

Centrelink

PAYMENT OF INDEPENDENT RATE OF YOUTH ALLOWANCE TO A YOUNG PERSON

February 2008

*This is an abridged version of report 01|2008.
The full report has not been made publicly available to
preserve the privacy of the complainant.*

Report by the Commonwealth Ombudsman,
Prof. John McMillan, under the *Ombudsman Act 1976*

REPORT NO. **01|2008**

Reports by the Ombudsman

Under the *Ombudsman Act 1976* (Cth), the Commonwealth Ombudsman investigates the administrative actions of Australian Government agencies and officers. An investigation can be conducted as a result of a complaint or on the initiative (or own motion) of the Ombudsman.

The *Ombudsman Act 1976* confers five other roles on the Commonwealth Ombudsman—the role of Defence Force Ombudsman, to investigate action arising from the service of a member of the Australian Defence Force; the role of Immigration Ombudsman, to investigate action taken in relation to immigration (including immigration detention); the role of Postal Industry Ombudsman, to investigate complaints against private postal operators; the role of Taxation Ombudsman, to investigate action taken by the Australian Taxation Office; and the role of Law Enforcement Ombudsman, to investigate conduct and practices of the Australian Federal Police (AFP) and its members. There are special procedures applying to complaints about AFP officers contained in the *Australian Federal Police Act 1979*. Complaints about the conduct of AFP officers prior to 2007 are dealt with under the *Complaints (Australian Federal Police) Act 1981* (Cth).

Most complaints to the Ombudsman are resolved without the need for a formal report. The Ombudsman can, however, culminate an investigation by preparing a report that contains the opinions and recommendations of the Ombudsman. A report can be prepared if the Ombudsman is of the opinion that the administrative action under investigation was unlawful, unreasonable, unjust, oppressive, improperly discriminatory, or otherwise wrong or unsupported by the facts; was not properly explained by an agency; or was based on a law that was unreasonable, unjust, oppressive or improperly discriminatory.

A report by the Ombudsman is forwarded to the agency concerned and the responsible minister. If the recommendations in the report are not accepted, the Ombudsman can choose to furnish the report to the Prime Minister or Parliament.

These reports are not always made publicly available. The Ombudsman is subject to statutory secrecy provisions, and for reasons of privacy, confidentiality or privilege it may be inappropriate to publish all or part of a report. Nevertheless, to the extent possible, reports by the Ombudsman are published in full or in an abridged version.

Copies or summaries of the reports are usually made available on the Ombudsman website at www.ombudsman.gov.au. Commencing in 2004, the reports prepared by the Ombudsman (in each of the roles mentioned above) are sequenced into a single annual series of reports.

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Background

Ms A, a 16-year-old girl, complained to the Ombudsman's office that Centrelink had paid her Youth Allowance to her mother, and was refusing to pay it directly to her. Whilst living at home, Ms A received Youth Allowance at the dependent rate, and her payments were deposited into her mother's bank account. This follows the general rule under the social security law that where a young person is under 18 and is not independent, their Youth allowance is paid to a bank account of their parent.

Ms A said that she left home after an incident that was reported to police. She went to live with her brother, continuing to attend high school as a full-time student.

She applied to Centrelink for Youth Allowance at the independent rate, which was higher than the dependent rate. Ms A advised Centrelink that she wanted her payments made directly to her, and she provided her bank account details. Ms A understood that once her claim was assessed, the payments would be made into her bank account, irrespective of the rate.

Administrative deficiencies in Ms A's case

The Ombudsman identified a number of administrative deficiencies in the way that Centrelink handled Ms A's application for payment of Youth Allowance at the independent rate:

- After she lodged her application, her Youth Allowance payments were suspended under s 80 of the *Social Security Administration Act 1999* (the Act), with the result that she was left without income support. Centrelink's records do not include any explanation of why this was done. This action appeared to the Ombudsman's office to be without lawful basis.
- After later deciding that Ms A could not be paid at the independent rate, Centrelink restored her payments at the dependent rate and paid arrears owed due to the suspension, plus two fortnightly payments (\$1,522 in total), into her mother's bank account. Ms A said that her mother refused to give her access to this money. Centrelink later made the payments directly into Ms A's account, after her mother contacted Centrelink and gave her consent.
- The Ombudsman queried the decision by Centrelink that Ms A could not be paid at the independent rate. Centrelink officers have discretion, under s 45(2) of the Act, to pay Youth Allowance directly to a person under 18, even without the written permission of the parent, and even where that person is not considered to be independent. In this case Centrelink accepted that it was unreasonable for the complainant to live at her mother's home, but declined to exercise the discretion conferred by s 45(2) because Ms A was not independent. That view, that she was not independent, was based on a social work assessment, which determined that she was receiving continuous support from her father, who was living interstate. Centrelink later cancelled Ms A's Youth Allowance because she was unable to provide details of her father's income and assets. The failure to re-examine the conclusion that Ms A's father was providing continuous support, or to seek the necessary information directly from him, has been identified by the Ombudsman as a further administrative deficiency. In the Ombudsman's view, Centrelink should have re-examined the conclusion that Ms A's father was providing continuous support, or sought information directly from him. Investigation by the Ombudsman's office revealed that the social work assessment on which Centrelink's decision was based was faulty. As a consequence, Ms A, a vulnerable young person, was left without any income support for over two months

- Ms A sought a review by an Authorised Review Officer (ARO). There was an unacceptable and unexplained delay of almost four months before this review was completed in spite of repeated requests from the Ombudsman's office.
- As Ms A did not have access to consistent support from either her mother or her father, she eventually applied again for the independent rate of Youth Allowance, and on this occasion, her application was granted. However, Centrelink declined to backdate the decision that Ms A be paid at the independent rate, even though there was no evidence that there were any significant changes in the complainant's situation between the first and second applications.

Systemic issues

This investigation also highlighted some systemic issues in Centrelink's process for assessing young people who are seeking to establish that they are independent of their parents, including a failure to change the payment arrangements.

It is the Ombudsman's view that it is unreasonable to expect a young person who has been forced to leave home because of violence or untenable living arrangements to be able to obtain parental agreement to get paid directly. It is also unreasonable for Centrelink to put the onus solely on a young person to obtain income and assets details from a parent the young person is not residing with, or with whom the young person might have had little contact.

The 'continuous support' criterion requires careful application to a young person, with reference both to the financial and non-financial support actually available to them. If an assessment regarding independence is to be based on a young person's access to financial support, Centrelink must confirm that the young person is actually receiving that financial support.

Recommendations

The Ombudsman made a number of recommendations, which were accepted by Centrelink, the Department of Education, Employment and Workplace Relations¹ (DEEWR) and the Department of Human Services.

As to Ms A, it was recommended that she be paid arrears at the independent rate backdated to the day she first applied for payment at that rate; and that Centrelink provide her a written apology concerning the handling of her case.

As to Centrelink administration, it was recommended that staff administering Youth Allowance be properly trained in applying the Act and ascertaining the facts; that Centrelink's automated system for implementing Youth Allowance decisions be reviewed so that staff will be prompted to give consideration in appropriate cases to payment of Youth Allowance at the independent rate; and that Centrelink review its policies, practices and training to ensure that under-18 Youth Allowance applicants do not bear all responsibility for providing specific information about the financial circumstances of their parents or the level of support available, particularly in cases involving domestic violence, and/or where they do not live with their parents.

It was also recommended that DEEWR consider changing the phrase 'unreasonable to live at home' as a description of the independent rate of Youth Allowance.

¹ Formerly the Department of Education, Science and Training and the Department of Employment and Workplace Relations, which were merged in December 2007.