

# Centrelink Debts

## 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.

## 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 the debt has been calculated incorrectly you can appeal to an Authorised Review Officer (ARO). **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 before appealing.

## 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 or FTB Centrelink can deduct money from your payments;
- 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; or
- 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.

## 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 1800 076 072 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.



## Can the debt be waived?

It is possible that even when you owe a debt you may not have to pay it back. You can lodge an appeal asking Centrelink to “waive” the debt.

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

Any part of your debt which was caused by Centrelink’s **“sole administrative error”** and that you received **“in good faith”** must be waived.

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 (e.g., failing to correct any mistakes in letters Centrelink sent you outlining your income and assets). 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.

Depending on when the debt was raised for **Family Tax Benefit debts** you may also need to show that you will suffer “severe financial hardship” if you have to repay the debt in order to get waiver for sole error.

### “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 the 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 Basic Rights Queensland before asking them to write something.

You must not have knowingly made any false statements to Centrelink or knowingly failed 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.

## Can the debt be written-off?

In very limited circumstances a Centrelink debt can 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. Please contact Basic Rights Queensland if you require advice.

### 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 do not have to attend this kind of interview. Before deciding whether to attend a prosecution interview always obtain legal advice.

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

### Appeal rights

If you have received a debt notice from Centrelink you have the right to lodge an appeal. To appeal, simply tell Centrelink that you wish to appeal/review the debt. It is a good idea to get a receipt number.

Once you have had a review by an Authorised Review Officer (ARO) you have the right to appeal further to the Administrative Appeals Tribunal Level

1 (AAT1). Please note there is no time frame to appeal the debt to an ARO, and from an ARO to the AAT1.

If you have already had a review with the AAT1 you can appeal this decision within 28 days to the Administrative Appeals Tribunal Level 2 (AAT2). In limited cases where there is an "error of law" a matter can be further appealed to the Federal Court, however legal advice should be obtained and the process can be complex and expensive.

### Helpful Contacts

Basic Rights Queensland	1800 358 511
Centrelink Debt Recovery	1800 076 072
Centrelink Indigenous Debt Recovery	1800 138 193
Centrelink Multilingual Call Centre	131 202
Telephone Interpreter Service	131 450
National Relay Service	1300 555 727
National Debt Hotline	1800 007 007

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

For advice about social security problems call Basic Rights Queensland on **1800 358 511**.

**\*This fact sheet was updated in April 2021.**

