

Centrelink debts

This factsheet is about what to do if you have a Centrelink debt, including:

- repaying Centrelink debts
- appealing Centrelink debts
- criminal prosecution relating to Centrelink debts.

This factsheet provides general information only. It is not legal advice. If you need legal advice, you can contact your local social security rights service, which you can find from our website at www.nssrn.org.au.

We have a separate factsheet on our website if your debt was raised by Centrelink's online compliance system.

What to do when Centrelink says you owe it money

You get a Centrelink debt if the amount you were paid by Centrelink is more than you should have been paid. If Centrelink decides you owe it money, it sends you an "Account Payable" letter, which tells you:

- Why Centrelink thinks you owe it money (briefly)
- How much you owe
- The due date to repay the money
- How you can repay the money.

If you cannot pay the full amount owing by the due date, you should phone Centrelink on 1800 076 072 to make a repayment arrangement you can afford. If you are Indigenous, you can phone a specialist team on 1800 138 193.

If you don't think you owe the debt, you can appeal. There is more information about appealing debts in this factsheet and we have a factsheet about appeals on our website.

It is important to phone Centrelink before the due date because otherwise it may:

- reduce your Centrelink payment to start repaying the debt by more than you can afford
- refer your debt to a collection agency such as Dun and Bradstreet
- start adding interest to the debt for each day until you start repaying the debt (if not are not receiving a Centrelink payment)
- take your tax refund or money directly from your bank account, or
- make an order prohibiting you from travelling outside Australia.

In most cases you need to make a repayment arrangement. If you appeal to an authorised review officer, you can ask Centrelink to pause any debt repayments until your review is finished. Be careful to confirm with Centrelink that a pause is in place, as otherwise Centrelink may add penalty interest to the debt.

If you appeal and it is found that you do not owe the debt, any money you have repaid will be refunded to you.

The amount you agree to pay should be reasonable given your financial situation. If repaying the debt will cause significant hardship, you should ask for an extension of time to pay ("temporary write-off"). You may need some evidence to show Centrelink for this.

Repaying a debt if you are receiving a Centrelink payment

If you are receiving Centrelink payments, Centrelink will reduce your payments to start repaying the debt in most cases.

If you not make a repayment arrangement by phoning Centrelink by the due date, it will apply a standard repayment rate of 15% of your payment, or a higher rate if you have some income.

If you cannot afford this, you should contact Centrelink and ask for a lower repayment rate. If Centrelink agree to a lower rate of repayment, the arrangement lasts for three months. Centrelink will review the rate after this time and may write to you. If you do not respond to this letter, Centrelink may apply the standard repayment rate again.

Repaying a debt if you are not receiving a Centrelink payment

If you are not receiving a Centrelink payment and you do not make a repayment plan by the due date, Centrelink may:

- Add interest to the debt
- Refer your debt to a collection agency such as Dun and Bradstreet
- Recover the debt from your tax refund or bank account (“garnishee”)
- Prohibit you from travelling outside Australia

Interest charge

If you are not receiving a Centrelink payment, you may be liable to pay daily interest on the amount owing if you:

- do not repay the debt by the due date
- do not enter into a repayment arrangement by the due date
- miss a payment under a repayment arrangement, until you catch up on it.

This can make your debt much bigger very quickly.

If you have a repayment arrangement but your situation changes and you are struggling to meet it, you should negotiate a new repayment arrangement rather than missing a payment.

If you are repaying the debt from your income support payment, but later stop receiving the payment (if you get a job, for example), you should make a new repayment arrangement (by direct debit, for example) otherwise you may start to incur interest on the amount owing.

Debt collection agencies

If you get a phone call or letter from a debt collection agency such as Dun and Bradstreet, you should respond as soon as possible to discuss repayment of the debt. In most cases, it is best to make a repayment arrangement with them.

If you are unhappy with how a collection agency treats you, you can:

- Calling Centrelink's feedback and complaints line on 1800 132 468 or online at humanservices.gov.au/feedback, or
- If not satisfied with Centrelink's response to your complaint, contacting the Commonwealth Ombudsman at ombudsman.gov.au or on 1300 362 073.

You should not agree to a repayment arrangement that you cannot afford or pay a debt by credit card if you won't be able to make the repayments.

Garnishee

Centrelink may also recover some or all of a debt directly from your bank account, tax refund or other source of funds. This is known as garnishee action. For social security debts generally it may only do this if you have failed to enter into a reasonable repayment arrangement or missed a payment under an arrangement. However, for family assistance debts (eg family tax benefit) tax refunds may automatically be used to pay the debt.

Prohibition from departing Australia

Centrelink may also make an order ("departure prohibition order") prohibiting you from leaving Australia until you repay a debt or agree to a satisfactory repayment arrangement. It is a criminal offence to knowingly depart Australia without permission, if there is a departure prohibition order in place, with a penalty up to 12 months' imprisonment.

Bankruptcy and Centrelink debts

It is possible to enter into a debt agreement or bankruptcy in relation to a Centrelink debt. This does not release you from all Centrelink debts, although they cannot be recovered during the agreement or bankruptcy. You should get legal advice from one of our member organisations and/or financial advice before entering into a debt agreement or bankruptcy in relation to a Centrelink debt.

10% penalty ("recovery fee")

A 10% "recovery fee" is a penalty which may be added to a debt due to a person's income from work, if they have:

- refused, or failed, to provide information about their income without reasonable excuse, or
- knowingly or recklessly provided false information about their income.

Centrelink decides whether to apply the recovery fee at the time it raises the debt.

If your recovery fee was imposed by Centrelink's online compliance system, you should read our factsheet about this system on our website.

The recovery fee is a separate amount and it is possible to appeal against its imposition separately from the debt itself. It is a good idea to get legal advice before doing this.

Appealing a debt

If you do not agree that you owe money to Centrelink or you do not think it is fair you have to pay it back, you have a free right to appeal against its decision. Some specific information about appealing Centrelink debts is below. There is also a factsheet about appeals on our website.

If you appeal to an authorised review officer, you can ask Centrelink to pause any debt repayments until your review is finished. Be careful to confirm with Centrelink that a pause is in place, as otherwise Centrelink may add penalty interest to the debt.

You can appeal against a Centrelink debt if:

- You do not owe any money to Centrelink (for example, it says you were in a relationship with another person, but this is wrong)
- You think it has calculated the debt incorrectly (for example, it has used the wrong value for an asset)
- You agree you have a debt, but you do not think you should have to repay some or all of the amount owing (for example, Centrelink made a mistake which caused the debt).

Usually all these issues are looked at if you appeal.

It is a good idea to get legal advice from one of our member organisations before appealing against a debt, especially if:

- The debt is large
- Centrelink tells you it may refer your matter to the Commonwealth Director of Public Prosecutions for possible criminal prosecution.

If you appeal a Centrelink debt, the most important thing in most cases is to collect evidence to support your appeal. Some of the most common evidence that may help your appeal is explained below.

You don't think the you should have a debt at all or it is calculated wrongly

You can appeal against a Centrelink debt if you think that you do not owe Centrelink any money at all, or it has been calculated wrongly. For example:

- Centrelink says that you were a member of a couple, but you were single
- Centrelink says you were not a full-time student, but you were studying full-time
- Centrelink used the wrong value for an asset

In cases like this, it may be important to find out why Centrelink believes something you think is wrong. It may have conducted an investigation of your circumstances and collected evidence which seems to show you owe a debt. For example, it may have contacted your university about your enrolment or it may have checked what address your ex-partner uses for their mail with banks, on their driver's licence and with their employer and it looks like they live with you.

It is often a good idea to look through this evidence and explain why Centrelink has misunderstood. You can get a copy of the evidence on your Centrelink record by making an application under freedom of information law. It will also be sent to you by Centrelink if you appeal to the Administrative Appeals Tribunal.

Centrelink records are complicated, so it is a good idea to get advice from our member organisations about what to ask for or whether you have been given all the relevant material. A good starting point can be to ask for a copy of all Centrelink's records and documents from the period it says you owe money for and a copy of any file it compiled during its investigation. You can get some information from your Centrelink online account and Centrelink has a form for requesting documents from it at <https://www.humanservices.gov.au/customer/forms/si031>.

It may also be important to collect evidence to support your side of the story. For example, evidence which shows you were not living with your ex-partner might include:

- Documents or records showing his or her correct address
- Letters or statements from a person they were actually living with
- Letters or statements from friends or family who know you were not living together

It is also a good idea to write down the main points you want to make or a timeline of events.

You can also appeal if you think Centrelink had worked out the amount you owe wrongly. Usually when you appeal the calculations will be checked by Centrelink. However, if you think that Centrelink has used the wrong information, it is important to collect evidence to show this. For example:

- If Centrelink has valued a property incorrectly, you may get an independent valuation or print out evidence from a real estate website of sale prices of similar properties
- If Centrelink has used the wrong date for when you withdrew from your course at university, a letter from the university confirming the correct date.

You do not think you should have to repay the debt

Even if you have a Centrelink debt, there are some cases when you may not have to repay it. This is called "waiver". The two main situations where a debt may be waived are where:

- Some or all of the debt is solely attributable to an administrative error by Centrelink
- There are special circumstances other than financial hardship alone which make it appropriate to waive the debt.

Debt solely attributable to administrative error by Centrelink

If a debt, or part of it, is solely attributable to administrative error by Centrelink, it must be waived if you received your payment in good faith and the debt was not raised within six weeks of the first payment that caused the debt.

You received the payment in good faith if you did not realise you were being overpaid at the time.

The debt, or part of it, must be solely attributable to administrative error by Centrelink. This means that if there were other factors that contributed to the debt, such as a mistake by you, it cannot be waived on this basis.

The main example of error by Centrelink is where you tell them some information (usually a change in your circumstances such as getting a job) and it does not adjust your payment as it should. In many cases it is

important for you to look for evidence that shows you did tell Centrelink. For example, if you phoned Centrelink to tell them:

- There may be a note of the phone call on your Centrelink file (you can ask for this under freedom of information, it is called an “online document record”)
- Your phone bill may show you called Centrelink on that day
- You may have noted the receipt number Centrelink gave you for your call in your diary.

The law about this type of waiver is complicated and it is a good idea to get advice from our member organisations if you think there was an error in your case.

Waiver because there are special circumstances

A debt may also be waived if there are special circumstances which mean it is appropriate to have your debt waived. This is usually something that makes your case unusual, especially if it would be unfair or particularly harsh on you to pay the debt back. If you do have special circumstances, the debt may be reduced or waived entirely.

If you want to have your special circumstances considered, it is important to collect evidence about them. It is best to get evidence about your situation during the period the debt relates to and your current situation, for example:

- Evidence of financial problems such as overdue bills or an eviction notice for unpaid rent
- Evidence about your own health or the health of someone else close to you, such as a letter from your GP or a print out from the chemist showing how much you pay for medication
- A bank statement showing how much money you have in the bank