



Social Security Payments

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Introduction

The social security system is administered by Centrelink, a Department of Human Services agency. Centrelink provides payments on behalf of the federal government to eligible people, including (but not limited to) retirees, the unemployed, families, carers, parents, people with disabilities and Indigenous Australians.

Most legal issues arise when a person's social security payment application is rejected or the payment has been reduced in amount, the payment has been cancelled or it has been overpaid and a debt has been raised against the recipient.

This chapter will outline common issues experienced by people accessing the social security system and how to appeal a decision. Certain steps can be taken to find out why a decision was made and how to advocate to change the decision if appropriate.

The law underpinning the social security system is the *Social Security Act 1991* (Cth) (Social Security Act), the *Social Security (Administration) Act 1999* (Cth), *A New Tax System (Family Assistance) Act 1999* (Cth) and *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth).

How to Claim a Social Security Benefit

A person can apply for social security benefits through their local Centrelink office or by using the Centrelink website. The steps include registering intent to claim, submitting supporting documentation, attending an interview, an assessment of the claim and the advice on the outcome.

Submitting an intent to claim and supporting documentation

An intent to claim can be a letter, visit or phone call to Centrelink where the person advises they wish to claim a social security benefit. You can also make a claim online on the myGov website if you have a Centrelink account. Starting a claim is also referred to as a statement of an intention to claim. Payments are backdated to the date of the call or letter as long as Centrelink receives a completed claim form and supporting documentation within 14 days of registering the intent to claim.

Centrelink cannot refuse an application. Even if a Centrelink worker has advised that a claim is unlikely to be successful, a claim can still be made and Centrelink must accept and assess it.

Attending an interview

A person applying for a payment may be asked to come in for an interview to provide documentation supporting the claim. Original copies of documents to prove the person's identity and income, assets, rent and previous employment may be required. It is better to provide too much information and documentation than not enough. This will prevent a claim from being delayed until required information has been provided.

Assessment of the claim

Processing times of claims for payments can vary. Many can be processed quickly, with the first payment received in three to four weeks. It should be noted that Disability Support Pension applications take longer—sometimes several months for the first payment to be received.

Activity-tested Social Security Payments

Some social security payments are activity tested to ensure that the people in receipt of payments are actively looking for employment and are doing everything they can to be ready for work. The following payments are activity tested:

- Newstart Allowance
- Youth Allowance (unemployed)
- Special Benefit (nominated visa holder)
- Parenting Payment.

Requirements

Newstart Allowance, Youth Allowance and Special Benefit (nominated visa holder)

A person will satisfy an activity test if they are ‘actively seeking work’ and are willing to undertake suitable paid work (ss 541(1)(b), 601(1) Social Security Act).

‘Actively seeking’ work means a person needs to engage with an employment service provider on a regular basis, apply for jobs, attend job interviews and training courses that will improve their job prospects, and accept suitable job offers. Work usually means full-time paid work, however, a job seeker should be willing to take part-time and casual work.

Some job seekers may not be able to work full time or may only have a limited range of allowable duties they can perform due to incapacity. The level of capacity will be determined by an Employment Services Assessment or Job Capacity Assessment.

Once a person has been assessed, they are expected to look for work within their assessed capacity (e.g. 15 to 22 hours per week; it will satisfy the activity test if they work for at least 30 hours a fortnight (ss 541(1B)(b), 603AB Social Security Act). This assessment may only be temporary (ss 542A , 603F Social Security Act).

Parenting Payment

A person receiving Parenting Payment must sign an Employment Pathway Plan or a Job Plan and meet participation requirements when their youngest child turns six years of age.

Exemptions

According to the Social Security Act, exemptions from the activity test may be granted on a number of grounds including if a person:

- is the principal carer of a child and there are special family circumstances (e.g. the person was subject to domestic violence) (ss 542F, 602B)
- lives in certain remote areas (ss 542E, 603)
- is in receipt of Special Benefit (nominated visa holder)

- can show special circumstances (e.g. medical grounds or temporary incapacity). In most cases special circumstances exemptions are applied for in 13-week periods and must be reapplied for regularly
- is over 55 and engaged in approved voluntary work for an approved organisation for at least 30 hours in the period(s 603AA).

Employment Pathway Plan

All job seekers with activity requirements will need to have an Employment Pathway Plan (EPP) created when they are granted payment (ss 544, 605 Social Security Act).

An EPP is an individually tailored plan that identifies a job seeker's employment and training goals, and records the activities the job seeker has agreed to undertake to reach the goals. The activities should be within their capacity and assist them in gaining sustainable employment (s 544B Social Security Act).

Each activity must be quantifiable and specific, stating what the job seeker must do and when, and it has to be measurable so it is clear when an activity has been completed. Some examples include completing a specified number of job searches in a week, participating in an education or development program, or performing volunteer work.

A person must be capable of complying with any term included in an EPP. If a person is not capable of undertaking an activity (or a combination of activities), the activity cannot be included in an EPP. Employment Pathway Plans can be amended at any time.

Penalties Applied to Social Security Payments

There are a variety of penalties applied to social security payments if a person does not comply with the requirements for example not attending an activity or interview arranged by an employment service provider. Centrelink will advise the person of the failure and the related penalty. In some cases, people will first be aware of their penalty when they do not receive their regular payment.

Penalties can include an immediate non-payment until a person contacts Centrelink, the loss of the equivalent of one working-day payment or a suspension of payment for a set period. A history of non-compliance can also lead to more serious penalties such as an eight-week non-payment period.

What to do if a penalty is applied

The first thing to do is to get in contact with Centrelink and reschedule any activities or appointments, or provide a reasonable excuse as to why the person was unable to complete their requirements. If a person does not agree with a penalty, they should appeal, particularly as having three minor failures within a six-month period can lead to an eight-week non-payment period.

Disability Support Pension

A person may be granted the Disability Support Pension (DSP) if they have a physical, intellectual or psychiatric condition that prevents them from working or allows them to only perform a limited amount of work, or if a person is permanently blind.

Eligibility

To qualify for the DSP, there are multiple requirements, which have become increasingly strict in the past decade.

A person qualifies for the DSP if they fulfil all of the following criteria:

- aged 16 or above and less than the Age Pension age at the time of the claim
- meet the residence requirements
- have a medical condition which has been fully diagnosed, treated and stabilised, and is unlikely to significantly improve with or without reasonable treatment in the next two years
- unable to work more than 15 hours per week for the next two years, and unable to undertake a training activity to prepare for work within the next two years independently of a program of support
- score at least 20 points for their impairment(s) (see Impairment Tables Social Security Act).

Applicants who do not score at least 20 points on a single Impairment Table must have participated in a Program of Support (e.g. an employment service or disability support service) for 18 months within three years of applying for the DSP to be eligible. There are limited exceptions to this requirement. Any period you are exempted from your participation requirement (e.g. medical certificates) will not count as active participation in a Program of Support.

To assess eligibility, Centrelink requires a medical report completed by a doctor or specialist regarding the person's disability, injury or illness. This should include how the condition impacts upon the person's ability to work.

If the person is applying due to a psychiatric or psychological condition, they must provide a report from a clinical psychologist or psychiatrist. People should provide any relevant additional medical information to support their application.

Applicants must also undergo a Job Capacity Assessment (JCA). A JCA is an interview with a Centrelink worker, which assesses whether a person can work, how much work they are able to do and how much assistance they need in order to find and keep a job. The outcome of the JCA will be a notional work capacity range (e.g. 8 to 14 hours).

People who apply for a DSP can receive Newstart Allowance or Youth Allowance as a provisional payment while their application is being processed (s 540A(1)(c) Social Security Act). This will generally happen automatically, but if not, enquiries should be made to Centrelink.

Disability Support Pension reviews

Centrelink conducts regular reviews to ensure that people receiving the DSP continue to qualify for the payment. Qualification for the DSP can be reviewed at any time, and different qualification criteria may apply than those under which the pension was granted. Currently, reviews of all DSP recipients are done against the current Impairment Tables, regardless of how long the person has been on the payment.

If a person is no longer eligible to receive the DSP, their payments will continue for 42 days once they have been notified of the cancellation decision. This is a decision that can be appealed, and a person in this situation should request the continuation of their DSP payments until the appeal is decided (this is called ‘payment pending review’).

Working while on the pension

Depending when you have been assessed for the DSP, you may be able to work up to 30 hours a week and still receive a part pension. Whether a person is able to work and still receive a part pension can be clarified by calling Centrelink. If a person is working more than 30 hours, the DSP payments will be stopped and the person will have to contact Centrelink to have them restarted if they start working less than 31 hours.

Under some circumstances, the DSP can be suspended for up to two years so that an individual can attempt to work. A person needs to reclaim the pension within two years and fourteen days to avoid the need for a new medical assessment.

Common Social Security Problems

Debts

Debts arise when a person is considered to have been overpaid by Centrelink (s 1223 Social Security Act)). Debts can relate to payments received a number of years previous. If Centrelink believes a debt is owed, it will send a letter out to the person detailing the debt and requesting repayment.

If the person thinks there has been a mistake in the raising or calculation of the debt it can be appealed (see *Appealing a Centrelink Decision*).

Repayment

If the person is still receiving social security benefits, the repayments can be deducted from their regular benefit. If the person no longer receives any Centrelink payments, they can negotiate a repayment schedule with Centrelink’s Debt Recovery Unit. If a person is no longer able to afford the repayments on the repayment schedule, they should contact Centrelink’s Debt Recovery Unit as quickly as possible to organise a new repayment schedule. If Centrelink will not agree to reduce a repayment rate then this decision can be appealed.

If a person is unable or unwilling to make repayments, Centrelink can also take steps to garnish the person’s wages, their bank account or their tax return without their consent. If Centrelink is still unable to recover the debt, it may take the person to court and the court can make an order about how the debt is to be repaid (s 1230C Social Security Act).

Write off or waiver

A ‘write off’ means that the debt recovery is temporarily suspended for a specified period of time. Centrelink will recover the debt after the write-off period expires. There are limited circumstances where a write off will be granted (s 1236 Social Security Act).

A Centrelink debt can be waived in whole or in part (s 1237 Social Security Act). If a debt or part of a debt is waived, it no longer exists. The grounds for seeking a waiver of a debt are strictly limited. The two main grounds for waiving a debt are a sole administrative error, where the error must be solely Centrelink's and the person owing the debt must not have contributed in any way to the debt and the person must have received the payments 'in good faith' (s 1237A Social Security Act), that is the person believed they were entitled to the payments. A special circumstances waiver, which only applies in unusual, uncommon or exceptional circumstances (s 1237AAD Social Security Act), may apply where the person or someone else did not 'knowingly' make a false statement, or 'knowingly' failed to comply with social security law.

Prosecution

In some instances the overpayment may lead to prosecution for fraud. It is a criminal offence to intentionally mislead Centrelink in order to obtain a payment or a higher rate of payment. Centrelink links with other government departments to ensure that people are honest in their reporting (this process is known as data matching). If Centrelink suspects that you have knowingly received a payment to which you are not entitled and fraud is suspected, it will pass the details to the Commonwealth Director of Public Prosecutions to make a decision whether or not to prosecute.

A person suspected of fraud will receive a letter stating that the case is being considered for prosecution. The person may be asked to attend an interview. They are not required to attend the interview or say anything to Centrelink. Non-attendance at an interview will have no adverse consequences on current payments. It is advisable to get legal advice from a criminal lawyer before attending any interview or making any statement.

Compensation payments

If a person receiving social security benefits receives a compensation payout as a result of injury, this must be reported to Centrelink. Centrelink applies specific rules to compensation payments, and they may prevent eligibility for payments of social security benefits for extended periods of time (these are referred to as preclusion periods). Periodic compensation can result in a reduction in the rate of payment a person receives (s 1173 Social Security Act). Some compensation payments may not impact on eligibility for payments, however, they can still be considered as an asset or income (including for the partner of the person in receipt of compensation) (s 1174 Social Security Act) and must also be reported to Centrelink.

Centrelink has a formula to calculate the compensation preclusion period where the person is not entitled to receive their social security benefit (s 1170 Social Security Act). If the person received social security benefits after their injury and while their compensation issue was being resolved, they would be required to pay back the amount out of their compensation payout.

Special circumstances to disregard compensation

It is important for a person seeking compensation for personal injury to advise their lawyer what social security benefit they are receiving and ensure that Centrelink is aware of any compensation benefits. A compensation payout can only be disregarded or a compensation preclusion period reduced in special circumstances (s 1184K Social Security Act). These include financial hardship,

poor health, high medical expenses, high legal costs and incorrect advice from Centrelink about the effect of the person's compensation.

If the person believes that Centrelink should disregard the compensation payout or the period of compensation preclusion should be reduced, the person should appeal the decision (see *Appealing a Centrelink Decision*).

Social Security Payment Rates for Couples

Social security payment rates, and income and asset tests differ depending on whether a person is single or a member of a couple, and some payments have eligibility requirements that relate to relationship status. Centrelink's definition of a member of a couple (or de facto relationship) (ss 4(2)-(3) Social Security Act) is different to the definition of de facto in family and tax law. Members of both same-sex and opposite-sex couples can be considered members of a couple.

A person can be in a de facto relationship according to Centrelink without realising it. If Centrelink believes there is any question as to whether two people should be considered a couple, Centrelink may undertake an investigation of the two people's circumstances. They will look at a variety of factors including financial and domestic arrangements, accommodation, social relationships, relationships with children and the commitment between them.

If the person is recently separated, Centrelink will look at whether the couple is now living separately and apart on a permanent or indefinite basis. A couple can be considered separated under one roof if the relationship has ended and the person can provide evidence of this.

If Centrelink declares a person as being a member of a couple, that person can appeal the decision (see *Appealing a Centrelink Decision*).

New Zealand Citizens' Eligibility for Social Security Payments

Most New Zealand citizens who enter Australia on a New Zealand passport are automatically issued with a Special Category Visa. This allows New Zealand citizens to live and work in Australia. However, it is not a permanent visa and therefore they are not entitled to receive social security benefits unless they are considered a 'Protected Special Category Visa' holder or are eligible for payments under the International Social Security Agreement between New Zealand and Australia.

Protected Special Category Visa holders

The criteria that Centrelink looks at to determine the 'protected' status are complex, however, some basic criteria require a person to have:

- resided in Australia on 26 February 2001 and to have entered Australia on a New Zealand passport
- resided in Australia for periods totalling 12 months at any time between 26 February 1999 and 26 February 2001, while holding a Special Category Visa

- received an Australian social security benefit between 26 February 2001 and 26 February 2004, while holding a Special Category Visa
- resided in Australia on 26 February 2001 but temporarily spent time overseas. If so, was the person receiving an Australian social security benefit while overseas and did the person return to Australia during the period the Australian social security benefit remained payable
- commenced or recommenced residing in Australia after 26 February 2001 but before 26 May 2001. If so, did the person apply to Centrelink before 26 February 2004 for a determination that the person was residing in Australia
- resided in Australia on 26 February 2001 but temporarily spent that day overseas, and has not received an Australian social security benefit. If so, did the person return to Australia by 26 February 2002, and did the person apply to Centrelink before 26 February 2002 for a determination that they were residing in Australia?

If the person was in Australia on 26 February 2001 and held a Special Category Visa at that time, they may have automatically acquired Australian citizenship. It is recommended that they enquire with the Department of Immigration and Border Protection.

International Social Security Agreement

Under the International Social Security Agreement (sch 3 *Social Security (International Agreements Act) 1999* (Cth)), New Zealand citizens can claim Age Pension, Disability Support Pension and Carer Payment from Centrelink if they hold a Special Category Visa and reside in Australia. The date that they entered Australia is not taken into consideration.

In order to be paid the Age Pension, the New Zealand citizen must be over 65 years and have resided in Australia and New Zealand for 10 years. The period of residence in New Zealand is only from age 20 to 64 years of age (e.g. a citizen residing in New Zealand from age 60 to 64 must have lived in Australia for six years before they are eligible for the Age Pension in Australia).

To be paid the Disability Support Pension, the person must be assessed as severely disabled and have a total of at least 10 years residence in Australia and New Zealand. The person must also have become severely disabled while living in Australia or New Zealand and have resided in New Zealand for at least one year before the date they became severely disabled. ‘Severely disabled’ is defined as a person with a physical, psychiatric or intellectual impairment that makes that person unable to work more than eight hours per week or unable to benefit from a rehabilitation program for the next two years.

In order to be paid the Carer Payment, the person must be caring for a partner who receives the Disability Support Pension. The person must have lived in Australia and/or New Zealand for at least two years.

Limited payments

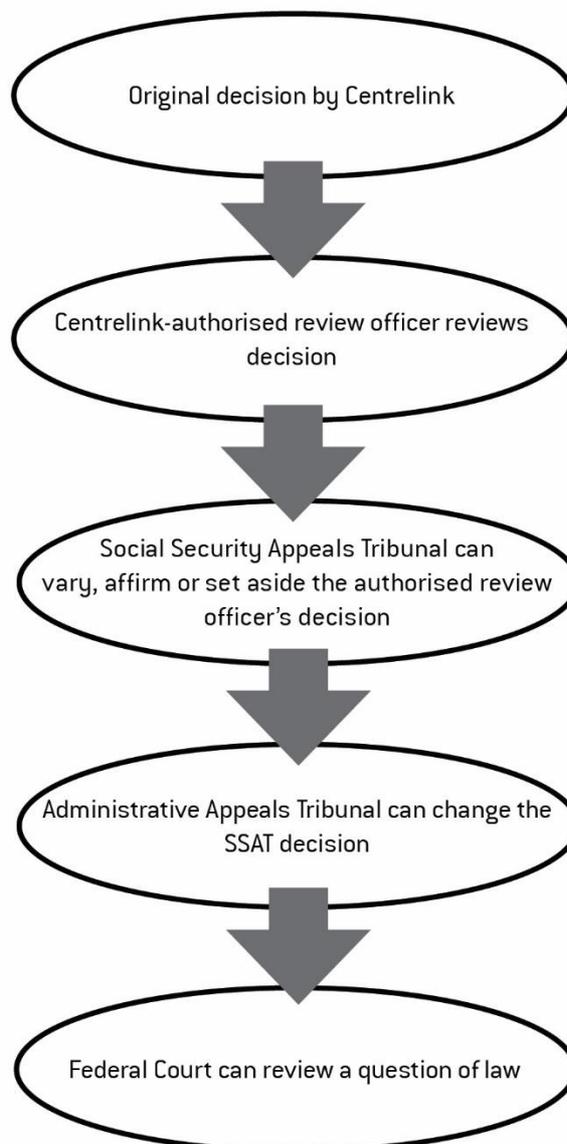
Special Category Visa holders who have resided in Australia for 10 continuous years may apply for Youth Allowance, Newstart Allowance and Sickness Allowance for a period of up to six months.

New Zealand citizens may also be eligible for the following payments: Family Tax Benefit, Baby Bonus, Maternity Immunisation Allowance, Child Care Benefit and the Double Orphan Pension. A 104-week waiting period generally applies to a Low Income Health Care Card or a Senior Health Card application. It is best for the New Zealand citizen to contact Centrelink's International Services to get further advice on eligibility.

Appealing a Centrelink Decision

Most Centrelink decisions are subject to internal and external review. A person affected by an adverse Centrelink decision has the right to an internal review to a Centrelink-authorized Review Officer and an external review to the Administrative Appeals Tribunal (AAT). Appeals to Centrelink and the AAT are free.

Levels of appeal



Authorised Review Officer appeal

A person has a further right of appeal to the Federal Court of Australia. However, appeals to the Federal Court are not free and a person should seek further expert legal advice before appealing.

The first level of appeal is an internal review to an Authorised Review Officer (ARO) who is a senior officer within Centrelink. The request for an ARO review can be made in person, in writing or over the telephone. The ARO will look at the facts, the law and current policy. The ARO can change the decision if it is not correct and will advise the claimant in writing of their decision and how they reached their decision.

The ARO may contact the payment recipient to obtain additional information as part of the appeal process. They do not have to seek additional information and can make their decision on the existing information. If a person has information that may assist their review, or would like the opportunity to find out if there is any additional evidence that may assist, they can make contact with their ARO. A person can ring Centrelink and be given the name of the ARO allocated to review their matter.

In instances where a payment has been cancelled or reduced, and the person is appealing this decision, they can request for their payments to continue at the original rate until after the appeal has been completed (this is known as payment pending review).

A person should apply for an ARO review of a social security decision within 13 weeks of being given notice of the decision to ensure they remain eligible for back pay to the date of the original decision.

Decisions are provided to people in writing. If the decision is not changed, a person can access the next level of appeal, the AAT (Social Security and Child Support Division (SSCSD)). A person must have appealed their decision to the ARO before they can appeal to the AAT.

Administrative Appeals Tribunal Social Security and Child Support Division

Once a Centrelink ARO has reviewed a decision, the next level of appeal is to the AAT (SSCSD). The AAT (SSCSD) is independent of Centrelink and can make a fresh decision or affirm, set aside, vary or substitute a decision made by Centrelink.

The AAT (SSCSD) (AAT Tier 1) usually sits with one or two members. The tribunal members have a variety of backgrounds including law, social welfare, medicine, accounting and government. If a case involves a medical issue (e.g. Disability Support Pension eligibility), an appropriately qualified member will usually sit on the tribunal.

How to appeal to the division

A person should appeal to the AAT (SSCSD) within 13 weeks of receiving notice of the ARO decision to safeguard eligibility for payment arrears.

A person can appeal to the AAT (SSCSD) only if they have already appealed to and received a decision by an ARO at Centrelink.

A person can appeal by:

- using the AAT (SSCSD) application form available at Centrelink or the AAT (SSCSD) offices or website
- writing a brief letter to the AAT (SSCSD) stating that they want to appeal including contact details so the AAT (SSCSD) can contact the person
- telephoning the AAT (SSCSD) and advising they wish to lodge an appeal.

Within two weeks of lodging an appeal, the person should receive a letter from the AAT (SSCSD) stating that the application for appeal is being reviewed. Time frames for hearings vary, but the process is usually completed within a few months.

When an appeal is made to the AAT (SSCSD), the AAT will request that Centrelink provide to them a copy of the person's file. The person's file will then be provided to the applicant prior to the hearing.

The AAT (SSCSD) hearing is an informal process. Centrelink is not represented at the tribunal. The person seeking the review can be represented at the tribunal by a solicitor, social/community worker or supported by a family member. At the hearing, the person seeking the review will need to be prepared with documentary evidence and a summary of why they are appealing the Centrelink decision. The person may be required to take an oath or affirmation. All hearings are recorded.

The tribunal is required to provide a written decision and reasons within 14 days of the hearing. The decision will be mailed to the person appealing. If the decision is in the person's favour, Centrelink has four weeks to implement it. If this would cause financial hardship, the person can request that the decision be put into action urgently.

If it is possible that the person could be prosecuted for a criminal offence, including fraud, they should get legal advice, as anything said during an AAT (SSCSD) appeal can be used by the Commonwealth Director of Public Prosecution in a prosecution case against them.

Administrative Appeals Tribunal

If a person or Centrelink disagrees with the decision of the AAT (SSCSD), they can appeal to the Administrative Appeals Tribunal (General Division). The appeal must be lodged in writing within 28 days of receiving the AAT (SSCSD) decision.

Appealing to the AAT (General Division) is free. A person can download an application form from the AAT website or can write a letter to the AAT (General Division), and include a copy of the decision that the person would like to appeal and an outline of the reasons why the decision was wrong.

The AAT (General Division) is a more formal tribunal, and hearings are public and witnesses must give sworn evidence. The tribunal hearing is a de novo hearing, which is a fresh rehearing on the merit of the case.

Federal Court of Australia

If the person disagrees with the decision of the AAT (General Division), they can appeal to the Federal Court on a question of law only. It is important to speak to a legal professional about whether

the person has the right to make an appeal to the Federal Court. An appeal must be lodged within 28 days of receiving the decision of the AAT (General Division).

Additional time limits for appeals

A person must apply for a review of some Family Tax Benefit decisions within 52 weeks of being notified of the decision.

Different rules apply to ABSTUDY and Assistance for Isolated Children Recovery of Debt decisions, which normally should be requested within three months.

There is no time limit for requesting a review of other ABSTUDY or Assistance for Isolated Children decisions.

For Paid Parental Leave scheme decisions, parents must seek a review normally within 28 days of the decision.

Free Legal Advice and Assistance

To get assistance with an appeal, contact Basic Rights Queensland. Basic Rights Queensland is a community legal centre that provides free advice for people with Centrelink issues. The lawyers working at this centre specialise in social security law and are independent of Centrelink. Basic Rights Queensland provides advice and advocacy to people calling from anywhere in Queensland. Advice is provided to all people who contact the service, and representation in appeals processes is available in limited circumstances.

Legal Notices

Disclaimer

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