

Financial matters\$ and Centrelink

facts for financial counsellors





Facts for financial counsellors

This factsheet was developed by the National Social Security Rights Network, with expert advice from Social Security Rights Victoria, one of its member community legal centres. Financial Counselling Australia is grateful for the assistance from both organisations.

The factsheet is intended to provide general information for financial counsellors about social security-related issues their clients may experience.

This factsheet does not constitute legal advice. Social security law and policy may have changed since the last update. Please seek advice from a National Social Security Rights Network member for more information or obtain legal advice. A member centre in your state or territory can be found at www.nssrn.org.au/services/



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Engaging with Centrelink



The following is a set of best practice guidelines, whether you are contacting Centrelink on behalf of a client or advising a client on how best to engage.

- Record who you speak with at Centrelink
- Make notes of what is said in the conversation with staff
- Ask for a receipt number every time you communicate with Centrelink
- Make copies of all documents you provide to Centrelink

Superannuation



What are the rules for early access?

A person can access their superannuation when:

- they turn 65 years (even if they are not retired), or
- they reach preservation age - the age, set by law, that they can access their superannuation as long as they are permanently retired, or
- a person is receiving a transition-to-retirement pension. You can find out more about this pension on MoneySmart's website at <https://bit.ly/1aKs9lb>.

A person may also be entitled to early release of superannuation if they meet one of the following eligibility requirements:

- they are in severe financial hardship, or
- have a terminal illness, or
- are a temporary resident, or
- have less than \$200 in their superannuation fund, or
- meet compassionate grounds.

If a person is between 55 and 60 and is working fewer than 10 hours a week they may be able to access some of their super, depending on whether they have reached their 'preservation age'.

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What is preservation age?

Preservation age depends on a person's date of birth.¹

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
From 1 July 1964	60

Source: ATO website April 2019. <https://bit.ly/2IXHVqU>

A person may be able to access their full super early if:

- they have reached preservation age plus 39 weeks, and
- are not retiring, and
- have received an eligible income support payment for at least 39 weeks in total since they reached their preservation age.

What is 'an eligible income support payment'?

An eligible income support payment is generally any Centrelink payment with the exception of Youth Allowance, Austudy and Family Tax Benefit.

What if my client is in severe financial hardship?

If the person has not reached preservation age plus 39 weeks, they may be able to access up to \$10,000 of their super per each 12-month period to meet immediate expenses if they:

- are currently in receipt of an eligible income support payment;
- have been on this payment for at least 26 weeks in a row; and
- can show they are in severe financial hardship.

Severe financial hardship means a person's readily available funds are less than the maximum amount of the age pension entitlements they could receive - consisting of the age pension (partnered or single), the pension supplement and the energy supplement.

They also must be unable to pay reasonable and immediate family living costs.

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1 From 2015 to 2025, the preservation age will increase from 56 to 60 years for income support recipients born after 1 July 1960.



What does my client need from Centrelink to show their eligibility for early release of super?

A person may need to provide their super fund with documents from Centrelink about their income support payment. As information from Centrelink will only be valid for 21 days, they must return the documents to their fund within that time. Superannuation funds are not compelled to allow early access to super. A few funds, including REST and SunSuper, currently don't allow access under financial hardship.

My client has accessed their superannuation early — do they need to tell Centrelink?

A payment might affect Centrelink payments under the Income and Assets test. Accordingly, clients should be encouraged to tell Centrelink within 14 days about their withdrawal of super to avoid possible overpayment. At the same time, they should ask Centrelink to add this information to the records of all the payments they receive.

Further information?

Centrelink's Early Release of Superannuation line: 1300 131 060. Our factsheet on superannuation is at www.nssrn.org.au/factsheets.

Superannuation lump sum payments

A lump sum payment comprises the account balance and any insurance benefits paid in respect of a disability. The insurance benefit, called Total and Permanent Disability (TPD), is usually a lump sum paid if the person is permanently unfit to do their usual occupation or other suitable work given their education, training or experience.

How will Centrelink treat my client's lump sum?

When taken out of a superannuation account, lump sums are treated as part of a person's assets and will affect their Centrelink payments if the lump sum takes them over the assets test exemption threshold. On occasions, Centrelink has treated TPD insurance benefits from superannuation accounts as income or compensation payments (see below). However, the Social Security Guide specifies that lump sum disability benefits paid out of superannuation accounts count towards the assets test and not the income or compensation tests.

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Compensation payments



If your client has received a lump sum compensation payment for personal injury, they may be ineligible for a Centrelink payment for a certain period. This is called a “compensation preclusion period”. It is generally very difficult to access Centrelink support if a person spends all their compensation before the preclusion period is over.

My client has just received a compensation payment — do they have to notify Centrelink?

Individuals who receive compensation are legally obliged to notify Centrelink of the payment. They can do this by visiting their nearest service centre or completing and uploading a form, found on the Department of Human Services website at <https://bit.ly/2IYQlyd>.

If a person continues receiving a Centrelink payment after being paid compensation, Centrelink may decide to raise a debt against them for being paid during a preclusion period.

My client has just received a lump sum payment — will it affect their eligibility for Centrelink?

If your client has received a compensation payment for personal injury, Centrelink may decide they are subject to a preclusion period before they can access certain benefits. The compensation recovery provisions of social security law are designed to ensure that people who receive compensation for loss of income do not also receive income support from the federal government during the same period.

Centrelink has an online calculator (<https://bit.ly/2kpYtHW>) to estimate the length of the preclusion period. Generally, the period is calculated by dividing the lump sum by two and then dividing that figure by the cut-off limit for a single rate pension.

For example, your client received \$100,000. Divide that figure by two, which equals \$50,000. Then divide that by \$1020.40, the weekly cut-off limit for the single rate pension for a person over 21. The answer is 49, which means your client's preclusion period is approximately 49 weeks.

It is important that individuals plan to ensure the compensation payment lasts for the preclusion period. This period is shortened only in rare instances (see below).

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Centrelink has told my client they have a debt due to receiving compensation

If Centrelink believes the person has been overpaid because they have received a Centrelink payment and compensation, Centrelink may raise a debt for the overpaid amount.

If a person believes the debt has been incorrectly raised or the amount of the debt is wrong, they can appeal. There is no time limit to appeal. For more information see our factsheet on Appealing to Centrelink www.nssrn.org.au/factsheets/.

My client has spent all their compensation and cannot get a Centrelink payment due to the preclusion period

Centrelink can shorten the preclusion period, but this is very rare. A compensation preclusion period may be waived (not applied or ended early) if a person has special circumstances.

Social security law doesn't define 'special circumstances'. A person will need to show not only that they are in financial hardship but will need to show other reasons for the period to be waived.

Centrelink considers a range of factors when determining whether a person qualifies for special circumstances. The primary focus is on "unusual, unforeseen or exceptional circumstances". Some examples could be serious illness or injury, a risk of homelessness or family violence.

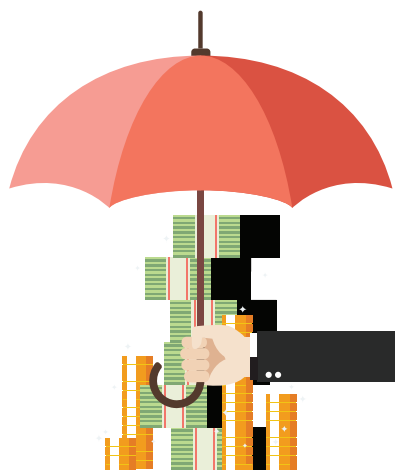


Further information

Your client can contact Centrelink's Compensation Recovery team on 1800 777 653. They can also refer to our factsheet on Compensation Preclusion Periods at www.nssrn.org.au/factsheets/.

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Income Protection payments



Income Protection payments replace the income lost when a person is unable to work due to injury or sickness. Often, a person will have Income Protection insurance through their superannuation fund.

My client is receiving income protection — how will this affect their eligibility for Centrelink?

Income Protection payments are treated as part of a person's 'ordinary income'. Centrelink adds up payments a person receives from their insurance, and any other income, to assess whether the person is eligible for a Centrelink payment.

Currently, the first \$172 per fortnight in income protection payments is usually exempt. Thereafter, Centrelink payments reduce by 50 cents for every dollar earned above \$172. If a person's ordinary income is greater than the fortnightly payments provided by Centrelink they will not be eligible for any payments.

Income protection offset clauses

Some (but not all) income protection insurance policies offset Centrelink payments. This means that if a person is receiving Centrelink payments, their income protection payments will either be reduced dollar-for-dollar by those Centrelink payments or income protection will only top up their Centrelink payments.

However, in that situation, Centrelink will deem the person to have received the full income protection payments and reduce Centrelink payments accordingly. It would then be possible to go back to the insurer to increase the income protection payments on the basis that the Centrelink payments were reduced.

My client has just received an income protection payment — do they have to notify Centrelink?

Your client should notify Centrelink as soon as they start receiving Income Protection payments. They will likely then have to report the amounts they receive each fortnight.

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Centrelink has told my client they have a debt due to receiving income protection

Centrelink may calculate that there was an overpayment if a person's insurance back pays them a lump sum of income protection for a period when the person was receiving a Centrelink payment. This may result in Centrelink raising a debt.

In special circumstances, it may be possible to appeal this decision and have some or all of the money repaid to the person. There is no time limit to appeal. See our factsheet on Appealing to Centrelink at www.nssrn.org.au/factsheets/ for more information.

Are income protection insurance payments different from 'compensation' payments?

Centrelink has specific rules for how it treats compensation payments. 'Compensation' under social security law usually refers to payments from statutory compensation schemes (bodies such as WorkCover or motor accident compensation, for example) or common law claims.

Income protection payments are **NOT** compensation for Centrelink purposes and do not have the same effect on Centrelink payments.



Where can my client get more information?

Your client can refer to our factsheet on Income Preclusion Periods at www.nssrn.org.au/factsheets/.

Income maintenance periods



My client recently left work and has been paid out their unused leave and/or redundancy — how will this affect their eligibility for Centrelink payments?

Centrelink calculates a person's income maintenance period to determine eligibility for payments. A person's social security payments may be reduced to nil until the maintenance period ends, and their partner's social security payment may also be affected.

An income maintenance period generally lasts for as many weeks as the person was paid out by their former employer. It is really important that your client plans their finances to last the length of this period.

The income maintenance period applies to the following payments:

- Newstart Allowance
- Partner Allowance
- Widow Allowance
- Sickness Allowance
- Parenting Payment
- Youth Allowance
- Austudy Payment
- Disability Support Pension

What should my client do when they receive their unused leave or redundancy payment?

If they have not found a new job, they should lodge a claim for a social security payment. At the same time, they should provide Centrelink with an employment separation certification, which details the payment they received from their employer. Centrelink will calculate their income maintenance period and advise them in writing of the date from which they can be paid.

If their employer has not provided an employment separation certificate or has filled it out incorrectly, the person should notify Centrelink. Centrelink can contact the employer directly or obtain the necessary information after granting the payment. It is the employer's responsibility to provide the employment separation certificate to Centrelink. A person's payment should not be delayed or refused if they have difficulty obtaining the certificate through no fault of their own.

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My client has run out of money before the end of their income maintenance period

Your client can request a waiver of their income maintenance period or claim for Special Benefit if they have run out of money. However, it is rare for either to be granted in such circumstances. For information on income maintenance periods, see www.nssrn.org.au/factsheets/.

Waiver

The income maintenance period may be waived if a person is in severe financial hardship due (only) to **unavoidable or reasonable expenditure**. A person is considered to be in severe financial hardship when the total value of their liquid assets is less than the maximum fortnightly social security payment they would ordinarily receive.

When requesting a waiver, a person should provide evidence of their severe financial hardship, such as bank account details, and evidence of their unavoidable or reasonable expenses, such as bank statements or receipts. A request for a waiver may be made at the same time as the claim for a Centrelink payment.

Incorrect calculation

If it appears the income maintenance period has been calculated incorrectly, your client can lodge an appeal with an Authorised Review Officer (ARO). For more information, see our factsheet on Appealing to Centrelink at www.nssrn.org.au/factsheets/.

If Centrelink determines the maintenance period was calculated incorrectly and your client suffered a loss as a result, contact your local NSSRN member about their options, including applying under the Compensation for Detriment caused by Defective Administration scheme. The Commonwealth Ombudsman has more information about the scheme at <https://bit.ly/2OCCkSY>.

Special Benefit

A claim for Special Benefit can be lodged at the same time as your client requests a waiver of the income maintenance period. Special Benefit is a discretionary payment for people who are unable to support themselves for reasons beyond their control.

If Centrelink refuses a waiver or Special Benefit, your client can lodge an appeal with an ARO which must be lodged within 13 weeks of the original decision to ensure back payment if the decision is reversed. For more information: www.nssrn.org.au/factsheets/.



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Centrelink debts



A Centrelink debt is raised when a person has been paid more social security benefit than they were entitled to. The person will have usually received an Account Payable letter stating the amount of the debt, the payment it was raised in relation to and why it was raised.

My client has been told they have a debt and must sign up to a payment plan. What should they do?

If a person is not on a Centrelink payment and does not enter into a repayment arrangement before a required date, Centrelink may:

- Add a penalty charge of 10%,
- Add an additional recovery fee charge,
- Garnishee the person's tax refund or their bank account,
- Make an order to stop them from travelling outside Australia, and/or
- Send their debt to an agency that will try to recover the debt.

Call 1800 076 072, Centrelink's Debt Recovery number, to arrange/re-negotiate a payment plan. The instalment amount should not cause a person financial hardship. The person should negotiate to ensure the repayment amount is affordable. Centrelink can also put the debt on hold for 13 weeks at the person's request.



My client disagrees with the debt raised

A person can ask Centrelink to review the decision to raise a debt on the basis that they do not owe Centrelink any money; the debt was calculated incorrectly; or the debt should be otherwise waived. There is no time limit for filing a review.

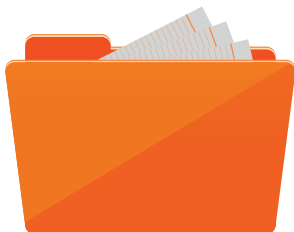
Even if the person plans to appeal against the debt, they may wish to enter into a repayment plan. Part, or all, of the money they pay may be returned to them if the appeal is successful. If the client requests an appeal, the repayments under any plan should be put on hold.

It is important to note there are risks in appealing a debt as:

- the debt could increase after further investigation by Centrelink, and
- any information provided to Centrelink can be used to make a referral to the Commonwealth Department of Public Prosecution ('CDPP') for prosecution.

All or part of a debt may be waived if the debt is solely attributable to administrative error by Centrelink or there are special circumstances.

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Administrative error waiver

A debt must be waived if a person received the overpayment in good faith and the overpayment (or part of it) is attributable solely to an administrative error by Centrelink. A person has received a payment in good faith if they did not realise they were being overpaid at the time.

If other factors contributed to the overpayment, such as a mistake by your client, the debt cannot be waived on this basis.

The main example of administrative error is where a recipient has told Centrelink some information (usually a change in circumstances such as getting a job) and Centrelink fails to adjust the payment as it should. In such cases it is helpful to look for evidence that shows Centrelink was provided with the correct information at the relevant time.

Special circumstances waiver

A debt may be waived if there are special circumstances that mean a waiver is appropriate. Such circumstances are usually something that makes the particular case unusual, especially if it would be unfair or particularly harsh to require the person to pay back the debt. For a debt to be waived on these grounds, a person will need to show:

- the debt did not result from the person (or another person) **knowingly** making a false statement or representation, or not complying with requirements under social security law (such as notifying Centrelink of their income), and
- special circumstances exist (other than financial hardship alone) that make it desirable to waive the debt. It is often difficult to demonstrate such circumstances exist.



CDPP

Australia's Federal Prosecution Service

My client was told their debt had been referred to the Commonwealth Director of Public Prosecutions

The CDPP can prosecute a person for failing to provide information or making false statements about their circumstances. If your client has been told they have been referred for prosecution, tell them to contact an NSSRN member as soon as possible.

Where can my client find further information?

Factsheets on Centrelink Debt and Appealing to Centrelink are available at www.nssrn.org.au/factsheets/. For legal advice on a debt, you can refer your client to a NSSRN member, which can be found at www.nssrn.org.au/services/

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Centrelink demerits and penalties



Centrelink has imposed a demerit or penalty on my client

Centrelink may impose demerits and/or financial penalties on job seekers, including those on Newstart and Youth Allowance and ParentsNext participants (as well as some recipients of Special Benefit payments).

These penalties are typically imposed when Centrelink believes the recipient has not met their mutual obligation requirements. These requirements include entering into a Job Plan, attending appointments with Jobactive or Disability Employment Service providers, and doing activities as required (per the Job Plan).

Your client may receive a demerit point each time Centrelink believes they have missed or failed a mutual obligation requirement without a valid reason. Each demerit lasts six months and your client may be moved to the 'penalty zone' if they get five demerit points in six months.

If your client is moved to the penalty zone, Centrelink will begin to impose financial penalties on them for failing to comply with mutual obligation requirements. At this stage, any further failures to meet the mutual obligation requirements without a reasonable excuse will result in your client:

- losing half their fortnightly payment for their first failure
- losing all their fortnightly payment for their second failure
- having their payment cancelled and a four-week non-payment period applied for their third failure.

Demerit points cannot be appealed, but they may be internally cleared (if Centrelink considers they were improperly applied).

If your client has received a financial penalty, they can appeal this decision to an Authorised Review Officer (ARO) in the first instance, and must do so within 13 weeks to receive back pay if the decision is changed.

More information on Centrelink demerits and penalties can be found on the Centrelink website at: <https://bit.ly/34lloQo>.

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Suspensions or cancellations

If Centrelink believes a payment is being paid to a person who is not eligible for a payment or to whom a payment is not 'payable', Centrelink can suspend or cancel that payment.

A payment may become not payable if Centrelink has sent a notice requiring a payment recipient to do something (for example, a letter saying the person needs to attend a Jobactive appointment) and the person does not comply with that requirement.

Centrelink can also cancel a person's payment if they get a "work refusal failure" or an "unemployment failure".

A work refusal failure may be issued where your client has refused a suitable job offer or has not started a job they accepted.

An unemployment failure may be issued if your client leaves a job (unless it was reasonable to do so) or they lose their job due to misconduct.

My client wants to appeal against a financial penalty, suspension or cancellation

Financial penalties, suspensions and cancellations must be appealed within 13 weeks of the decision to ensure your client can receive back pay if the decision is changed. A suspension or cancellation may be reversed if it can be shown the decision was not correct. For example, a person has a reasonable excuse for not meeting the obligation.

You can refer your client for legal advice regarding the penalty to an NSSRN member, which can be found at www.nssrn.org.au/services/. General information can also be found from the Australian Unemployed Workers Union website: <https://bit.ly/2kNmtEZ>.

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Eligibility for income support



The full list of Centrelink benefits can be found at:

www.humanservices.gov.au/individuals/services/centrelink

Centrelink's Payment and Service Finder (<https://bit.ly/2wsawJR>) may also be used to determine initial eligibility. A person should contact Centrelink and advise it in detail of their circumstances to determine which benefit they are eligible for.

A person has appeal rights if their application for income support has been rejected. The first step is asking for an internal review of the decision by an ARO. This must be done within 13 weeks of the decision to ensure back payment if the decision is reversed. The person should seek legal advice from an NSSRN member (www.nssrn.org.au/services/) before asking for a review.

Domestic violence and Centrelink payments



If a client's financial problem is related to experiencing domestic violence, additional payments are available. These include:

- **Crisis Payment** – a one-off payment that can be paid to a person:
 - › leaving a violent relationship if they are eligible for social security,
 - › who is in severe financial hardship, and
 - › who has recently experienced an extreme life change such as leaving a violent relationship which includes one party leaving the family home.

The payment is equal to one week's payment of the person's current Centrelink benefit. For more information on the crisis payment:

<https://www.humanservices.gov.au/individuals/forms/su510>

- **Urgent payment** – an instalment may be paid in advance if the person is in severe financial hardship as a result of exceptional and unforeseen circumstances (which may include domestic violence). The advance is repaid fortnightly. See: <https://bit.ly/2kztnh6>

A person who is under 22 and cannot live at home due to extreme circumstances (including domestic violence) may be able to claim the Independent Youth Allowance rate. Centrelink will assess the situation

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when the person lodges a claim for Youth Allowance and asks to be treated as independent.

If a person is receiving a payment that requires them to complete participation activities they may be able to obtain an exemption from them by showing they have been subject to domestic violence.

For individuals receiving Newstart, Youth Allowance and Parenting Payment, the domestic violence incident must have occurred in the 26 weeks before requesting the exemption. The exemption is initially granted for 16 weeks, with the possibility of extension.

- For people receiving Disability Support Pension, the domestic violence incident may be treated as a major personal crisis which qualifies them for an exemption of up to 13 weeks.
- For people receiving Special Benefit, the domestic violence incident may be treated as a major personal crisis that qualifies them for a two-week exemption, which can be extended to four weeks in extremely traumatic circumstances.

If a person is receiving a payment that may be affected by them being a member of a couple, Centrelink considers domestic violence as a factor in assessing their relationship status.

Last resort for debt waivers



The Department of Finance provides a last-resort option for people with Commonwealth debts (including to Centrelink, the Australian Tax Office and the Department of Education) to seek waivers if all other appeal avenues have been unsuccessful.

Appeal avenues include seeking a review of a Centrelink debt with an Authorised Review Officer and lodging a dispute with the Administrative Appeals Tribunal phase 1.

People can apply for a waiver on the grounds of unaffordability – that payment will put them into hardship. More information is available from the department's website at <https://bit.ly/2DBPfy4>. It can take up to two years for the process to be completed but it is well worth the wait if a waiver is granted.