

Poverty or Safety - Legislative Brief 2024

Modest reforms to the social security system have the potential to greatly improve the lives of many victim-survivors of domestic violence, increasing their capacity to escape abuse and rebuild their lives.

1. Crisis Payment for victim-survivors of domestic violence

A victim-survivor of domestic violence may be eligible for Crisis Payment if they have been forced to leave their home or they have remained in their home after their partner left or was removed due to domestic violence. Paid at the equivalent of a single week of the person's normal social security payment, this modest payment can make a critical difference to a person in crisis.

The issue – Crisis Payment claim period is too short

Crisis Payment has a 7-day claim period which is a poor fit for people who have experienced a traumatic event. People often remain in 'fight or flight mode for some time', while trying to find alternative accommodation (sometimes in hiding), move their belongings, change children's schools, attend medical appointments and/or police interviews, etc. Those who have had a partner removed can face a host of decisions, appointments and associated trauma. Many are unaware of the short claim period and lack access to their online account or face difficulty contacting Centrelink by phone. This issue is well established. The Department of Social Services monitors the frequency of claim rejections as a result of claims exceeding the time limit, and has also tried to 'stretch' the claim period through policy, however, this nuance is not always well understood by frontline Centrelink staff or victim-survivors, who may not claim after seven days, be turned away or have their claim rejected.

- **Required reform** Extend the Crisis Payment claim period to '14 days after the extreme circumstance occurred' (s1061JH, *Social Security Act*)

The issue – Linking Crisis Payment to 'home' locks out people in substandard housing

Crisis Payment can only be paid if a person is forced to leave their home (s1061JH), or they remain in their home after the perpetrator is removed (s1061JHA), however definitions of home are too narrow, excluding people living in substandard accommodation. That locks out people in particularly vulnerable circumstances. It is particularly problematic given the current housing crisis.

The *Social Security Guide* defines 'home' as a 'house or other shelter that is the fixed residence the person would have lived in for the foreseeable future', including 'a house, apartment, on-site caravan, long-term boarding house or moored boat' but not a 'refuge, overnight hostel, squat or

other temporary accommodation'. This excludes people who have been living in substandard accommodation, including a caravan on private property or a tent, even when they have lived there long-term.

EJA suggests the intention of this provision was never to exclude people who are particularly financially vulnerable, but instead to provide support for people forced to move and/or re-establish themselves. Crisis Payment could be more effectively targeted if 'home' were replaced with language such as 'the place where the person has been living' or 'has been residing'.

- **Required reform** Extend the definition of 'home' to reflect the broad range of situations in which people live:
 - Replace the word 'home' with a term encompassing a broader range of residential arrangements, for example, 'where the person has been residing' (s1061JH, *Social Security Act*).

Or

- Extend the definition of 'home' to include a broader range of residential arrangements (3.7.4.20, *Social Security Guide*).

The issue – Requiring establishment of a new home denies Crisis Payment to people in flux

Eligibility for Crisis Payment requires that a victim-survivor of domestic violence has not only left their home but has established, or intends to establish, a new home. The requirement is unnecessary given section s1061JH of the *Social Security Act* already requires that a person cannot return to their home and it is unreasonable to expect them to do so. It also denies the fact that many victim-survivors are forced out of their home and in crisis but hope to reconcile with their partner. Further, s1061JH requires evidence that a person has or is looking for new permanent accommodation – which is completely out of reach of many, given the current housing crisis.

- **Required reform** Repeal the requirement that a person has or intends to establish a new home (s1061JH, (1) (c), *Social Security Act*).

2. Debt Waiver when debt caused by domestic violence

A social security debt may be waived under social security and family assistance law where there are 'special circumstances' (additional to financial hardship) that are unusual, uncommon or exceptional, and it is considered unfair or unduly harsh for the person to have to repay the debt. The process of debt waiver requires the collection and consideration of evidence before a decision maker considers whether the facts constitute 'special circumstances'. The decision to waive remains discretionary. From time to time, this discretion is applied by Services Australia delegates

and the Administrative Appeals Tribunal where domestic violence has played a part in accrual of the debt.

The issue – People are held liable for Centrelink debts accrued as the direct result of domestic violence and coercion

The impacts of domestic violence, particularly coercive control, were not within the purview of Parliament when special circumstances waiver provisions were introduced. As the legislation now stands, ‘special circumstances’ waiver provisions cannot be applied where a victim-survivor has not complied with their social security obligations as a result of threat, coercion or violence - regardless of special or exceptional circumstances. That is because, discretionary debt waiver is not available if a debtor has ‘knowingly made a false or misleading statement or failed to comply with an obligation under social security law’ (s1237AAD, *Social Security Act*). That includes where a victim/survivor has been forced or coerced into making statements regarding their own or their partner’s circumstances, including where those payments were their only source of income or their partner stole those funds.

- **Required reform** Amend the *Social Security Act* to allow access to special circumstances debt waiver provisions where the debt results from a false statement, misrepresentation act or omission made as a result of coercion or duress by amending section 1237AAD to read ‘the debt did not result wholly or partly from the debtor or another person knowingly and willingly’.

Or

- Amend the *Social Security Guide* to provide for statements made under direct threat of violence or coercion to be excluded from considerations of ‘knowingly’ (s6.7.3.40).

The issue – People are held liable for Centrelink debts resulting from a false statement by perpetrators of domestic violence

Discretionary debt waiver is unavailable where a debt arises as the result of a false statement or omission by another person. That includes where a perpetrator lies or provides false documents directly to Centrelink (for example in relation to their income), but the social security or family assistance entitlements were the victim-survivor’s – whether or not the victim-survivor knew the statements were false or had access to the funds.

- **Required reform** Amend section the Social Security Act to allow access to special circumstances debt waiver provisions where the debt results from false statements by a perpetrator who has lied to Centrelink without the victim’s knowledge or under significant threat of violence (s1237AAD).