

# Submission to the Inquiry into the Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025

Senate Community Affairs Legislation Committee

26 September 2025

## About ACOSS

The Australian Council of Social Service (ACOSS) is a national voice in support of people affected by poverty, disadvantage and inequality and the peak body for the community services and civil society sector.

ACOSS consists of a network of approximately 4000 organisations and individuals across Australia in metro, regional and remote areas.

Our vision is an end to poverty in all its forms; economies that are fair, sustainable and resilient; and communities that are just, peaceful and inclusive.

## Summary

This bill includes some long overdue, positive reforms to debt recovery that will make the system fairer for people receiving social security. These are most welcome, and we congratulate the government for moving to legislate these changes.

Despite these welcome changes, ACOSS has concerns about the bill's provisions to deal with income apportionment recommends amendments to improve the income apportionment resolution components.

ACOSS appreciates that income apportionment presents an extremely difficult problem for the government to resolve. Up to 5.5 million debts affecting around 3 million people dating back at least to the 1990s have been calculated using income apportionment, which was unlawful. For many of these debts, there are insufficient records about the person's employment income, making it impossible to accurately recalculate entitlements according to the law prior to 7 December 2020. Even if such records were available, the work involved to do these reassessments would be enormous. Given Services Australia is often stretched to meet current demand and administer the system quickly for people, we understand that it would not be a good use of resources for the agency to reinvestigate and recalculate these millions of debts.

ACOSS also understands that there are many people with an outstanding income apportionment debt who have had it paused for years while awaiting an outcome. It is important that these debts are dealt with quickly.

However, we do not think the resolution scheme proposed sufficiently recognises the injustice for many individuals. While many people affected by income apportionment were advantaged by the government's miscalculation of income, many were not, and the Commonwealth owes them money.

Capping resolution payments at amounts up to \$600 will mean many people are still owed money from the Commonwealth because income apportionment resulted in a false debt, or a much higher debt than was warranted.

Furthermore, in its sampling, it appears Services Australia has not calculated other losses incurred by someone affected by income apportionment, like lost Family Tax Benefit, or the 10% recovery fee on a debt. In short, there will be people affected by income apportionment who are owed more money than the sampling suggests, and the resolution scheme provides.

We also recommend that the bill be amended to include a statute of limitations on debt recovery. This would address one of the critical outstanding recommendations from the Robodebt Royal Commission and improve fairness in the debt recovery process.

## **Recommendations**

### **Recommendation 1**

Increase the \$200 small-debt threshold in line with lost CPI increases since its inception (which would make it over \$440 now).

### **Recommendation 2**

The Secretary must ensure that where a debt has arisen because of family and domestic violence, special waiver is still considered where the victim of that violence is unable to provide documentary evidence or have a third party verify the violence.

### **Recommendation 3**

ACOSS supports Economic Justice Australia's recommendation to amend the bill to remove paragraph a of each of the special circumstances provisions to ensure people in need receive this waiver.

### **Recommendation 4**

In its drafting of the legislative instrument for the resolution scheme, the government must ensure there is a straightforward mechanism to properly compensate people who are owed more money from the Commonwealth than the capped amounts currently proposed (\$200, \$400 or \$600).

### **Recommendation 5**

Expand the 12-month timeframe to claim a resolution payment and ensure the proof required is as minimal as possible noting that people will not have retained documents from as far back as 2003.

### **Recommendation 6**

Outstanding income apportionment debts should be waived in recognition of the length of time it has taken for this issue to be resolved, and the stress and other negative effects people have experienced by having a social security debt.

### **Recommendation 7**

The government put in place a six-year statute of limitations from the date the debt accrued. This should be legislated as soon as possible.

## ACOSS supports debt waiver reforms

ACOSS warmly welcomes Schedule 2 in the bill, which will update the definition of a 'small debt' for waiver and expand the special circumstances waiver.

### **Positive reforms to small debt waiver**

Reform of the small debt waiver provisions is sensible and improves fairness. Currently, the Commonwealth can recover debts as small as \$50, with the small debt waiver provisions having remained the same for over 30 years. Lifting the small-debt threshold is long overdue, not only to reduce stress and hardship experienced by people receiving income support, but to also reduce the administrative burden for Services Australia.

At the moment, for someone receiving social security payments, the effective small-debt threshold is \$50, and deductions are made from the person's social security entitlement. For someone no longer receiving social security, it is \$200. We welcome this bill making one threshold for the small debt waiver, rather than two as is currently the case.

We also welcome indexation of the amount that constitutes a small debt, which ensures the new threshold maintains its value over time. We do note, however, that had CPI indexation of the \$200 threshold been in place when it was introduced, it would be over \$440 now. We believe there is a case to be made to lift the small-debt threshold higher than \$250 recognising the loss in value of this threshold over time.

We also welcome the proposal for the one-off waiver of undetermined debts that are below or likely to be below \$250. Given the scale of undetermined debts that are small (in the order of 1.2 million), this is a rational reform that will free up Services Australia to focus on other parts of the system.

### **Recommendation 1**

Increase the \$200 small-debt threshold in line with lost CPI increases since its inception (which would make it over \$440 now).

### **Special debt waiver most welcome**

ACOSS strongly supports the provision to expand the circumstances the Secretary may consider when looking at whether the special circumstances debt waiver provisions may apply. We congratulate Economic Justice Australia, Single Mother Families Australia and other advocates who have long called for the amendment of debt waiver provisions to ensure women experiencing family

and domestic violence are not liable for debts that arise through that violence.<sup>1</sup> Currently, someone who underreports their income to Centrelink because of coercive control and is then found to have a debt, cannot be considered to receive a special circumstances waiver for that debt because the person 'knowingly' gave false information. Part 1 updates this schedule to allow for consideration of other circumstances like coercive control and family and domestic violence that led to falsely reporting income and allows the decision maker to waive a debt that arises in these circumstances.

This part of the bill is an important reform to help stop perpetrators of abuse using the social security system to inflict abuse.

It is positive that the amendment is not strictly confined to episodes of coercive control. It is important that decision makers have discretion to take into consideration a broad array of circumstances that may result in someone knowingly underreporting income (for example) and waive the associated debt.

To strengthen this component of the bill, we recommend that people not be denied special waiver where there is a lack of documented evidence of the coercive control or domestic violence (for example). There are a range of reasons why someone may not report domestic violence to a third party (and indeed, coercive control may lead them to not report). As shown with Crisis Payment for Family and Domestic Violence, around one in six claims are denied by Services Australia because the presence of domestic violence cannot be confirmed by a third party.<sup>2</sup> It will be important for a woman's word to be accepted in cases where there is no documented evidence of the abuse.

ACOSS also shares the concerns raised by Single Mother Families Australia in their submission about women with Family Tax Benefit debts arising from unpaid child support. We encourage the Committee to refer to their submission, which outlines how abuse is perpetrated using the child support system.

In addition, ACOSS supports Economic Justice Australia's recommendation to amend the bill to remove paragraph a of each of the special circumstances provisions. This is to ensure people entitled to a special circumstances waiver receive it.

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<sup>1</sup> Economic Justice Australia (formerly NSSRN) (2018) 'How well does Australia's social security system support victims of family and domestic violence?' [https://www.ejaustralia.org.au/wp-content/uploads/2018/10/Report-summary\\_-\\_NSSRN-social-security-domestic-violence\\_Digital.pdf](https://www.ejaustralia.org.au/wp-content/uploads/2018/10/Report-summary_-_NSSRN-social-security-domestic-violence_Digital.pdf)

<sup>2</sup> Economic Inclusion Advisory Committee (2025) Report to Government <https://www.dss.gov.au/committees/resource/economic-inclusion-advisory-committee-2025-report> p.78

## **Recommendation 2**

The Secretary must ensure that where a debt has arisen because of family and domestic violence, special waiver is still considered where the victim of that violence is unable to provide documentary evidence or have a third party verify the violence.

## **Recommendation 3**

ACOSS supports Economic Justice Australia's recommendation to amend the bill to remove paragraph a of each of the special circumstances provisions to ensure people in need receive this waiver.

## **Resolution scheme needs amendment**

### **Amounts to be paid may fall short of what is owed**

ACOSS appreciates the difficulty faced by the Commonwealth in addressing unlawful income apportionment, that may have affected around 3 million people and up to 5.5 million debts since the 1990s. We understand that the Commonwealth genuinely misinterpreted the law, which has led to this error in calculating debts and entitlements to social security over many years.

We understand the constraints on government to reassess people's entitlements, given the limited evidence available about people's earnings from so long ago as well as limited staff capacity. Reviewing affected debts would incur considerable cost and detract from Services Australia's other critical work. It would also be time consuming, frustrating and in some cases distressing for people affected by income apportionment.

We believe, however, that the resolution scheme falls short of what is required to compensate many people for the income they have lost because of income apportionment.

The proposed resolution scheme payment amounts are outlined in the Minister's Second Reading Speech, and these are to be established by legislative instrument. They are as follows:

- For debts under \$200, the full debt will be repaid.
- For debts between \$200 and \$2,000, the payment would be \$200.
- For debts between \$2,000 and \$5,000, the payment will be \$400.
- For debts above \$5,000, the payment would be \$600.

We appreciate that these amounts will suffice for many people affected by income apportionment. Sampling indicates that 64% of people with an income apportionment debt were overcharged and a further 4% owed no debt at all. For many in these groups, the amount that they overpaid will fall within the amounts proposed by the resolution scheme, and this represents a good outcome for them.

We also understand that some people have been advantaged by income apportionment (sampling indicates some 29% of people paid a debt lower than what they would have owed had the law been followed) and they can still claim a payment from the scheme. For these people, obviously the resolution scheme provides a beneficial outcome.

However, for a lot of people, the resolution scheme amounts will fall short. Darren O'Donovan's analysis shows that of the income apportionment debts reviewed by Services Australia that were reduced upon recalculation, the average reduction was 36%.<sup>3</sup> For someone with a \$5,000 income apportionment affected debt (as an example), a 36% decline represents \$1,800. However, the maximum resolution payment currently proposed for this person would be \$600. The sampling also showed reductions in debts or arrears of up to \$3,600. However, for someone who overpaid this amount to the Commonwealth, it is not clear how they would go about retrieving this money under the proposed legislation, particularly because income apportionment will be validated as an acceptable way to assess employment income retrospectively. As we understand it, unless the individual was able to show their daily earnings, the government would likely revert to income apportionment in 'recalculating' their debt.

The sampling that the resolution scheme appears to be based on seems to exclude a range of other factors that would affect the size of the debt or overall effect on a person. We have several questions that have not been publicly addressed, including:

- Whether anyone with an income apportionment debt who has been prosecuted by the Commonwealth Director of Public Prosecutions would have received a reduced sentence had their debt not been income apportioned **and** was lower as a result (noting that in sentencing the size of the debt *may* be taken into consideration).
- The number of people with a false or inflated income apportionment debt who paid a 10% recovery fee.
- The number of people with a false or inflated income apportionment debt who paid interest on that debt.
- The number of people with an income apportionment debt who were issued with a Departure Prohibition Order because of that debt (we understand these orders are rare).
- If anyone had their payment wrongfully cancelled because of income apportionment. This may arise if someone recorded a nil rate of payment for more than 13 weeks because their earnings exceeded the income threshold and therefore was cancelled off payment.
- How many people had other social security entitlements affected because of income apportionment, including:
  - o Advance payments

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<sup>3</sup> Darren O'Donovan (2024) 'A Generational Miscalculation' 22 March <https://welfare.substack.com/p/a-generational-miscalculation>



- Special Employment Advance
- Family Tax Benefit
- The number of people who did not have an income apportionment debt, but whose entitlements were negatively affected by it (for example, people's working credit or income bank balances).

Given the lack of information about the above, we assume that the government does not have a good understanding of the extent to which people are affected by these issues.

We appreciate that many people affected by income apportionment will be better off under this bill, either because the resolution scheme would provide sufficient compensation or if their debt was recalculated, they would owe the Commonwealth more money. However, just because many people will be better off does not make denying others full repayment of lost income right.

It seems to ACOSS that at the very least, there needs to be a straightforward mechanism that provides for additional payments for people who are owed more than these capped amounts. This is particularly so considering that someone with several smaller income apportionment debts could receive much more in compensation under the proposed scheme than what someone with a single debt who is owed more than the capped amounts would receive (because the resolution payments are paid per debt).

ACOSS also recommends that the time limit to claim a payment under the scheme be expanded beyond 12 months to ensure that those eligible who would like to claim a resolution payment have sufficient time to do so. We note that Robodebt refunds have taken far longer than 12 months (and indeed some are still outstanding)<sup>4</sup> highlighting that people need sufficient time and information about the scheme to access it. We also call for evidence requirements to access the scheme to be as minimal as possible acknowledging the time passed and that people will not have retained records dating back to 2003.

#### **Recommendation 4**

In its drafting of the legislative instrument for the resolution scheme, the government must ensure there is a straightforward mechanism to properly compensate people who are owed more money from the Commonwealth than the capped amounts currently proposed (\$200, \$400 or \$600).

#### **Recommendation 5**

Expand the 12-month timeframe to claim a resolution payment and ensure the proof required is as minimal as possible noting that people will not have retained documents from as far back as 2003.

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<sup>4</sup> As at December 2024, 2,600 people were still owed Robodebt refunds, with the highest outstanding refund being \$21,544 – response to question on notice, 19 December 2024, Senate Estimates, Community Affairs: <https://www.aph.gov.au/api/qon/downloadattachment?attachmentId=25b6827d-ed1d-4b38-89f0-3f73776d8d1c>



## **Fairness of releasing the Commonwealth of liability and retrospectivity**

The bill includes a provision that where someone successfully claims a resolution scheme payment for an income apportionment affected debt, they release the Commonwealth from liability for having unlawfully calculated that debt.

Our concern with this provision is that it seeks to absolve the Commonwealth of full responsibility for unlawfully calculating people's social security entitlements. It stands to reason that people receiving social security, who comprise 48% of people affected by income apportionment, will likely seek resolution payments. They will have a strong impetus to access the scheme because they are likely to be on a very low income and need urgent support. However, in doing so, they will seemingly forgo their right to hold the government accountable for getting it wrong.

As Terry Carney has pointed out, the number of people who have their day in court with a social security issue is shockingly low, highlighting how people in receipt of social security are disadvantaged in ensuring their rights are upheld.<sup>5</sup> Our concern is that, when we know people who receive social security are typically very disadvantaged when it comes to upholding their rights, this bill will see many unable to get true justice with their case.

Furthermore, because the Commonwealth will validate income apportionment as a lawful way to calculate entitlements retrospectively, someone who does not claim a payment via the resolution scheme but who is owed money from the Commonwealth will have limited scope to fully hold the government to account. We understand they will be able to seek a merits review, but unless they can provide evidence of daily income (as we understand it) the Commonwealth may still recalculate their entitlements using income apportionment because it would be lawful to do so.

It is in this context that we are uncomfortable with the government making income apportionment retrospectively lawful. At the very least, we think that it is best for the government to waive the 160,000 outstanding income apportionment debts rather than recalculate them using income apportionment. Waiving these debts would recognise the long period of time people have been waiting for a resolution, which for many has caused distress and other negative outcomes.

### **Recommendation 6**

Outstanding income apportionment debts should be waived in recognition of the length of time it has taken for this issue to be resolved, and the stress and

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<sup>5</sup> Terry Carney (2023) 'Unravelling Robodebt: Legal Failures, Impact on Vulnerable Communities and Future Reforms' <https://www.sydney.edu.au/law/news-and-events/news/2023/12/13/unraveling-robodebt-legal-failures-impacts.html>

other negative effects people have experienced by having a social security debt.

## **Need a statute of limitations on social security debts**

ACOSS reiterates its call for a statute of limitations on debts to be legislated after it was removed in January 2017. Two years on from the release of the Robodebt Royal Commission report, which recommended that the statute of limitations be returned, it is well beyond time that the government put it in place.

We call for the statute to be six years from the date the debt accrued. This limitation will incentivise the government to act quickly to address social security debts and increase fairness for people receiving social security payments. It would also reduce the administrative burden for Services Australia and people receiving social security as it would no longer be possible to recover debts from beyond six years in the past.

### **Recommendation 7**

The government put in place a six-year statute of limitations from the date the debt accrued. This should be legislated as soon as possible.

## **Acknowledgements**

ACOSS thanks Economic Justice Australia, Anglicare Australia, Single Mother Families Australia and Dr Christopher Rudge for their engagement in preparing this submission.

## **Contact**

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