

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



EJA has partnered with academic researchers at the University of Wollongong, the University of Sydney and the University of Queensland¹, to examine the operation of social security law, and Centrelink debt investigation and recovery practices, for women experiencing family and domestic violence.

The project report – ***Debt, Duress and Dob-ins*** – will be published by EJA later in 2021. The report will build on EJA’s 2018 research, *How well does Australia’s social security system support victims of family and domestic violence?*², as well as data from the new research partnership³.

The project data reveals how victims/survivors of domestic violence can unfairly be held responsible for social security debts and exposed to the risk of criminal prosecution—including in situations where:

- their actions leading to the debt’s accrual were a direct result of threats, physical violence and/or coercion by an abuser
- they or their children received no financial support from an abusive partner or alleged partner during the debt period
- they did not receive any direct benefit from the Centrelink payments constituting the debt
- the abuser intentionally lied or misled them about their income or assets, and this lack of knowledge or misinformation led to the victim’s debt
- the abuser used Centrelink compliance mechanisms to further their coercion and control over the victim/survivor.

The case studies examined include those where, arguably, the domestic violence victim/survivor should not have accrued a debt because she should not, in hindsight, have been considered by Centrelink to have been a ‘member of a couple’ over the relevant period. In some cases, victims/survivors were left with significant debts that they will likely be repaying for the rest of their lives. Others were jailed as a result of their Centrelink debt. Perpetrators have walked away with no repercussions at all.

The improved recognition of the impacts of family and domestic violence within DSS and Services Australia/Centrelink has led to some improvements in provision of support to women disclosing domestic violence but, as the report will make clear, there is a pressing need for deeper systemic and structural reform.

The new report will make recommendations for addressing these issues through law and policy reform. We also need actions to promote better understanding of family and domestic violence among Centrelink decision-makers through training on how domestic and family violence can be relevant to applying particular legislative and policy provisions, especially regarding the raising and recovery of debts. Implementation of these recommendations would significantly reduce the risk of victims of violence being pursued to repay unfair Centrelink debts, and being charged with criminal offences in relation to substantial debts that are the result of the coercive and violent actions of an abusive partner or ex-partner.

1 The Legal Intersections Research Centre at the University of Wollongong (UOW) and its Director, Professor Nan Seuffert, member Dr Scarlet Wilcock (now at the University of Sydney), and Dr Lyndal Sleep, who is a Postdoctoral Research Fellow at the University of Queensland.

2 Available at <https://www.ejaustralia.org.au/general/how-well-does-australias-social-security-system-support-victims-of-family-and-domestic-violence/>

3 The primary data examined in the report will include interviews with EJA member caseworkers, a review of EJA member files, a review of Administrative Appeals Tribunal cases involving Centrelink debts and domestic violence, published case studies and semi-structured interviews with victims/survivors, and is supported by literature reviews and analysis of relevant law and policy documents.

At a more fundamental level, **it is time to consider moving away from using assessment of relationship status as the basic determinant of entitlement in the social security system - a paradigm based on outmoded assumptions regarding traditional gender roles of male breadwinner and dependent female.** Many of the problematic issues for women in the social security system that will be canvassed in the forthcoming report would not exist if they were not paid a lower rate as a 'member of a couple', with payment precluded under the income test if their partner's income exceeds the relevant cut-out threshold. Women receiving independent income support would not be forced into financial dependency on a violent partner; and would not face risk of prosecution for failing to declare a violent partner's income, or for claiming to be single under duress. They also would not be exposed to the ongoing risk of being controlled by the perpetrator of violence, with the threat of being dobbed 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, even if that other person is an abusive partner who has threatened the recipient.** 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 modern 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.

What will be covered in the report?

The report will examine:

- the need to revise policy guidelines to ensure that family and domestic violence is appropriately taken into account when considering whether a social security debt should be waived in the 'special circumstances' of a case
- problems with the narrow scope of the 'special circumstances' debt waiver provisions. Currently waiver is not available where the victim/survivor has 'knowingly' failed to report their circumstances, which means that it is not available to victim/survivors who have been forced or coerced into not complying with Centrelink rules, or where the victim/survivor's debt was caused by their abusive partner's failure to comply
- procedural issues relating to referral of cases to the Commonwealth Director of Public Prosecutions (CDPP) for criminal prosecution, by Services Australia
- options to ensure that where a client has disclosed domestic violence to an EJA member or other community advocate, the service is able to directly access relevant, trained Centrelink staff - including social workers - to avoid re-traumatising the client and to facilitate warm, targeted referrals to family and domestic violence support services
- problems with use of the anonymous 'tip-off', or 'dob-in' line for social security fraud as a tool of harassment, abuse, control and revenge by abusers
- issues relating to the definition of a 'member of a couple' under social security law
- the need for reform of policy guidelines on assessment of relationship status for a person experiencing domestic violence.

Key recommendations

Key recommendations in the report will cover the need to:

- amend decision-making guidelines used by Services Australia and the Administrative Appeals Tribunal to determine relationship status, to make it clear that the presence of family and 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 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 to address barriers to waiving recovery of debts resulting from domestic and family violence
- review Services Australia's 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 CDPD is in the public interest
- ensure that information received by Services Australia through its Fraud Tip-Off Lines is properly triaged, to prevent perpetrators of domestic violence from making spurious anonymous tip-offs as a tool of violence against a current or former partner
- enhanced access to Centrelink social workers
- enhanced 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 National Plan to Reduce Violence against Women and their Children, and in associated action plans.

The *National Plan to Reduce Violence against Women and their Children: 2010-2022* aims to achieve a significant and sustained reduction in family and domestic violence. Ensuring access to social security income must be a critical component of that plan, and of broader strategies to support women to leave and not return to violent relationships. Moreover, social security accessed at times of greatest vulnerability can be critical to victims of violence re-establishing themselves so they may rebuild their lives and move on.

About EJA

Economic Justice Australia is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. See <https://www.ejaustralia.org.au/wp/legal-help-centrelink/>

About EJA's 2018 research report

In 2018, Economic Justice Australia (EJA) undertook a comprehensive review of the capacity of Australia's social security system to support victims of family and domestic violence. The resulting report, *How well does Australia's social security system support victims of family and domestic violence?*, made 32 recommendations to address structural and systemic inadequacies in the social security system that undermine efforts to provide a consistent, effective response to family and domestic violence at the national level.

Several of the report's 32 recommendations have been implemented but there is much more to be done.

- EJA members keep seeing 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 by Centrelink while still living with the perpetrator.
- EJA members keep seeing women with substantial social security debts incurred as a result of domestic violence, including financial abuse, but given the restrictive 'special circumstances' debt waiver provisions of the Social Security Act there is often nothing that can be done. Many women live in fear of facing criminal charges in relation to such debts, even where primary responsibility for accrual of the debt lies with the perpetrator.

EJA's 2018 report is available at <https://www.ejaustralia.org.au/general/how-well-does-australias-social-security-system-support-victims-of-family-and-domestic-violence/>

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