



# DEBT, DURESS AND DOB-INS: Centrelink compliance processes and domestic violence



# Acknowledgments

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# About Economic Justice Australia

Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice regarding social security issues and rights. Our members across Australia have provided free and independent information, advice, education and representation in the area of social security for over 30 years.

EJA draws on its members' casework experience to identify systemic policy issues and provide expert advice to government on reforms needed to make the social security system more effective and accessible. Our law and policy reform work:

- Strengthens the effectiveness and integrity of our social security system
- Educates the community
- Improves people's lives by reducing poverty and inequality.

## Research partnership

In 2020/21, EJA partnered with the Legal Intersections Research Centre at the University of Wollongong (UOW), through its Director, Prof Nan Seuffert, to undertake a research project funded by a UOW Community Engagement Grant. Dr Scarlet Wilcock from the University of Sydney and Dr Lyndal Sleep from the University of Queensland, both with expertise in social security law, are also researchers on the project.<sup>1</sup> The project aims to build on the findings of EJA's 2018 report, *How well does Australia's social security system support victims of family and domestic violence?*,<sup>2</sup> a comprehensive review of the capacity of Australia's social security system to support victims/survivors of family and domestic violence.

The new project focuses on investigating the operation of social security law and Centrelink debt investigation and recovery practices impacting women experiencing family and domestic violence. It analyses the extent to which the impacts of domestic violence are taken into account in social security decision-making affecting victims/survivors, and whether abusers can use Centrelink compliance processes as a tool of violence.

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<sup>1</sup> The project originated from discussions between Dr Scarlet Wilcock and EJA, with Seuffert joining the project prior to development of the funding application. When Wilcock left UOW for the University of Sydney, Seuffert took over as lead. Dr Lyndal Sleep is a Postdoctoral Research Fellow at the Automated Decision Making and Society Centre of Excellence at the University of Queensland.

<sup>2</sup> Sally Cameron, *How well does Australia's social security system support victims of family and domestic violence?* (Report, 2018) <<https://www.ejaustralia.org.au/wp/general/how-well-does-australias-social-security-system-support-victims-of-family-and-domestic-violence/>>

# Executive summary

Domestic violence<sup>3</sup> is a serious and widespread problem in Australia, disproportionately impacting women and children. The prevalence and intensity of domestic violence have worsened during the COVID-19 pandemic, with significantly increased demand for domestic violence services<sup>4</sup>. Domestic violence is a national crisis demanding a considered and integrated policy response.

Access to income support provides a vital safety net for women living with or escaping domestic violence. Income security is crucial to safety at times of greatest vulnerability, and social security support can be an essential resource for women to re-establish themselves so they may rebuild their lives and move on. Yet social security is often absent from governments' domestic violence policy or formal plans, most recently failing to make the agenda of the September 2021 Women's Safety Summit. **This ongoing failure represents a critical policy disconnect between these two intersecting areas of public policy: social security and the domestic violence response.**

As EJA's 2018 report revealed, the social security system performs a fundamental function supporting victims of domestic violence and significant improvements have been made to improve the support it provides, but problems remain.

A key issue identified in our new study relates to domestic violence victims/survivors' vulnerability to accruing Centrelink debts, including where:

- a claimant is subject to coercion from a violent partner; or
- an abusive partner lies or misleads the claimant about their income leading a victim to accrue an often significant social security debt.

**These debts, and the related Services Australia recovery and compliance processes, cause enormous distress for domestic violence victims/survivors, compounding the harms associated with the domestic violence. Services Australia debt recovery and compliance processes can be aggressive – undermining and running counter to the Commonwealth's commitment to supporting women experiencing domestic violence.**

This report draws on EJA's comprehensive review in its 2018 report of the intersection of domestic violence and social security law and policy, as well as the data derived from the new research. This new data includes interviews with caseworkers, and anonymised published case studies from EJA member centres detailing clients' experiences of negotiating the social security system and appeals to the Administrative Appeals Tribunal ('AAT').

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<sup>3</sup> Depending on the context, and for brevity, at times this report refers to 'domestic violence' rather than 'family and domestic violence'

<sup>4</sup> Elly Duncan, 'NSW domestic violence support groups warn coronavirus isolation is prompting surge in demand for services', *ABC News Australia* (online, 27 March 2020) <<https://www.abc.net.au/news/2020-03-27/coronavirus-domestic-family-violence-covid-19-surge/12096988>>

## Key findings

Our research identifies a number of key issues and concerns about the relationship between domestic violence and Centrelink compliance and debt mechanisms, and the impacts of these mechanisms on domestic violence victims/survivors. Impacts identified include:

***Member of a Couple determinations tie women's access to social security payments to their abuser.***

This research demonstrates the ongoing challenges associated with assessing relationship status in the context of domestic violence.<sup>5</sup> Domestic violence continues to be under-recognised or not fully considered in member of a couple determinations, indicating problems with both the legislative provisions and their application in the context of domestic violence. Women experiencing domestic violence continue to be assessed as being a member of couple for the purposes of social security law, which effectively tethers women to their abuser, even in circumstances where income is not shared between the couple.

***Victims/Survivors are unfairly incurring social security debts, including as a direct result of the actions of abusers.***

The context and impacts of domestic violence can make it difficult and sometimes impossible for victims/survivors to navigate the social security system and comply with reporting and other obligations, which makes women vulnerable to social security debt. Our research reveals instances where the actions of perpetrators directly contribute to victims/survivors' debts. This includes where a violent partner refuses to provide information, or provides false information, about their income and assets, which can lead to inaccurate eligibility assessment and rate calculations. In other cases, women have been forced to provide false information to Centrelink by their partners. Victims/survivors are often held solely responsible for these debts, effectively punished by the state as a consequence of violence perpetrated by their abuser.

***Social security compliance and fraud mechanisms are being misused by perpetrators as tools of violence.***

Our research identifies instances where abusers manipulate Centrelink compliance rules and mechanisms to threaten or carry out further abuse. In particular, abusers use or threaten to use Services Australia's anonymous 'Fraud Tip-off Line'<sup>6</sup> as a tool of harassment, abuse, control and revenge. Making a tip-off can set in train a series of compliance processes, including compliance review, debt recovery action, referral to the Commonwealth Director of Public Prosecutions ('CDPP'), and charging victims/survivors with criminal offences. In this way, social security compliance processes can be marshalled by perpetrators as a tool of violence.

***Victims/Survivors struggle to access appropriate assistance and support.*** The availability of appropriately trained and supportive Centrelink staff and access to social security legal and other support services is critical for domestic violence victims/survivors seeking to access social security payments. When these services work effectively, many of the problems we outline in this report can be avoided or lessened. Unfortunately, this research highlights ongoing challenges and gaps in the support available, particularly for First Nations women and women from culturally and linguistically diverse (CALD) backgrounds.

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<sup>5</sup> Social Security Act 1991 (Cth) s 4 <[http://www5.austlii.edu.au/au/legis/cth/consol\\_act/ssa1991186/s4.html](http://www5.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/s4.html)>

<sup>6</sup> 'Reporting fraud', Services Australia (Web Page, 25 February 2021) <<https://www.servicesaustralia.gov.au/individuals/contact-us/reporting-fraud>>

## Improving women's safety: recommendations for reform

This report makes recommendations for addressing these issues through social security law and policy reform, and training Centrelink decision-makers to better understand the intersections between domestic violence and social security law and policy, especially regarding relationship assessment and the raising and recovery of debts. Implementation of these recommendations would significantly reduce the risk of victims/survivors of domestic violence being pursued to repay unfair Centrelink debts, and being charged with offences in relation to debts that are the result of the coercive and violent actions of a partner or ex-partner.

Key recommendations in this report cover the need to:

- amend decision-making guidelines used by Services Australia and the AAT to determine relationship status, to make it clear that the presence of domestic violence may indicate an absence of commitment, and that the person is therefore not a member of a couple
- ensure that Centrelink decision-makers are trained to take the full range of abusive tactics of family and domestic violence into account in discretionary decision-making – including in assessment of relationship status, and as a means of remedying unfair debts
- amend social security legislation to ensure that liability for repayment of a debt rests with the person who benefited from the overpayment – for example, where a woman is coerced by a violent partner into not declaring his income
- amend the debt waiver provisions of the Social Security Act 1991 (Cth) ('SS Act') to address barriers to waiving recovery of debts resulting from domestic and family violence
- review Services Australia prosecution guidelines to ensure that where a person has disclosed domestic or family violence, proper consideration is given to whether referral of the case to the CDPP is in the public interest
- ensure that information received by Services Australia through its Fraud Tip-off Line is properly triaged, to prevent perpetrators of domestic violence from using spurious anonymous tip-offs as a tool of violence against a current or former partner
- enhance access to Centrelink social workers
- increase funding for community legal centres providing advice and representation on social security issues
- ensure that actions to enhance access to social security rights and entitlements are embedded in women's safety policy, and included in the next National Plan to Reduce Violence against Women and their Children (and associated action plans), with the 2010-2022 plan drawing to a close.

## Time for more fundamental change?

At a more fundamental level, it is time to consider moving away from relationship status as the basic determinant of entitlement in the social security system – a paradigm based on a social security system set up to respond to the traditional gender roles of male breadwinner and dependent female.

So many of the problematic issues for women escaping domestic violence canvassed in this report would not exist if a person were not paid a lower basic rate when assessed as a 'member of a couple',<sup>7</sup> with their ongoing rate of payment affected by their partner's income and assets. Women would not be forced into financial dependency on an abusive partner, and would not face risk of prosecution for failing to declare an abusive partner's income/assets or claiming to be single under duress. They would not have to face being told by Centrelink that they need to repay the income support payments they and their children survived on despite not receiving any financial support from their abusive partner.

<sup>7</sup> Social Security Act 1991 (Cth) s 4(2) <[http://www5.austlii.edu.au/au/legis/cth/consol\\_act/ssa1991186/s4.html](http://www5.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/s4.html)>



They also would not be exposed to the ongoing risk of being controlled by their abuser, with the threat of being doxxed in for social security fraud.

The ultimate example of this outdated notion is that discretion to waive a Centrelink debt in 'special circumstances' is not available where 'another person' made the false statement leading to a person's debt.<sup>8</sup> This means that a woman's violent and controlling partner can make the offending statement or omission leading to accrual of a debt and it will be the woman, the victim/survivor, who is stuck with repaying the debt.

Until the system is reformed to recognise and reflect the nature of modern relationships and the multifarious impacts of domestic violence, the social security system's capacity to play its role in addressing the economic insecurity of women experiencing domestic violence will remain limited.

## Recommendations

### 2018 Report

1. That outstanding recommendations made in EJA's 2018 report, *How well does Australia's social security system support victims of family and domestic violence?*<sup>9</sup> be implemented.

### Member of a couple legislation/assessment

2. That DSS review all decision-making Guidelines used by Services Australia and the AAT to determine relationship status, to ensure that regard is had to the impacts of family and domestic violence on women and children.
3. That Services Australia provide training to all decision-makers to ensure that the full range of abusive tactics used in domestic violence is taken into account in discretionary decision-making.
4. That DSS amend section 2.2.5.10 of the *Guide to Social Security Law* ('SS Guide') to reflect that where a person is experiencing domestic violence and receiving no financial support from the perpetrator, or is the subject of other ongoing financial abuse, this may indicate that they should be assessed to be single—ongoing and retrospectively. A reference should be included explaining the rationale for this policy, referencing official domestic violence policy—including the *Services Australia Family and Domestic Violence Strategy 2020-2023*.<sup>10</sup>
5. That DSS amend section 2.2.5.10 of the SS Guide to note that whatever the victim/survivor's past depiction of the relationship to Centrelink, 'the presence of family and domestic violence may indicate the absence of commitment and that the person is not a member of a couple'.
6. That DSS add at least two scenarios or case examples to section 2.2.5.10 (as is common throughout the SS Guide), to emphasise and explain the types of scenario where domestic violence may indicate absence of commitment:
  - a. one regarding current and ongoing assessment
  - b. one regarding retrospective assessment, and consideration of whether there was a failure to notify of a de facto relationship.
7. That Services Australia provide practical training on the application of section 2.2.5.10 of the SS Guide, and make the training mandatory, for staff making decisions about whether a person is a member of a couple.

<sup>8</sup> Ibid s 1237AAD(a) <[http://www5.austlii.edu.au/au/legis/cth/consol\\_act/ssa1991186/s1237aad.html](http://www5.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/s1237aad.html)>

<sup>9</sup> Sally Cameron, *How well does Australia's social security system support victims of family and domestic violence?* (Report, 2018) <<https://www.ejaustralia.org.au/wp/general/how-well-does-australias-social-security-system-support-victims-of-family-and-domestic-violence/>>

<sup>10</sup> (2020) <<https://www.servicesaustralia.gov.au/organisations/about-us/our-commitments/strategies/family-and-domestic-violence-strategy-2020-23>>

8. That DSS conduct a community consultation on enhancing access to social security income support for women experiencing domestic violence, and the merits of abolishing the lower partnered basic rate of income support and partner income testing, as a means of enhancing access to income support for women experiencing domestic violence.

## Discretion to treat a person as not a 'member of a couple'—s24

9. That DSS amend section 2.2.5.50 of the SS Guide to include reference to family and domestic violence, emphasising that family and domestic violence may in and of itself constitute a 'special reason' to treat a person as single under section 24 of the SS Act.
10. That DSS add at least two scenarios or case examples to section 2.2.5.50, to emphasise and explain the types of scenario where the section 24 discretion may apply:
  - a. one regarding current and ongoing assessment
  - b. one regarding retrospective assessment and consideration/reconsideration of whether there is a recoverable debt.

## Liability for debt

11. That the Government introduce amendments to social security legislation to ensure that liability for repayment of a debt rests with the person(s) who benefited from the overpayment.

## Limitations on waiver discretion

12. That the Government introduce amendments to debt waiver provisions of the SS Act to address barriers to waiving recovery of debts resulting from family and domestic violence -
  - a. As proposed by the Australian Law Reform Commission in 2011, we recommend that section 1237AAD of the SS Act be amended to provide that the Secretary may waive the right to recover all or part of a debt, if satisfied that:
    - (a) the debt did not result wholly or partly from the debtor, or another person *acting as a nominee or agent for the debtor\**, knowingly:
      - i. making a false statement or a false representation; or
      - ii. failing or omitting to comply with a provision of the *Social Security Act 1991* (Cth), the *Social Security (Administration) Act 1999* (Cth) or the *Social Security Act 1947* (Cth);
    - (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.(\*Italics denote suggested amendment to current provision.)
13. That DSS amend section 6.7.3.40 of the SS Guide to include reference to family and domestic violence, including at least two scenarios or case examples of how family and domestic violence, through duress and coercion, can mean that the debtor did not 'knowingly' make false statements or representations, or fail to comply with requirements.

## Special circumstances

14. That DSS amend section 6.3.7.40 of the SS Guide to explicitly state that the prevalence of family and domestic violence in the general community, or in a particular community, does not mean that a person's experience of domestic violence cannot or should not be regarded as 'uncommon' or 'unusual' within the meaning of section 1237AAD of the SS Act. The guidelines should include commentary on the possible impacts of family and domestic violence for women reliant on social security income support, with an example of the way in which domestic and family violence would constitute 'special circumstances'.

15. That practical training on family and domestic violence in the context of 'special circumstances' waiver be made mandatory for all Services Australia staff making decisions regarding the raising and recovery of social security debts.

## Prosecutions

16. That Services Australia amend its prosecution guidelines to ensure that where a person has disclosed domestic or family violence, management of the case is referred to a senior officer with relevant expertise and that where prosecution is being considered for a person who has disclosed family or domestic violence, they are referred for social worker support.
17. That Services Australia amend its prosecution guidelines to ensure that proper consideration is given to whether referral of a case to the CDPP is in the public interest where a person has disclosed domestic violence.

## Tip-off line

18. That Services Australia develop protocols to ensure that information received by its Fraud Tip-off Line is properly triaged, with assessment of the credibility of information provided.
19. Protocols should include guidelines for identifying tip-offs potentially provided as a form of abuse, and provide that tip-offs suspected to be spurious and based on malice are to be discounted.

## Social workers

20. That the Government provide funding to ensure timely access to Services Australia social workers, so that Services Australia is better able to support victims/survivors of family and domestic violence, including with enhanced access to face-to-face social worker interviews.
21. That the Government provide funding to ensure that social workers are accessible to Aboriginal and Torres Strait Islander women experiencing family and domestic violence, particularly women living in regional and remote communities; and to enable warm, targeted referrals by Services Australia for community support.
22. That the Government provide funding to ensure that social workers are accessible to women from CALD communities experiencing family and domestic violence; and to enable warm, targeted referrals by Services Australia for community support.

## Access to senior staff

23. That Services Australia restore EJA member centres' direct access to senior Centrelink staff, and that this be supported by a Memorandum of Understanding developed in consultation with EJA.
24. That Services Australia establish a specialist family and domestic violence team, to facilitate disclosure/discussion of family and domestic violence. The specialist team should have high-level expertise regarding how domestic violence interacts with social security law, including relationship assessment and debt waiver.
25. That Services Australia establish a nation-wide Advocates Hotline for community legal centres, staffed by people with technical expertise and an understanding of administrative review rights.

## CLC funding

26. That the Government provide additional funding to community legal centres serving regional and remote communities, to enable provision of specialist legal advice and assistance on social security issues.

## National Plan

27. That actions to enhance access to social security rights and entitlements be embedded in women's safety policy, and included in the *National Plan to Reduce Violence against Women and their Children* and associated action plans.

**He lied about his income  
but walked away  
with no repercussions  
at all while ...  
she's left with  
the Centrelink debt!**



## Introduction

In 2020/21, EJA partnered with academic researchers to examine the operation of social security law and Services Australia debt investigation and recovery practices as they affect women experiencing domestic violence. Specifically, the research aims to investigate whether Centrelink's debt and compliance mechanisms impact domestic violence victims/survivors in ways that may jeopardise women's safety, and propose options for reform to ensure the social security system can provide meaningful support for victims/survivors of violence.

### Domestic violence

Domestic violence is a form of gendered violence perpetrated by a person's former or current intimate partner. It may include physical, sexual, financial and/or psychological violence. While domestic violence may take on a variety of forms, it is characterised by a pattern of behaviour aimed at gaining power over, and controlling, a partner through fear and intimidation.<sup>11</sup>

Domestic violence represents a serious and widespread problem in Australia, with women and children comprising the vast majority of victims. According to the Australian Bureau of Statistics' (ABS) 2016 *Personal Safety Survey*, one in four Australian women have experienced domestic violence since the age of 15.<sup>12</sup> While domestic violence impacts people of all backgrounds, particular cohorts are at heightened risk, notably First Nations women and children.<sup>13</sup>

Domestic violence occurs at an enormous financial cost to the Australian population including expenditure on policing, Legal Aid, court hearings, crisis accommodation, health responses and lost work, as well as substantial downstream costs from injury and trauma, and interrupted employment and schooling. KPMG's 2016 estimate for the DSS put the cost of violence against women and their children in 2015-16 at \$22 billion,<sup>14</sup> noting KPMG's 2020 estimate has not as yet been made publicly available.

11 Council of the Australian Governments, *The National Plan to Reduce Violence against Women and their Children 2010-2022* (February 2011) <[https://www.dss.gov.au/sites/default/files/documents/08\\_2014/national\\_plan1.pdf](https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf)>

12 *Personal Safety*, Australia (8 November 2017) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>

13 *Ibid*

14 KPMG, *The cost of violence against women and their children in Australia*, (Final Report, May 2016) <[https://www.dss.gov.au/sites/default/files/documents/08\\_2016/the\\_cost\\_of\\_violence\\_against\\_women\\_and\\_their\\_children\\_in\\_australia\\_-\\_summary\\_report\\_may\\_2016.pdf](https://www.dss.gov.au/sites/default/files/documents/08_2016/the_cost_of_violence_against_women_and_their_children_in_australia_-_summary_report_may_2016.pdf)>

Domestic violence remains the leading cause of homelessness and the main contributor to premature death for women aged 18–44.<sup>15</sup> Evidence from frontline service providers indicates that the prevalence and intensity of domestic violence has worsened in the context of the COVID-19 pandemic, with service providers experiencing significant increases in demand for domestic violence services.<sup>16</sup> Domestic violence is a national crisis, demanding a considered and integrated policy response.

## The importance of access to social security for domestic violence victims

Access to income support provides a vital safety net for women living with or escaping domestic violence. This income support is crucial to safety at times of greatest vulnerability and a vital resource for women to re-establish themselves so they may rebuild their lives and move on as soon as they are able.<sup>17</sup> There is also increasing international evidence that the availability of welfare payments not only assists women to leave violence, but it is linked to reduced incidences of domestic violence.<sup>18</sup> Consequently, it is essential that adequate and accessible welfare payments are a central part of the Australian Government's strategy to reduce violence against women.

We recognise that enormous strides have been made over the last few decades to expand the social security system to be more responsive to domestic violence. Initiatives include the introduction of the Crisis Payment, and Services Australia's recognition of its role 'connecting [survivors of domestic violence] to support as quickly as possible', and committing to ensure that its 'systems and processes are simple and safe', while promising to 'explore ways to fast track' support for those affected by family and domestic violence.<sup>19</sup> The new two-year pilot program of the Escaping Violence Payment of up to \$5000 in value, administered by UnitingCare Australia, is a very welcome boost to the resources available to facilitate escape from a situation of domestic violence. However, ongoing income security to enable a victim/survivor to remain safe and empower them to re-establish their life requires access to the kind of support that the social security system provides.

We also recognise that changing attitudes to family and domestic violence, greater commitment to entrenching better practice in policy guidelines, and increased awareness of the impacts of family and domestic violence through training, have contributed to significant improvements in the way Services Australia staff and AAT members deal with cases involving family and domestic violence.

Conversely, social security is often missing from governments' domestic violence policies or formal plans. *The National Plan to Reduce Violence against Women and their Children: 2010–2022* (the National Plan),<sup>20</sup> which aims to achieve a significant and sustained reduction in family and domestic violence across jurisdictions, makes no reference to social security issues—neither directly nor in terms of broader strategies to support women to leave and not return to violent relationships.

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15 White Ribbon Australia, 'Other Facts and Statistics', (Web Page) <<https://www.whiteribbon.org.au/Learn-more/Get-the-facts/Facts-and-Statistics/Other-Facts-Statistics>>

16 Elly Duncan, 'NSW domestic violence support groups warn coronavirus isolation is prompting surge in demand for services', *ABC News Australia* (online, 27 March 2020) <<https://www.abc.net.au/news/2020-03-27/coronavirus-domestic-family-violence-covid-19-surge/12096988>>

17 Deborah K. Anderson and Daniel G. Saunders, 'Leaving an abusive partner: An empirical review of predictors, the process of leaving, and psychological well-being' (2003) 4(2) *Trauma, violence and abuse* 163; Rochelle Braaf and Isobelle Barrett Meyering, 'Seeking Security: Promoting Women's Economic Wellbeing Following Domestic Violence' (2011) *Australian Domestic and Family Violence Clearinghouse*

18 Ana Maria Buller et al., 'A Mixed-Method Review of Cash Transfers and Intimate Partner Violence in Low and Middle-Income Countries' (Working Paper No WP-2018-02, UNICEF, February 2018) <[https://www.unicef-irc.org/publications/pdf/CT%20%20IPV\\_Review\\_Innocenti%20WP%202018-02.pdf](https://www.unicef-irc.org/publications/pdf/CT%20%20IPV_Review_Innocenti%20WP%202018-02.pdf)>

19 Services Australia, *Family and Domestic Violence Strategy 2020–23* (2020) 9, 13 <<https://www.servicesaustralia.gov.au/organisations/about-us/our-commitments/strategies/family-and-domestic-violence-strategy-2020-23>>

20 Council of the Australian Governments, *The National Plan to Reduce Violence against Women and their Children 2010–2022* (February 2011) <[https://www.dss.gov.au/sites/default/files/documents/08\\_2014/national\\_plan1.pdf](https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf)>

Most recently, social security failed to make the agenda of the 2021 Women's Safety Summit; an event designed to inform the next National Plan.

The ongoing failure to reflect the intersection of domestic violence and social security represents a critical disconnect between these two areas of public policy. The current 'hit and miss' approach means that not only are victims of violence falling through the cracks, at times the social security system is effectively re-traumatising victims of violence. For these women, social security legislation, policies and administrative processes run counter to the Commonwealth's commitment to address the harms of domestic violence.

It is imperative that the new National Plan, currently under development for 2022, ensures that adequate and accessible social security income support is available and accessible for victims/survivors of domestic violence.

## EJA's 2018 report

EJA has had a longstanding interest in the intersection of domestic violence and social security given the frequency with which domestic violence is at the core of our members' clients' social security problems. Our new research project builds on EJA's 2018 comprehensive review of the capacity Australia's social security system to support victims/survivors of family and domestic violence. The resulting 2018 report, *How well does Australia's social security system support victims of family and domestic violence?*<sup>21</sup>, made 32 recommendations to address structural and systemic inadequacies in the social security system that undermine efforts to provide a consistent, effective response family and domestic violence at the national level.

Six of EJA's 32 recommendations were implemented by DSS through amendment to its SS Guide,<sup>22</sup> the primary resource for Services Australia decision-makers for guiding decision-making regarding social security payments. These six amendments:

- clarified that the **definition of family and domestic violence**, previously only specifically applying to Crisis Payment, is a common definition relevant to decision-making for all social security payments [1.1.D.235](#)
- referenced family and domestic violence as relevant to consideration of **waiver of a compensation preclusion period due to 'special circumstances'** [4.13.4.20](#)
- clarified that the presence of family and domestic violence may indicate that two people living together **may not be a member of a couple** [2.2.5.10](#)
- clarified that the presence of family and domestic violence may indicate that two people **living together under one roof may be separated** [2.2.5.30](#)
- clarified that where a person is experiencing family and domestic violence, the seven-day claim period for Crisis Payment may be met where the person contacts Centrelink about a claim within seven days of the 'extreme circumstances' occurring, and **lodges a claim within 14 days after the contact day** [3.7.4.20](#) and [3.7.4.25](#)
- **removed the reference to the four-week limit on continued payment of family tax benefit ('FTB')** where there is a short-term deviation from the normal care arrangements for a child [2.1.1.60](#).

21 Sally Cameron, *How well does Australia's social security system support victims of family and domestic violence?* (Report, 2018) <<https://www.ejaustralia.org.au/wp/general/how-well-does-australias-social-security-system-support-victims-of-family-and-domestic-violence/>>

22 Department of Social Services, Social Security Guide (Web Page, 27 September 2021)(v 1.286) <<https://guides.dss.gov.au/guide-social-security-law>>

EJA members have seen tangible positive effects of those changes—including better understanding of the ways in which domestic violence can serve to impede victims<sup>23</sup> access to income support on the one hand, or result in victims' accrual of social security debts on the other. Being able to point to the changed provisions in the SS Guide has meant that in numerous cases our members have been able to resolve issues for clients quickly, avoiding resource-intensive appeals that can operate as secondary trauma for clients experiencing domestic violence.

These positive signs are welcome but systemic problems remain.

**Recommendation 1** *That outstanding recommendations made in EJA's 2018 report, How well does Australia's social security system support victims of family and domestic violence, be implemented.*

EJA members continue to see women experiencing domestic violence who want and need to be able to access independent income support but are prevented from doing so because they are regarded as a member of a couple while still living with the abuser. Our members also see women with substantial debts incurred as a result of domestic violence, including financial abuse and/or threats of retaliation, but given the restrictive 'special circumstances' debt waiver legislation<sup>24</sup> there is nothing they can do to assist. The disclosure of domestic violence in such debt cases, and probing as to the part it played in accrual of the overpayment, is re-traumatising and generally to no effect in terms of providing redress.

Since publication of our 2018 research report, EJA has continued to make recommendations to address these issues, including a submission to the 2020 House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into family, domestic and sexual violence,<sup>25</sup> and in feedback to Services Australia<sup>26</sup> on operationalising its *Family and Domestic Violence Strategy 2020–2023*.<sup>27</sup>

It is hoped our new research findings will contribute to a stronger evidence base, building on our 2018 research and other policy submissions, to further contribute to the impetus for reform in this area.

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23 EJA notes that some people prefer to identify as victims of violence and others as survivors. In this report use of the term 'victim' is intended to mean victims and survivors.

24 Social Security Act 1991 (Cth) s 1237AAD <[http://www5.austlii.edu.au/au/legis/cth/consol\\_act/ssa1991186/s1237aad.html](http://www5.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/s1237aad.html)>

25 (24 July 2020) <<https://www.ejaustralia.org.au/wp/policy-submission/inquiry-into-family-domestic-and-sexual-violence/>>

26 Services Australia, formerly the Department of Human Services, is an agency of the Australian Government, responsible for delivering welfare, health, child support payments and other services. Centrelink delivers a range of government payments and services on behalf of Services Australia, including administration of social security and family assistance entitlements.

27 Council of the Australian Governments, *The National Plan to Reduce Violence against Women and their Children 2010–2022* (February 2011) <[https://www.dss.gov.au/sites/default/files/documents/08\\_2014/national\\_plan1.pdf](https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf)>

## New research project

### Aims and focus

Our new research has investigated the extent to which the impacts of domestic violence are taken into account in social security decision-making affecting victims, and whether abusers can use Centrelink compliance processes as a tool of violence. We have focused on the potential for social security debt and compliance processes to exacerbate the risks and harms associated with domestic violence and make women and children less safe, examining:

- whether family and domestic violence is appropriately taken into account in policy guidelines and social security law that inform Centrelink debts, including:
  - o assessment of relationship status<sup>28</sup> for a person experiencing domestic violence;
  - o application of the provision whereby recovery of debts may be waived in ‘special circumstances’, including as it relates to application of the ‘knowingly’ criterion where the welfare recipient is a victim/survivor of domestic violence;<sup>29</sup> and
  - o use of the tip-off line by abusive partners/ex-partners of victims/survivors of domestic violence.
- whether there are procedural issues relating to referral of cases to the CDPD by Services Australia where the alleged offender is a victim/survivor of domestic violence
- whether there are adequate options to ensure that where a woman has disclosed domestic violence to an EJA member or other community advocate, the service is able to directly access relevant Centrelink staff, including social workers, to avoid re-traumatising the client and to facilitate warm, targeted referrals to support services.

### Methods and data

To investigate these questions the researchers used a combination of readily available sources and new data, including:

- a **review of relevant national and international literature**
- relevant **law and policy documents** including the SS Act, the SS Guide and other primary and secondary sources interpreting the Act
- **interviews** with EJA member centre solicitors/caseworkers. Five practitioners with expertise and direct experience working with women victims/survivors of domestic violence with Centrelink debt issues were recruited from across NSW, Qld and WA. The five participants had combined experience of more than 50 years focussing on social security law. Semi-structured interviews, of between 90 and 120 minutes duration, were conducted with the participants between August 2020 and February 2021 over Zoom, and transcribed (Extracts from these interviews are used throughout this report).
- **AAT decisions** where domestic violence was disclosed and involved Centrelink debt and the tip-off line. AAT decisions are publicly available and were located via a search of the AustLII database for relevant terms such as “abuse” and “dob in”. Nineteen AAT decisions were included in the study.

28 Social Security Act 1991 (Cth) s 4 <[http://www5.austlii.edu.au/au/legis/cth/consol\\_act/ssa1991186/s4.html](http://www5.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/s4.html)>

29 Ibid s 1237AAD



- De-identified **case studies** from EJA member centres. These cases are publicly available and provide a social security law practitioner's account of some ways that the tip-off line and domestic/family violence interact. Five case studies were obtained from the August 2020 edition of EJA's *Rights Review*<sup>30</sup>, and two were from the EJA website (2021).<sup>31</sup>

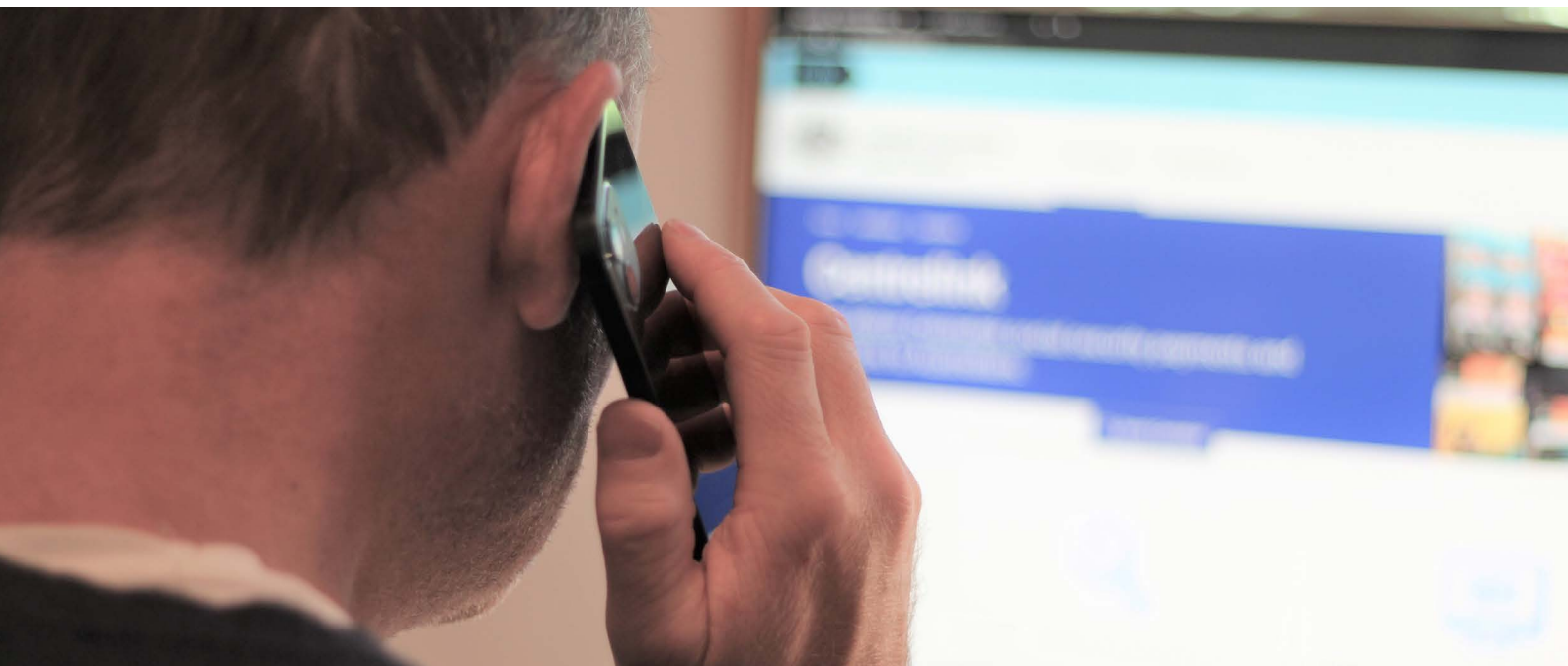
This data was compiled and then analysed for thematic categories<sup>32</sup> to highlight different ways in which social security compliance mechanisms, debt, and domestic violence can intersect and impact on victim/survivors. The themes that emerged form the basis of the key findings and recommendations of this report. This research is being undertaken with University of Wollongong Human Ethics Approval (2020/081).

## Key concerns and findings

This report identifies and explores a number of key issues and concerns about the relationship between domestic violence and Centrelink compliance and debt mechanisms and ways that these mechanisms unfairly, unintentionally and/or inappropriately impact victims of domestic violence, namely that:

- Member of a couple determinations tie women's access to social security payments to their abuser
- Victims/survivors are unfairly incurring social security debts, including as a direct result of the actions of abusers
- Social security compliance and fraud mechanisms are being misused by perpetrators as tools of violence
- Victims/survivors struggle to access appropriate assistance and support.

These findings are addressed in turn below.



<sup>30</sup> Economic Justice Australia 'Centrelink Information Gathering and Domestic Violence', *Social Security Rights Review* (Web Page, 12 August 2020) <<https://www.ejaustralia.org.au/wp/social-security-rights-review/centrelink-information-gathering-and-domestic-violence/>>

<sup>31</sup> Economic Justice Australia, 'Debts, Duress and Dob-Ins: Social Worker Support Case Studies' (Web Page, 26 October 2021) <<https://www.ejaustralia.org.au/wp/latest-news/debts-duress-and-dob-ins-social-worker-support-case-studies/>>

<sup>32</sup> Hsiu-Fang Hsieh and Sarah E. Shannon, 'Three approaches to qualitative content analysis' (2005) 15(9) *Qualitative Health Research* 1277

**She and her children received  
no financial support from  
her alleged partner and  
no benefit from the payments  
but ...  
she's left with  
the Centrelink debt!**

## Member of a couple—legislative basis

Whether or not a person is assessed by Centrelink to be a 'member of a couple' determines social security income support entitlement in two important ways:<sup>33</sup>

- A single person receives a higher fortnightly basic rate of income support than a person who is a member of a couple, with the single rate set at more than half the couple rate. This is based on the premise that the cost of living is lower for two people living as a couple than it is for two single people living together.
- If a person is regarded as a member of a couple, the income and assets of their partner are taken into account in assessing their income support entitlement. Partner income and assets affect entitlement for all income support payment types, with different income and assets test thresholds and taper rates for different payments. Partner income or assets may preclude a person's entitlement completely.

When a person is granted a social security payment they are given formal notices advising that they are required to notify Centrelink, usually within 14 days, if they have a change of circumstances—including if they become a 'member of a couple'. Such a notification triggers reassessment of their entitlement, taking into account their partner's income and assets. Reassessment of relationship status can also be triggered by periodic reviews, or by receipt of information from third parties/other agencies.

Where a person is assessed to be a member of a couple and Centrelink considers that they failed to advise that they commenced a relationship (as required), a debt will be raised. Depending on the payment type and the partner's income and assets, the debt may be the difference between the single and couple rate of payment, or the full amount the person received since their circumstances changed. It is the latter that frequently results in substantial income support payment debts being raised, particularly if the person is assessed to have had no entitlement over an extended period given the partner's income or assets. These debts can amount to hundreds of thousands of dollars.

If it is decided that the recipient of the overpaid monies, or 'another person' (e.g. their partner), 'knowingly' claimed and received the allegedly overpaid monies, they may be prosecuted for fraud.

<sup>33</sup> Whether or not a person is a member of a couple can affect access to social security in numerous other ways, including activity testing and obligations of a parent to look for work.

The charge must include:

- That the defendant intentionally failed to inform the Department of a particular event or change in circumstances as required by law (or as required by section 66A of the *Social Security (Administration) Act*);
- what the change of circumstances was;
- that the failure to inform resulted in the defendant receiving a financial advantage;
- that the defendant was not entitled to that advantage; and
- that the defendant knew or believed they were not entitled to the advantage.<sup>34</sup>

If found guilty, criminal penalties apply, potentially including a custodial sentence.<sup>35</sup>

Despite the development of more sophisticated understandings of family and domestic violence over recent years, including the nature of coercive control, there has been no refinement of the statutory criteria for establishing whether a person is single or a member of a couple. Other than the recognition of same-sex relationships under social security law in 2008,<sup>36</sup> the 'member of a couple' criteria have changed little since 1992.<sup>37</sup>

Section 4(3) of the SS Act provides five key criteria to be considered when determining whether a person is a member of a couple:

- the financial aspects of the relationship
- the nature of the household
- the social aspects of the relationship
- the presence or absence of a sexual relationship
- the nature of the commitment.

The SS Guide provides no further guidance on how the different factors should be weighed against each other when the circumstances of a relationship are not clear. The Guide simply states that:

"Making a determination that a person is a member of a couple requires that the indicators for a de facto relationship outweigh the indicators that the person is not in a de facto relationship. All 5 factors must be considered. No single factor should be seen as conclusive and not all factors need to be present."<sup>38</sup>

Assessing whether a person is a member of a couple can be clear-cut, but in many instances, it is not. Aside from evolving community standards, de facto relationships are inherently difficult to define—especially at the beginning or end of a relationship, and particularly where there are children from a previous relationship. Where domestic violence is disclosed, assessment of the ongoing status of a relationship can be fraught with difficulty.

*The member of a couple factors are just so messy in a long-term relationship. Knowing the cycles of many violent relationships - the on again/off again nature of them, and perpetrators' attempts to remain involved in the victim/survivor's life to have some kind of connection can be indicative of a relationship but instead reveals the perpetrator's attempt to retain some form of control over the victim.*

34 CDPP, 'Charging Centrelink omission prosecutions pursuant to section 135.2 of the Criminal Code' (Instruction Number: 1, Last Update: June 2014) <<https://www.cdpp.gov.au/sites/default/files/PGL-RBF-001.pdf>>

35 CDPP 'Crimes We Prosecute', *Social Security Fraud* (Web Page) <<https://www.cdpp.gov.au/crimes-we-prosecute/fraud/social-security-fraud>>

36 *Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Act 2008* (Cth)

37 Pre-1990, the rule was applied to now-redundant payments targeting women and single parents, e.g. Widow's Pension and Single Parents Pension.

38 Department of Social Services, '2.2.5.10 Determining a de facto relationship', *Social Security Guide* (Web Page, 27 September 2021) (v 1.286) <<https://guides.dss.gov.au/guide-social-security-law/2/2/5/10>>

*I've had a number of younger Muslim clients who were living in the same house as a husband or fiancée who was abusive. The relationship had been over for some time, and they were trying to leave, which they'd told Centrelink but Centrelink refused to accept. Basically, there was nowhere for the woman to go and there were cultural difficulties with her moving out by herself, but Centrelink would not accept her account.*

*My Aboriginal client commenced a relationship with a male partner who was approximately 15 years older. She had a history of neglect and sexual abuse, as well as domestic violence. The relationship occurred over approximately 10 years but there was a clear lack of commitment or support from the perpetrator. She had children and although he was the father, he had little involvement in the children's lives. She was the sole carer and received almost no financial support from him. He basically just came around to her house when he wanted.*

**(Caseworker interviews)**

Centrelink requires a definitive date from which a person became or stopped being a member of a couple, however, this can be very difficult if not impossible for a person to pin-point. This is especially so where a person sincerely believes that they never consciously entered into a 'de facto' relationship.

To assist in investigating a potential debt and identifying the start-date or recommencement of a de facto relationship, Services Australia undertakes data-matching with other Government departments, for example, the Australian Tax Office and the Department of Home Affairs (migration and travel records). Investigations can also involve obtaining and scrutinising evidence such as bank records, school administrative records, hospital records, parking fines, property and tenancy records, evidence from police raids, third-party and neighbours' accounts, police domestic violence reports, and Domestic Violence Orders.<sup>39</sup>

*In many cases, Centrelink says a person is a member of a couple and the person says they're not, with Centrelink relying on the fact that there's a tenancy agreement in joint names. The client will explain that their ex-partner, the perpetrator, never actually lived there and they haven't been in a relationship for a long time, but they couldn't get a tenancy agreement as a single mother with kids and no one was going to rent them a unit, so the father of the kids agreed to co-sign on the tenancy agreement.*

**(Caseworker interview)**

**Recommendation 2** That DSS review all decision-making Guidelines used by Services Australia and the Administrative Appeals Tribunal to determine relationship status, to ensure that regard is had to the impacts of family and domestic violence on women and children.

**Recommendation 3** That Services Australia provide training to all decision-makers to ensure that the full range of abusive tactics used in domestic violence is taken into account in discretionary decision-making.

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<sup>39</sup> Lyndal N. Sleep and Luisa Gras Diaz, 'When Transparency Can be Deadly: Reporting of Identifiable and Locatable Personal Information in Administrative Appeal Tribunal Couple Rule Decisions that Involve Domestic Violence' (2020) 8(1) *Griffith Journal of Law and Human Dignity* 11.

## Applying the 'member of a couple' criteria—law and policy guidelines

Section 4(3) of the SS Act sets out the factors that must be taken into account in determining whether a recipient is a member of a couple.

### The financial aspects of the relationship, section 4(3)(a)

Section 4(3)(a) of the SS Act<sup>40</sup> calls for consideration of joint ownership and pooling of assets, obligations taken on by one partner for the other, and sharing of household expenses. While it is well documented that financial abuse is a key tactic of domestic violence involving one person using violence and coercion to control another person's access to money, assets and financial decisions, the provision does not mention or take account of this fact, nor does it provide any guidance for decision-makers on how to do so.

The SS Guide also does not adequately address the importance of considering financial abuse when assessing the nature of a relationship. [Section 2.2.5.10](#) of the SS Guide notes that when determining whether a person is a member of a couple:

Financial aspects can be an important factor, but lack of financial interdependence would not necessarily be a strong indicator that the claimant/recipient is not in a de facto relationship due to the increasing trend for couples to maintain separate finances. However, it is likely most couples in a de facto relationship will be financially intertwined in some way.

The Guide goes on to refer directly to financial abuse, noting:

The presence of economic abuse may indicate that a relationship has broken down and that a person is no longer considered a member of a couple.

This is certainly true but financial abuse can occur throughout relationships, with ongoing denial of a victim's access to income, bank accounts and other assets.

*Centrelink can consider you a member of a couple even if you have absolutely no benefit whatsoever financially from the other party.*

*I've seen cases where someone has deliberately under-declared their income because the perpetrator has access to their bank accounts and they need money to survive so they've been claiming a payment and not declaring the income and the perpetrator takes money from their account and they get what's left.*

**(Caseworker interview)**

EJA members report many cases of abuse where perpetrators have point-blank refused to provide any financial support to victims or their children, controlled women's bank accounts, and withdrawn their funds before they could access them. At its worst, women were unaware that Centrelink was making payments in their name:

*I had a number of clients who were not aware that they were 'receiving' Centrelink income payments at all because it was going to an account that their abusive partner managed, or they weren't aware of the amount of income that they were receiving ... and then they were slapped with the debt from Centrelink to repay a quantity of money that they had never seen or benefited from.*

**(Caseworker interview)**

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40 <[http://classic.austlii.edu.au/au/legis/cth/consol\\_act/ssa1991186/s4.html](http://classic.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/s4.html)>

In other instances, perpetrators lied to the victim and/or Centrelink about their income in order to maximise Centrelink payments, often also refusing to allow her control over those funds.

*Jean lived with her partner who was violent and controlling. He controlled her finances and deliberately under-reported his income to maximise the payment Jean would receive from Centrelink and which her partner would then take control of.*

*Centrelink received a tip-off that Jean was getting the single rate of payment while partnered and raised a debt against her as a result of her member of a couple status and her partner's under-reporting of his income.*

**(Member centre case study)**

The importance of providing guidance and training for decision-makers in applying the 'member of a couple' financial criteria in cases of family and domestic violence becomes clear in a case like Jean's. It would have been possible for Centrelink to apply the criteria and decide that the presence of economic abuse in her case indicated that she was no longer a member of a couple.

As they stand, the policy guidelines are inadequate, merely referring to economic abuse as a potential indicator that a de facto relationship has broken down, without any guidance for situations where financial abuse has been ongoing for some time, possibly years.

*The Guide could be elaborated to include case examples to demonstrate what financial abuse actually means. How does it manifest?*

**(Caseworker interview)**

Given that the 'member of a couple' criteria are based on the premise that members of a couple share a financial advantage by pooling their resources, the policy guidelines should clearly stipulate that where a victim of financial abuse is/has been denied financial support or denied access to their full Centrelink entitlement by their supposed partner, they should not be assessed as a 'member of a couple'.

Assessment of relationship status as the basic determinant of entitlement in the social security system is an outdated paradigm based on the traditional gender roles of the male breadwinner and dependent female. Many of the case studies presented in this report exist because women have been forced into financial dependence on a violent partner because of barriers to accessing secure independent income. In addition, this assumption is foundational to women's risk of prosecution for failing to declare a violent partner's income or for claiming to be single under duress. It is also foundational to women's exposure to the ongoing risk of being controlled by a perpetrator of violence, with the threat of being dobbed in for social security fraud in member of a couple cases.

The ultimate example of this outdated notion is that discretion to waive a Centrelink debt in special circumstances is not available where 'another person' made the false statement leading to the debt. This means that someone's violent and controlling partner can make the offending statement or omission, and it will be the victim of violence who is stuck with the debt and even worse, at risk of prosecution for fraud.

Until the system is reformed to recognise and reflect the nature of contemporary relationships and the impact of family and domestic violence, the social security system's ability to play its role in addressing the economic insecurity of women will be limited.

**Recommendation 4** That DSS amend section 2.2.5.10 of the Guide to the Social Security Act to reflect that where a person is experiencing domestic violence and receiving no financial support from the perpetrator, or is the subject of other ongoing financial abuse, this may indicate that they should be assessed to be single—ongoing and retrospectively. A reference should be included explaining the rationale for this policy, referencing official domestic violence policy—including the Services Australia Family and Domestic Violence Strategy 2020–2023.<sup>41</sup>

**Recommendation 5** That DSS amend section 2.2.5.10 of the SS Guide to note that whatever the victim/survivor’s past depiction of the relationship to Centrelink, ‘the presence of family and domestic violence may indicate the absence of commitment and that the person is not a member of a couple’.

**Recommendation 6** That DSS add at least two scenarios or case examples to section 2.2.5.10 (as is common throughout the SS Guide), to emphasise and explain the types of scenario where domestic violence may indicate absence of commitment:

- a. one regarding current and ongoing assessment
- b. one regarding retrospective assessment, and consideration of whether there was a failure to notify of a de facto relationship.

## Assessing commitment to a relationship

[Section 2.2.5.10](#) of the SS Guide notes that when considering the ‘nature of commitment’ between two people, ‘the presence of family and domestic violence may indicate the absence of commitment and that the person is no longer a member of a couple’. Further, the SS Guide notes that an important indicator is the ‘evidence of domestic violence, e.g. court documentation, which may indicate the absence of commitment and/or emotional support’. This suggests a radical improvement to historical considerations by both Centrelink and the AAT that domestic violence is evidence that a person is a member of a couple and not entitled to payment.<sup>42</sup>

The recent change to [Section 2.2.5.10](#) of the SS Guide in response to our 2018 recommendations is very positive. However, the guidelines need to be further refined to recognise the extent to which Services Australia decision-makers, with varying degrees of training and holding a broad range of views, rely on the SS Guide.

*When it’s not in the policy guide, it is, of course, much more challenging. If it’s not explicit there, you know, for decision makers within Centrelink, that’s what they rely on, and if it’s not outlined explicitly, that makes it a lot harder, certainly within Centrelink.*

*My experience is that decisions within Centrelink are much more literally interpreted from the Guide. At the AAT, they may be more prepared to step outside the Guide and interpret the legislation.*

### **(Caseworker interviews)**

To ensure that the ‘nature of commitment’ criterion for assessing the nature of a relationship is properly considered in cases where a person has disclosed domestic violence, the wording of the SS Guide needs to be strengthened. In particular, it is unclear why the text in the SS Guide has been

<sup>41</sup> (2020) <<https://www.servicesaustralia.gov.au/organisations/about-us/our-commitments/strategies/family-and-domestic-violence-strategy-2020-23>>

<sup>42</sup> Lyndal Sleep, Domestic violence, social security and the couple rule (Research Report, July 2019) <<https://www.anrows.org.au/project/domestic-violence-social-security-law-and-the-couple-rule/>>

drafted to suggest that domestic violence may only reflect loss of commitment at the latter stages of a relationship, allowing a person to be then considered as 'no longer a member of a couple'.

Disclosure of domestic violence by a woman with a debt resulting from a decision that she failed to notify that she was in a de facto relationship should ideally trigger Centrelink to consider whether the woman was in fact a 'member of a couple' for the period in question. Close scrutiny of the relationship may mean that the woman was not in a de facto relationship with the abuser and the whole or part of the debt can be cancelled. Many victims of domestic violence rely on social security payments while living with an abusive partner but trying to physically leave the relationship, as well as after leaving as domestic violence may continue long after the person has physically left the perpetrator.

*The changes Centrelink has made to the Guide around how Section 4 should be interpreted is helpful but there really needs to be training with staff that are making these decisions to make sure they understand how it's relevant, what's appropriate, and what kind of information they might need to get from clients in order to make good decisions.*

**(Caseworker interview)**

Significant investment in compliance measures such as 'Robodebt' places increasing pressure on Centrelink staff to raise and recover debts, and this is only likely to increase given the expenditure precipitated by COVID-19 special measures. In a compliance environment where the focus is to 'catch' people who are misrepresenting their circumstances, careful interviews with victims of family and domestic violence regarding the nature of their relationship over a 'member of a couple' debt period can seem counterintuitive to compliance officers.

**Recommendation 7** That Services Australia provide practical training on the application of section 2.2.5.10 of the SS Guide, and make the training mandatory, for staff making decisions about whether a person is a member of a couple.

**Recommendation 8** That DSS conduct a community consultation on enhancing access to social security income support for women experiencing domestic violence, and the merits of abolishing the lower partnered rate of income support and partner income testing, as a means of enhancing access to income support for women experiencing domestic violence.

## Discretion to treat a person as not being a 'member of a couple'

Section 24 of the SS Act allows for a person living with a partner to be treated as single if 'the Secretary is satisfied that the person should, for a special reason in the particular case, not be treated as a member of a couple'.<sup>43</sup> Application of this discretion allows a person who is considered to be a 'member of a couple' to be paid at the single rate, with no regard to their partner's income and assets.

The SS Guide (at [2.2.5.50](#)) outlines that this is 'a discretionary area of law and only applies in limited situations ... to deal with unfair, inequitable and/or unjust anomalies'. It then elaborates, noting some of the 'special reasons' that may be relevant, including if a person's partner is overseas and unable to provide support; or subject to a newly arrived residents waiting period; or is subject to a financial guardianship order.

Family and domestic violence, and financial abuse, are not referred to in examples of where section 24 of the SS Act may be applied, so currently the SS Guide makes it unlikely that disclosure of domestic violence will trigger consideration of whether the section 24 discretion may be applied.

43 <[http://classic.austlii.edu.au/au/legis/cth/consol\\_act/ssa1991186/s24.html](http://classic.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/s24.html)>



Firstly, the SS Guide suggests that section 24 can only be applied in particular and exceptional circumstances. Given that family and domestic violence has been viewed by previous AAT decision makers as not 'unusual, uncommon or exceptional',<sup>44</sup> this potentially presents problems in application of section 24 in a particular case. The SS Guide says that:

This discretion can ONLY be exercised 'for a special reason in the particular case'. In general, the circumstances must be unusual, uncommon, abnormal or exceptional. It is the context which generally determines whether the circumstances in one case are markedly different from the usual run of cases. This is not to say that the circumstances must be unique but they must have a particular quality of unusualness that permits them to be described as special.

Secondly, the SS Guide states 'there must be some degree to which circumstances are outside the couple's or individual's control and cannot be changed', noting: 'if it is reasonably within the individual or couple's control to improve their circumstances without section 24, generally this should be explored first'. This proviso is an uncomfortable fit within the context of family and domestic violence given that AAT decision makers have, in the past, claimed that it is within the victim/survivor's control to leave the relationship,<sup>45</sup> discounting the increased risk to women when they leave and also the lived experience of domestic violence.<sup>46</sup>

The SS Guide should specifically note that applying the section 24 discretion may be applicable to cases of family and domestic violence in particular circumstances - both for ongoing assessments and retrospectively, so that a debt is not raised.

**Recommendation 9** *That DSS amend section 2.2.5.50 of the SS Guide to include reference to family and domestic violence, emphasising that family and domestic violence may in and of itself constitute a 'special reason' to treat a person as single under section 24 of the SS Act.*

**Recommendation 10** *That DSS add at least two scenarios or case examples to section 2.2.5.50, to emphasise and explain the types of scenario where the section 24 discretion may apply:*

- a. *one regarding current and ongoing assessment*
- b. *one regarding retrospective assessment and consideration/reconsideration of whether there is a recoverable debt.*

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<sup>44</sup> Lyndal Sleep, Domestic violence, social security and the couple rule (Research Report, July 2019) <<https://www.anrows.org.au/project/domestic-violence-social-security-law-and-the-couple-rule/>>

<sup>45</sup> Ibid

<sup>46</sup> Patricia Eastaer and Derek Emerson-Elliot, 'Domestic violence and marriage-like relationships: Social security law at the crossroads' (2009) 34(3) *Alternative Law Journal* 173.



## Liability for debt repayment—legislative issues

*And you know that sometimes the debts are so unrealistic, the person is never going to be able to pay them off, so they just live with enormous debt, deducted from their Centrelink payment for the rest of their lives*

*It's always the caregiver that gets the debt.*

**(Caseworker interviews)**

In instances of family and domestic violence, it is generally the woman who ends up with a significant social security debt because it is generally the woman who has been without other income, and is often the one with caring responsibilities. As such, the woman is generally the one who has signed Centrelink claim forms and received payment. At times, victims of violence are left with significant debt through no fault of their own.

*I had a case recently where the woman concerned was reporting her partner's income, but he wasn't giving her the correct details about his income. He was hiding his income.*

**(Caseworker interview)**

Women experiencing domestic violence can be forced or coerced into not declaring their partner's income. At the very least, the responsibility for the debt should be proportional to the amount of benefit received by each party to the relationship.

*I've had cases where the perpetrator says, 'You can't tell them my income', refusing to let them report the income so that the victim can receive income support. Unfortunately, the woman is the one that ends up with the debt if discovered by Centrelink.*

**(Caseworker interview)**

*Consider joint or several liability where there's a discretion to decide whether there's an apportionment of the debt if someone other than the victim has benefited from the payment.*

**(Caseworker interview)**

**Recommendation 11** That the Government introduce amendments to social security legislation to ensure that liability for repayment of a debt rests with the person(s) who benefited from the overpayment.

## Limitation on discretion to waive recovery of a debt in 'special circumstances'

*The waiver provisions as currently drafted are an almost insurmountable obstacle to having a debt waived.*

### **(Caseworker interview)**

Recovery of all or part of a social security debt may be waived if it is accepted 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; 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.<sup>47</sup>

The special circumstances waiver provision is often presented as the safety net for ensuring that people may be relieved of intrinsically unfair debts, or of enduring unduly harsh impacts of debt recovery. However, application of this provision is notoriously problematic. Cases involving family and domestic violence constitute a case in point: current interpretation of the terms 'knowingly' and 'special circumstances' means that victims of violence can remain liable for debts incurred as a result of duress, coercion and physical violence—including debts for money they have not received—and the actions of another person.

### **'Knowingly' and 'or another person'**

'Special circumstances' waiver does not apply where the debtor, or another person, has 'knowingly' given false information to Centrelink. This means that recovery of a person's debt cannot be waived in circumstances where they have been forced or coerced into providing false information through the threat or use of physical violence.

*If a case is being considered for prosecution, it suggests Centrelink considers false information has been provided or information has been omitted, so the person has knowingly failed to comply with their reporting requirements. If that is the case, regardless of how special their circumstances are, according to the legislation, the debt cannot be waived and the person can be prosecuted.*

### **(Caseworker interview)**

The two case studies below illustrate how victims of family and domestic violence can be prevented from obtaining debt waiver and face prosecution, despite the fact that they were coerced into providing false information.

*A client was in an abusive relationship until her husband died from a drug overdose. Her husband forced her to give Centrelink false information saying she was single by threatening to kill her and using violence including choking. She was too scared to go to the police and too embarrassed to tell anyone about his violence. At the time of contacting WRC, she faced prosecution.*

<sup>47</sup> Social Security Act 1991 (Cth) s 1237AAD <[http://www5.austlii.edu.au/au/legis/cth/consol\\_act/ssa1991186/s1237aad.html](http://www5.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/s1237aad.html)>

*A client had a debt of almost \$200,000 from overpayment of Newstart Allowance and Family Tax Benefit. Her husband had made her sign documents saying he was living somewhere else and was not the father of their children. Additional to her husband's abuse, she was dyslexic and had difficulty reading Centrelink documents. She wanted to appeal to the AAT to explain her situation but was concerned that doing so may raise evidence that could lead to prosecution.<sup>48</sup>*

We propose that the definition of 'knowingly' needs to be clarified in the SS Guide to make it clear that where there has been domestic violence, false information provided under duress or coercion may not constitute knowingly failing to comply with reporting obligations.

Waiver in special circumstances also does not apply where another person has 'knowingly' given false information to Centrelink. This means that in a situation of family and domestic violence, the perpetrator could be the one knowingly providing false information, but it is the victim of violence who received the overpaid monies who is responsible for the debt—and faces the risk of prosecution.

The 2002 case of *Watson and Secretary, Department of Family and Community Services*<sup>49</sup> was cited in a submission to the Australian Law Reform Commission's (ALRC) 2011 inquiry into family violence and Commonwealth laws, recommending that "another person" be removed from section 1237AAD.<sup>50</sup>

In this case, Mrs Watson was subjected to verbal and physical abuse from her partner. She was assaulted repeatedly to 'keep her in line' and on several occasions was hospitalised with bruising and broken bones. When she attempted to leave her partner, he said 'if you leave, I will kill you and your children'. The relationship ended only when Mr Watson was imprisoned for social security fraud. Mrs Watson had been receiving social security payments of her own. These benefits were higher than they should have been because of her husband's undeclared income, and a substantial debt was raised against Mrs Watson. Mrs Watson sought waiver under s 1237AAD of the SS Act. It was open to the Secretary to find that Mrs Watson's own statements had not been made 'knowingly' because they had been made under coercion, but the debt was not waived because it was considered that Mr Watson—i.e. 'another person'—had the requisite knowledge.

The ALRC suggested qualifying the term 'or another person' with the words 'acting as an agent for the debtor', noting that the words 'acting as an agent for the debtor' would have covered the circumstances raised in the Watson case, as Mr Watson was not acting as her agent. Addressing the rationale for the inclusion of 'another person' in section 1237AAD of the SS Act (namely the idea that the debtor and another person could be acting in complicity to defraud the Commonwealth), the ALRC suggested that careful verification of claims of family and domestic violence could be undertaken to avoid false claims of family violence made to avoid repayment of a debt.<sup>51</sup>

Also problematic is that the current interpretation of 'knowingly' does not necessarily take into account situations where people believe they have provided accurate information but do not understand exactly what they're being asked to provide and what Centrelink needs for their decision-making.

48 These two case studies were published in EJA's 2018 research report *How well does Australia's social security system support victims of family and domestic violence?* (Report, 2018) <<https://www.ejaustralia.org.au/wp/general/how-well-does-australias-social-security-system-support-victims-of-family-and-domestic-violence/>>

49 *Watson v Secretary, Department of Family and Community Services* [2002] AATA 311.

50 P Eastaer and D Emerson-Elliott, Submission CFV 05. 242 to Australian Law Reform Commission, *Family Violence and Commonwealth Laws— Improving Legal Frameworks* (5 October 2011).

51 Australian Law Reform Commission, *Family Violence and Commonwealth Laws— Improving Legal Frameworks* (ALRC Report 117 (30 November 2011) 242 [9.76-9.78]

*People do the best they can but they don't understand the legal requirements, so when asked to fill in a form about their relationships, they might write information that they think answers the questions but it might not necessarily include everything that's relevant.*

**(Caseworker interview)**

Similarly, people frequently fail to understand their obligation to report a change of circumstances as outlined on the back of what looks like a 'standard' letter, one similar to those they've received many times before.

*Communication setting out obligations needs to be improved across the board. The practice of sending people a barrage of letters spelling out critical obligations in fine print on the back of the page is hard to fathom. It's not the way people engage with services or take in information. And they're standard letters, so you expect them to all say the same. So, people don't read them but they can be really critical. When it comes to an appeal, the Commonwealth will say, "We on the 67th letter that you received in 2018 showed you the amount of income we were using to assess your payment. As you didn't read that and call us and tell us that we were wrong, you've been overpaid for the last X number of years". The debts can be huge and they can lead to prosecution. The issue is even more critical if a person is in or escaping domestic and family violence, unable to comprehend information when their brain is in trauma mode.*

**(Caseworker interview)**

Ten years later, and the 2011 recommendations of the ALRC in this area remain relevant, meritorious and unimplemented. Victims of family and domestic violence are generally in the same precarious position as a decade ago. In the context of rising public awareness of family and domestic violence and pressure on government to address its impact, it is untenable for the situation to continue where social security law makes victims of violence responsible for debts which are the result of duress and coercion, or where the perpetrator of violence was the one who 'knowingly' provided the false information.

EJA's recommendations on 'knowingly' mirror those of the ALRC. Without legislative and policy amendment to implement these recommendations, Centrelink's compliance decisions will continue to fail to take into account the dynamics of domestic violence.

In 2017, Independent MP Andrew Wilkie sought to address this issue by introducing the *Social Services Legislation Amendment (Relieving Domestic Violence Victims of Debt) Bill 2017*. The Bill proposed to extend the special circumstances debt waiver provision to allow waiver in cases where a debtor made a false statement or failed to comply with another provision of social security or family assistance law due to being subjected to family or domestic violence. Unfortunately, this Bill did not become law.

**Recommendation 12** That the Government introduce amendments to debt waiver provisions of the SS Act to address barriers to waiving recovery of debts resulting from family and domestic violence

a. As proposed by the ALRC in 2011, we recommend that S1237AAD of the SS Act be amended to provide that the Secretary may waive the right to recover all or part of a debt, if satisfied that:

(a) the debt did not result wholly or partly from the debtor, or another person acting as a nominee or agent for the debtor\*, knowingly:

- i. making a false statement or a false representation; or
- ii. failing or omitting to comply with a provision of the Social Security Act 1991, the Social Security (Administration) Act 1999 (Cth) or the Social Security Act 1947; 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.

(\* Italics denote recommended amendment.)

**Recommendation 13** That DSS amend section 6.7.3.40 of the SS Guide to include reference to family and domestic violence, including at least two scenarios or case examples of how family and domestic violence through duress and coercion can mean that the debtor did not 'knowingly' make false statements or representations, or fail to comply with requirements.

## Special circumstances

In addition to satisfying the 'knowingly' requirement, waiver in special circumstances requires the existence of 'special circumstances other than financial hardship alone that make it desirable to waive the debt'.<sup>52</sup>

Special circumstances are not defined in the SS Act or the SS Guide, with the Guide noting that AAT and Federal Court decisions have found that providing a list of factors limiting the discretion is neither possible nor desirable.<sup>53</sup> The Guide states that special circumstances should take into account all of the person's circumstances based on a combination of factors, including the physical and emotional state of the person together with their decision-making capacity and financial circumstances.<sup>54</sup>

EJA member centres continue to see cases where decisions are based on an assertion that domestic violence is all too common and prevalent, therefore it is not special.

*Just last year, I came across a decision where the person had disclosed the history of childhood sexual abuse and the conclusion of the member in the first level of the AAT was that that was not a 'special circumstance', not sufficiently unusual or uncommon among Centrelink recipients—so using quite extraordinary language. We were able to represent the client to the general division, where we settled. But you know, just for the client to read that was awful.*

### **(Caseworker interview)**

<sup>52</sup> Social Security Act 1991 (Cth) s 1237AAD <[http://www5.austlii.edu.au/au/legis/cth/consol\\_act/ssa1991186/s1237aad.html](http://www5.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/s1237aad.html)>

<sup>53</sup> *Beadle and Director-General of Social Security* (1984) 1 AAR; *Secretary, Department of Social Security v Paul Raymond Hulls* (1991) 13 AAR 414.

<sup>54</sup> Department of Social Services, '6.7.3.40 Waiver of Debt on the Basis of Special Circumstances', Social Security Guide (Web Page, 27 September 2021) (v 1.286) <<https://guides.dss.gov.au/guide-social-security-law/6/7/3/40>>

The notion that family and domestic violence is too commonplace to be applicable to a definition of 'special circumstances' is highly problematic and goes against the intention of the special circumstances provisions.

**Recommendation 14** *That DSS amend section 6.3.7.40 of the SS Guide to explicitly state that the prevalence of family and domestic violence in the general community, or in a particular community, does not mean that a person's experience of domestic violence cannot or should not be regarded as 'uncommon' or 'unusual' within the meaning of section 1237AAD of the SS Act. The guidelines should include commentary on the possible impacts of family and domestic violence for women reliant on social security income support, with an example of the way in which domestic and family violence would constitute 'special circumstances'.*

**Recommendation 15** *That practical training on family and domestic violence in the context of 'special circumstances' waiver be made mandatory for all Services Australia staff making decisions regarding the raising and recovery of social security debts.*

# She fled the abuse but now she has a letter saying she might be prosecuted because ... she's left with the Centrelink debt



## Criminal prosecution referrals

As outlined above, a person who is considered to have knowingly failed to advise of a change of circumstances, or to have knowingly provided false information, may be subject to criminal prosecution. Given that 'special circumstances' waiver requires that the debt must not have been knowingly incurred, this can lead to caution in seeking waiver in otherwise compelling domestic violence cases due to the risk that in explaining the violence and coercion, the client may incriminate themselves.

*If you could have some certainty that the person isn't going to be prosecuted, then you could do something about it.*

**(Caseworker interview)**

*All the criminal offence actually requires is that your conduct, which can include an omission, led to you being overpaid and you knew that you would be overpaid ... The reason for that is not relevant.*

**(Caseworker interview)**

There is a pressing need for review of Services Australia prosecution investigation and referral processes to ensure that family and domestic violence is taken into account. Processes should not impede access to waiver and appealing the debt, and should not re-traumatise victims/survivors. There are several key issues in need of urgent attention, as highlighted in our EJA caseworker interviews.

- **People are interviewed without appropriate safeguards.**

Once a case has been investigated and Services Australia is preparing for referral of the case to the CDP, the process generally becomes formalised, with invitations to taped interviews noting that the person may wish to seek legal advice before agreeing to attend. Before any prosecution interview commences (where the person is, for example, to be asked to identify whether signatures on key documents are theirs), a formal caution is given and the person is advised that they may decline to be interviewed or cease the interview at any time.

Informal compliance interviews that are purportedly to 'clarify' how a debt occurred are less formalised and can be highly problematic—including in complex cases involving domestic violence and financial abuse. People can be contacted by Centrelink compliance officers investigating debts by phone, without warning, and interviewed on the spot. The person will then have no opportunity to collect their thoughts and present information in a focused way, and may not realise the full implications of what they say in response to questions, or voluntarily disclose—especially where there is domestic violence or financial abuse involved.

*When being contacted as part of an investigation, it's often out of the blue; a phone call from someone they've never heard of on a private number. The caller might not be given any background to the call, only to say, 'I'm Bill from compliance at Centrelink. I want to know ABCD about you'. The*



person is expected to respond immediately even if they're at the supermarket or they're standing in the playground with the other mums, and they may not understand the significance of the call.

**(Caseworker interview)**

*So, if they thought about fairness ... it's not going to mean that if there's a valid debt that they're going to find some way to hide it. I mean if you haven't reported your earnings properly you haven't reported earnings properly. ... If the person gets some advice and there has been violence/duress, a person can get advice and a useful intervention can be made.*

**(Caseworker interview)**

- **Vulnerable people have been traumatised by police raids.**

Members have also reported experiences of clients who have been highly traumatised by police raids—a heavy-handed approach to uncovering whether or not a person is a member of a couple.

*We've had clients being investigated and the first that they knew about it was either they're invited to a prosecution interview or less frequently nowadays, their house is raided at six in the morning.*

**(Caseworker interview)**

- **Time frames for investigation are long and the uncertainty about potential criminal prosecution is traumatic.**

The reality of these cases is that the investigation can take many months or even years. This uncertainty over an extended period can be extremely traumatic, particularly for a victim of domestic violence left in limbo, with the prospect of imprisonment hanging over her head. A woman may face the prospect of leaving her children with the perpetrator if jailed, or the prospect of having no one to care for her children.

*One of the most difficult things for people going through that process is the uncertainty around it and, not even having a good idea about the time frames. You know like, even I don't know how long the investigation is going to take. It could be months or years.*

*Decisions about commencing prosecution can be made months or years after the debt was raised. More recently, the fraud team seem to be making decisions about referral for prosecution before or at the same time as raising a debt. I can't guess how long prosecutors are taking to make decisions—it's often at least a year after referral.*

*Often people can't afford legal advice and Legal Aid doesn't provide any specific advice to those who qualify until the person's received a court subpoena. So, unless the person can afford legal advice, it's a really difficult time for them with the primary fear being that they're going to go to prison and they'll be separated from their children, and they're really, very, very distressed about going to prison and being separated from their children.*

**(Caseworker interview)**

*They might have been invited to a taped interview, or they're aware that Centrelink is investigating them, or they're part way through the process—they've been referred, but they haven't yet gone to court ... . The thing that strikes me most is ... I'm thinking particularly about mothers, there's a huge level of distress. And as a worker that's really difficult. I'm unable to really offer any comfort because we can't respond practically to their distress, we have to refer them elsewhere, and say "Well, I'm sorry you're just going to have to wait and see what the outcome is".*

**(Caseworker interview)**

- **Often people cannot access legal advice to support a not guilty plea**

A long-standing concern of EJA members is the lack of access to legal advice for people who are charged with social security offences, particularly where legal advice focuses on supporting a 'not guilty' plea.

*With social security prosecutions, clients tend to plead guilty because Legal Aid (in our jurisdiction) generally will only fund guilty pleas, so if you plead guilty you will get access to a Legal Aid lawyer to assist you with a plea. If you plead not guilty, it's very rare that you would get access to a Legal Aid lawyer.*

**(Caseworker interview)**

Our member centre solicitors assess cases that are to be referred / have been referred to the CDPP on a case-by-case basis. In domestic violence cases, the solicitor may make submissions to the CDPP to withdraw—either arguing that the debt was not knowingly incurred, or submitting that prosecution would not be in the public interest.

**Irene**

*Irene was in a long-term relationship with a man who physically abused her and had a previously violent criminal history. He came and went from her home at different times and she lived in fear of him.*

*Centrelink received an anonymous tip-off that Irene was getting the single rate of payment while partnered and raised a debt of around \$50,000 against her. Irene had a record of minor offences and a history of poor health and she did not find it easy to connect with services or advocate for herself, so she had not told Centrelink that her partner was violent. Centrelink referred the matter for prosecution. At the time of prosecution, Irene was on the run from her now ex-partner because she feared violence from him.*

*Irene sought assistance from the member centre who helped her prepare a submission addressing the violence and her current situation. The CDPP did not proceed with prosecution, however, the Centrelink debt remained. The client did not seek legal help to appeal it as she was focused on finding a safe place to live.*

**(Member centre case study)**

- **People don't return after prosecution to undertake the administrative review process.**

Although clients are advised by EJA member caseworkers that they can proceed with administrative review of their social security debt after prosecution activity has ceased, whether or not they have been convicted, most do not do so.

*I haven't had any come back in the last 5 years or so – my feeling is that the prosecution process especially if they end up serving a term of imprisonment is devastating and they don't want to take any further steps.*

*Some people say, 'there's no way I can do it. Do I want to tell a bunch of strangers all about this again, to go into detail? I just don't want to talk about it, to re-live it.'*

**(Caseworker interview)**

This means that any opportunity to have the debt decision overturned or waived, or the debt quantum reduced, is lost.

## Need for early intervention

Problematic prosecution investigation and referral processes point to the need for early intervention in cases of alleged fraud involving victims of domestic violence. Not only is the investigation process problematic, if the CDPP does proceed to lay charges, these criminal charges are not based on identical criteria to those applying under administrative law. Unless a client has legal representation, the criminal process provides no opportunity to investigate extenuating circumstances behind accrual of the alleged debt, and whether the debt would stand under administrative review.

*If you write a charge a particular way you pick up everyone ... so you really are relying on the discretion of the prosecutor to not charge.*

### **(Caseworker interview)**

Here, it is important to note that Services Australia is not obliged to refer potentially prosecutable cases to the CDPP. It is within Services Australia's discretion to choose not to refer cases, including cases involving victims of family and domestic violence.

*We have had cases where there is severe domestic violence and the client has received a letter from Centrelink saying they've decided not to refer the case to prosecutors. There may be all sorts of reasons for that, including the complexity of trying to establish the case. These cases include those where there is some evidence a person has 'knowingly' failed to tell Centrelink about something but there is clear duress or abuse in the relationship, and the client is clearly vulnerable.*

### **(Caseworker interview)**

*Where there's a debt and when there's compliance activity, like a fraud investigation, staff usually show a great reluctance to engage with us because they're not wanting to compromise the investigation.*

*I've seen cases where clients haven't declared a relationship under duress that subsequently has led to a debt that's led to prosecution. In those cases, if it's a deliberate under-declaring of income and it's already been referred to the DPP when the client comes to us, it's quite difficult to get the DPP to not commence charges as they will say that it's just an argument in mitigation for the plea after they plead guilty.*

*I think where it's at the stage where Centrelink is considering referring matters, if there's evidence of family or domestic violence that's at all relevant, then that matter should not be referred. Similarly, when prosecutors are deciding whether a prosecution is in the public interest, if there's evidence that family and domestic violence is relevant to why the debt's arisen, they should consider the impact of that violence on the person's thinking and behaviour, and usually, the matter should not proceed.*

### **(Caseworker interview)**

**Recommendation 16** That Services Australia amend its prosecution guidelines to ensure that where a person has disclosed domestic or family violence, management of the case is referred to a senior officer with relevant expertise and that where prosecution is being considered for a person who has disclosed family or domestic violence, they are referred for social worker support.

**Recommendation 17** That Services Australia amend its prosecution guidelines to ensure that proper consideration is given to whether referral of a case to the CDPP is in the public interest where a person has disclosed domestic violence.

# Use of the Fraud Tip-off Line

The Services Australia 'Fraud Tip-off Line' is promoted by the Government as a tool to maintain the integrity of the social security system by engaging the public in detecting cases of social security fraud. However, our research highlights how in the context of domestic violence, the tip-off line can inadvertently facilitate abuse because abusers may use it as a weapon.

Perpetrators of violence can use an anonymous tip to the tip-off line, or simply the threat of a tip-off, as a tool of harassment, abuse, and control. Once an unfounded accusation has been made, the resulting compliance processes outlined above can further traumatise victims of violence with intrusive and stressful investigation into whether they are a member of a couple, or whether they knowingly provided false information or failed to comply with a notification requirement, such as advising of partner earnings. This process can threaten the financial security of victims/survivors of domestic violence, including children, if the accusations lead to payment cancellation. It can also result in debt and/or referral to the CDPP. Challenging the debt by providing evidence that they are not a member of a couple can pose a real risk of provoking a violent partner or ex-partner.

The way social security payments are structured using relationship status to define the basic rate of payment entitlement, means that tip-off and compliance processes disproportionately impact women who are already financially disadvantaged. This is because women are primarily in unpaid caring roles, and thereby likely to be reliant on their partner's income if they are assessed to be a 'member of a couple'.

*I've had clients say their partners or ex-partners threaten to use the tip-off line.*

*I've seen prosecution briefs [and] I think once or twice I've accidentally seen who tipped off and it's been the perpetrator ... They'll threaten that 'unless you, um, comply with my wishes I will tip off.' So they'll threaten their ex that 'I can go back five years, you know, you were living with me, remember, when you're living with me for two years and then we separated then you came back and lived with me again. Uh well I can punch you with debts ...'*

*They may have been in a particularly fragile state or have a lot of stressors on them and so trying to deal with Centrelink at the same time as trying to get to safety, or trying to get kids organised or sort out the Family Law matters or a restraining order—it can be pretty overwhelming.*

*Another example is we've seen instances where the perpetrator has a family member or friends working for Centrelink and they make threats to use that.*

*They might stay in a relationship but they might also just accept and pay off a debt that's been raised rather than ask for a review of the debt and that might be because they just don't want to do anything that might trigger some response.*

**(Caseworker interview)**

Sometimes threats of dob-ins may be made by the family of the perpetrator.

*The young Muslim woman I was talking about had basically cut off all contact with her partner's family because they were regularly interacting with Centrelink and giving Centrelink different accounts of the status of her relationship with her partner.*

**(Caseworker interview)**

As the practitioner interviews show, social security compliance rules are extremely complicated. It can be difficult for a recipient to know whether she is in compliance and as a result, threats can be effective whether or not a woman is actually in breach of the rules. Further, there is also the possibility that once Centrelink gets a tip-off they start fishing, for example, through state motor vehicle registration and bank records for joint assets upon which to base a reassessment of eligibility for payments. Public information about the proportion of tip-offs that are investigated is not readily available, so the likelihood of investigation will be unknown by the victim/survivor. This means that even if Centrelink does not initiate an investigation, the threat can still work to give the abuser power and control, allowing him to coerce the victim. For many women, the stakes of losing their Centrelink payments and having large debts raised against them are high—potentially including homelessness, deportation, having children taken by the state, or orders to have contact with abusers.

EJA members' experience that the tip-off line can be used for unfounded, abusive and revengeful accusations also aligns with the statistics revealing that most tip-offs are not useful in identifying cases of social security fraud. In 2018-2019, just 752 (or 2.4 per cent) of the 31,093 tip-offs received through the Fraud Tip-off Line (i.e. made by members of the public) resulted in a social security fraud investigation.<sup>55</sup> 460 tip-offs (or 1.5 per cent) were referred to the CDPP for possible prosecution action.<sup>56</sup> This means that 30,341, or roughly 97.6 per cent of the 31,093 public tip-offs made in 2018-2019 did not identify prosecutable cases of welfare fraud worthy of investigation.

*We can see when we FOI a file, a lot of them (fraud investigations prompted by tip-offs) don't lead to any change at all because when Centrelink does the investigation, the person's circumstances were already correctly advised or they sometimes led to the person getting an increase in their payment because when they do an investigation they realise they're being underpaid.*

**(Caseworker interview)**

## Coercion in family law and migration matters

Our research found that the Fraud Tip-off Line is also used by abusers for malicious and coercive purposes when the victim/survivor is involved in Family Court proceedings or migration matters. This can have significant consequences for victims of violence who believe that they need to comply with a perpetrator's demands to avoid family law problems, or to avoid 'getting into trouble with the authorities' in other proceedings:

*If the tip-off line is used and that prompts Centrelink to start making demands for information from the person or their payments are suspended, it can really add to the difficulty for them in relation to all the other things that are going on. It has led to people not proceeding with a family law claim because the perpetrator has said if they don't withdraw their claim for property settlement, they'll do them in. It's led to people withdrawing violence restraining order applications for the same reason.*

*[In] Family Court proceedings it could cross over to contact and care relationships in relation to children. ...[and] to property settlements, ... so they're using it to get a leg up in another proceeding. [The abuser is saying] ... "If you don't agree to visitation or shared custody or whatever, this property split, uh, I'm going to do you in using the tip-off line."*

*if there's any issues around what kind of visas they're on - even if they are on a visa that would mean they're at no risk the woman is often unsure about that, unsure about whether she's on her own individual visa, whether she's only here as a result of her relationship visa or even if she's not if she's someone for example who wasn't particularly literate in her own community and if her partner is*

55 Services Australia, 2018-2019 Annual Report (Report, 17 September 2019) 165-166 <<https://www.servicesaustralia.gov.au/organisations/about-us/reports-and-statistics/annual-reports/annual-report-2018-19>>

56 Ibid 172

someone who's been, or his family have been organising Centrelink she may not actually understand the system and she might just be told, "well you'll be deported if I tell Centrelink this or that" so whether that's accurate or not is not the issue.

**(Caseworker interviews)**

The fact that threats of tip-offs to Centrelink can also be used to coerce victims/survivors in areas such as family law and migration, highlights its effectiveness as a tool of abuse—in contrast to its ineffectiveness as a tool of detecting welfare fraud.

The following two case studies provide examples revealing some of the specific ways in which abusers can use the tip-off line to initiate processes that effectively require the victim to prove in some detail that the abuser is lying, and subject the victim to long periods without income to support themselves and their children.

**Natalie**

*Natalie contacted a member centre when her Family Tax Benefit was suspended. Following a long history of abuse, Natalie had left the violent relationship when her son was 12 months old. She'd been in a long Family Court dispute with her ex-partner, which was finalised in her favour. Disgruntled with the result, her partner contacted Centrelink claiming he'd had a greater share of the care of the child over the last three years.*

*Centrelink informed Natalie that she was at risk of a \$2500 debt, and that they'd sent her a letter with forms requesting information in months ago, but Natalie never received this letter, and the member centre believes she was not informed of the investigation and report until her payment was cancelled.*

*Natalie was able to submit:*

- *personal diary notes of the child's overnight stays with her ex-husband, including dates circled going back 3 years*
- *letters from her son's psychiatrist who was involved in the mediation and access negotiations*
- *parts of a report done by the court appointed expert psychiatrist supporting the level of care*
- *hand-written notes made by Natalie about access*
- *emails from the ex-husband where he cancelled access days*

*Natalie was referred to a Centrelink social worker who stated he would intervene on her behalf but he didn't contact her and she was not given any means to contact him. Natalie also called the Families Line a number of times but they told her they were not able to give her any information about what was happening and would pass a message along to the dispute team. She was not able to talk to the dispute team herself.*

*Natalie did not have her payments reinstated until a month after submitting her evidence.*

**(Member centre case study)**

## **Keira**

*Keira contacted a member centre when her Family Tax Benefit was suspended. She is an Aboriginal woman who has four children between the ages of 4 and 18 years of age, who reside with her. Keira and the father of two of the children are separated, and the father is subject to an ADVO.*

*Keira's FTB was cancelled because of misinformation provided by her ex-partner who currently had care of the children. She had no prior warning that the payment would be stopped, and there was no record of an attempt by Centrelink to contact her. A letter from Centrelink which Keira received a few days later informed her that her FTB had been stopped but gave no reason why, and did not include any information about Keira's options; nor did it request Keira to provide any further information.*

*Keira phoned Centrelink to ask why her FTB payment had been cancelled. She explained that apart from one week, the children were in her care and that she needed the FTB payments to support her children. After this phone call, Centrelink sent Keira a further letter requesting additional information about her family circumstances. Keira provided documentary evidence that the children had been in her care.*

*Keira's FTB was reinstated a month after the cancellation with arrears paid. However, Keira did not receive the funds as they were allocated to a debt that had arisen because Centrelink believed that the children were not in Keira's care for some time during a previous period, likely as a result of misinformation from her ex-partner. This debt has been appealed to an ARO and is awaiting a decision.*

### **(Member centre case study)**

While there is the potential of significant harm to a victim of violence as the result of a perpetrator dobbing them in to Centrelink, the nature of the Fraud Tip-off Line is that information can be provided completely anonymously.

*The system would have more integrity if there were a requirement for a person providing a tip-off to give their name and contact details. There should also be a warning to them prior to making a tip-off that if the information they provide is untrue or provided for malicious purposes, legal action may be taken against them.*

### **(Caseworker interview)**

In considering the merits of the tip-off line, it is important to consider whether the harm from perpetrators using tip-offs as a weapon of violence could be reduced by simply requiring that the person providing the tip-off identify themselves rather than providing information anonymously.

**Recommendation 18** *That Services Australia develop protocols to ensure that information received by its Fraud Tip-off Line is properly triaged, with assessment of the credibility of information provided*

**Recommendation 19** *Protocols should include guidelines for identifying tip-offs potentially provided as a form of abuse, and provide that tip-offs suspected to be spurious and based on malice are to be discounted.*



# Services Australia domestic violence initiatives

## Access to social workers

EJA's 2018 report contained many case studies and observations from caseworkers about the crucial role of social workers in ensuring that family and domestic violence is safely disclosed, and sensitively and appropriately taken into account in Centrelink decision-making. The resourcing of the social work function within Centrelink is particularly critical in the compliance area where failure to understand the impact of family and domestic violence could lead to payment cancellation, a large debt and even criminal prosecution.

It is our member centres' experience that within the Centrelink environment, social workers are uniquely equipped to facilitate disclosure of domestic violence, work with clients and Centrelink delegates to ensure access to social security rights and entitlements, provide warm referrals to domestic violence support services, and assist in securing safe housing. EJA's research into family and domestic violence indicates better outcomes for clients when they have timely access to Centrelink social workers.

The assistance of Centrelink social workers is often key to resolution of cases where victims of domestic violence have incurred social security/family assistance debts or face repaying a substantial debt due to being coerced by an abusive partner into misreporting their circumstances/partner income.

Early intervention by a social worker, can provide a quick resolution to a problem, saving considerable time for the Department and distress for the client. Some cases seemingly take on a life of their own, proceeding down a pathway to debt and prosecution, because the client does not understand what is being asked of them and what is required, or is overwhelmed and incapable of gathering evidence regarding the abuse. Quite apart from the enormous stress experienced by the client, these cases waste Centrelink, CDPP, AAT, community legal services and Legal Aid resources. Often, a single referral to a Centrelink social worker would prevent a cascading of events.

Issues regarding limited access to Centrelink social workers identified in EJA's 2018 report continue to be experienced by our members, including:

- Women disclosing domestic violence are not always offered referral to social workers and are not always aware that Centrelink social work support exists.



- Clients often have to wait for social work support, expressing frustration at not being able to get an appointment in a timely manner when support is most needed.
- Clients are often only provided the option of a phone appointment with a social worker making it more difficult for social workers and clients to build rapport, with clients not comfortable enough to share information about their personal circumstances over the phone with someone they do not know, especially those from culturally and linguistically diverse backgrounds.
- Access to social workers is inconsistent across different regions, with differences in what triggers social worker referrals.
- Clients are not always allowed a choice about the gender of the social worker which can be a crucial factor in accessing help.
- Phone appointment calls appear on client's phones as a private number so clients do not always answer the call.

Unfortunately, EJA members continue to report their clients' (and their own) limited access to Centrelink social workers. EJA members report that clients often have to wait two to three days for Centrelink social worker support, and express frustration at not being able to get an appointment when urgent assistance is needed. The loss of permanent social worker positions in Centrelink offices is keenly felt. There is a need for all Centrelink offices to have a social work unit, staffed at an appropriate level in light of local needs.

*My understanding is that Centrelink has significantly reduced the proportion of social workers in their offices. I understand they do have social workers in their debt investigations unit but I'm not sure how well that works.*

*Women who have suffered violence and have had a large debt raised will typically need extra support - a person who's actually interested in their case and follows through so the women doesn't have to repeat their story so many times.*

*It's such a common problem, not getting referred for expert help in a timely manner within Centrelink, to a social worker who might then be able to explain what the problem is and what the person needs to do.*

**(Caseworker interview)**

Feedback to EJA from its member centres is that clients experiencing domestic violence present in a great deal of distress, traumatised and fearing for their safety. Access to Centrelink social workers is essential at this critical stage—so that immediate income support needs can be addressed, and to prevent escalation of the presenting problems. Victims need a safe space, and a Centrelink contact to whom they can disclose personal issues without fear of repercussions from the perpetrator. The greatest fear for women experiencing domestic violence can be fear of retaliation if the father of their children is contacted by Centrelink. Without the help of the Centrelink social workers the personal crisis for victims of domestic violence can get drastically worse. With the growth of self-service and automated services, the need for face-to-face social work assistance has never been greater. There is a pressing need for more social workers on the ground to respond to the complex needs of women fleeing domestic violence in way that they feel safe, supported and not having to repeat their stories many times.

Connecting with a social worker can also be a frustrating experience for community advocates. Clients regularly report that requests for urgent social worker appointments have not been dealt with on the same day, some clients waiting a week for an appointment. EJA members can find it impossible to access social workers directly when trying to advocate for clients who have been unable to get an appointment with a social worker.

Our members also identify structural gaps in social worker resourcing.

## First Nations women

Dedicated social worker resources are needed to ensure Remote Servicing Teams can provide the full suite of services to Aboriginal and Torres Strait Islander women experiencing family and domestic violence. EJA members engaging with remote communities for legal outreach and community education observe that under-resourcing of Remote Servicing Teams and Indigenous/Community Liaison Officers is putting pressure on Centrelink agents who are unable to answer questions regarding social security eligibility, income tests and mutual obligation requirements—let alone identify and respond to domestic violence risk.

### **Maxine**

*Maxine is an Aboriginal woman from a rural community. Her partner is a convicted domestic violence perpetrator, with a history of physical, verbal, financial and emotional abuse perpetrated against Maxine and their disabled daughter.*

*When she contacted the EJA member centre for assistance, Maxine and her partner had been separated for 3+ years, but for complex reasons had not moved. Maxine had been without means of support since the cancellation of her payments four months prior. She had been receiving social work support from a community health clinic, who had referred her to the member centre for help in getting her payments reinstated, and regarding debts raised following income data-matching compliance checks.*

*The community legal centre attempted to arrange for Maxine to be referred to a Centrelink social worker several times. Centrelink was unable to schedule face-to-face appointments with Maxine, as she had no access to transport independent of her partner, and phoning Centrelink was a risk.*

*The legal service assisted Maxine to complete a 'Separated Under the Same Roof' application. Centrelink accepted that Maxine was in fact separated and she received four months payment in arrears—i.e. back to the date Maxine's income support payments were cancelled under the partner income test. Appeals against recovery of the debts are yet to be decided.*

*Maxine was left without any social security support for over four months—despite Centrelink having been made aware, on several occasions, of her ongoing risk of domestic violence, and despite requests for a social worker referral. This prolonged Maxine's and her child's exposure to their abuser. Had a Centrelink social worker been offered to Maxine when her payment was first cancelled, these dangers could have been avoided.*

### **(Member case study)**

Although Services Australia's guidelines stipulate that where domestic violence is indicated and there is ongoing risk, the client is immediately referred for social worker support, our members report that there is often no sense of urgency in dealing with women at extreme risk of harm. Social worker assistance should be proactively offered to people in remote communities without income support, for support in resolving payment issues and for ongoing support regarding social issues disclosed to the social worker, including domestic violence. EJA members working with remote communities observe that provision of Centrelink social worker support is rare, and that most community services – and some Centrelink officers – are unaware that this may be an option.

## Women from CALD communities

Women from culturally and linguistically diverse backgrounds can be particularly isolated, and exposed to risk of financial abuse and coercion. Failure to refer women from CALD communities who are known to be experiencing domestic violence for social worker support can result in ongoing abuse that could have been avoided.

### **Nisha**

*Nisha is illiterate in both her first language and English. Her abusive ex-partner was able to get the Family Tax Benefit (FTB) payments for their child transferred from Nisha to himself by coercing Nisha to sign a form falsely stating that he had had 100% care of their child for some time. He told Nisha that the form was for their daughter to go to a private school. She felt threatened by him so she signed. Centrelink proceeded to transfer the FTB payments to Nisha's then partner, even though there were notes in her Centrelink records regarding the domestic violence, including that she had fled to a refuge. Centrelink also raised FTB and PPS debts against Nisha.*

*Early referral of Nisha to a social worker for support could have avoided this issue.*

### **(Member case study)**

**Recommendation 20** That the Government provide funding to ensure timely access to Services Australia social workers, so that Services Australia is better able to support victims/survivors of family and domestic violence, including with enhanced access to face-to-face social work interviews.

**Recommendation 21** That the Government provide funding to ensure that social workers are accessible to Aboriginal and Torres Strait Islander women experiencing family and domestic violence, particularly women living in regional and remote communities; and to enable warm, targeted referrals by Services Australia for community support.

**Recommendation 22** That the Government provide funding to ensure that social workers are accessible to women from CALD communities experiencing family and domestic violence; and to enable warm, targeted referrals by Services Australia for community support.

## Access to senior, expert Centrelink staff

Members stress the value of caseworkers being able to access senior expert staff at Centrelink and how this can often result in a case being resolved quickly.

*If we're able to speak with someone from the Service Recovery Unit, with someone who is experienced and has authority to get things done, we find the staff are responsive and things resolve quickly.*

*Clients often have trouble getting consistent information and advice from Centrelink staff, while if we can have a conversation with a senior officer, we can find out exactly what's happened and stop the problem escalating.*

*I'd recommend that there should be a specialist family and domestic violence team or even a number that a client can call if they want to speak to someone about a family or domestic violence issue. That would increase the likelihood of clients disclosing family and domestic violence so they can get the help they need. Expecting them to disclose on a general number or to general staff is often too much to expect.*

**(Caseworker interview)**

EJA members play a key role in helping people navigate the complex Centrelink compliance process, particularly people who are victims of family and domestic violence. As well as making legal arguments, this assistance can include explaining legal requirements, helping clients decipher evidence requirements and evidence they have previously provided, and helping them collect evidence to explain their situation.

*It's very difficult for clients who are traumatised to recollect exactly what happened seven years ago; to recollect specific dates and events, the material is overwhelming. You say to a client, 'This transaction on the 22nd of June 2013. What was it for?'*

*Usually we help them get further evidence, which makes the difference.*

**(Caseworker interview)**

Caseworkers express frustration that they are now largely locked out of direct contact with Centrelink. This stands in stark contrast to the situation a decade or so ago when advocates had contact details for key senior staff at local and/or regional offices. The loss of this pathway to relevant Centrelink staff slows down the process of providing evidence and checking exactly what evidence should ideally be provided:

*Our client had a phone call out of the blue asking for information. We were wanting to help get that to the right people but it's often really difficult to know where to direct that information. Centrelink's response is everything should be uploaded into their MyGov account using their device but you never really know where that's gone or if the client's done it correctly. We're not their nominee so we don't have access to their accounts. We'd just like to be able to access either a manager of a local Centrelink office or the Manager of the relevant team.*

**(Caseworker interview)**

Lack of caseworker access to Centrelink decision-makers also presents a stumbling block to clients being able to inform Centrelink of changes in circumstances in a way that facilitates consideration of specific circumstances:

*Recently where clients are in a situation where they're either claiming a payment, challenging a cancellation of their payment, or it's in the steps prior to a debt being raised, they approach us for help with contacting Centrelink so they can honestly disclose exactly what's happened during the last three years. Instead of just saying 'we're a couple', we help them to explain, 'this is what our living arrangement has been. Please assess my situation'. And we've seen that often either Centrelink doesn't cancel their payment or raise a debt or refuse to grant them payment.*

**(Caseworker interview)**

Lack of access to Centrelink staff means that income support issues for women experiencing domestic violence can take an inordinate amount of time to resolve, and can be far more resource-intensive than need be:

*Some years ago, we had the phone number to each Centrelink Service Centre in our state, so we could just call and ask to speak to the social worker. Then we lost our direct contact lines.*

Sometimes clients have been trying to work out what's gone wrong with their Centrelink payment for weeks or months, and once we've had a look at the issue, we find that if we contact one of our contacts in Centrelink, we can resolve the issue in hours or days.

**(Caseworker interview)**

**Recommendation 23** That Services Australia restore EJA member centres' direct access to senior Centrelink staff, and that this be supported by a Memorandum of Understanding developed in consultation with EJA.

**Recommendation 24** That Services Australia establish a specialist family and domestic violence team, to facilitate disclosure/discussion of family and domestic violence. The specialist team should have high-level expertise regarding how domestic violence interacts with social security law, including relationship assessment and debt waiver.

**Recommendation 25** That Services Australia establish a nation-wide Advocates Hotline for community legal centres, staffed by people with technical expertise and an understanding of administrative review rights.

## Access to free legal assistance

There is an urgent need for specialist social security legal services to be adequately resourced to meet increasing demand for legal assistance.

*I think clients have a very different response from Centrelink when they don't have an advocate.*

*If you look at general division in social security, you know obviously like, 99 percent of them are not represented but they are represented by the department, so the client's not represented, the department's represented and that influences the, the tribunal because, there's not a counter, a counterweight, counterpoint, a counter voice, an effective one who can address those more technical aspects of the decision that are being made, but you know. If you, look at a member of a couple decision, as well, and the range of factors that are involved, and the material involved, it's immense, you know, you have to have someone, needs to be quite sophisticated, to be able to review those documents. Uh clients, say oh, you know I'm very distressed because they get sent a thousand pages by the tribunal um and they know that Centrelink is going to be represented by a lawyer.*

**(Caseworker interview)**

The need for enhanced access to legal advice is most pressing in regional and remote areas of Australia, especially for remote First Nations communities—among which rates of family and domestic violence are high. These communities also have disproportionately high rates of social security and family assistance debt, and disproportionately low appeal rates for debts and other decisions.

Some regional and remote areas have no funded specialist on-the-ground services providing social security legal advice and assistance. This leaves people without access to accessible information, advice and advocacy on social security issues—including women experiencing family and domestic violence.

The Kimberley represents a compelling example. The Kimberley is twice the size of Victoria and the region is thousands of kilometres from the closest community legal centres providing specialist social security legal advice and assistance, these being in Darwin and Perth. Whilst the Kimberley Community Legal Service (KCLS) is a generalist Community Legal Service, neither KCLS nor any of the

other non-profit legal services in the Kimberley receive dedicated funding to provide social security legal help.

Lack of access to specialist social security legal advice is particularly problematic in the Kimberley given the high proportion of disadvantaged people in need of social security support, and the dramatic effects of social security problems - including women affected by family and domestic violence in remote Aboriginal communities. Women experiencing domestic violence with strong grounds to seek review of a decision that they are a member of a couple or of a debt, are denied the right to do so because of lack of access to advice and support.

**Recommendation 26** *That the Government provide additional funding to community legal centres serving regional and remote communities, to enable provision of specialist legal advice assistance on social security issues.*

## Social Security missing from the National Plan

Australia's primary instrument to address family and domestic violence is the *National Plan to Reduce Violence against Women and their Children: 2010–2022* (the National Plan).<sup>57</sup> The National Plan focuses on six national outcomes:

1. Communities are safe and free from violence
2. Relationships are respectful
3. Indigenous communities are strengthened
4. Services meet the needs of women and their children experiencing violence
5. Justice responses are effective
6. Perpetrators stop their violence and are held to account.

The National Plan also outlines its goal to 'allow women who have experienced violence to rebuild their lives as quickly as possible as part of a community-wide response',<sup>58</sup> noting 'all systems need to work together to make a major difference to the prevalence and impact of violence against women'.<sup>59</sup>

The National Plan is operationalised through the Fourth Action Plan 2019–2022. It is notable for the absence of any reference to social security or Centrelink support despite Centrelink payments providing a vital safety net for women living with or escaping domestic violence. This omission is at odds with the reality that socio-economic inequality and discrimination are key drivers of higher rates of violence against women, and that supporting victims/survivors' economic independence and security is key to ending family and domestic violence.

A more recent Commonwealth Government publication, the 2020 Women's Economic Security Statement,<sup>60</sup> notes 'the Commonwealth and state and territory governments are implementing many other significant initiatives that complement and support the National Plan to combat family and domestic violence, listing the:

- National Plan to Reduce Violence Against Women and their Children 2010–2022
- Migration Amendment (Family Violence and Other Measures) Act 2018
- Modern Slavery Act 2018

57 Council of the Australian Governments, *The National Plan to Reduce Violence against Women and their Children 2010–2022* (February 2011) <[https://www.dss.gov.au/sites/default/files/documents/08\\_2014/national\\_plan1.pdf](https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf)>

58 Ibid 10

59 Ibid 11

60 Department of the Prime Minister and Cabinet, *Women's Economic Security Statement 2020* (Report, 2020) <<https://www.pmc.gov.au/office-women/economic-security/wess>>

- National Action Plan to Combat Human Trafficking and Slavery 2015–2019
- Family Advocacy and Support Service
- National Drug Strategy 2017–2026
- National Inquiry into Sexual Harassment in Australian Workplaces

Not only is social security law omitted from these documents, but the Women’s Economic Security Statement also inexplicably fails to mention social security or Services Australia in a case study involving significant violence against a woman, referring to the social security debt as a ‘government debt’<sup>61</sup>.

### Case Study

#### Health Justice Partnership – WA Women’s Resource and Engagement Network

Situations of family violence are often characterised by financial abuse, and women frequently face economic disadvantage and financial hardship as a result of abusive and controlling relationships. Health Justice Partnerships (HJPs) combine the provision of healthcare with other legal and social supports for women experiencing family violence, including financial services.

Ms J had suffered significant violence at the hands of her partner when she was referred to the Women’s Resource and Engagement Network (WREN) HJP in Western Australia. Ms J was also struggling financially with numerous bills and debts raised in her name by her partner. Appointments were made for Ms J with the WREN Health Justice Partnership solicitor and financial support service. Through this support service, Ms J was able to obtain advice surrounding budgeting, emergency relief information and negotiating payment plans with debt collectors and banks. This resulted in Ms J accessing the assistance she needed to help regain control of her finances. Ms J was also able to receive assistance through the Welfare Rights and Advocacy Service to contest a government debt that was raised due to having to live with significant family violence. The submission was successful, with a decision by the agency not to pursue criminal charges.

It is vital that the central role of social security support in addressing family and domestic violence is embedded as strategy in the next (and pending) National Plan to Reduce Violence against Women and their Children, and that implementation of the strategy is subject to specific performance benchmarks and monitoring. Economic Justice Australia is a signatory to the open letter calling for a separate First Nations National Safety Plan to Eliminate Violence against Aboriginal and Torres Strait Islander Women,<sup>62</sup> recognising that First Nations women are 32 times more likely to be hospitalised and 10 times more likely to die due to assault than other women. It will also be vital to ensure that social security income support is included in this plan.

**Recommendation 27** *That actions to enhance access to social security rights and entitlements be embedded in women’s safety policy, and included in the National Plan to Reduce Violence against Women and their Children and associated action plans.*

<sup>61</sup> Ibid 68

<sup>62</sup> Change the Record, *Open letter – A First Nations National Safety Plan to Eliminate Violence against Aboriginal and Torres Strait Islander Women* (online, 18 October 2021) <<https://www.changetherecord.org.au/change-the-record/posts/open-letter>>

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