

Social Security Rights

CASE STUDY

Breaching and the right to social security income

Rachel was receiving an unemployment benefit of \$190 per week, while looking for work and studying part-time. Rachel missed an appointment at Centrelink because she did not receive the letter advising her of the appointment. As Rachel had missed 2 appointments before, her payment was cancelled for 8 weeks. Rachel appealed the cancellation and was successful in having her payment restored. However, the appeal took some weeks and she was unable to pay rent and lost her accommodation. As a result of being homeless she had to withdraw from her part-time studies.¹

Breaches are penalties imposed when people fail to meet conditions attached to social security payments. As of September 2003 this penalty regime was extended to include parents receiving a parenting payment and mature-age people on Newstart (unemployment benefit). Previously it applied only to people receiving an unemployment benefit.

From July 2002 to June 2003, 134,239 breaches were imposed. It is generally the most vulnerable people, homeless people, illiterate people, people from non-english speaking backgrounds, or people with physical or intellectual disability, who have their payments reduced or cancelled.

The right to social security in international conventions

Article 9 of the *International Covenant on Economic, Social and Cultural Rights* recognises “the right of everyone to social security, including social insurance.”

Australia made a commitment to comply with the Covenant in 1972.

CASE STUDY

Rights of migrants to social security

When Maria migrated from Russia she spoke little English. She was sponsored by relatives, but when she could not find a job, she had to work and cook for the family. Maria received no money, as her work was regarded by the family as payment for accommodation and food. She effectively became the household’s unpaid servant. Maria could not get financial support from the government for two years, and was forced to stay with her relatives. She was unable to establish herself in the community, since she was dependent on the family for food and shelter and thus under their control.²

Current Australian social security policy

Breaching

Under the *Social Security Act 1991*, payments can be reduced or cancelled when a person has “unreasonably” failed to meet the conditions for payments.³ There is also an administrative review process for people to appeal decisions.⁴ This appeal process is free, but people suffer the loss of benefits before they can appeal.

Two-year waiting period for migrants

Since March 1997 all newly arrived residents or those being granted permanent residency have to wait for two years before being able to get social security payments. This is especially difficult for people from non-English-speaking backgrounds, who often need language training before they can find work.

A permanent resident in severe financial hardship during the two-year waiting period may be able to access Centrelink’s Special Benefit. Special Benefit is the payment of last resort and can sometimes be paid where a person is not eligible for any other payment and is “unable to earn a sufficient livelihood”. In order for Special Benefit to be granted during the two-year waiting period, a person must demonstrate that they have “suffered a change in their circumstances beyond their control” and be in financial hardship.

Rights not protected in Australia

Breaching

Under the *Social Security Act 1991*, up to three penalties can be imposed within a two-year period. These can amount to a loss of over \$3,500. Penalties can be imposed for relatively trivial matters, such as not attending an appointment, or not answering a letter.

An Independent Review undertaken in 2002 found that the operation of the penalties system was often “arbitrary, unfair or excessively harsh”.⁵ It also found that “breaches were imposed too frequently [and] penalties for the breaches are often too severe, thereby causing unnecessary and unjustifiable hardship”.⁶

In 2000 the United Nations Committee on Economic, Social and Cultural Rights expressed concern

that the right to social security payments is not legally protected in Australia.⁷

There is no protection against the harsh and unfair reduction in social security payments.

Two-year waiting period for migrants

It is difficult for people to access the Special Benefit, as Centrelink takes a restrictive view of the provision of what constitutes “a change in circumstances”.

Special Benefit, unlike any other payments, is paid at a discretionary rate and is not available to full-time students over the age of 18.

In 2000 the Committee on Economic, Social and Cultural Rights called upon Australia to “ensure that the two-year waiting period for receipt of social security assistance by new immigrants does not infringe upon their right to an adequate standard of living”.⁸

The imposition of waiting periods for newly arrived permanent residents violates this fundamental right.

International example of protection of the right to social security

In 1991 three Czech brothers illegally re-entered Switzerland. It was impossible for Switzerland to expel them since the now Czech Republic had rescinded their citizenship.⁹ The brothers were denied social welfare support on the basis of their illegal status. In Switzerland there is a constitutional right to a basic minimum level of subsistence for a dignified human existence. Since it is a fundamental right, it can be invoked by both Swiss citizens and foreigners.

The Court found that this exclusion from social welfare support was in violation of the right.

Improving social security rights in Australia

While Australia has a history of providing a quality social security safety net, there are limited legal guarantees for its provision in the future.

Protection of the right to social security in line with international standards would ensure that those who are most disadvantaged are guaranteed a minimum level of income.

“What form should the protection of human rights take?”

➡ For options about protecting human rights through a Charter or Bill of Rights see fact sheet N° 1: **Background to Human Rights**

REFERENCES

- ¹ Case study provided by the Welfare Rights Centre, NSW.
- ² Welfare Rights Centre, Sydney, *Waiting to Settle*, 1998, p 19.
- ³ Breach provisions contained in the *Social Security Act 1991* under each relevant payment type.
- ⁴ Review of Decisions is covered in the *Social Security (Administration) Act 1999* (Cth).
- ⁵ Pearce, D. et al (2002) *Making it Work*, Report of the Independent Review of Breaches and Penalties in the Social Security System, p 13.
- ⁶ As footnote 5.
- ⁷ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia, 1/9/2000, UN Doc E/C.12/1/Add.50, p 2.
- ⁸ As footnote 7, p 4.
- ⁹ *Switzerland, V v Einwohnergemeine X und Regierungsrat des Kantons Bern*, BGE/ATF 121 I 367, Swiss Federal Court, 27 October 1995. English summary at www.eschr-net.org (accessed on 24/3/2004).

