



# Introduction to Special Benefit

This fact sheet summarises the Ask LOIS webinar on this topic, presented by Jessica Raffal, Solicitor, Women's Legal Service NSW

This webinar can be viewed for free at [www.asklois.org.au/webinars/past-webinars](http://www.asklois.org.au/webinars/past-webinars) .

This factsheet looks at:

- What is the Centrelink "Special Benefit" Payment?
- How can my client qualify to receive it?
- Some examples of where Special Benefit is payable
- The rate of Special Benefit
- Claiming Special Benefit
- Appealing a decision about Special Benefit

## What is Special Benefit?

Special Benefit (SpB) is a discretionary income support payment, paid by Centrelink to people who are in financial hardship and unable to earn a sufficient livelihood, and who are not eligible to receive any other social security pension or allowance.

It differs from most other Centrelink payments in two key respects:

1. It is discretionary where other payments are not. The *Social Security Act 1991* typically sets out of qualification and payability criteria for a payment. Once these are established, the claimant is entitled to receive it. This is not the case with Special Benefit; and
2. Qualification depends on failing to be eligible to receive any other social security payments.

## Qualification Criteria for Special Benefit

In order to enliven the discretion to pay Special Benefit, it is necessary to meet the qualification criteria.

In order to qualify for Special Benefit, a person must:

- Be unable to receive any other social security pension or benefit, **and**
- Be in financial hardship and unable to obtain or earn a sufficient livelihood for themselves and any dependants, **and**
- Be in Australia throughout the period for which payment is sought, **and**  
One of the following
  - Be an Australian resident, **or**
  - Be the holder of a specified subclass of visa.

The specified visa subclasses are:

- subclass 820 - Partner,
- subclass 309 - Partner (Provisional),
- subclass 785 - Temporary Protection,
- subclass 786 - Temporary (Humanitarian Concern),
- subclass 790 - Safe Haven Enterprise,
- subclass 449 - Humanitarian Stay (Temporary),
- CJSV (9.2.14) - issued specifically for the purpose of assisting in the administration of criminal justice in relation to an offence of trafficking in persons, slavery or slavery-like practices,

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- subclass 060 - Bridging F, and
- subclass 070 - Bridging (Removal Pending).

### **Circumstances in which Special Benefit is commonly paid**

The Guide to Social Security Law includes a section called “**3.7.2 Common Situations where Special Benefit is Claimed**” (<http://guides.dss.gov.au/guide-social-security-law/3/7/2>) with a range of examples.

This is **not** an exhaustive list, just common examples.

This factsheet will look at the following common situations:

- Newly arrived residents
- Non-resident parents of Australian citizen/PR babies
- Young people
- Older people

### **Newly arrived residents**

Most new migrants do not have immediate access to Centrelink payments.

A two-year “Newly Arrived Residents Waiting Period” (NARWP) applies to the following payments:

- newstart allowance,
- youth allowance,
- austudy payment,
- partner allowance,
- carer payment,
- sickness allowance,
- mobility allowance,
- pensioner education supplement,
- special benefit,
- health care card (low income), AND
- Commonwealth seniors health card.

The NARWP begins from the date of arrival in Australia, or the date of grant of permanence residency – whichever occurs later.

There are a range of exemptions from the NARWP. The following people are not required to serve one:

- a person who arrived in Australia as a refugee,
- a person who is a family member of a refugee or a former refugee at the time the former refugee arrived in Australia and is a family member at time of claim,
- a person who is an Australian citizen,
- a person who has lawfully been a permanent resident of Australia at any time for a continuous period of no less than 2 years,
- a person who holds or was the former holder of a visa subclass 060, 070, 449, 785, 786, 790, or a CJSV granted to people assisting in the administration of criminal justice in relation to an offence of trafficking in persons, slavery, or slavery-like practices, or

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- **suffered a substantial change of circumstances beyond their control after arrival in Australia, and is in financial hardship.**

In general, the NARWP applies to Special Benefit, except where last exemption above applies. I.e. where the person has suffered a “substantial change in circumstances beyond their control”, and they are able to show they are in financial hardship by meeting the “available funds test”.

“**Substantial change in circumstances beyond control**” can include things like:

- Loss of job
- End of relationship
- Accident or illness

“**Beyond control**” should not be read in an overly restrictive manner. Eg. Deciding to leave a violent relationship should satisfy the test.

Essentially, a decision-maker will want to see that the person had a plan for serving the NARWP and that it went awry through no fault of their own.

There are two “**available funds**” tests: short and long term.

*Short term:* equal to or less than the equivalent of 2 weeks SpB plus FTB at the maximum applicable rates

*Long term:* less than \$5,000 in liquid or “reasonably realisable” assets (including property overseas)

A decision-maker has discretion over which test to apply, the exercise of which will turn in part on whether the need is short or long term (generally NARWP exemptions will attract the short term test).

### **Non-resident parents of Australian citizen/PR babies**

Common situation:

*A non-Australian woman partners with an Australian man and moves to Australia. She eventually leaves the relationship because of DV, then discovers she is pregnant. She is trying to sort out her Australian residency but this is a long process. She has the baby and is the sole carer of the child. She is in financial hardship but cannot qualify for a Centrelink payment in her own right due to her non-PR status.*

Most Centrelink payments have minimum and/or maximum qualification ages, but Special Benefit **does not**.

This means that Special Benefit can be paid to babies or young children who meet the qualification criteria.

The mother in the above situation may be able to receive Special Benefit **on behalf of her baby**.

If she is also eligible to receive Family Tax Benefit (FTB) she will need to choose between that and Special Benefit. While it is possible to receive Special Benefit in one’s own right as well as FTB for the care of a child, it is not possible for Special Benefit and FTB to be paid **in respect of the same child**. Special Benefit will **usually though not always** be worth more than the FTB

### **Young People**

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Youth allowance can be paid to persons over 16 years of age. Young people under 16 may receive Special Benefit in some circumstances.

In order to receive Special Benefit, the young person must not be receiving adequate support (provision of food, shelter, clothing and utilities that is sufficient enough to meet the needs of the young person) from parents/guardians/state welfare agencies.

If someone is receiving FTB in respect of that young person, that FTB will be cancelled from the grant of Special Benefit.

## Older People

Most payments have the two year NARWP, but some payments – **Age Pension** and the **Disability Support Pension** – have a **ten year Qualifying Residence Period**. This can cause problems for new migrants which can sometimes be address by Special Benefit.

### Example

*A 64 year old woman comes to Australia from Sri Lanka to live with her son. She is granted a PR visa before arrival. She claims NSA when she first arrives but is told she must serve the NARWP. She waits two years, then claims again. Her claim is rejected – she no longer qualifies for NSA because she has reached Age Pension age. She cannot qualify for Age Pension because she has 8 years remaining on her 10 year QRP.*

*Provided she meets the other criteria, she may receive Special Benefit.*

## Other Circumstances

Special Benefit is an open discretionary payment, it is not limited to specific sets of circumstances – refer back to qualification criteria

But some other eggs include:

- Expectant mothers
- Persons under an Assurance of Support
- Partner unable to provide support
- Disaster victims

Refer to Guide to Social Security Law 3.7.1 and 3.7.2

## Rate of Special Benefit

The rate of Special Benefit is discretionary, just as the payment itself is discretionary. Section 746 of the *Social Security Act 1991* specifies that the rate of a person's Special Benefit is not allowed to exceed the maximum rate of Newstart allowance/youth allowance/Austudy which the person would otherwise be receiving if they were qualified for that payment.

The rate is then calculated as follows:

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1. Calculate the rate of Newstart, YA or Austudy the person would otherwise receive.
2. Apply the direct deduction income test.
3. Deduct an amount for any in kind support the person receives on a continuing and indefinite

### **Direct deduction income test**

Most income support payments are subject to the ordinary income test. This test includes an “income free area” (in which the first part of someone’s income has no effect on their rate of payment), and then a taper rate (in which for each dollar of income a person receives, they lose a lesser amount (eg. \$0.40) of their income support payment.

Special Benefit is subject to the “direct deduction” income test which is far less generous: for each dollar a person receives in income, they lose a dollar of their Special Benefit payment. Eg. A person who would otherwise receive Special Benefit in the amount of \$400 per fortnight, receives \$150 from another source one fortnight. Her Special Benefit rate will be reduced to \$250 for that fortnight.

### **Deductions for in kind support**

The value of any regular in kind support that the person receives will be deducted from the rate of Special Benefit payable.

That includes support like:

- The payment of bills
- Spousal maintenance
- Provision of food, clothes and/or pharmaceutical items
- Free board and/or lodging

Where free lodging (rent) or board (meals) are providing on a continuing and indefinite basis, the rate of Special Benefit will be reduced as follows:

- Where free lodging is provided, a reduction of one-third of the rate of Special Benefit
- Where free board and lodging are provided, a reduction of two-thirds of the rate of Special Benefit

This will mean that free rent from family or friends will end up costing a Special Benefit a considerable amount of money. An arrangement that the recipient instead pay a small amount towards rent and meals will leave the recipient in a better financial position.

### **Claiming Special Benefit**

It is vital to make a claim for Special Benefit as early as possible to test eligibility.

Payments cannot be backdated except in very limited circumstances, and certain waiting periods can only start to run once a claim is lodged.

Claim for SU004 is available online: <https://www.humanservices.gov.au/sites/default/files/2017/08/su004-1709en.pdf>

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Sometimes Centrelink staff will have an idea of when Special Benefit is payable based on the “common scenarios” (eg. for newly arrived migrants) and turn your client away if their situation does not fit this idea (“You can’t claim that payment”). **It is vital to lodge a claim** in spite of any reluctance by staff that your client may encounter.

If your client has been turned away, you can help by calling the local office or writing your client a letter to take with them. The letter need only be brief, along the lines of:

Dear \_\_\_\_\_,

Please help my client, NAME, to claim Special Benefit. She previously attended your office on DATE and was told she could not claim this payment.

Section 36(1) of the *Social Security Administration Act 1999* provides that:

*Subject to this section, the Secretary must, in accordance with the social security law, determine a claim for a social security payment or a concession card, either granting or rejecting the claim.*

The effect of this section is to oblige Centrelink to accept my client’s claim for Special Benefit, which it may then decide to grant or reject. Centrelink is not allowed to refuse to accept my client’s claim.

My client is in severe financial hardship. Kindly arrange for her claim to be processed urgently.

Please call me on \_\_\_\_\_ if you have any questions, or if there are any problems with accepting my client’s claim.

Thank you.

## Appealing a decision

Once made, a decision to reject a claim for Special Benefit, or to pay at a reduced rate (or nearly any other decision), can be appealed.

There are several levels of appeal:

Appeal Level	Time Limit
Authorised Review Officer	13 weeks
Administrative Appeals Tribunal – Social Services and Child Support Division (SSCSD)	13 weeks
Administrative Appeals Tribunal – General Division	28 days

Each appeal must be lodged in order, ie. it is necessary to have a decision from an Authorised Review Officer before appealing to the Administrative Appeals Tribunal.

An Authorised Review Officer is a senior Centrelink staff member who will look at all the information and check whether the original decision was correct.

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The Administrative Appeals Tribunal (AAT) is an independent tribunal, separate from Centrelink. Centrelink is bound by the decisions of the AAT.

The 13 week time limits for the first two levels of appeal are **not** hard time limits. It is possible to lodge an appeal outside of this period. However, appellants who lodge their appeal outside of this time have not preserved the right to be back paid to the date of the original claim in the event of a favourable decision on appeal, and will generally only receive payment from the date of the favourable decision.

The 28 day time limit to the AAT General Division is a **hard time limit**. It is possible to seek an exemption.

#### *Example*

*A person claims Special Benefit on 1 May 2018. Their claim is rejected, and they appeal to an Authorised Review Officer within 13 weeks. This appeal is unsuccessful, and they appeal again to the Administrative Appeals Tribunal SSCSD. This appeal is also unsuccessful, and the person makes a final appeal to the AAT General Division within 28 days. This appeal is decided in Person A's favour on 1 May 2019. The person will receive full backpay in the amount of the Special Benefit she would have received had her initial claim on 1 May 2018 been granted.*

#### **Resources**

**National Social Security Rights Network**  
(Factsheets and local service contacts)

<http://www.nssrn.org.au/>

**Guide to Social Security Law**

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

**Women's Legal Service NSW**

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