

Federal budget submission 2023-24

About Economic Justice Australia

1. Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. Our members across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years.
2. EJA provides expert advice to government on social security reform to make it more effective and accessible. Our law and policy reform work:
 - Strengthens the effectiveness and integrity of our social security system;
 - Educates the community; and
 - Improves people's lives by reducing poverty and inequality.

Executive summary

3. The right to social security and a basic income is a fundamental building block of all human rights; other legal and human needs cannot be fulfilled without financial security.
4. EJA recognises that the requirement for further funding to support viable and sustainable services and operations varies between member centres. We also recognise that individual EJA members may make separate representations regarding their specific funding needs beyond the scope of the EJA submission.
5. In light of a range of factors including the complexity of the social security system and legal framework; the high unmet demand for specialist social security assistance; and the impact of the National Legal Assistance Partnership (NLAP); EJA **proposes as an immediate measure:**
 - Funding of \$3,630,000 to provide for one additional position to each of EJA's 21 legal centre members around Australia providing specialist social security legal

assistance and programs, including to EJA as the peak organisation representing these services. This is a measure that can be immediately actioned while the community legal sector works with the Government on the co-design of a longer-term funding proposal.

6. EJA also makes the following **social security policy recommendations** designed to improve the operation of Australia's social security system for vulnerable and disadvantaged people, through law and policy reform, and associated resourcing of the system:

Recommendation A: Permanently increase social security income support payment rates, and provide supplementary payments that reflect specific costs people face.

Recommendation B: Permanently abolish the newly arrived residents waiting period (NARWP) for Special Benefit, such that people in severe financial hardship have equitable access to the payment.

Recommendation C: Provide all New Zealand citizens living in Australia with access to Special Benefit.

Recommendation D: Extend the list of visa sub-classes that attract Special Benefit, with extended coverage including:

- Bridging Visas, all sub-classes
- Student Visa
- Temporary Resident (Skilled Employment) Visa
- Pacific and Seasonal Worker Visa
- Temporary Graduate Visa

Recommendation E: Amend s737(1) of the Social Security Act to enable full-time students to access Special Benefit.

Recommendation F: Amend the Social Security Act so as to abolish the Liquid Assets Waiting Period and Ordinary waiting period.

Recommendation G: Implement the recommendations of EJA's *Debts, Duress and Dob-ins* report in full, including:

- That section 1237AAD of the Social Security Act be amended to enable debt waiver where the debt resulted from another person knowingly providing false information.
- Amend section 1237AAD to ensure that a false statement or misrepresentation etc, made as a result of coercion or duress by a perpetrator does not preclude access to the special circumstances provisions of the Act. Other formulations for identifying the intent of the

debtor in section 1237AAD -for example 'knowingly and willingly' -could also be considered to provide this limitation.

Recommendation H: That the Disability Support Pension (DSP) qualification criteria be amended, including by:

- amending section 94 of the Social Security Act so as to remove the program of support requirement; OR, in the alternative, amend section 94 so as to include criteria for exempting a person from the requirement.

Recommendation I: Cease all compulsory income management.

Recommendation J: Pending the dismantling of social security compulsory income management, reform Income Management exemption and exit policies and procedures to identify and address systemic barriers to access to exemptions and exits, particularly for First Nations people in remote and very remote communities.

Recommendation K: Resource Services Australia to enable engagement of additional Mobile Service Centres, Indigenous Service Officers and Multicultural Service Officers.

Recommendation L: Allocate substantial additional funding to enable Services Australia to employ additional Centrelink social workers, particularly given COVID-19 impacts and the rise in risk and incidence of domestic and family violence, and homelessness.

Recommendation M: Provide funding to enable establishment of a Centrelink nationwide specialist hotline for community legal centre advocates

Funding proposal – social security community legal centres

Complexity

7. The social security system and legal framework is difficult for individuals to navigate without specialist assistance. Social security and family assistance law is second only to taxation law in its complexity, but with a significantly more disadvantaged and vulnerable population affected by adverse decisions. The stakes are particularly high for this group. Decisions can result in a person being left with inadequate means of financial support or no support at all. In some cases, where a decision is made to pursue a person for social security debt, vulnerable people can face criminal prosecution and imprisonment.
8. Many people face barriers to successfully challenging social security and family assistance decisions, particularly debts.

Example: Social security debts in the context of family and domestic violence

The following case study was documented in EJA's research report, *How well does Australia's social security system support victims of family and domestic violence?*

Client receiving Disability Support Pension was married for 14 years during which time she experienced severe financial, physical and sexual abuse. Although her husband had significant assets and income, he would not financially support her or her children, so she told Centrelink she was single. She wanted to disclose her history to Centrelink but may be liable for a debt exceeding \$100,000.

De facto relationships are inherently difficult to assess under the *Social Security Act 1991* (Cth)(Social Security Act). The legislation sets out five different factors to consider when assessing whether a person is a 'member of a couple' and no clear guidance to decision-makers on how these factors should be weighed against each other for the purpose of income support assessment.

The presence of domestic violence profoundly complicates the 'member of a couple' assessment. The client in this example, with complex needs as a result of her experience of disability, and domestic and sexual abuse, needed specialist social security legal assistance to support her through the process of administrative review. Without legal assistance to argue that the sustained financial abuse and physical abuse meant that this client should not be regarded as a member of a couple, she could well have ended up with a large debt and at risk of criminal charges.

Member of a couple assessments become even more complex where there are intersectional issues - for example where a victim/survivor of domestic or family violence also has issues with visa status, or where they are older, live with disability or live in a remote community. With such complexity, self-represented litigants among vulnerable cohorts can be set up to fail in the appeals system, They may lack the information, resources or capacity to challenge adverse decisions, or may seek review but be unable to effectively self-represent.

Demand

9. There is a high demand for specialist social security legal assistance that remains unmet. Unlike most other areas of specialist community legal centre practice, there is no private sector equivalent where people can go for legal advice or representation, either on a pro bono basis or from a private legal practice. Even if a person has the financial resources to pay for legal advice and representation, there is a lack of social security and family assistance expertise in the private legal sector.

10. Legal Aid does not provide representation in internal Centrelink appeals made to the Authorised Review Officer (ARO) in any jurisdiction.¹ In some jurisdictions, Legal Aid also does not provide advice or representation at the AAT in social security matters, such as in Western Australia, ACT and Tasmania.
11. This means that, unlike other specialist and generalist community legal centres, our social security legal centres may have nowhere to refer people for help with their social security problem if they are at capacity, which is increasingly the case. There are also have fewer options to utilise volunteers within their centres, due to a lack of available expertise in the social security law. This leaves people at a dead end, even where they have a legitimate case due to a wrongful decision being made.
12. Specialist social security legal services are increasingly overwhelmed due to high demand and are forced to turn away many people who need their assistance. For example, Welfare Rights Centre NSW receives on average a hundred calls a week from seventy people to its advice line for help. Given current staffing levels and the complexity of the matters, the Centre can provide comprehensive advice to only twenty of these people, with the remainder provided with information only. Only a fraction of those people obtain representation in relation to their social security matter.
13. To provide a sense of scale, the caseload of the Social Security and Child Support Division (SSCSD) of the Administrative Appeals Tribunal (AAT) is almost three times the size of the AAT's NDIS caseload, (6703 SSCD lodgements in the period 1 July 2022 to 31 December 2022, compared with 2240 for the NDIS), with many cases of comparable if not greater complexity. Unlike the NDIS, advising and representing clients in social security and family assistance debt matters can be further complicated by the spectre of criminal prosecution.

¹ In some jurisdictions, Legal Aid provides access to some information/advice at this level, but does not represent. For example Victoria Legal Aid provides information via a helpline.

**AAT Caseload Report**
For the period 1 July 2022 to 31 December 2022

Division/Caseload	Lodgements	Finalisations	On hand at period end	Proportion of applications finalised within 12 months of lodgement	Median time to finalise (weeks) ¹	Proportion of applications in relation to which decision under review changed ²
Freedom of Information	27	32	92	34%	77	50%
General	2,056	2,099	2,914	73%	24	31%
Australian citizenship	246	264	345	64%	30	26%
Centrelink (2nd review)	593	573	736	82%	22	27%
Visa-related decisions relating to character	255	321	145	91%	11	49%
Workers' Compensation	607	638	1,257	56%	47	34%
Other	355	303	431	80%	16	14%
Migration & Refugee	9,554	9,914	55,788	32%	142	31%
Migration	4,686	6,923	16,869	37%	130	40%
Refugee	4,868	2,991	38,919	20%	164	10%
National Disability Insurance Scheme	2,240	3,100	3,324	85%	31	75%
Security	1	5	33	0%	98	40%
Small Business Taxation	260	102	623	65%	42	24%
Social Services & Child Support	6,703	5,923	3,139	>99%	10	24%
Centrelink (1st review)	5,433	4,668	2,435	>99%	10	21%
Child Support	1,105	1,139	638	>99%	12	36%
Paid Parental Leave	165	116	66	100%	9	7%
Taxation & Commercial	357	277	1,391	47%	57	34%
Taxation	306	222	1,280	44%	60	38%
Other	51	55	111	52%	51	18%
Veterans' Appeals	102	88	199	56%	42	31%
AAT	21,300	21,540	67,503	63%³	34	35%

¹Median time to finalise is measured in weeks from lodgement to finalisation.

²These figures relate to applications for review of decision and do not include other types of applications that may be made under the AAT Act or related legislation. The decision under review is treated as having been changed if the Tribunal varies or sets aside the decision or remits the matter to the decision-maker for reconsideration by way of a decision under section 43 of the Administrative Appeals Tribunal Act 1975 (AAT Act) or section 349 or 415 of the Migration Act 1958 or by way of a decision made in accordance with terms of agreement reached by the parties under section 34D or 42C of the AAT Act.

³The *Defence Budget Statement* for the AAT sets out a performance criterion target of 75% of applications finalised within 12 months of lodgement.

Impact of NLAP and chronic long-term underfunding

14. The NLAP funding arrangements have limited the capacity of EJA's membership to maintain and expand social security and family assistance law expertise. In particular, standalone social security workers in generalist centres do not have the capacity, or in some cases the support, to build their specialist expertise beyond the level required to provide advice and limited one-off assistance, and they have no capacity to develop Tribunal and Court advocacy skills.
15. The funding arrangements have also continued to affect the level of core /baseline funding required by statewide specialist centres. Relatedly, we note the importance of statewide specialist services in being a source of expertise and a resource to other legal practitioners/centres, financial counsellors, social, community and health workers, who are assisting their clients with social security matters through secondary consultation, supported casework, warm referrals, professional development, placements, student clinics and other forms of collaboration.
16. At the same time as resourcing to support the maintenance and development of expertise is diminishing in the community legal sector, expertise among decision-makers is also being diluted through under-resourcing of Services Australia's internal review processes, and through well-publicised issues with the AAT.
17. The announcement in late 2022 of the abolition and replacement of the AAT with a new body is welcome. However, since the abolition of the Social Security Appeals Tribunal (SSAT) in 2015 there is no intermediary step between review by an ARO and the first tier

of the AAT. As a result, pursuing an AAT matter has become an impossible barrier for many.

18. Our members observe that ARO decision letters are increasingly opaque, especially regarding appeals against Disability Support Pension (DSP) refusal, debt recovery, and reviews of other decisions involving the application of discretion. This makes it difficult for people to know the basis for which a decision was made and whether they have grounds to appeal, meaning that many do not pursue that option.
19. Given the level of formality at the Social Services & Child Support Division of the AAT (SSCD) compared to the defunct SSAT, and the narrower range of backgrounds and expertise of SSCSD members compared to SSAT members, there is a need for representation that EJA member centres do not have the capacity to meet. This means that in the General Division of the AAT, applicants who can neither access Legal Aid nor the assistance of one of our members, most often represent themselves – even when faced with the Commonwealth’s legal representatives, usually from a large top tier law firm.¹ Where a person is forced to self-represent, there can be a serious risk of unfairness due to a power imbalance between the parties.
20. With reducing levels of legal representation at the AAT level, opportunities for the development of case law and guidance on the interpretation of social security law is limited and future injustices on the scale of Robodebt are less likely to be exposed and addressed.
21. Other professionals also provide advice about, support and representation to their clients at the AAT. An important role of specialist services includes being a resource to these professionals as well accepting referrals and working collaboratively on client matters.
22. For all the above reasons, specialist social security legal services cannot be compared with other specialist services where the law is state-based and not as complex; where the opposing party is not the infinitely resourced Commonwealth; and where other legal providers have the expertise and inclination to assist with filling the gaps in service provision.

Additional funding via NLAP is required to address critical need for social security legal services and expertise

23. EJA members are comprised of both statewide specialist social security legal centres (Welfare Rights Centre NSW and Social Security Rights Victoria), and standalone social security solicitors/case workers employed within generalist community legal centres that address a wide variety of other legal areas. EJA’s member centres are located in each state and territory and between them cover all of Australia.
24. EJA supports Community Legal Centres Australia’s interim ask for funding for an extra position at each of their member community legal centres in Australia. However, we

understand that in most cases this additional funding would not go towards funding the social security legal services EJA represents.

25. Successive changes to the legal assistance funding framework have reduced the capacity of community legal services to deliver specialist social security legal advice and representation and maintain/build their expertise, with serious consequences for access to justice and the integrity of the social security system.
26. Community legal centres previously received Australian Government funding directly from the Attorney General's Department, with a Welfare Rights funding program established in 1992 via an allocation of \$0.5 million from the Department of Social Security to the Attorney General's Department portfolio in 1992/1993 and then growing to \$1.1 million in 1995/1996.²
27. NLAP agreements have transitioned community legal centres funding into agreements (2015-2020 and 2020-2025) to be administered by states and territories, bringing the NLAP into alignment with the Commonwealth Government's funding for Legal Aid Commissions which has flowed through a national partnership agreement structure since 2010.
28. Funding distributions have particularly disadvantaged specialist social security community legal centres, distributions failing to recognise the costs and challenges of providing state-wide and intrastate services when dealing with a particularly complex area of Commonwealth jurisdiction. Funding arrangements have also failed to recognise that Legal Aid Commissions frequently refer people to community legal centres, including where:
 - the case is still subject to internal review.
 - the person is ineligible Legal Aid due to strict means and merits testing
 - Legal Aid does not provide advice or representation in social security cases, including for AAT matters - such as in Western Australia.
29. Generalist centres in turn frequently refer people with social security or family assistance issues to specialist services, particularly for representation in complex cases, as well as to access information and support.

² See Australian Senate, *Budget Paper Number 1 – Budget Statements 1993–93* (August 1992), <https://archive.budget.gov.au/1992-93/downloads/Budget_1992-93_Budget_Statements.pdf> page 3.208. The next injection of funding to the welfare rights program was about 2005/2006 when the collapsed the generalist funding into the welfare rights program.

30. States and territories often do not prioritise Commonwealth responsibilities when allocating funding. This leads to inadequate allocations of funding to social security services or positions, due to a preferencing of state and territory concerns.³
31. There are obvious conflicts of interest involved in attempting to address these issues in funding allocation, not the least of which is a reluctance to take risks with unravelling current NLAP arrangements in a manner that may disadvantage all community legal centres. Generalist centres are understandably reluctant to see any reduction in funding to other under-resourced areas of their practice to accommodate an increase in social security legal assistance funding. For these reasons, additional funding for social security legal services is required.

Proposal

As an immediate interim measure, EJA seeks \$3,630,000 in funds to provide one additional position to each of its 21 legal centre members⁴ around Australia providing specialist social security legal assistance and programs, and to EJA as the peak organisation representing these services. This amount is based on the Community Legal Centres Australia costings of \$165,000 per position.

Over the coming months, Community Legal Centres Australia is conducting a sector-wide scoping of legal assistance funding. EJA will be working with its members to contribute information to this scoping process about the need for additional social security legal assistance funding. . The case for more fulsome social security legal assistance funding will take into account evidence of particular areas of social security need, for example in regional and remote Australia where there is currently a gross underfunding of services. Our funding ask in this budget submission is a measure that can be immediately actioned while the community legal sector works with the Government on the co-design of a longer-term funding proposal.

EJA welcomes the Government's establishment of the Economic Inclusion Advisory Committee and supports the call to raise the rate of working age social security income support payments as a matter of urgency (as discussed below).

As an immediate measure, increasing access to social security legal advice and representation means not only that the system can work efficiently and as intended, but that people already entitled to payments can immediately receive the economic support they need.

³ Where social security legal services are provided by a standalone solicitor/case worker employed within a generalist community legal centre, decisions of the state / territory funder about funding allocation for social security legal services often serve to limit capacity. Restricting social security advice and representation can also be the result of a decision of an individual community legal centre's management committee, in response to funding constraints and unmet need for legal assistance in state / territory matters.

⁴ Including associate members.

Policy proposals

Address rate inadequacy

32. The current cost of living crisis makes the need to raise the rate of working age social security payments even more apparent and urgent. This is evidenced, for example, by soaring demand for community services offering emergency relief, such as Foodbank Australia.⁵ Our previous submissions have outlined the inadequacy of income support payments, even before the current surges in the cost of essentials like food, rent and energy bills.⁶
33. EJA endorses ACOSS's Budget 2024 proposals to lift base rates of working-age payments to the current pension rate. This is currently \$513 per week for a single person (as at September 2022) and would require an increase of \$175 per week to the single maximum rate of JobSeeker Payment and \$232 per week for single, maximum rate of Youth Allowance. Increases would apply to all allowance payments, including Austudy and Abstudy. All payments should be increased twice per year in line with wages or inflation (whichever is higher). Additionally, maximum rent thresholds should be increased by 50 per cent. EJA also endorses ACOSS's proposal that supplementary payments be provided that reflect specific living costs faced, including for people with disability or illness, and single parents. Routine indexation of payments does not deliver the real increase needed to stop people from falling further into desperate poverty.
34. EJA welcomes the establishment of the Economic Inclusion Advisory Committee, This means the Government will be provided with advice on the adequacy, effectiveness and sustainability of income support payments ahead of this and every Federal Budget. EJA supports ACOSS's recommendation that indexation of these income support payments should be to wages as well as consumer prices.

Recommendation A: Permanently increase social security income support payment rates, and provide supplementary payments that reflect specific costs people face.

Enhance access to Special Benefit

35. The cost of living crisis has also highlighted the precarious position of newly arrived migrants who do not have access to income support, many of whom we effectively encouraged to come to Australia to address skills shortages.

⁵ Foodbank Australia, 'Millions of households struggling to put food on the table' (Press release, 17 October 2022) <<https://www.foodbank.org.au/foodbank-hunger-report-2022/>>.

⁶ See, eg, Economic Justice Australia, Submission to the Treasury, *Pre-budget submission 2022-2023* (February 2022) <<https://www.ejaustralia.org.au/pre-budget-submission-2022-2023/>>; Economic Justice Australia, Submission to the Senate Standing Committee on Community Affairs, *Social Services Legislation Amendment (Strengthening Income Support) Bill 2021* (March, 2021).

36. This precariousness is due to the four-year newly arrived migrants waiting period (NARWP) that applies for most income support payments - including for the payment of 'last resort', Special Benefit.
37. The qualification criteria for Special Benefit under the Social Security Act are extremely tight, with eligibility restricted to people in dire hardship for reasons beyond their control. Although the four-year NARWP may be waived if the Special Benefit claimant has 'suffered a substantial change of circumstances beyond (their) control' after arrival in Australia, this is very difficult to establish in practice.
38. The four-year NARWP ordinarily applying to Special Benefit was temporarily suspended as a special COVID support measure. This occurred in recognition of the need to ensure that new residents would not face destitution and homelessness during COVID as a result of the additional hurdle the NARWP poses to accessing Special Benefit. The NARWP was subsequently reinstated. Yet the need to give new migrants equitable access to the social security safety net is arguably even stronger at present— many community organisations report that demand for their emergency relief services is greater now than it was during the height of the COVID-19 lockdowns.⁷

Recommendation B: Permanently abolish the newly arrived residents waiting period (NARWP) for Special Benefit, such that people in severe financial hardship have equitable access to the payment.

39. There are cohorts of people living in Australia on long-stay work or student visas who cannot access Special Benefit, including: New Zealand citizens; international students and graduates; and skilled and seasonal worker visa holders. During the COVID lockdowns and subsequent economic downturn, the inability to access Special Benefit forced many international student and migrant workers who lost work to return to their home country. The exodus of many students and migrant workers had broader repercussions, creating ongoing issues for recovery of the Australian economy.
40. As Australia looks to attracting migrant workers back to Australia, with a comprehensive review of Australia's migration system underway, it will be important to ensure that access to income support is incorporated as an underpinning of these reform measures.

Recommendation C: Provide all New Zealand citizens living in Australia with access to Special Benefit

Recommendation D: Extend the list of visa sub-classes that attract Special Benefit, with extended coverage including:

- Bridging Visas, all sub-classes

⁷ See, eg, ACOSS, *Helping people in need during a cost-of-living crisis: Findings from the Australian Community Sector Survey (2022)* <<https://www.acoss.org.au/helping-people-in-need-during-a-cost-of-living-crisis-findings-from-the-australian-community-sector-survey/>>.

- Student Visa
- Temporary Resident (Skilled Employment) Visa
- Pacific and Seasonal Worker Visa
- Temporary Graduate Visa

Recommendation E: Amend s737(1) of the Social Security Act to enable full-time students to access Special Benefit.

Abolish ordinary waiting period and liquid assets test waiting period

41. EJA continues to endorse ACOSS's proposals that the ordinary waiting period and the liquid assets waiting period, which affect start dates for certain social security income support payments, be revoked. We agree that these waiting periods are anomalous, forcing people with modest savings to expend financial buffers needed to meet ongoing costs such as utility bills, and car registration.

Recommendation F: Amend the Social Security Act so as to abolish the Liquid Assets Waiting Period and Ordinary waiting period and replace it with a comprehensive means test.

Amend social security debt waiver provision to address anomaly affecting victim/survivors of domestic violence

42. EJA continues to advocate for the recommendations made in its 2018 report, *How well does Australia's Social Security System support victims of family and domestic violence*⁸, to be implemented in full. In follow up research to the 2018 report, EJA's recent report *Debts, Duress and Dob-ins: Centrelink compliance processes and domestic violence*⁹, found that victim/survivors of domestic violence are unfairly being held responsible for social security debts, including debts that are a direct result of the actions of their abusers.
43. As outlined in these reports, the most effective means of guaranteeing victim-survivors are not held responsible for debts arising from domestic violence is to ensure that domestic violence is a specific consideration when determining if "special circumstances" exist to warrant waiving recovery of a debt under section 1237AAD of the Social Security Act (section 1237AAD).
44. The special circumstances waiver provision currently requires that recovery of a debt may only be waived in the special circumstances of the case if the overpayment was not "knowingly" incurred, either by the debtor or "another person". This wording serves to limit victim-survivors' access to debt waiver even where it is clear that the debt was incurred as a result of duress or coercion by the perpetrator.

⁸ Sally Cameron (Report, 2018) <<https://www.ejaustralia.org.au/wp/general/how-well-does-australias-social-security-system-support-victims-of-family-and-domestic-violence/>>

⁹ Sally Cameron and Linda Forbes (Report, 2021) <<https://www.ejaustralia.org.au/wp/latest-news/debt-duress-and-dob-ins-centrelink-compliance-processes-and-domestic-violence/>>

45. Firstly, there is a need to amend section 1237AAD of the Social Security Act by adding “and willingly” after “knowingly”. This re-wording would enable waiver of a victim-survivor’s debt where their false statement was made under duress relating to the domestic violence, or where their or failure to comply with a requirement was the result of coercion by the perpetrator.
46. Secondly, the fact section 1237AAD of the Act precludes waiver where the debt was caused by a false statement, misrepresentation, or failure to comply by “another person”, means that victim-survivors of domestic violence are forced to repay debts that are the direct result of abuse. We propose that the wording of s1237AAD be amended so as to limit the relevant false statement or false representation of “another person” to a person whose statements, representations, acts or omissions, were authorised (whether formally or informally) by the debtor in circumstances free of coercion or duress.

Recommendation G:

- That section 1237AAD of the Social Security Act be amended to insert the words “and willingly” after “knowingly”.
- That section 1237AAD of the Social Security Act be amended so as to limit the relevant false statement or false representation of “another person” to a person whose statements, representations, acts or omissions, were authorised (whether formally or informally) by the debtor in circumstances free of coercion or duress.

Address Disability Support Pension inequities

47. EJA is encouraged by changes to the DSP contained in the new draft of the DSP Impairment Tables. This includes proposed changes to the requirement that a person’s condition be ‘fully’ diagnosed, ‘treated’ and ‘stabilised’ as a prerequisite to receiving DSP. We understand that the term ‘fully’ as a qualifier has now been removed in the new draft, which will lead to a clearer and fairer assessment process. These changes reflect the recommendations made in EJA’s consultation input, as well as in our submission to the DSP Senate inquiry¹⁰ and our research report, *Barriers to Disability Support Pension access for people with psychiatric impairments and their experiences on JobSeeker Payment*.¹¹
48. EJA’s research report also highlights how the barriers to accessing DSP are particularly problematic for people with psychosocial disability across already vulnerable cohorts - including people in remote First Nations communities and refugees. People in these cohorts may have strong claims for DSP, but they lack access to support and legal advocacy to navigate the process. In the absence of this, many people, including those with severe psychosocial disability, are effectively relegated to JobSeeker Payment or

¹⁰ Economic Justice Australia, Submission to the Senate Community Affairs Legislation Committee, *Inquiry into the Purpose, Intent and Adequacy of the Disability Support Pension* (30 July 2021) <<https://www.ejaustralia.org.au/wp/policy-submission/inquiry-into-the-purpose-intent-and-adequacy-of-the-disability-support-pension/>>

¹¹ Dr Louise St Guillaume et al, (Report, July 2021) <<https://www.ejaustralia.org.au/wp/latest-news/barriers-to-disability-support-pension-access-for-people-with-psychiatric-impairments-and-their-experiences-on-jobseeker-payment/>>

other activity tested payments indefinitely or until they reach Age Pension age. They can also be at high risk of incurring payment suspensions and non-payment penalties as a result of an inability to comply with mutual obligation requirements.

49. Ongoing requirements to negotiate mutual obligations with Employment Services Provider staff who may have no real understanding of the impact of particular impairments or chronic multiple health conditions on work capacity, can cause considerable distress and hardship. This is particularly the case for people who cannot access DSP until they have participated in a 'program of support' for at least 18 months.¹²

Recommendation H: That the DSP qualification criteria be amended, including by:

- Removing the requirement in the revised Disability Support Pension Impairment Tables that that a person's condition be 'fully' 'diagnosed', 'treated' and 'stabilised' in order to be assessed under the Tables.
- amending section 94 of the Social Security Act so as to remove the program of support requirement; OR, in the alternative, amend section 94 so as to include criteria for exempting a person from the requirement.

Abolish compulsory Cashless Debit Card and Income Management

50. EJA continues to strongly oppose compulsory quarantining of social security payments. The legislative change which abolished the Cashless Debit Card (CDC) last year is a positive first step towards this outcome, along with welcome Government investment in infrastructure projects and employment pathways in former CDC communities.
51. Although implementation of the *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022* (Cth) means that the CDC program will cease from March 2023, compulsory income management will remain firmly in place in the Northern Territory (NT) and Cape York. The Government has made commitments to consulting with these communities regarding the future of compulsory income management, but the consultation process and timeline is yet to be determined.
52. EJA endorses and adopts the Australian Income Management Network's (AIMN's) position that all compulsory income management be immediately brought to an end; and that if income management continues as a policy measure, participation should be voluntary and opt-in only.

Recommendation I: Cease all compulsory income management.

¹² For discussion of the CATCH-22 represented by the program of support requirement, see Economic Justice Australia, Submission to the Senate Community Affairs Legislation Committee, *Inquiry into the Purpose, Intent and Adequacy of the Disability Support Pension* (30 July 2021) <<https://www.ejaustralia.org.au/wp/policy-submission/inquiry-into-the-purpose-intent-and-adequacy-of-the-disability-support-pension/>>

Recommendation J: Pending the dismantling of social security compulsory income management, reform Income Management exemption and exit policies and procedures to identify and address systemic barriers to access to exemptions and exits, particularly for First Nations people in remote and very remote communities.

Increase Services Australia staffing

53. EJA is encouraged to see the Community Partnership Pilot with resourcing of Community Partnership Specialist Officers co-located in community services trial sites around Australia. These officers are able to answer questions regarding social security eligibility, income tests and mutual obligation requirements, and assist in resolving issues – enhancing access to justice by addressing of social security issues before they escalate into legal problems.
54. It is critical that similar additional public service resources are invested into all areas of complex need, including to enable provision of additional Mobile Service Centres, and appointment of sufficient Indigenous Service Officers and Multicultural Service Officers to meet local needs. These specialist staff are often at the frontline when it comes to dealing with issues such as family and domestic violence, and homelessness, but staffing levels are inadequate for adequately assessing clients' needs and making appropriate referrals.
55. Resourcing is also needed to ensure there are sufficient specialist Services Australia staff to whom appropriate referrals can be made, particularly social workers. In EJA's experience, social workers within the Centrelink environment are uniquely equipped to work with clients with complex needs, including in relation to domestic and family violence,¹³ and homelessness.¹⁴
56. Despite the crucial role played by Centrelink social workers, EJA members report that many people in acute crisis struggle to access social worker support, with clients often having to wait two to three days – longer in regional and remote communities. Although clients in obvious urgent need of social worker support and referrals are generally offered a phone appointment on the day of contact, phone interviews are not conducive to disclosure of issues such as domestic and family violence, building trust and rapport, and providing warm referrals to local community services. There is a need for all Centrelink offices to have a social work unit, staffed at an appropriate level in light of local needs.
57. Urgent investment is also needed to improve the quality of ARO decision-making, in addition to addressing the long delays in completion of internal reviews of decisions

¹³ Sally Cameron, *How well does Australia's social security system support victims of family and domestic violence?* (Report, August 2018) <<https://ejaustralia.org.au/general/how-well-does-australias-social-security-system-support-victims-of-family-and-domestic-violence/>>

¹⁴ Canberra Community Law and National Social Security Rights Network (now Economic Justice Australia), *Homeward Bound: Social Security and Homelessness* (Report, December 2019) <[Homeward Bound: Social Security and Homelessness | Economic Justice Australia \(ejaustralia.org.au\)](https://ejaustralia.org.au/reports/homeward-bound-social-security-and-homelessness/)>

observed by our members due to the impacts of COVID on Centrelink claim and appeal rates. Our members have seen overwhelmed review officers making overly hasty review decisions that fail to address relevant issues. Our members also see the impact of pressure on AROs who are using template decisions rather than customising their decisions.

58. As noted above, our members have similarly observed that ARO decision letters are increasingly opaque. Poor internal decision-making standards inhibit procedural fairness for individuals and point to rule of law issues on a systemic level. A notable lack of transparency in decision-making has also been exposed by the Robodebt Royal Commission – it is important that the mistakes that led to Robodebt are not repeated.

Recommendation K: Resource Services Australia to enable engagement of additional Mobile Service Centres, Indigenous Service Officers and Multicultural Service Officers.

Recommendation L: Allocate substantial additional funding to enable Services Australia to employ additional Centrelink social workers, particularly given COVID-19 impacts and the rise in risk and incidence of domestic and family violence, and homelessness.

Streamline third party advocacy with an advocates line

59. This submission started with a section explaining the complexity of social security law and administration. Streamlining access for EJA's member centre advocates to Services Australia staff who have the technical expertise and an understanding of administrative review rights to resolve complex client issues would not only ensure that highly vulnerable clients are dealt with promptly, but also relieve pressure on Centrelink frontline staff.
60. Unfortunately, EJA's member centres no longer have a regular channel to facilitate this kind of access, relying on individual personal contacts with particular Centrelink staff. This lack of access is coupled with the increasing need for FOI requests, both to access client records and internal policy guidelines (including the Services Australia Operational Blueprint). As a result, legal advocacy is being obstructed, which is negatively impacting access to justice for vulnerable and disadvantaged people.

Recommendation M: Provide funding to enable establishment of a Centrelink nationwide specialist hotline for community legal centre advocates.

Contact

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Endnote

ⁱ See below extracts from Social Security Rights Victoria's [submission](#) to the Senate Inquiry into the integrity and performance of Australia's administrative review system on the critical and urgent need for adequately resourced specialist social security legal services to meet unmet need for legal representation in the Tribunal.

The SSCSD is the second largest division of the Tribunal, with over 15,700 applications lodged in 2019/2020 and over 13,000 lodged in 2020/2021. Of this, Centrelink reviews made up over 13,000 applications to the SSCSD in 2019/2020 and over 10,000 in 2020/2021. Centrelink appeals in the General Division make up the largest caseload of the Division, with over 2,167 out of 5,584 total lodgements in 2019/2020 and 1,826 out of 4,775 total lodgements in 2020/2021.

In 2020/2021, 19% of Centrelink decisions on review in the SSCSD were changed and 21% of SSCSD decisions appealed to the General Division were overturned.

Applicants at the SSCSD and in Centrelink related matters at the General Division are also the most frequently unrepresented. The following data, showing rates and percentages of legal representation, or lack thereof, in finalised Tribunal matters involving review of Centrelink decisions, has been obtained from the Tribunal's 2019/2020 annual reportsⁱ:

2019/2020	Tribunal decisions made	Number of applicants legally represented	Percentage of unrepresented applicants
SSCSD Centrelink Decisions (1 st review)	14,138	265	98.1%
General Division, Centrelink decisions (2 nd review)	2,131	163	92.4%

There are currently no specific funds for social security legal services provided under the National Legal Assistance Partnership, despite the significant number of people affected by social security and family assistance decisions across Australia, many of whom in vulnerable cohorts - including people experiencing family violence, people with disability, older people, and First nations people, and people from CALD backgrounds, as well as people unable to self-represent for other reasons such as mental illness.

Services Australia is, of course, always legally represented in General Division matters. It is our position that set-aside rates in both Divisions, would be higher in relation to Centrelink matters if more people were able to obtain legal representation.

.....

It is our submission that this gross lack of available legal representation causes an almost complete stifling of the progression of Tribunal precedent to advance the interpretation of social security and family assistance legislation, and ensure it is applied fairly and accurately in all cases. In their 2020/2021 annual report Services Australia conceded that, out of 707 Centrelink (and review) decisions, and 10,531 Centrelink (1st review) decisions, *“the AAT made no decisions that had, or may have, a significant impact on the operations of Services Australia.”*