intentionally not advising of an increase to your income.

## How are decisions to prosecute made?

### 1. Advice of Debt

First Centrelink must decide you have been overpaid, and send you a letter asking you to repay the money. You can be prosecuted whether or not you repay the money. A Centrelink interviewing officer does not have the authority to advise you that you will not be prosecuted if you “tell them everything” or “repay the money in full”.

### 2. Centrelink investigation

If Centrelink thinks your debt arose because you intentionally told it something that was not true or intentionally withheld information, it may investigate your case further.

Centrelink has wide powers to obtain information. It can obtain information from other people or organisations such as your employer, your bank and the Australian Tax Office.

However, Centrelink cannot obtain information about you from your solicitor.

### 3. Centrelink prosecution interview

Centrelink may ask you to attend a prosecution interview. The purpose of this interview is to ask you questions which might prove that you committed a criminal offence. After the interview, Centrelink may recommend to the Director of Public Prosecutions (DPP) that you be charged with a criminal offence. The DPP makes the final decision about which cases should be prosecuted.

The appointment letter should say if an interview is a prosecution interview. You can tell it is a prosecution interview as Centrelink will give you a warning that anything you say may be used against you in a court of law and that the interview will be taped.

***Before deciding whether to attend a prosecution interview always obtain legal advice.*** In most cases it will not be in your interest to attend the interview. This is because the interviews are conducted in a manner designed to fill the gaps in the case against you.

You have the right not to attend the prosecution interview, or if you decide to attend it, you can end it at any time. ***You cannot be penalised for not attending a prosecution interview. You can simply ring up and advise that you do not wish to attend.***

Centrelink will usually send you a letter advising whether or not your case has been sent to the DPP for consideration of prosecution.

### 4. The Director of Public Prosecutions (DPP)

When the DPP receives your case from Centrelink, it will decide if a criminal offence can be proven. It might ask Centrelink to do more investigation. If it thinks an offence can be proven, the DPP will start proceedings in court. If it decides not to proceed, you will receive a letter.

Sometimes the DPP takes more than six months to reach a decision.

## How will I know if I am being prosecuted?

You will get a court attendance notice (CAN) or summons if you are going to be prosecuted. This document that tells you the time and date you have to attend a court. The CAN/summons will specify the charges, and the address of the court you have to attend. A CAN/summons is usually given to a person by a police officer, but does not involve being arrested. It is an offence not to attend court on the day specified in the CAN/summons.

## What are the penalties if I am convicted?

The penalties vary depending on the seriousness of the offence, your attitude to the offence, any history of previous offences and your circumstances. The court can impose penalties ranging from good behaviour bonds and fines to community service orders and imprisonment. The court may also make a “reparation order” which is an order requiring you to repay the debt to Centrelink.

## Do I have to repay the debt if I am prosecuted?

Yes, even if the court does not make a reparation order, you will have to repay a debt unless the court says that it imposed a prison sentence or a longer sentence because you were unable or unwilling to repay the debt.

## What can I do...

### ... about the debt

If you owe a debt you will need to start repaying the debt by instalments, either from your Social Security or Family Tax Benefit payments, or from other sources of income.

If you think you do not owe the money or the amount is wrong, you can appeal. It is important to appeal as soon as possible. If your appeal is successful, or partially successful, you may avoid

prosecution, or lessen the penalty you get from the court.

Keep in mind that it may not be in your interests to appeal the debt as you may disclose adverse information to Centrelink which can be provided to the DPP. A Welfare Rights Centre/Advocate can provide advice about whether you should appeal a debt and the timing of your appeal. Also see the factsheet “Debts – what to do if you have a Social Security debt”.

You can apply for a copy of your file under the Freedom of Information Act to help you check whether the debt is wrong. Ask Centrelink for the form “Freedom of Information - I want to access or change document(s)”. There is no charge to get your file. For more information see the factsheet “Freedom of Information – how to request a copy of your file from Centrelink”.

### ... if I have circumstances that should be considered in deciding whether or not to prosecute

If there is information you would like the Centrelink investigator or the DPP to consider, talk to a solicitor and ask them whether it would be appropriate to write a letter to Centrelink or to the DPP. In some cases the DPP will stop prosecution action because it is not in the public interest to prosecute you. This may include circumstances relating to new information, your health, disability or social situation.

### ... if I receive a court attendance notice / summons

If you receive a court attendance notice (CAN)/summons, talk to a solicitor about whether you should plead guilty or defend your case, and what preparation should be done before you go to court.

If you do not have enough time to see a solicitor before you have to go to court, attend the court and ask to have your case “adjourned” to another date while you get legal advice. It is a good idea to get an appointment before you go to court, so you can advise the court of how long it will take to obtain advice.

The Legal Aid Commission in each state and duty solicitors can give you advice about what to do at

court. Legal Aid can only represent people who satisfy a means test, so you may need a private solicitor to represent you before the court. Many local courts have duty solicitors who provide basic advice and assistance on the day of your court appearance. They may be able to help you get an adjournment if you need one.

Welfare Rights Centres/Advocates do not represent people in court however they can give advice about a debt.

## Appealing Centrelink decisions

Separate to the prosecution process, you have the right to appeal against Centrelink decisions, including decisions about debts. Welfare Rights Centres/Advocates can advise you about your right to appeal against Centrelink debts. See below for more information about your appeal rights.

## Appeal rights

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

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

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

If you think the ARO decision is wrong you can appeal to the Social Security Appeals Tribunal (SSAT). The SSAT is independent of Centrelink.

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

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

## Please Note:

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

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

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

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