

# Centrelink Debts

This fact sheet outlines the rules around appealing debts in general terms, however, we recommend contacting us for advice so that we can provide specific advice. If Centrelink advises you that you owe a debt – don't panic. Read this factsheet and contact us for advice

## What is a debt?

If you are paid more than you are entitled to by Centrelink (including pensions, allowances and FTB), even if it is not your fault, the amount you were overpaid is a debt owed to Centrelink.

## Do I owe a debt to Centrelink?

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

## What actions can I take?

- Get independent advice about your debt from Basic Rights Queensland.
- 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.
- If you think there's been a mistake and the debt shouldn't exist at all, you can appeal.

## Is the debt amount correct?

Centrelink sometimes calculates debts incorrectly. If you believe the debt amount is too high, you can appeal the debt to an Authorised Review Officer.

**Please be aware the amount of a debt can occasionally increase as a result of an appeal,** for example the period of the debt may be extended. Therefore, it is a good idea to seek advice from Basic Rights Queensland.

## Why was a 10% penalty added to the debt?

A 10% penalty may be added to your debt if:

- you refused or failed to provide information to Centrelink about your income from work; or
- they consider that you knowingly or recklessly provided false or misleading information that resulted in the debt.

The 10% penalty cannot be added if:

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

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

## How does Centrelink collect debts?

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

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

- if you are getting a Social Security payment, including FTB, Centrelink can deduct money from your payment;
- if you are not getting a Social Security payment, Centrelink will try to negotiate a repayment arrangement with you;
- Centrelink can "garnishee" your wages or bank account. This means that money can be taken from your bank account or wages. Your tax return can also be garnisheed;
- you can be taken to court and the court may make an order about how the debt is to be repaid.



## How much can Centrelink collect each fortnight?

If you are getting a Social Security payment Centrelink normally deducts 15% of your payment each fortnight (not including Rent Assistance and other extras) to recover a debt.

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

Centrelink may deduct as much as 95% from some payments, e.g. Family Tax Benefit.

## What if I can't afford the debt repayments?

Don't agree to repay more money than you can afford. If you can't afford the debt repayments, you should call Centrelink's debt recovery number on 13 63 30 to negotiate the amount you repay each fortnight. You will generally need to provide details of your income and expenses to negotiate.

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

## Do I have to repay the debt?

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

It is usually complicated to argue that a debt should be written-off or waived, so get independent advice from Basic Rights Queensland.

## Can the debt be written-off?

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

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

- you cannot repay the debt. If you are receiving a Social Security payment you will need to show

that deductions from your payment would cause you severe financial hardship;

- you are not receiving a Social Security payment, and it would be too expensive for Centrelink to collect the debt;
- there is no proof the debt exists (eg, the records about your debt have been lost);
- you have been discharged from bankruptcy (subject to some exceptions);
- the person who owes the debt has died and there is no estate;
- If you think your debt falls into one of these categories, make an appeal.

## Can the debt be waived?

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

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

There are two main grounds for waiver of a debt.

### "Sole Administrative error" waiver

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

It can be difficult to convince Centrelink that a debt was "solely" caused by its error. Centrelink may admit that it made a mistake, but point out that you made a mistake as well (eg, failing to correct any mistakes in letters Centrelink sent you outlining your income). Although Centrelink may refuse to accept that your debt was solely caused by its error, the Administrative Appeals Tribunal could view your case differently and decide that your debt must be waived.

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

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

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

### “Special circumstances” waiver

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

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

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

However, even if you have some “special circumstances” the debt will only be waived where it is seen as “desirable” to do so weighing the cost to the taxpayer of letting you keep overpayments.

It may be useful to ask doctors, counsellors or community caseworkers to provide reports to help explain your circumstances, however, we recommend you seek advice from BRQ before asking them to write something.

You must also show that you did not knowingly make any false statements to Centrelink or knowingly fail to give Centrelink correct information.

For example, if you knew you were giving Centrelink incorrect details about your income from work, then your debt cannot be waived on this basis.

## Will Centrelink automatically consider waiver of the debt?

Usually you need to appeal and ask Centrelink to waive your debt. See below for details on how to make an appeal.

## What happens if I become bankrupt?

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

After bankruptcy, Centrelink can only recommence to recover a debt in limited circumstances. Whether or not a debt can be recovered after bankruptcy is a complicated issue. If Centrelink try to recover your debt after you are discharged from bankruptcy you should seek legal advice from Basic Rights Queensland.

## Could I be prosecuted?

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

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

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

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

## Appeal rights

If you think a Centrelink decision is wrong you have the right to appeal against it. **Appealing is easy and free.** To appeal simply tell Centrelink that you wish to appeal/review your debt 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 in relation to a debt.

If you think the ARO decision is wrong you can appeal to the Administrative Appeals Tribunal Level 1 (AAT1). The AAT1 is independent of Centrelink.

You have further appeal rights to the Administrative Appeals Tribunal Level 2 (AAT2) and the Federal Court. 28 days time limits apply at these levels.

## Interpreters

Most Centrelink offices have interpreters available at regular times each week. Your local Centrelink office can tell you about their available languages and times.

You can telephone the Centrelink Multilingual Call Centre on 131 202 and speak to a bilingual Centrelink officer.

You can also call the **free** Telephone Interpreter Service (TIS) on 131 450 and ask for an interpreter.

## Please note:

This Fact Sheet was prepared by Basic Rights Queensland (BRQ). It contains general information only and does not constitute legal advice.

BRQ is a member of Economic Justice Australia (EJA). EJA members are community legal centres which provide specialist legal services in relation to Social Security (Centrelink).

BRQ also provides specialist legal services in relation to Disability Discrimination and non-legal advice services to Queensland women who are seeking assistance with problems at work.

BRQ is independent of Centrelink or any other government body and all assistance is free.

For advice about social security or disability discrimination problems call **1800 358 511**.

For advice for women experiencing workplace problems call **1800 621 458**.

*This fact Sheet was updated in November 2020*

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