

# Prosecution of Social Security Offences

## 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 fail to provide relevant information to Centrelink, 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.

### 2. Centrelink Investigation

If Centrelink thinks your debt arose because you intentionally told them something that was not true or withheld information they 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 lose any of your Centrelink payments due to 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 and may ask Centrelink to do more investigation. If the DPP thinks an offence can be proven it will commence 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 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 happens if I receive a court attendance notice/summons?

If you receive a court attendance notice (CAN) or summons talk to a criminal lawyer 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 lawyer before you 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 lawyers 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 lawyers 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.

**Basic Rights Queensland do not represent people in criminal proceedings. Basic Rights Queensland can only provide advice about the prospects of debt waiver under social security legislation.**

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.

### 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 clearly states in sentencing you that it imposed a greater sentence (such as a longer prison sentence) because you were unable or unwilling to repay the debt.

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

### Should I appeal the debt?

If you think you do not owe the money or the amount is wrong you can appeal at any time, however, **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. Basic Rights Queensland can provide advice about whether you should appeal a debt.** Please also see our factsheet "Centrelink Debts".

### 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.**