

The Federal Government has changed 85 laws to give same-sex couples the same legal rights and protections as different-sex de facto couples.

The changes to social security affect Centrelink payments as well as payments made by the Family Assistance Office (FAO) and the Department of Veteran Affairs (DVA). From 1 July 2009, people living together with their same-sex partner may now be recognised by these offices as a "member of a couple"

In essence this means that if you are in a same-sex relationship and you receive a social security payment, both you and your partners' income and assets (such as wages, investments and cars) will be used to figure out your social security payment. Each person in a same-sex relationship previously received a sole payment. If you live together and meet other factors listed below, this may mean that you now receive a payment based on the lower coupled rate.

Centrelink and the Family Assistance Office use five factors to figure out if you are a 'member of a couple'. These are the social aspects of the relationship with your partner (whether you present as a couple), whether it is sexual, your commitment to each other, your shared finances, and your living arrangements and domestic responsibilities. Before the 1 July 2009 changes to recognise same-sex relationships, if you lived with a non-family member of the opposite sex, Centrelink would ask questions about your relationship. Now you may be asked to explain your relationship to all people in your household, regardless of gender. DVA applies the equivalent provisions under the veterans' affairs legislation to assess the entitlements of same-sex couples and dependants.

Some couples may have their income reduced or stopped altogether because of these changes. This is because their partner's income and assets may now be used by Centrelink to calculate how much money a person should receive. Some members of a couple may find their situation better off, as assets and income previously considered belonging to only one partner may now be shared across a couple. Some younger LGBT people on Youth Allowance may now be considered as independent.

Many same-sex couples have expressed concerns that there was only a short amount of time to readjust to their new financial situation. In particular those over the age of 55 planning for or in retirement have expressed concerns about suddenly becoming financially dependent on their partner. It is important, however, to ensure that you are in fact a "member of a couple" under social security law and that you are receiving full benefit of your new entitlements in relation to social security and all the other areas of law change.

To make sure you are on the correct social security payment and are not being treated unfairly, the National Welfare Rights Network have been funded to provide an independent advocacy service to the people from the LGBT community. Welfare Rights is a confidential service and can provide you with detailed information in line with your individual circumstances. See their details in the need more information section.

Actions you can take

- Call the National Welfare Rights Network or Centrelink to discuss your individual circumstances.
- Carefully and accurately fill in all Centrelink paperwork to ensure you do not incur a debt if you are later determined to have been a member of a couple
- If you are a member of a couple - ensure you register for the Medicare Safety Net & PBS Safety Net as a couple – see more on the Health & Ageing factsheet
- Ensure you claim all allowable tax deductions as a couple for 2009/10 in your post July 2010 tax return – see more on the Financial factsheet

Please note: This factsheet provides general information only. It does not

Need more information?

Welfare Rights Network
1800 226 028 or (02) 9211 5300

Centrelink
Same Sex Hotline: 13 6280

Family Assistance Office
13 6150 (8am and 8pm weekdays)

Department of Veteran Affairs
133 254 or 1800 555 254 (regional
Australia)

Australian Federation of AIDS
Organisations (AFAO)
(02) 9557 9399
(Contact for details of your local
AIDS Council or PLWHA
organisation)

Gay and Lesbian Counselling and
Community Services of Australia
1800 18 45 27

Lifeline
13 11 14

constitute legal advice and may not be applicable to your individual circumstances. If you need specific legal advice contact your local Welfare Rights Centre.

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Things you should know

- The definition in Social Security laws of “member of a couple” is different from the other reforms used to determine “defacto relationships”. Five criteria are used by Centrelink to assess the relationship of people you live with to determine if you are a “member of a couple”.
- Some same-sex couples may receive less money from Centrelink, DVA or the Family Assistance office, because they now receive the rate of a couple’s payment instead of two individual payments. Other people’s payments may stop altogether, because their partners’ income or assets are now being included in calculations. If you are concerned about what the changes mean for your payments and would like to speak to somebody independent, you can talk to the Welfare Rights Network.
- If you are a member of a couple and receive a concession or pension card you may be sent a new card with your partner’s name on the card. If you don’t want your partner’s name on your card, you can contact Centrelink and ask them to give you a new card with only your name. You’ll still be able to use both cards so your partner can access some concession discounts.
- Because your relationship is now recognised by social security law, if your family suffers a tragedy where a partner dies, the surviving partner may now be able to access bereavement assistance subject to means testing, such as bereavement allowance or bereavement payment.
- Younger people who live with their same-sex partner may now be recognised as independent. This means your parent’s income and assets will no longer be used to calculate your payment and you could receive a higher Youth Allowance payment.
- If you are a child of same-sex parents, both your parents’ incomes and assets may now be used when working out how much money you should receive from Centrelink.
- Centrelink has not updated its policies regarding transgender and intersex people. This means Centrelink will still ask for your legal sex, which may not be your affirmed sex.
- If your partner is or has been in the Defence Force, you can now apply to be recognised by the Department of Veterans’ Affairs (DVA) as their partner. Similar to social security payments by Centrelink, DVA income support for same-sex couples is assessed on your combined income and assets. Because your relationship may now be recognised by DVA, you and your children may be entitled to receive a pension from DVA as dependants if your partner passes away.
- In this factsheet we keep using the words “same-sex” and “opposite-sex” or “different-sex” couples. This is because these are the terms that the Federal government uses. Under the new laws a person’s gender does not matter when working out who is a ‘member of a couple’. This means that if you are transgender or intersex you can still be considered a “member of a couple”, whatever your partner’s sex or gender.

Frequently asked Questions

▼ Am I a ‘member of a couple’?

A ‘member of a couple’ has a specific meaning under social security law. To decide if you are a ‘member of a couple’ Centrelink uses a number of factors to assess the relationship between you and any person you live with. Generally you will be asked to fill out a ‘nature of the household’ form and if Centrelink requires more information a ‘member of a couple assessment’ form. In working out if you are a member of a couple, Centrelink will consider the following five factors:

1. The social aspects of your relationship (whether you present as a couple)
2. Whether it is sexual or not
3. The nature of your commitment, which could include the length of your relationship
4. The extent to which you share finances
5. The nature of the household including domestic responsibilities and living arrangements

A decision is made about whether a person is single or a member of a couple by weighing the evidence relating to all five factors. Not all factors need to be present. DVA applies the equivalent provisions under the veterans' affairs legislation to assess the entitlements of same-sex couples and dependants.

If you have questions about your Centrelink application or think that your assessment may have been wrong, it is a good idea to contact Welfare Rights. The Welfare Rights Network is not part of the Government and conversations can be anonymous and confidential.

Welfare Rights (with the assistance of the Aurora Foundation) have created a Declaring your same-sex relationship to Centrelink factsheet [<http://www.welfarerights.org.au/Factsheets/Declaring%20your%20same-sex%20relationship%20to%20Centrelink.doc>] to help you understand more about what happens.

▼ **What types of payments are affected by these reforms?**

Almost all social security payments may be affected by these changes. All payments made by Centrelink, the Department of Veteran Affairs and the Family Assistance Office now recognise same-sex relationships. Examples of the types of payments are:

- Youth Allowance
- Newstart Allowance
- Disability Support Pension
- Parenting Payment
- Age Pension
- Sickness Allowance / Mobility Allowance
- Austudy or Abstudy
- Carer Payment and/or Carer Allowance
- Rent Assistance
- Family Tax Benefit
- War Widow's/Widowers Pension/ Compensation for Wholly Dependent Partners
- Service Pension
- Orphans Pension / Compensation for Eligible Young Persons
- Income Support Supplement
- Child Care Benefit or Rebate
- Baby Bonus
- Maternity Immunisation Allowance (Note that Paid Parental leave commences from 01/01/2011)
- Large Family Supplement
- Health Care Cards
- Jobs, Education and Training Child Care fee assistance

▼ **What happens if I don't tell Centrelink that I am in a relationship?**

Same-sex couples may be afraid to tell Centrelink about their relationship, especially if they are not out publicly or live in a small community. It is very important, however, that you do declare your relationship if you are a member of a couple and you and/or your partner receives a Centrelink payment.

When you are applying for Centrelink payments and indicate that you live with someone but say you are not a member of a couple, Centrelink may ask you to complete a compulsory 'member of a couple' assessment. Centrelink might also find out that you are a 'member of a couple' by comparing information from other Government agencies about your relationship status. Centrelink also runs a "tip-off" line where people can tell them they believe someone is a member of a couple and hasn't declared.

If any of these situations occur, Centrelink may send you a form to return to them to make an assessment of your individual situation and determine if you are a 'member of a couple'. If you disagree with an assessment you can appeal their decision. Welfare Rights can help you with this appeal if you need.

If Centrelink gave you more money than you should have been receiving because you didn't declare your relationship, you may need to repay the money to Centrelink. If you deliberately lie about your relationship status they could even

take legal action against you for fraud.

It is very important to tell Centrelink about all relationships between you and the people you live with even if you are unsure about whether you are a 'member of a couple' or not.

Centrelink staff have undertaken 'Gay and Lesbian Awareness' training. Part of the training includes the issue of 'outing' and staff are sensitive to the concerns some same-sex couples may have. If a lesbian or gay customer remains concerned about privacy, they can contact Centrelink by phone to assess their member of a couple status or call a dedicated Centrelink same-sex law reform hotline on 13 62 80.

▼ **I'm worried that Government staff members will be homophobic. What have organisations like Centrelink done to make sure our community will be treated with respect?**

This is a very important concern for our community. You might be worried about telling Centrelink about your relationship because you are scared they may hassle you or be judgmental. You may also be worried about being outed.

A community organisation - Gay and Lesbian Health Victoria - developed a training package for all the staff members at Centrelink, Family Assistance Office and the Department of Veteran Affairs. Centrelink staff received this training about how to be sensitive to LGBT people and their partners.

If you are unhappy with the person who is handling your application, you can always ask to speak to someone different or call the dedicated Centrelink same-sex law reform hotline on 13 62 80. If you feel that you have been discriminated against, you have the right to make a complaint (see bottom of this factsheet for more information).

▼ **Do I have to tell Centrelink if I am living with someone of the same-sex but am not in a relationship with them?**

Yes, it is important that you do.

You must tell Centrelink about all of the people living in your household no matter if you're in a relationship or not. If you are not in a relationship with your housemates, or were previously but are no longer in a relationship with the person you are living with, talking with someone from Welfare Rights may help you work out how to explain this to Centrelink.

The information that Centrelink collects about other people living in your house is used to make sure you and your housemates get the right payment and right amount of rent assistance.

▼ **I don't know / I don't think that I am a 'member of a couple', but I am nervous that someone might 'dob' me in to Centrelink and say that I am. What can I do to lessen my stress?**

First, it's a good idea to talk through your individual situation with someone from the Welfare Rights Network, because they are independent of Centrelink and have been funded to help out LGBT people. Second, you could ask Centrelink to perform a 'member of a couple' assessment on your situation to formally declare that you are officially not a 'member of a couple'.

▼ **I am in a Civil Partnership or Registered Relationship does this mean I am a 'member of a couple'?**

Being in a registered relationship (non-caring) in Victoria, Tasmania or the ACT means that you can automatically be recognised as a 'member of a couple' by Centrelink. When you are filling in your Centrelink form, tick the 'registered relationship' box under relationship status.

Unfortunately registered relationships from local councils or overseas (including overseas marriages) will not automatically be recognised but can make you much more likely to meet the 'member of a couple' assessment, provided you live together. When filling in the Centrelink form, you should tick the "defacto partner" box.

▼ **What happens if I am living with an ex partner?**

If you are not in a relationship with someone anymore but you are still living with them you could be considered 'separated under one roof'. Centrelink might want to assess whether your relationship has actually stopped by taking into account your living and household arrangements, how your relationship has changed, and your plans for the future. Welfare Rights can help explain more.

▼ **What can I do if I am experiencing severe financial hardship?**

There might be a special reason why assessing you as a 'member of a couple' would result in you losing so much money that you experience 'severe financial hardship'. This means that you and your partner's incomes and assets combined are not be able to provide basic necessities. If this is the case you may wish to talk with a Centrelink social worker or the FIS officer and you may be able to apply for a 'hardship provision'.

To do this, you need to complete a Claim for Consideration Under Hardship Provisions form, which you can pick up at any Centrelink Office. It is important that both you and your partner make a claim for 'hardship provision' by completing one form each or doing one together with both your details. It is a good idea to get Welfare Rights to help you in the application process.

There are separate provisions if you are experiencing hardship just because of the assets test – see the next question.

▼ **What can I do if I am experiencing severe financial hardship because of the assets test?**

If your and your partner's assets, including assets that you cannot realise, reduce your payment under the assets test and you are in severe financial hardship, you can apply for assistance under the assets test 'hardship provisions'.

To do this, you need to complete a Claim for Consideration Under Hardship Provisions form, which you can pick up at any Centrelink Office. It is important that both you and your partner make a claim for 'hardship provision' by completing one form each or doing one together with both your details. It is a good idea to get Welfare Rights to help you in the application process. These hardship provisions do not apply if your payment is reduced under the income test.

▼ **I was considered a single parent before these changes. What happens now?**

From 1 July 2009 same-sex couples and their children may be recognised as a family under the social security changes. This means that you may no longer be considered a single parent - both you and your partner's income and assets will be used to calculate how much money you will receive. This also applies where both you and your partner were receiving payments as single parents. Welfare Rights can provide further information about your individual circumstances.

▼ **I'm worried about my privacy. Do I have to tell Centrelink/the Family Assistance Office/Department of Veteran Affairs about my same-sex relationship and family situation?**

Being outed, or having your personal life shared with government officials can be very worrying sometimes but is important to ensure you provide all information requested by Centrelink, etc.

Centrelink, DVA and the Family Assistance Office all have very strict guidelines and rules about privacy to ensure that your information is never released inappropriately. If you are uncomfortable with a case worker assigned to you, you can ask for another case worker or ask to have your file changed to a new office. You may also be able to conduct most or all of your transactions online or over the phone. All government departments take issues of privacy very seriously and complaints can be made to the ombudsman or privacy commissioner.

▼ **What do I do if I believe I am being unfairly treated?**

The best starting point would be to talk to the Welfare Rights Network about your experiences. If you have been treated unfairly they might be able to help you work out what your next move could be. You can also make a complaint to the department itself (eg Centrelink), the responsible Minister or the Commonwealth Ombudsman. If you would like further information about making complaints or appealing against decisions please see the end of this factsheet.

▼ **My partner was a veteran and died before the changes to law came in on 1 July 2009. Can I receive their veteran's pension?**

No, a partner cannot receive the late veteran's pension. You may, however, be able to receive some benefits as a surviving partner. If you have any questions about your new rights under the law changes, contact the Welfare Rights Network who may be able to answer your questions.

▼ **If I lose my Disability Support Pension or have it reduced, what will happen to my health care concession card?**

If your pension is reduced but you still receive even just \$1 of your DSP, then you will keep your Pensioner Concession Card. If you have lost your pension completely because of your partner's employment income, your Pensioner Concession Card can only continue for up to 13 weeks. If you lose your pension because you commence employment or have an increase in your own employment income, you may be able to retain a concession card for up to 52 weeks. Check your individual circumstances with Centrelink or speak to someone from the National Welfare Rights Network.

Make sure you check if you, your same-sex partner and/or your family can qualify for the Pharmaceutical Benefits Scheme safety net and the Medicare safety net as a family. See the Health & Ageing factsheet for more information.

▼ **Where can I find more information?**

For more information about groups and services which can help you understand the new laws and apply for your changes, please see the list of contacts under the "more information" section of this factsheet. You can also find a range of helpful factsheets [<http://www.welfarerights.org.au/pages/factsheets.aspx>] on the Welfare Rights website or go to the same-sex couples Centrelink website [http://www.centrelink.gov.au/internet/internet.nsf/individuals/same_sex.htm].

The National Welfare Rights Network website

[<http://www.welfarerights.org.au/default.aspx>] includes factsheets in many different foreign languages. The Aurora Foundation has funded Welfare Rights to create a series of factsheets specifically for same-sex couples. The Welfare Rights publication Relationships and Centrelink

[<http://www.welfarerights.org.au/Shared%20Documents/Relationships%20and%20Centrelink.pdf>] is a good overview of dealing with Centrelink when declaring your relationship.

Centrelink's website also has some pages that may be particularly useful to you. These include a wide range of same-sex case studies

[http://www.centrelink.gov.au/internet/internet.nsf/individuals/ssr_cases.htm]

(including specific examples for DSP, carers and people separated under one roof), up to date amounts allowed under an assets test

[<http://www.centrelink.gov.au/internet/internet.nsf/payments/chartab.htm>], pension income tests

[<http://www.centrelink.gov.au/internet/internet.nsf/payments/chartc.htm>] and general information about calculating income

[<http://www.centrelink.gov.au/internet/internet.nsf/factors/income.htm>].

The Social Security laws that have changed

- #50** Child Support (Assessment) Act 1989
- #51** Child Support (Registration and Collection) Act 1988
- #52** Social Security Act 1991
- #53** Education Services for Overseas Students Act 2000
- #54** Farm Household Support Act 1992
- #55** Higher Education Support Act 2003

Please note: This factsheet provides general information only. It does not constitute legal advice and may not be applicable to your individual circumstances. If you need specific legal advice contact your local Community Legal Centre.