

Legislative brief – Reform for victim/survivors of family and domestic violence being held liable for Centrelink debts

About Economic Justice Australia

Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice and representation to people on their social security rights and entitlements. Its members across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years. Economic Justice Australia draws on its members' casework experience to provide expert advice to government on reform measures to strengthen the effectiveness and integrity of our social security system.

The issue

Victim/survivors of family and domestic violence are being held liable for Centrelink debts accrued as the direct result of violence, deceit or coercion by the perpetrator. This is at odds with current Australian domestic violence policy.

Required Reform - Special Circumstances Debt Waiver

Currently discretionary debt waiver is not available if:

- the debtor has knowingly made a false or misleading statement or knowingly failed to comply with an obligation under social security law;
- the false statement or omission was made by the victim/ survivor or by another person.

Legislative reform is required to ensure that discretionary debt waiver provisions (special circumstances debt waiver) can be applied in situations where a false statement has been made by a perpetrator or by a victim subject to violence, threat or coercion resulting in a debt, where debt recovery from the victim is unjust.

The impacts of domestic violence, particularly coercive control, were not within the purview of Parliament when these special circumstances waiver provisions were introduced. Legislative amendment is needed to pay due regard to current understandings of domestic violence – as informed by the National Plan to Prevent Violence against Women and Children.

Safeguards

The proposed amendments will not automatically waive social security debts when a debtor says they have been subject to domestic violence. The process of debt waiver requires the collection and consideration of evidence before a decision maker considers whether the facts constitute 'special circumstances'. The decision to waive remains discretionary.

Scenarios

1. Debt resulting from false statement to Centrelink by perpetrator

Darren had recently started working casually as a tradie for various companies, sometimes for cash, while Mina looked after their young kids. Mina received Parenting Payment, and Darren had been on JobSeeker Payment. Darren told Mina that he'd called Centrelink and told them he was getting casual work. Mina told Darren that she also had to tell Centrelink about his casual earnings too, for her Parenting Payment, and that she needed to see his payslips to work out the gross income to report to Centrelink each fortnight via myGov. Darren lost his temper, and assaulted her, throwing furniture and smashing walls. He said that he needed to deal with the myGov reporting because she was going to stuff it up. He said that he'd use her phone to report his income on MyGov from now on.

Two years later Mina received a Centrelink "account payable" notice, which said she'd been overpaid Parenting Payment and owed \$9,000. After seeking advice, she learned that Darren had been misreporting his casual earnings to Centrelink and had also been lying to her. When Mina confronted him, he assaulted her so badly that the police were called. Mina and the kids then moved into a refuge and Darren was eventually jailed for the assault. But the Centrelink debt stayed with Mina.

2. Debt resulting from false statement to Centrelink by victim

Maggie has three kids with Brett who is violent; assaulting her so badly that she has required medical treatment on a number of occasions. Brett also has a gambling habit. He refuses to put any money towards food, rent, clothing or utilities – gambling away all of his income. He sometimes takes Maggie's debit card and withdraws funds from her account, requiring her to visit local charities for food and utilities vouchers.

Brett has routinely told Maggie that if she tells Centrelink he's living there, he will kill her. When she receives a form asking for updated details, she shows it to Brett and says that she has to tell Centrelink he lives there. He punches and chokes her, resulting in injuries that require hospitalisation.

The hospital social worker helps Maggie arrange accommodation in a refuge and two weeks later, she leaves with the kids. Brett trashes the house (leased in Maggie's name), then leaves a voice message on Maggie's phone saying he's rung Centrelink to tell them she's been living with 'someone'. Maggie subsequently gets a letter from Centrelink saying she owes \$62,000 as she has been a member of a couple while receiving a single rate of payment.

Recommended drafting for legislative change

Discretionary debt waiver provisions for Centrelink debts are contained in four separate Acts:

- Social Security Act - s1237AAD
- A New Tax System Family Assistance (Administration) Act - s101
- Student Assistance Act 1973 – 43F
- Paid Parental Leave Act - s199

Recommendation 1 - Amend the relevant legislation to ensure that a false statement or misrepresentation made as a result of coercion or duress by a perpetrator does not preclude access to the special circumstances provisions of the Act.

Insert a new subsection 2 in each legislative provision:

(a) For the purposes of subsection (1), “knowingly” does not include a false statement or false representation or failure or omission to comply with a provision of this Act, the Administration act or the 1947 Act, if the false statement or false representation or failure or omission to comply is a result of coercion or duress by another person.

Recommendation 2 - Amend the relevant legislation to ensure that access to the special circumstances provisions is not precluded by conduct that is not authorised by the debtor: for example, where a perpetrator, without a person’s knowledge or consent, lies to Centrelink.

Insert in the new subsection 2:

(b) For the purposes of subsection (1) (a) (i) and (1) (a) (ii), “another person” is limited to a person whose statements, representations, acts or omissions, are authorised (whether formally or informally) by the debtor in circumstances free of coercion or duress.

Social Security Act 1991

s1237AAD Waiver in special circumstances The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

- (a) the debt did not result wholly or partly from the debtor or another person knowingly:
 - (i) making a false statement or a false representation; or (ii) failing or omitting to comply with a provision of this Act, the Administration Act or the 1947 Act;
- (b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and
- (c) it is more appropriate to waive than to write off the debt or part of the debt

A New Tax System Family Assistance (Administration) Act

s101 Waiver in special circumstances

The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

- (a) the debt did not result wholly or partly from the debtor or another person knowingly:

- (i) making a false statement or a false representation; or
- (ii) failing or omitting to comply with a provision of the family assistance law; and
- (b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and
- (c) it is more appropriate to waive than to write off the debt or part of the debt.

That includes cases where:

- the perpetrator has not provided any financial support to the victim or their children
- the victim did not receive the funds because they were stolen by the perpetrator

Paid Parental Leave Act

s199 Waiver of debts—special circumstances

The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

- (a) the debt did not result wholly or partly from the debtor or another person knowingly:
 - (i) making a false statement or a false representation; or
 - (ii) failing or omitting to comply with a provision of this Act; and
- (b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and
- (c) it is more appropriate to waive than to write off the debt or part of the debt

Student Assistance Act

S43F The Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that:

- (a) the debt did not result wholly or partly from the debtor or another person knowingly:
 - (i) making a false statement or a false representation; or
 - (ii) failing or omitting to comply with a provision of this Act; and
- (b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and
- (c) it is more appropriate to waive than to write off