

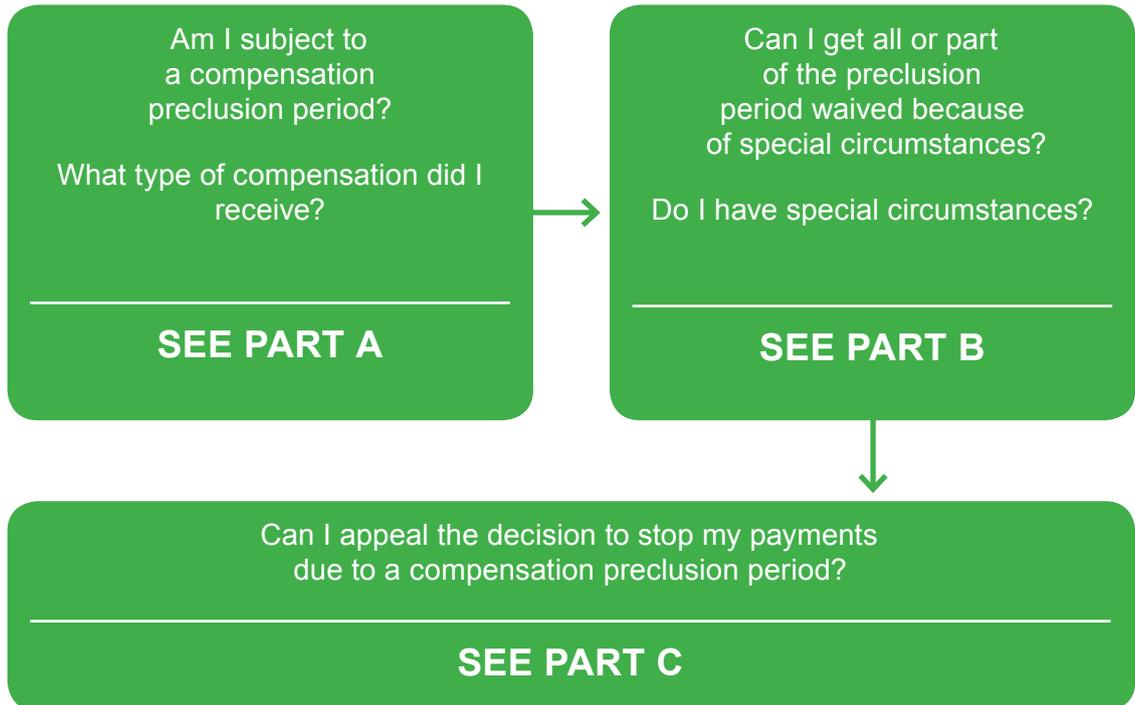


## WHAT IS COMPENSATION PRECLUSION?

### KEY MESSAGES

- A compensation preclusion period means a period of time you won't receive Centrelink payments because of compensation you received.
- Centrelink will apply special rules if you receive compensation for a personal injury, which includes an amount for lost income, because you cannot go back to work.
- If you are in financial hardship due to a compensation preclusion period, you may be able to appeal the length of the period.

If your payments have been stopped, or your application for a payment has been rejected, ask yourself the following:



## PART A

### **What happens if I receive a lump sum compensation? What is a compensation preclusion period?**

If you receive a lump sum payment of compensation for personal injury which includes an amount for lost income (either in the past or in the future because you cannot go back to work), Centrelink may exclude you from payments for a period of time. This is called a compensation preclusion period.

The length of the compensation preclusion period is based on the total or gross amount of compensation you received, even if some of that money was used to pay legal or medical costs.

Instead of receiving income support payments during this period, Centrelink expects you to use the lump sum payment to support yourself. The compensation preclusion period does not apply to your partner (but the compensation might reduce their Centrelink payments under the usual income tests).

If Centrelink says you received compensation which includes an amount for lost income, but you disagree, you can appeal. You can contact SSRV for advice relating to this before you do so.

### **How is this preclusion period worked out by Centrelink?**

#### **The basic formula that Centrelink will use to determine the length of time you are ineligible for payments is as follows:**

**50% of your lump sum payment divided by \$959.10\* = number of weeks you are ineligible.\***

Only 50% of the total amount awarded to you is considered for the preclusion period. This means that if, for example, you are awarded \$250,000 in workers compensation, only \$125,000 is considered by Centrelink for the purpose of working out the preclusion period.

The period of time (the preclusion period) is expressed in weeks. The calculation that Centrelink uses divides the amount of money (in this case \$125,000) by the average weekly earning. Therefore, Centrelink would divide \$125,000 (half the amount awarded in workers compensation) by \$959 which equals 130.3 weeks. That is, your preclusion period would be approximately 2 years and five months.

You can find a calculator on Centrelink's website to help you work out when you might be eligible for payment.

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\* Note that this figure is correct as of November 2016. This number changes periodically. SSRV recommends that you use Centrelink's compensation payment calculator to ensure the most correct figure.

### When does a preclusion period start?

Centrelink calculates your preclusion period from the time in which the lump sum is paid to you. The date of payment may be many months after the event that has left you unable to work. Complications might arise where you are receiving payment such as the Disability Support Pension in the time immediately before receiving your lump sum compensation. We recommend that you contact SSRV if you are about to receive a compensation payment and are unsure how this might affect your Centrelink entitlements.

### Centrelink has stopped my payments because I have received a lump sum. How do I know if this money is a compensation payment or not?

Not all lump sum payments you receive as compensation will affect your payments. "Compensation" has a specific definition in the context of Centrelink payments. If you have received money in relation to **Total Permanent Disability** or in relation to **Income Maintenance** this money is not compensation. SSRV has fact sheets explaining these payments (see the SSRV website). If you have received payments due to a workplace injury (Workcover) or road accident (TAC) these payments generally ARE considered compensation.

If you are still unsure what type of payment you have received, contact SSRV or a financial services officer at Centrelink.

If you believe Centrelink have applied a compensation preclusion period incorrectly, this fact sheet includes steps for how to appeal a Centrelink decision to an Authorised Review Officer (ARO) or the Administrative Appeals Tribunal.

## PART B

### Can I end the preclusion period early? – Special circumstances waiver

A compensation preclusion period may be waived (not applied or ended early) if you have special circumstances.

What are considered special circumstances will be different for everyone and is not defined in social security law. You need to show not only that you are in financial hardship but also that you have other reasons for the period to be waived. Centrelink considers a range of factors when determining whether you qualify for special circumstances. Their primary focus is on "unusual, unforeseen or exceptional circumstances". Some examples of special circumstances could be serious illness or injury, risk of homelessness or family breakdown.



## Guide to appealing a compensation preclusion period

### STEP ONE:

#### Lodge a claim for payment with Centrelink

Start by lodging a claim. In most cases, you should claim Newstart Allowance or Disability Support Pension.

If your claim is rejected, you should immediately tell Centrelink you want to appeal to an ARO. There is a form to help you do this below (see Part C), but you can also do it over the phone – make sure to ask for a receipt number for the phone call. Make sure you do this within 13 weeks of Centrelink rejecting your claim so you can get maximum back pay if your preclusion period is waived.

There are a few payments that can be paid during a preclusion period, and you should check to see if you are eligible for any of these, for example:

- Family assistance payments (Family Tax Benefit), if you have children in your care;
- Carer Allowance, if you care for someone else daily; and
- Mobility Allowance, for certain people who need substantial assistance to use public transport because of a disability.

You might be eligible for a Low Income Health Care Card 12 months after you receive the lump sum compensation.

If you feel that Centrelink have incorrectly assessed your compensation, you must make this clear to the ARO, either in writing or if you lodge over the phone.

### STEP TWO:

#### Collect evidence of your Special Circumstance for your appeal

It is very important to have evidence to support what you say makes your case special. Don't be worried about the word "evidence", most people with special circumstance have evidence, they just don't realise it. This fact sheet will help you in collecting yours.

In most cases there are two main topics you should collect evidence about:

1. Evidence about how much compensation money you got and the main things you spent it on.
2. Evidence about your personal circumstances, including your current financial and living situation, physical and mental health and the health of any family members.



## **STEP THREE:**

### **Different types of evidence**

#### **3.1 EVIDENCE ABOUT HOW YOU SPENT THE COMPENSATION MONEY**

Here is some evidence that we suggest you include in your appeal:

- A letter from the lawyer who represented you in the compensation matter which shows the total amount you were paid (gross) and how much money you actually got in your hand (net). The letter should show what was taken out of your compensation for lawyer's costs, medical and other expenses.
- Evidence of how the money was spent. A good place to start is your bank statements. You should also look for receipts for major purchases (e.g., renovations, a car etc). You don't need to show your ordinary living expenses.

If you repaid loans to family and friends, you should get them to write a letter about how much you paid them. If you had a business that failed, ask the accountant to write a letter explaining why the business failed and how much you lost.

#### **3.2 EVIDENCE ABOUT YOUR CURRENT FINANCIAL AND LIVING SITUATION**

It is very important to have evidence about your current financial and living situation as in most cases a compensation preclusion period will not be waived unless you are in severe hardship.

Here is some evidence we suggest you use to show your financial situation:

- Credit card statements if you are living off your credit card.
- Outstanding bills and any letters from debt collectors.
- A statement of your financial position drafted by a financial counsellor (note that this is free - contact the National Debt Helpline on 1800 007 007 for more information).

When collecting evidence of your living situation we suggest getting copies of:

- Your lease, if you are renting, to show how much rent you are paying.
- If you are behind on your rent you should include evidence of that – for example a letter from your landlord stating that your rent is in arrears.
- If you own a house and you are behind in your mortgage payments, include a bank statement that shows this.

### 3.3 EVIDENCE ABOUT YOUR HEALTH

It is important to have evidence about your health and the health of any family members. Where possible, you need specialist reports. A letter from your GP is sufficient in many cases. Letters from psychologists and counsellors may also help. An example of a doctor's letter is included at the end of this guide. It asks your doctor to write a letter answering some questions. It also asks them not to charge you for writing the letter and this is something you should make sure you discuss with your doctor, psychologist or counsellor beforehand.

### 3.4 EVIDENCE ABOUT ADDICTIONS OR ANYTHING ELSE WHICH AFFECTED YOUR SPENDING DECISIONS

If you think your spending decisions were affected by something beyond your control, such as an addiction or a mental health problem, it is very important to have evidence for this as it will help your case. Ideally, this evidence will come from a doctor or appropriately qualified counsellor, such as a gambling counsellor. But you should provide any evidence you have.

Some examples are:

- You may have spoken to a social worker about a gambling problem – if that is the case, ask the social worker to write you a letter about this.
- Your bank statements may show that you have spent a lot of money in pubs, clubs or pokies venues. Make a copy of your bank statement and include it in your submission along with an explanation of why you are including it.

### 3.5 EVIDENCE ABOUT ANY ASSETS YOU HAVE

It is very difficult to have a compensation preclusion period waived if you have substantial assets. It is a good idea to get advice from SSRV if you have substantial assets, especially if you own your home and used your compensation money to buy it or pay off the mortgage.

If you do have an asset but you have good reasons why you can't sell it, you should provide evidence about this.

### 3.6 OTHER SPECIAL CIRCUMSTANCES

The Department of Social Services has information which lists the main circumstances which are considered for special circumstances. This is available online at:

<http://guides.dss.gov.au/guide-social-security-law/4/13/4/20>

This is a very good starting point to help you work out what evidence to collect.



## PART C

### If your appeal to an ARO is unsuccessful

1. If you are not happy with the decision made by the ARO, you can appeal to an independent tribunal called the Administrative Appeals Tribunal, Social Services & Child Support Division (SSCSD). You can lodge the appeal by phone or online. See <http://www.aat.gov.au/social-services-child-support-division>

You must lodge your appeal within 13 weeks to ensure you get maximum back pay if successful.

2. If you are dissatisfied with the outcome from the SSCSD you have further appeal rights to the Administrative Appeals Tribunal (AAT). If you wish to do this you must appeal to the AAT within 28 days of receiving the decision to be sure that your appeal will be accepted. More information on this process can be found through contacting SSRV.
3. You are also entitled to lodge a new claim for a payment in the future if your circumstances have changed and you want your new situation to be considered. For example, you may have been evicted from your rental property since you last claimed a payment.

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This fact sheet contains general information only. It does not constitute legal advice. If you need legal advice, please contact SSRV on either 94810355 or [www.ssrv.org.au](http://www.ssrv.org.au). SSRV is a community legal centre which specialises in social security law, administration and policy. SSRV is independent of Centrelink and all assistance is free.

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## SAMPLE LETTER TO PRESENT TO YOUR DOCTOR/ SOCIAL WORKER/COUNSELLOR

[Date]

Dear Dr [Name]

### LETTER OF SUPPORT

I am appealing against Centrelink's decision that I cannot receive a Centrelink payment because of compensation I received in the past.

To receive a Centrelink payment I need to show that my case is special. Could you please write a short letter of support for me that explains:

- How long I have been your patient;
- My physical and/or mental health problems and any treatments I am receiving;
- Whether you think my current situation is affecting me, including affecting my health problems and their treatment.

Please address the letter 'To Whom It May Concern' as I will likely be forwarding this letter to Centrelink and/or the Administrative Appeals Tribunal.

I am precluded from any Centrelink income. The compensation funds I have received are very limited or exhausted. I am living on the generosity of family and friends (see next) and/or charities. Please bulk bill this consultation and any other work done on my behalf.

Yours faithfully,

[Signature]

[Name]

[Address]