



RELATIONSHIPS
&
CENTRELINK

Frequently Asked
Questions

This booklet aims to assist people who are receiving income support payments from Centrelink. It provides information regarding a persons' rights and obligations when being investigated for an alleged marriage-like relationship, by Centrelink.

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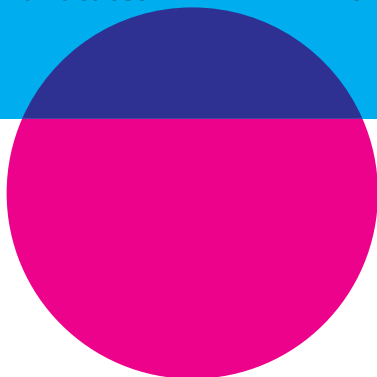
Disclaimer: While every effort is made to ensure that the information in this booklet is as correct and up to date as possible, readers are advised to seek advice when faced with specific issues in relation to Centrelink and marriage-like relationships - particularly to seek legal advice where there is the possibility of prosecution. This booklet is intended as a guide and should not be used as a substitute for legal advice.

The law as at 1 April 2005.

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Relationships

Why does Centrelink want to know whether I have a partner?

Centrelink needs to know whether or not you are a member of a couple because this may affect your Social Security entitlement. Centrelink assesses your entitlement differently if you are a member of a couple to the way it would if you were single.

Which Centrelink payments are affected?

Most Social Security payments are affected by whether the person claiming payment is regarded as being in a 'marriage-like relationship' or a 'member of a couple'. For example:

- a 'member of a couple' does not qualify for Parenting Payment (single) or Widow Allowance;
- a person must be a 'member of a couple' to qualify for Parenting Payment (partnered);
- different income and assets tests apply to a recipient of a pension, allowance or Family Tax Benefit where that person is a 'member of a couple' and different rates of payment apply.

For further information on rates of payment contact Centrelink or your local Welfare Rights Advocate. Please see page 25 for contact details.

If Centrelink decides you are a member of a couple you may not be entitled to the payment you are receiving, or you could be entitled to a lesser amount. If you are receiving the wrong payment or rate you could end up in debt, or even worse, being prosecuted: see Debts & Prosecutions, pages 16 and 20.

What if I am in a same sex relationship?

Your payment will be worked out as if you were single. People of the same sex are not regarded as being a 'member of couple or in a marriage-like relationship' for Social Security purposes.

Defining a relationship

How does Centrelink decide whether I am a member of a couple?

You will be considered a member of a couple if:

- you are married (and you have not separated); or
- you are living with someone of the opposite sex in a 'marriage-like relationship'.

What is a marriage-like relationship?

A 'marriage-like relationship' is a relationship in which the people live together in a way which is similar to the way they would if they were legally married.

The process for determining whether a person is, or is not, in a marriage-like relationship is set out in Social Security law.



Your responsibilities

How do I avoid getting into trouble with Centrelink?

You need to tell Centrelink of any changes in your circumstances. This includes:

- if you become a member of a couple;
- if you change your address;
- if your income changes;
- if there is a change in the number of children in your care;
- if there is a change in your child support payments; or
- if you or your children are going overseas.

You should look at the back of Centrelink notices for what changes you are required to notify Centrelink about. You must tell Centrelink within 14 days of your situation changing or you may not receive the correct payment and risk a debt being raised against you, or even prosecution: see debt and prosecution pages 16 and 20.

What if I am not sure if I am a member of a couple?

If you are not sure whether you are a member of a couple go through the questions on page 8 and contact your local Welfare Rights Centre. You should also discuss the situation with Centrelink. If Centrelink make a decision you are not happy with, you have the right to appeal, see page 18.

Centrelink decision making process

How does Centrelink decide whether I am in a marriage-like relationship?

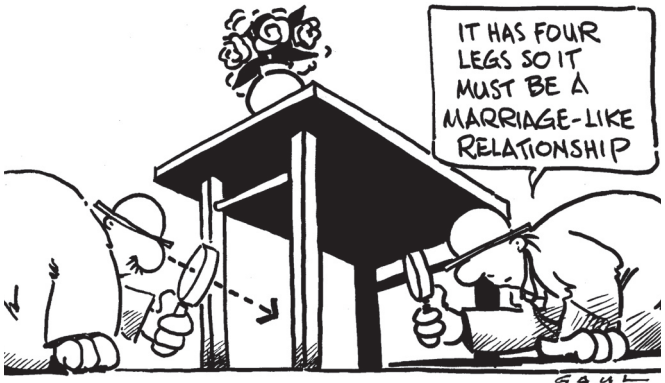
To decide if a person is in a marriage-like relationship Centrelink must consider all the aspects of the relationship. Questions about each of these aspects are on the 'Assessment of Living Arrangement' form Centrelink sends out.

These aspects are:

- the nature of the household,
- the financial aspect of the relationship,
- the social aspect,
- the nature of the people's commitment to each other and
- any sexual relationship that exists between them.

Each aspect should be considered equally. No aspect should be given more weight than the other. You should consider all of them in relation to your own situation.

See page 8 for a list of questions you can use to help decide whether you are a member of a couple.



Are there any situations in which Centrelink will not regard me as being a member of a couple even though I am in a relationship?

There are a number of situations in which Centrelink will not regard you as being a member of a couple even though you are still in a relationship. These include:

1. If you are under 16 years of age;
2. If your partner cannot live at home because of ill health (but can still be treated as a member of couple);
3. There are special reasons why you should be paid the single rate.

You should not assume Centrelink will regard you as single in these situations. Contact a Welfare Rights Advocate if you think you may fall within any of these categories.

Questions Centrelink use to assess relationships

Can I be considered to be living 'seperately & apart' from my ex partner?

The questions below are relevant when deciding whether you are in a marriage-like relationship. No individual answer is conclusive that the relationship is marriage-like. All of the factors need to be taken into consideration.

Financial arrangements

- Do you provide financial support for each other?
- Do you have any joint accounts or credit cards?
- Do you have a joint loan or have you signed loan papers for each other?
- Whose name is the telephone/electricity/gas in?
- Who pays the bills and how do you work it out?
- Do you jointly own large items, eg house, car, furniture?
- Do you know about each other's financial affairs?
- Are either of you listed as a dependent spouse for tax or Medicare?
- Has either of you named the other person as a beneficiary in your will or superannuation?
- Do you lend or give each other money?
- If the other person lost their job or had no income, would you feel obliged to offer them financial help for a period of time?

Arrangements for children

If one of you has children:

- Is the person you live with the father or mother of the child?
- Do you share parenting activities, eg. feeding, dressing, disciplining, taking children to school?
- Who would care for the children if their parent could no longer do so?

Sexual relationship

- Do you have a continuing sexual relationship with each other?
- Does either of you have a sexual relationship with anyone else?

Accommodation and domestic arrangements

- Do you live at the same address?
- How long have you lived there?
- Have you lived together at other places?
- Why did you first decide to live together at the same address?
- Has the way you live together changed since you first moved in?
- Do you intend to keep sharing accommodation in the future?
- Do you have separate bedrooms or living areas?
- Whose name is the lease or mortgage in?
- How do you arrange your domestic chores eg cooking, shopping, cleaning, laundry, ironing & lawn-mowing?

Social relationship

- Do you share the same circle of friends?
- Do you tell each other where you are daily or what you are doing when you go out?
- Do you frequently go out together or do you regularly go out separately?
- Do either of you have a girlfriend or boyfriend?
- Do you visit each other's families?
- Would your friends and families consider you a couple? Do you correct them?
- Do your family or friends make plans for you as a couple?
- Have you ever let a government department, real estate agency or bank assume you were a couple?
- Do you use the same family name?
- Do you take holidays together?

Commitment to each other

- How long has the relationship lasted?
- Is it different from other friendships?
- Do you consider the relationship is likely to continue?
- Who do you talk to when you have a problem?
- If you suddenly got sick, who would you call?
- Have you any long term plans involving the other person?
- Do you think you are likely to marry?
- Do you think your relationship is like a marriage?

Why are Centrelink investigating me?

Centrelink will review your circumstances if you are receiving a payment as a single person but there is information that suggests you may be a member of a couple. It will also review your circumstances when you change your address.

Where does Centrelink get its information?

Centrelink may have obtained the information through:

- information on a new claim form;
- information obtained through a review (Centrelink conducts regular reviews of your circumstances to see whether you are receiving the correct payment type and rate); or
- information provided by a member of the public (for example a 'dob-in' by a neighbour, family member or ex-partner).



What triggers an investigation?

There are also a number of 'triggers' where if certain facts exist Centrelink will require you to fill out a 'Review of Living Arrangements Form'. Examples of triggers include:

- you and another person of the opposite sex have shared a home for eight weeks and one of the following applies:
 - you are both the parents of a child who lives in the residence;
 - you jointly own the residence;
 - you jointly hold a lease that is for at least 10 years;
 - you have joint assets worth more than \$4,000;
 - you have joint debts worth more than \$1,000;
 - you have previously been members of the same couple;
 - you have previously shared another residence together; or
 - you were once a member of a couple but now you claim to be living separately and apart from each other on a permanent basis.

Can a Centrelink Officer come into my house?

You do not have to let Centrelink staff into your house. A Centrelink officer may call at your home and ask to enter your house. If this happens you have the choice of whether or not to allow the officer into your home. You cannot be punished for not letting the person in. You have the right to know the reason for the visit.

Centrelink have been talking to my neighbours - Are they allowed to do that?

Yes. Centrelink has wide powers of investigation. Centrelink can ask anyone who may have information about you, questions that relate to your eligibility for payment. They may ask questions of friends, hospitals, relatives, employers and neighbours. Schools however should generally not to be contacted regarding your relationship with the other person.

Do I have to be interviewed by Centrelink?

Centrelink have the right to review your living arrangements and ask questions to determine whether you are in a marriage-like relationship. You have the right to request the interview be conducted at the Centrelink office, to take a support person to the interview with you, or to have the Centrelink officer put the questions to you in writing. You are not required to answer questions about your relationship for a prior period if you do not wish to do so.

Do I need to prove that I am not in a relationship?

It is not up to you to provide evidence you are not a member of a couple. But if you are under investigation and not a member of a couple you should provide Centrelink with evidence that supports your single status. The onus is on Centrelink to look at all the factors and make its decision.

Can Centrelink reinvestigate me?

Yes. Centrelink can investigate you on more than one occasion, even if it had earlier decided that you were not in a relationship.

However, once Centrelink have made a decision that you are not in a marriage-like relationship they must not investigate you again for having a relationship with the same person for 12 weeks.

Centrelink is allowed to investigate within this 12 week period if:

- your circumstances change; or
- it has new information.

How will I know when the investigation has ended?

Depending on how complex your situation is, Centrelink investigations may go on for 6-12 months as it gathers information. Centrelink may not contact you to tell you that the investigation has ceased. You can contact the investigating officer to ask whether the investigation has ended.

What happens if Centrelink has decided I am not in a marriage-like relationship?

If Centrelink has decided you are not in a relationship than you should ask for written notice of the decision.

Do I have to fill out the review forms?

Yes. The date the form is due back should be on the front of the form. If you don't complete the form and return it by the due date or within 14 days, your Centrelink payment may be stopped.



What happens if Centrelink decide I am in a marriage-like relationship?

If Centrelink decide you are in a relationship the payment you are receiving may be stopped, reduced or your payment type may change.

If you have children, you will be advised to provide an estimate of your partner's income to determine your eligibility for Family Tax Benefit.

You may also have a debt raised against you.

If Centrelink believes you intentionally provided the wrong information your case may be referred for prosecution. Please refer to Debts & Prosecution, pages 16 and 20.

If you do not believe you are in marriage-like relationship, or you were not in the relationship for the length of time claimed by Centrelink, you should appeal. Please refer to Appeals, page 18.

Relationships change

We have just separated but are sharing accommodation. Am I member of a couple?

If you think you may not be a member of a couple because you have separated from your partner, the same list of questions on page 8 can be used. You need to ask yourself what your relationship was like before and after the separation, and how things have changed.

Will my rate of payment change if we have separated?

Depending on what payment you are receiving your payment may change. You should contact Centrelink or a Welfare Rights Advocate to find out what payment you are entitled to.

You need to inform Centrelink as soon as possible that you have separated. Centrelink will ask you for evidence of the change in the relationship.

Centrelink tell me I have an overpayment - What does this mean?

Centrelink often refers to a debt owed to them as an overpayment. An overpayment describes a payment that was made to you that Centrelink does not think you were entitled to receive, or you received a rate higher than you were entitled to.

Did I really get overpaid?

You should make sure that you understand the reasons why Centrelink have decided you owe a debt.

NEVER JUST ACCEPT THAT YOU WERE OVERPAID!

Centrelink's decision to raise a debt and recover a debt may be wrong.

You should also check the way in which Centrelink has calculated the debt, as it sometimes calculates debts incorrectly.

Ask Centrelink to clearly explain the debt to you. You can also contact a Welfare Rights Advocate who may be able to make inquiries on your behalf.

Always get independent advice before accepting you were overpaid: see helpful contacts on page 25.

I don't agree with Centrelink's decision. What can I do?

You can appeal. See page 18 for more info. You should appeal if you believe:

- Centrelink has made a wrong decision; or
- the debt amount is incorrect; or
- there are special circumstances why you should not have to repay the debt.

For example, Centrelink may say you have a debt because you were living in marriage-like relationship and claiming Parenting Payment single. You can appeal against this decision and argue that you were not in a marriage-like relationship. On appeal it may be decided that you do not owe any money, you owe less money or it is not appropriate to recover the money from you, or the decision may remain unchanged.

Do I have to repay the debt?

Debts can (and usually will) be recovered by Centrelink.

There are a number of methods of recovery including deductions from your Social Security payment, repayment, garnishee and legal proceedings. If you are having money withheld from your payments and this is causing hardship you should negotiate to have the amount reduced to reflect your capacity to repay. If you are unsuccessful you can appeal that decision.

There are situations where debts will not be recovered or where recovery can be delayed. For advice about when debt recovery might be waived or recovery set aside contact a Welfare Rights Advocate. You should also be aware that even if you are repaying, or have repaid the debt, Centrelink can still take prosecution action.

Appeals

Can I appeal against a Centrelink decision?

You have the right to appeal any Centrelink decision with which you are not happy. If you think Centrelink has made a mistake about the nature of your relationship with another person, or the length of time such a relationship existed, you should appeal.

Appealing simply means asking for a review of the decision with which you disagree. The person or tribunal you appeal to can change the original decision if it is wrong.

You cannot get into trouble or be penalised for appealing a decision.

How do I appeal?

Appealing is easy and free.

You can download a form to assist you to lodge an appeal from www.welfarerights.org.au or write to, or visit your local Centrelink office and explain that you would like the decision reviewed by an Authorised Review Officer (ARO). The ARO is a senior Centrelink officer who will take a close look at all the facts in reviewing the decision. Many people are successful at this level.

If you are not satisfied with an ARO decision, you can appeal to the Social Security Appeals Tribunal (SSAT). This is the first appeal stage that is outside of Centrelink and the SSAT is totally independent. There are no time limits to having decisions reviewed. However, it is advisable to appeal within 13 weeks of the original decision.

If you are still not satisfied with the SSAT decision you can appeal to the Administrative Appeals Tribunal (AAT). If you require further information contact your local Welfare Rights Advocate.

Can I continue to get the single rate of payment while I am appealing?

Centrelink may continue to pay you while the review is being conducted but you will need to ask it to do so. You should request this as soon as possible after you have been informed your rate of payment has been reduced, or your payment has been cancelled. You should contact your local Welfare Rights Centre for assistance if your payment is cancelled and for advice about appealing generally, see: helpful contacts on page 25.

Prosecution

I have been told I may be prosecuted and have to go to court. What is prosecution?

If you have been overpaid because Centrelink decided you intentionally provided false or misleading information, you may be prosecuted. Prosecution is the process of going to court for a criminal offence.

Do I need to attend a prosecution interview?

No. Centrelink may ask you to attend a prosecution interview to ask you questions which might assist it to prove that you committed an offence. After the interview Centrelink may recommend to the Director of Public Prosecutions (DPP) that you be prosecuted. The DPP, not Centrelink, makes the final decision about which cases will be prosecuted.

The appointment letter should say if an interview is a prosecution interview. You can also tell if it is a prosecution interview because it 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 in the gaps in the case against you.

You have the right not to attend the prosecution interview and if you do attend you can end the prosecution interview at any time. You cannot be penalised for not attending a prosecution interview. You can simply ring up and advise that you do not wish to go.

Will I still be prosecuted if I am repaying the money?

Even if you are repaying the money, you may still be prosecuted.

Sometimes Centrelink has made a mistake about the nature of the relationship or the length of time such a relationship existed and it may be appropriate to appeal to the Social Security Appeals Tribunal before dealing with the criminal matter. If you are in this situation you should obtain advice as early as possible from a Legal Aid solicitor. See helpful contacts on page 25.

Can I be sent to prison?

The Court can impose penalties ranging from good behaviour bonds and fines to community service orders and imprisonment.

The penalties vary depending on the seriousness of the offence, your attitude to the offence, any history of previous offences and your circumstances.

Freedom of information

Can I see what information Centrelink has about me?

You have a right to see your Centrelink file and other computer records Centrelink holds which relate to you. This right is provided under Commonwealth legislation called the Freedom of Information Act. It costs nothing to see your Centrelink file and records.

If you wish to see your file you should attend your local Centrelink office and complete the form 'I want to see my file'. You can also download a form at: www.welfarerights.org.au. It is helpful to explain why you want to see your file so that Centrelink can give you precisely what you want.

The Centrelink Officer investigating my case has been rude and intimidating. Can I complain?

You have the right to complain about a Centrelink worker's behaviour.

If a Centrelink officer is offensive politely end the interview. Afterwards, write down what happened and what was said. If there was a witness, ask them to do the same.

How do I make a complaint?

To make a complaint, telephone or write to the manager of your local Centrelink office or telephone the Centrelink Customer Relations Unit on 1800 050 004.

You can also complain in writing to:

- the Commonwealth Ombudsman – a senior independent person who investigates actions of Commonwealth government workers: see helpful contacts page 25.
- the Privacy Commissioner – a senior, independent person who investigates breaches of Commonwealth Privacy laws;
- your local Federal Member of Parliament.

What should I put in the complaint?

- the name of the person you dealt with, date, time and place of the incident;
- the details of what happened and/or what was said (in the first person, eg. He said "You cannot appeal this decision"); and
- the name of any witnesses to the incident.

Your health

I am having trouble sleeping because I am stressed about the Centrelink investigation - Is there anyone I can talk to?

Your health may suffer as a result of Centrelink investigations. You may feel stressed and anxious.

You should seek emotional support from someone you trust and feel comfortable talking with.

You may want to consider talking to a trained counsellor or seeing your doctor.

You can make an appointment to see a Centrelink Social Worker who can advise you on local organisations who provide support and counselling services.

Domestic Violence

If a person you live with behaves in a manner which causes you to be fearful for your safety and/or well being then you are experiencing domestic violence. Domestic violence includes physical abuse, verbal abuse, threats, intimidating behaviour and stalking.

You may wish to speak with a Social Worker from Centrelink, a solicitor at your local legal centre or the police and explain your situation.

Factsheets and information can be found at www.welfarerights.org.au

Helpful contacts

Tribunals

Social Security Appeals Tribunal 1800 011 140

Administrative Appeals Tribunal 1300 366 700

Complaints

Commonwealth Ombudsman 1300 362 072

Centrelink Customer Relations 1800 050 004

Centrelink

To arrange an appointment 131 021

Free Advice - Welfare Rights Advocates

Adelaide Welfare Rights Centre

Torrens Building, 220 Victoria Square, Adelaide, SA 5000

Telephone: (08) 8226 4123, 1800 246 287

Welfare Rights Centre, Brisbane

Suite 3, 28 Old Cleveland Rd, Stones Corner, QLD 4120

Telephone: (07) 3847 5532, 1800 358 511

Welfare Rights & Legal Centre, Canberra

Havelock House, Gould Street, Turner, ACT 2612

Telephone: (02) 6247 2177

Darwin Community Legal Centre

8 Manton Street, Darwin, NT 0800

Telephone: (08) 8982 1111

Welfare Rights Service, Geelong Community Legal Service

73 Pakington Street, Geelong West, VIC 3218

Telephone: (03) 5223 1232

Please turn page...

Hobart Community Legal Service Inc.

166 Macquarie Street, Hobart 7000

Telephone: (03) 62232500

Launceston Community Legal Centre

4A George St, Launceston, Tasmania, 7250

Telephone: (03) 6334 1577; 1800 066 019

Welfare Rights Unit, Melbourne

155 Easey Street, Collingwood, VIC 3066

Telephone: (03) 9416 1111

Community Legal and Advocacy Centre

24 Parry St, Fremantle, WA 6160

Telephone: (08) 94 32 9790

Sussex Street Community Law Service

29 Sussex Street, East Victoria Park, WA 6981

Telephone: (08) 9470 2676, 1800 642 791

Welfare Rights and Advocacy Service

98 Edward Street, Perth, WA 6000

Telephone: (08) 9328 1751

Welfare Rights Centre, Sydney

Level 5b, 414 Elizabeth St, Surry Hills, NSW
2010

Telephone: (02) 9211 5300 and 1800 226 028

Townsville Community Legal Service

155 -157 Denham St, Townsville City, 4810 Qld

Telephone: (07) 4721 5511

Illawarra Legal Centre

7 Greene Street, Warrawong, NSW 2502

Telephone: (02) 4276 1939

Welfare Rights Advocates provide FREE confidential advice on all Social Security matters and are entirely independent of Centrelink. The first step is to telephone a Welfare Rights Centre to find out when a worker is available to discuss your rights and obligations. A free interpreter service is provided if necessary, telephone TIS on 131 450.