



Australian Government
Department of Social Services

Submission to Senate Community Affairs Legislation Committee Inquiry into the **Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025**

Department of Social Services and Services Australia

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Introduction

The Department of Social Services (the Department) and Services Australia welcome the opportunity to make a submission to the Community Affairs Legislation Committee about the Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, referred for inquiry on 4 September 2025.

This submission should be read in conjunction with the Explanatory Memorandum to the Bill. This submission has been drafted to expand on the explanations and information about the measures in the Bill provided in the Explanatory Memorandum.

If there is additional assistance or information beyond this submission that would support the Committee in its consideration of the Bill, the Department and Services Australia are able to assist.

Overview of the Bill

The Bill contains 4 Schedules giving effect to the following measures:

Schedule 1

- Provide a legal basis for the long-standing historical method of apportioning employment income, known as income apportionment, by providing retrospective express legislative authority for the method as it applied to entitlement periods between 1 July 1991 and 6 December 2020.
- Clarify lawful methods for apportioning employment income in respect of entitlement periods from 1 July 1991 to 6 December 2020, to determine a debt or rate of payment for prospective debt decision-making.

Schedule 2

- Expand the instances in which the special circumstances waiver may be applied to waive debts incurred under each respective Act.
- Increase the threshold for waiving a small debt to \$250 and annually index the waiver threshold to the Consumer Price Index, along with operational improvements to the application of the waiver.
- Provide a one-off waiver of the Commonwealth's right to recover undetermined social security and family payment debts¹ recorded in Services Australia's systems, where those amounts have not yet been raised as a debt immediately before commencement.

Schedule 3

- Establish the Income Apportionment Resolution Scheme (Resolution Scheme) as part of the social security law.

Schedule 4

- Create a new special appropriation for the purposes of the Bill.

The Bill gives effect to policies announced by the Minister for Social Services, the Hon Tanya Plibersek MP, and Minister for Finance, Senator the Hon Katy Gallagher, on [27 August 2025](#) and [31 August 2025](#).

¹ The term 'family payment debts' refers to debts under the family assistance law and *Paid Parental Leave Act 2010*, including debts related to Family Tax Benefit and Child Care Subsidy.

Schedule 1 – Income Apportionment

Validating the historical use of income apportionment

Income apportionment was a long-standing method used by Services Australia (and its predecessors) to assess employment income. It is now recognised that in many cases, the use of income apportionment was inconsistent with the social security law in force at that time.²

Schedule 1, Division 2 of the Bill retrospectively validates the historical use of income apportionment. Debts calculated using income apportionment would stand and be enforceable and would not need to be recalculated. Any other action that occurred because of that debt would also be validated, including debts arising under other Acts (e.g. family assistance debts).

Retrospectively validating the historical use of income apportionment reflects the information known about:

- the circumstances in which income apportionment was used;
- the time period over which income apportionment was used;
- the number and nature of the debts potentially affected by income apportionment;
- the likely impact of income apportionment on these debts; and
- the effort required to correct historical decisions affected by income apportionment.

Circumstances in which income apportionment was used

Retrospective validation recognises income apportionment was a reasonable approach to determine a person's entitlement to social security. It was a method which used probative evidence (usually a person's payslip) to assess their means to support themselves in a given Centrelink payment instalment period. Unlike Robodebt, it occurred where there was probative evidence of income being earned or received while a person was accessing income support.

Income apportionment was a genuine misunderstanding of how the law worked and was standard practice that went largely unquestioned for a significant amount of time. This was corroborated by extensive research undertaken for the Department, including reviews of legislation, interviews with long-standing government officials in the space, and major academics and senior commentators in the social services space.

Time period over which income apportionment was used

Exploratory, sampling undertaken by Services Australia has confirmed that debts dating back to at least 2003 were calculated using income apportionment. Research undertaken by the Department indicates the use of income apportionment was likely common practice in 2003, and it was likely used as far back as the 1990s.

² For more information on the history of income apportionment, and the interaction with the law in force at the time, see pages 1-2 of the Explanatory Memorandum to the Bill, or the Commonwealth Ombudsman's report '[Lessons in Lawfulness](#)' from August 2023.

On 7 December 2020, amendments under the *Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Act 2020* took effect. Though those measures were not specifically aimed at addressing income apportionment, they simplified income reporting by introducing a method of daily income attribution based on the instalment period in which an income amount was “paid”, rather than “earned” or “received”. Using “paid” made it unnecessary to use income apportionment because the 2020 legislative changes allowed for a method of calculation based on information that is more readily available to the decision maker, and it specifically overrides the requirements to take income into account in the fortnight it is first “earned”.

The number and nature of debts potentially affected by income apportionment

The Department estimates around 5.5 million historical debts may *potentially* be affected by income apportionment. This is based on research undertaken by the Department into the circumstances in which the use of income apportionment was likely invalid, and the types of debts potentially affected (those relating to the assessment of employment earnings).

Not all of these 5.5 million debts would be affected by income apportionment. Exploratory sampling undertaken by Services Australia found around 63% of employment income related debts were found to have relied on income apportionment when manually reviewed. It is not possible to know if a debt is or is not affected without a manual review of each debt.

In addition to the above, there are around:

- 16,000 formal reviews paused as they may be affected by income apportionment.
- 6,000 explanations of decisions paused as they may be affected by income apportionment.
- 87,000 undetermined debts known to Services Australia which may be affected by income apportionment.

Activity relating to these reviews, explanations of decisions and potential overpayments was paused in July 2021 due to uncertainty around how to correctly apply social security law to these decisions. In accordance with recommendation 1A from the Commonwealth Ombudsman’s statement *Lessons in Lawfulness*, the Department also sought the advice of the Solicitor-General regarding income apportionment. That advice was received on 22 December 2023. Clarity on how to apply the social security law to these paused decisions was provided by the Full Court of the Federal Court in *Chaplin v. Secretary, Department of Social Services* [2025] FCAFC 89. Decision making for these matters is in the process of being recommenced in line with the Full Court’s decision. Should this Bill pass, the matters will progress in line with the rules for future decision making in Schedule 1, Division 3 (refer below).

The likely impact of income apportionment

On the recommendation of the Commonwealth Ombudsman, Services Australia undertook exploratory sampling to better understand the likely impact of income apportionment on debt values.

This sampling compared:

- The debt amount on record
- The debt amount when recalculated using the Department's interpretation of the law (which has since been upheld in *Chaplin v. Secretary, Department of Social Services*)

Services Australia sampled a range of debt records, including raised debts, AAT matters and not-yet raised debts ('undetermined debts'). The sampling of determined debts best reflects the likely recalculation outcomes for the broader debt population. Table 1 shows the outcomes of the sampling for determined debts. The sampling of determined debts includes debts raised back to 2003.

Table 1: Key statistics from sampling of determined debts

	Determined Debts
Related to employment income	970
Relied upon income apportionment	614 (63%)
Recalculations conducted	409
Downward Variations	254 (62%)
Average variation	-\$187.85
Median variation	-\$98.83
Upward Variations	126 (31%)
Average variation	\$193.58
Median variation	\$67.32
Arrears	18 (4%)
Average arrears amount	\$113.57
No Change	11(3%)

Source: Services Australia Record Sampling Activity Report - November 2023 - February 2024

While not exhaustive, the exploratory sampling suggests that in general the impact of income apportionment on the debt amount was likely relatively small. The median change from the sampling when a debt was recalculated was less than \$100. The data suggests in most cases the debts would still exist if recalculated not using income apportionment.

Table 2: Variations in the sampling of determined debts

Increased or decreased by less than...	Proportion
\$50	35%
\$100	53%
\$150	67%
\$200	73%

Source: DSS Analysis of Services Australia Record Sampling Activity unit data

Illustrative examples on pages 17-19 of the Explanatory Memorandum to the Bill outline how income apportionment worked in practice.

The effort required to correct historical decisions affected by income apportionment

Investigating and recalculating the 5.5 million debts potentially impacted by income apportionment would be resource and time intensive. This would require:

- Manually reviewing each of the historical debts related to employment income to see if it was affected by income apportionment;

- Seeking additional information from the individual and, if necessary, employers and financial institutions. This will place additional administrative burdens on these parties;³
- Recalculating the debt based on the new information;
- Making refunds to customers where debts have been over-recovered; and
- Seeking further recovery where the debts have increased on recalculation, where appropriate.

The recalculation of all debts would involve significant administrative and operational cost and require the diversion of substantial expert resources from elsewhere in Services Australia. It cannot be addressed by simply increasing staffing, given the levels of expertise required. This diversion of resources would likely lead to significant delays and inefficiencies in providing income support (e.g. claims processing, telephony, face-to-face support) to those who currently need this support now.

Services Australia advises the end-to-end recalculation process can take on average between 7.5 hours for each simple debt to 30 hours for each complex debt. Allowing time for each step (above), a recalculation can take around 2 months.

Recalculating all potentially affected debts could significantly disrupt the lives of millions of people. Debts, some many decades old and fully repaid, would be re-opened, which could cause distress to affected individuals. It is likely most people affected do not know they have a debt where income apportionment was used. Engaging and refunding individuals who are no longer in the system, vulnerable customers or deceased customers will be particularly difficult, and would often be for very small amounts. This will subject people with potentially affected debts to years of waiting and uncertainty before any resolution is provided. This includes those people with debts with recovery or review paused, who have already faced an extended period of uncertainty.

In addition, given the average age of a potentially income apportionment affected debt is 19 years old, sufficient evidence for recalculation is unlikely to be available from employers and financial institutions in many cases.

Services Australia tested correspondence about income apportionment with customer reference groups. This testing has shown explaining income apportionment is difficult, given the complexity of the issue. Any resolution approach which requires explaining complex recalculations to individuals risks these recalculations and the intent of any process being poorly understood.

What the validation means for those with debts affected by income apportionment

Individuals with debts affected by income apportionment will have their debt automatically validated by this legislation. Their debts will not be required to be recalculated or reassessed.

Individuals still repaying their debt will be required to continue repaying the current debt amount and recovery will recommence for debts affected by the current debt pauses.

³ For additional information on the regulatory impost of recalculations, refer to the impact analysis prepared for the Bill, including in the Explanatory Memorandum to the Bill.

Individuals with debts reasonably likely to be affected by income apportionment can apply for a resolution payment under the Income Apportionment Resolution Scheme.

Preservation of general law and appeal rights

Individuals can still access the courts to make a claim about the use of income apportionment unless those individuals are offered and accept a payment under the resolution scheme.

The validation of income apportionment does not affect the review and appeal rights of those affected. Individuals still maintain review and appeal rights, to the extent they have not exhausted them. Any review (including by a Services Australia Authorised Review Officer, the Administrative Review Tribunal, or a court) would be undertaken having regard to the rules for future decisions in Schedule 1, Division 3 (refer below). Reviews and appeals can also continue to be made in respect of decisions about the debt unrelated to income apportionment (e.g. decisions around qualification, couple status, waiver decisions, etc.).

Future decision making

Schedule 1, Division 3 provides a lawful method for making decisions relating to pre-7 December 2020 employment income and applies to any payment types where income apportionment would have been unlawful. Together with the validation of income apportionment, this method ensures pre-7 December 2020 employment income is treated the same regardless of when it was assessed.

How the method for future decisions will work

The method for future debt decision making codifies the long-standing steps used by Services Australia (and predecessor entities) for assessing pre-7 December 2020 employment income. The method allocates the income to an individual's Centrelink instalment periods based on the evidence available to the decision maker at the time a decision is made.

- Where the decision maker has evidence of the exact instalment period in which the income was earned, the decision maker assesses the income in that instalment period (the First Approach).
- If the First Approach does not apply, but the decision maker has evidence regarding the payroll period in which the income was earned, the decision maker apportions the income across the payroll period and assesses the income in the corresponding instalment periods (the Second Approach, 'income apportionment').
- If the First or Second Approaches do not apply, the income is to be assessed in the instalment period in which the person received it (the Third Approach).

This method means the best available evidence is used to assess the employment income. It recognises a lack of precise information as to when the income was earned should not prevent employment income from being assessed.

Decision makers must follow the strict hierarchy of this method. This ensures consistent decision making. Where the same evidence is available about an amount of employment income, the same approach will be used.

Illustrative examples on pages 25-27 of the Explanatory Memorandum to the Bill outline how this method works in practice.

What the new method means for those with debts affected by income apportionment

This method for making future decisions will be used where, for example:

- a debt decision potentially affected by income apportionment has been on hold;
- a past debt decision affected by income apportionment is subject to merits review; or
- a new debt is raised relating to pre-7 December 2020 employment income.

Where a past debt decision affected by income apportionment is reviewed under the new rules, the assessment of employment income will not change unless there is better information as to when the income was earned.

Schedule 2 – Debt waivers

Schedule 2 to the Bill reforms the legislative regimes for social security and family payment debt administration to create a fairer, more cost-effective debt management system.

This schedule expands the special circumstances waiver provisions to allow Services Australia to consider all the circumstances that lead to someone ‘knowingly’ making a false statement in relation to a debtor not complying with the law, including circumstances of coercion or financial abuse.

It also increases the existing small debt waiver threshold to \$250, as well as indexing the value each year in July, in line with changes to the Consumer Price Index.

Special circumstances waiver

Under existing legislation⁴, a social security or family payment debt can be waived (in full or part) where ‘special circumstances’ exist.⁵

However, currently the special circumstances waiver cannot be applied where the debtor or another person knowingly make a false statement or fail to comply with the law. This was intended to prevent those committing fraud from accessing debt relief, but it had the unintended consequence of denying debt relief to those with justified reasons for making a false statement or not complying with the law.

This includes victims of financial abuse and coercive control, but also people with reduced mental capacity, people affected by the impact of natural disasters, people with serious addiction to drugs and alcohol, or people experiencing homelessness.

Schedule 2, Part 1 makes changes to relevant Acts to amend the special circumstances waiver. Under the changes in the Bill, decision makers will be able to apply the special circumstances waiver where:

- The debt did not result wholly or partly from the debtor or another person knowingly making a false statement or a false representation or failing to comply with the law.
- The debt resulted (wholly or partly) from such an act or omission by the debtor, but that act or omission was justified in the circumstances.
- The debt resulted (wholly or partly) from such an act or omission by another person, but either:
 - the debtor did not know about that act or omission; or
 - the debtor was justified in the circumstances for not correcting that act or omission.

The waiver will continue to be contingent on:

- There being special circumstances (other than financial hardship alone) that make it desirable to waive the debt; and
- It being more appropriate to waive than write off the debt or part of the debt.

⁴ See section 101 of the *A New Tax System (Family Assistance) (Administration) Act 1999*, section 199 of the *Paid Parental Leave Act 2010*, section 1237AAD of the *Social Security Act 1991* and section 43F of the *Student Assistance Act 1973*.

⁵ For more information about what constitutes ‘special circumstances’, refer page [6.7.3.40 of the Guide to Social Security Law](#).

Under the new special circumstances waiver, decision makers will be able to consider all a person's circumstances which may explain why they made a false statement or failed to comply with the law, before deciding whether to apply a waiver. This includes whether the person was coerced, or a victim of financial abuse.

- The term “justified” is used in the wording of the new provision. This is because “justified” provides a subjective test for the Secretary's consideration and satisfaction of whether an act or omission was warranted in the particular circumstances of the case. This includes considering the personal perspective of the debtor.
- A deliberate decision was made not to use wording like “reasonable” as this could be interpreted as requiring an objective test based on what a reasonable person would have thought or done in the particular circumstances of the case. That is, whether a reasonable person in the debtor's circumstances would have acted in that way. In a social security debt context, “reasonable” is used for tests like whether a person should be excused from interest charge (subsection 1229F(2)), or excused from the 10% penalty for understating income (subsection 1228B(4)). These are situations where the objective ‘reasonable person’ test was seen as the appropriate benchmark.
- The Department considers the subjective test of ‘justified’ is more appropriate in this context, as the decision around the waiver should be based on the subjective experiences of the individual (particularly in circumstances of coercion or financial abuse). It matches the subjective test of whether ‘special circumstances’ exist.
- Interpretation of “justified” for the purposes of the special circumstances waiver will be supported by the detail in the explanatory memorandum, the Guides to Social Policy Law, and Services Australia's Operational Blueprint.

Illustrative examples on pages 34-39 of the Explanatory Memorandum to the Bill outline situations where the waiver cannot currently be applied, and the benefits of the proposed changes to the waiver.

This reform responds to part of recommendation 58 of the 2024 Parliamentary Joint Committee on Corporations and Financial Services' inquiry into Financial Abuse, which recommended amendments be progressed to *“ensure that a victim-survivor is not precluded from accessing a special circumstances waiver if a perpetrator lies to Services Australia without the debtor's knowledge or consent, or the debtor makes a false statement or misrepresentation as a result of coercion or duress by a perpetrator.”*

Where there is no reason justifying a debtor knowingly providing false information or failing to comply with the law or justifying why a debtor did not correct the act or omission of another person they knew of, decision makers will not be able to apply the special circumstances waiver. This prevents the waiver from being applied where people clearly and intentionally deceived Services Australia or set out to defraud the Government.

The changes to the special circumstances waiver will apply from commencement of the Bill. All debts, regardless of age or value, will be eligible to be considered under the revised waiver.

Those with historical or current debts will be able to seek review of their debt and have their circumstances considered under the new provisions.

Small debt waiver

The Bill will increase the threshold for waiving small debts to \$250. This reflects a fair, equitable and financially responsible approach to debt management.

The process for raising and recovering a debt

Social security and family payment debts arise where a payment should not have been made, or should have been made at a lower rate, because:

- the person was not qualified for the payment or the payment was not payable to them (for example, they did not meet all the eligibility criteria under the law to receive the payment); or
- the payment was payable at a different amount (for example, because of the operation of the income or assets tests, or because the person was eligible for the lower partnered rate of payment rather than the higher single rate of payment).

Practically, overpayments occur where:

- the information held by the Government, and used to determine the person's eligibility for payment and/or rate of payment, does not align with the person's circumstances; or
- an administrative error occurs.⁶

Unless a debt is waived or written off, government is required by law to recover overpayments of social security and family payments. Raising and recovering a debt comes at administrative cost.

When Services Australia is alerted to a change in circumstances (e.g. a change in income or assets, a change in partnered status), an 'undetermined debt' can arise on Services Australia's systems. This typically occurs when Services Australia receives information about a person which may affect their rate of entitlement for a prior period. This could be through reporting from the person themselves or a third party, or from an investigation by Services Australia.

Some debts are never undetermined; they are raised for recovery when the change of circumstances occurs. This occurs where there is clear evidence of overpayment, and the decision to raise a debt is clear. An example of this are debts which occur through the Family Tax Benefit reconciliation process - a person's tax return has all the information necessary to determine their change in eligibility for Family Tax Benefit, and a debt can be raised.

Where undetermined debts are created, Services Australia investigate them to determine whether they are a debt to be raised for recovery.

⁶ Each of the relevant legislative schemes provides for waivers of debts for situations where an overpayment is solely due to administrative error, and the overpayment was received in good faith. See section 97 of the *A New Tax System (Family Assistance) (Administration) Act 1999*, section 195 of the *Paid Parental Leave Act 2010*, section 1237A of the *Social Security Act 1991* and section 43B of the *Student Assistance Act 1973*.

This is a predominantly manual process. Debts deemed to be non-recoverable are either raised and waived (for example, debts which fall under the relevant small debt waiver threshold, or a product of sole administrative error) or finalised as non-debts (for example, undetermined debts found on review not to reflect an actual overpayment).

If a debt is found to be recoverable, it is raised, and the person is notified they have incurred a debt. Debts may then be reviewed including via internal review by an Authorised Review Officer and by the Administrative Review Tribunal.

Once raised, debts also require ongoing management. Debts may be permanently written off where they become irrecoverable at law (for example, the person is discharged as bankrupt), or temporarily written off (for example, where a person is experiencing financial hardship).⁷ Recovery of debts also requires maintaining repayment arrangements and ensuring repayment arrangements are responsive to the needs and circumstances of individuals.

The process of reviewing an undetermined debt, raising a debt for recovery, maintaining and reviewing recovery arrangements and undertaking formal reviews of a debt requires resourcing. For small debts, the cost of these processes is often higher than the debt itself.

Debts, including small debts, can also represent an administrative, financial and emotional burden on individuals. It is therefore important policy settings promote recovery action proportionate to the value and seriousness of the overpayment being recovered. This is consistent with the beneficial nature of social security and family payments law and the intended purpose of Australia's social welfare system.

The purpose of the small debt waiver

The small debt waiver was designed to ensure debt recovery remains cost effective and proportionate. When introduced, the current thresholds of \$50 (for those receiving ongoing payments) and \$200 (for those not receiving ongoing payments) reflected the understanding of when it was cost effective to recover a debt.

The \$200 threshold was introduced in 1993, with the lower \$50 threshold introduced in 1995. These amounts have never been adjusted since then.

Table 3: Increases in key indicators since 1993

	CPI	Single full rate Age Pension	Single full rate working age payment
Value in 1993	60.8	\$8,114.60	\$6,162.00
Value in 2024	139.4	\$29,874.00	\$20,537.40

Source: ABS; Guide to Social Security Law

⁷ At any time, a temporary write off can be reversed and recovery proceedings begun where circumstances change. A debt may also be partially or fully waived. Waivers are distinct from write-offs in that they extinguish the debt such that it is deemed never to have existed.

Table 4: Illustrative increases in small debt waiver thresholds, had they been linked to the value of payments or CPI since 1993

If the threshold had increased in line with...	CPI	Single full rate Age Pension	Single full rate working age payment
\$50 (current recipients)	\$114.60	\$184.10	\$166.60
\$200 (ex-recipients)	\$458.60	\$736.30	\$666.60

Source: DSS Analysis of ABS; Guide to Social Security Law

The current waiver is also applied differently, depending on:

- whether a person is receiving ongoing payments: those receiving ongoing payments are subject to a lower threshold of \$50.
- the Act the debt arises under: the waivers in the *Social Security Act 1991*, *A New Tax System (Family Assistance) (Administration) Act 1999*, and *Paid Parental Leave Act 2010* require debts to be less than \$50 (or less than \$200 for non-current recipients), while the *Student Assistance Act 1973* has one threshold of \$50 for all debtors.
- the method by which the debt arises: the test in the current waiver that the debt 'is not cost effective to recover' is subjective, and means some debts raised through automated processes do not have the waiver applied, while those requiring manual processing do.

Changes to the small debt waiver

Schedule 2, Part 2 of the Bill:

- Increases the threshold for applying the small debt waiver to \$250, reflecting a more current reflection on what is 'cost effective' to recover.
- Indexes the threshold annually to CPI, ensuring the threshold maintains its value over time.
- Standardises the application of the waiver across current and former recipients, different payments, and the method by which the debt arises.

The changes to the small debt waiver will commence from 20 March 2026, or 14 days after the Bill receives Royal Assent (whichever occurs later). The first indexation of the threshold will occur on 1 July 2026.

One-off waiver of small undetermined debts

Schedule 2, Part 3 of the Bill provides for a one-off waiver of small undetermined debts known to Services Australia when the small debt waiver commences.

Consistent with the increase to the small debt waiver in Schedule 2, Part 2, this one-off waiver addresses the large backlog of undetermined debts. There are currently around 2.3 million undetermined debts currently known to Services Australia, of which around 860,000 are below \$250. This backlog is largely a product of successive pauses on debt raising activity during COVID-19 and periods of natural disasters. The one-off waiver of these undetermined debts acknowledges that it is not cost-effective to manually investigate, and where appropriate recover, small undetermined debts.

Impacts of changes to the small debt waiver and the one-off waiver of small undetermined debts

The change to the small debt waiver and the one-off waiver of small undetermined debts will almost halve the backlog of undetermined debt by the end of 2025-26, with around 1.2 million undetermined debts expected to be waived or no longer needing to be raised as a result.

Not all undetermined debts are raised for recovery once investigated.

The Department estimates the changes to the small debt waiver, and the one-off waiver of small undetermined debts, will result in:

- around 420,000 small debts waived in 2025-26 that otherwise would have been raised for recovery.
- around 200,000 small debts waived in each subsequent year that otherwise would have been raised for recovery.

The change to the small debt waiver will only apply to debts under \$250 which are raised after the commencement date or were raised before but varied after this date. Anyone who already has a debt they are paying off will not be affected by these changes, unless the debt is varied after the commencement date (for example, following a review) and the debt amount is reduced to under the threshold. However, it will not affect a debt that was originally higher than \$250, but through recovery is now below the small debt waiver threshold.

People do not need to apply for the small debt waiver. Services Australia will automatically waive a debt where it is under the threshold.

Schedule 3 – Income Apportionment Resolution Scheme

Schedule 3 to the Bill establishes the Income Apportionment Resolution Scheme (the Scheme) to provide a resolution payment to persons whose debts have been affected by income apportionment during a debt period between 20 September 2003 and 6 December 2020.

Introducing a Scheme alongside retrospective validation of income apportionment acknowledges the use of income apportionment led to incorrect debt amounts as the law applied. It is an equitable approach which offers individuals affected by income apportionment a convenient method to seek fair and reasonable compensation from the Government.

Under Schedule 3 to the Bill, the Minister will make a legislative instrument to establish the operational requirements for the Scheme.

Applications to the Scheme

People will be able to apply for the Scheme via existing channels for accessing their Centrelink details, including via myGov. For those who do not have an online account, they will be able to put in a claim over the phone. People will need to confirm some basic identification details, including to ensure Services Australia has their current contact details.

Eligibility for the Scheme

It is proposed that applications to the Scheme will be open for one year (unless an extension of time is granted in special circumstances).

People with debts affected by income apportionment from 20 September 2003 to 6 December 2020 will be eligible to apply for a resolution payment. This includes consequential debts indirectly affected by income apportionment (such as Family Tax Benefit debts). The main entitlement provisions are set out in item 2 of Schedule 3.

Eligibility is limited to 20 September 2003 onwards as changes to social security law were made in September 2003, which provided a point in time when the use of income apportionment was inconsistent with provisions in the *Social Security Act 1991*.

Resolution payments offered under the scheme

People affected by income apportionment will be entitled to up to \$600 as a one-off payment or as a reduction on an outstanding debt (if they choose). Payment amounts will be according to the following scale:

Table 5: Resolution payment scale

Debt amount	Resolution payment amount
Up to \$200	The full debt amount
\$200 up to \$2,000	\$200
\$2,000 up to \$5,000	\$400
More than \$5,000	\$600

This payment scale reflects the likely impact of income apportionment on debts observed in Services Australia's exploratory sampling. Services Australia's exploratory sampling showed very small debts (those less than \$200) are the most likely to significantly decrease due to income apportionment, in terms of proportion of total debt value. For larger debts, the more likely outcome is a small reduction in debt. However, the resolution amount scale increases slightly as the debt value increases to reflect the moderate trend that higher debt values have higher reductions in their debts, on average.

The Department expects this payment scale will result in the vast majority of those affected by income apportionment being made better off overall, compared to if their debt was recalculated to remove the use of income apportionment.

The debt amount used for determining a resolution payment amount is exclusive of any waivers already applied to the debt.

It is intended resolution payments will be exempt from the social security income test. Prior to the Scheme commencing, the Secretary will make a determination under subsection 8(11) of the Social Security Act 1991 to this effect.

The Department has confirmed with the Australian Tax Office that the nature of these resolution payments means they will not be assessable income.

Effect of accepting a payment under the Scheme

Individuals will have the choice to apply for the Scheme, and to accept offers of resolution payments. As part of accepting an offer of a resolution payment, the person must agree to release and discharge the Commonwealth from all liability in relation to any claim against the Commonwealth that arises as a result (whether directly or indirectly) in relation to the use of income apportionment in respect to the relevant debt (refer to subitems 2(5) and (6) in Schedule 3, effect of effective acceptance of offer of resolution payment).

The accepting of a payment under the Scheme does not affect the merits review and appeal rights related to the debt. Individuals still maintain merits review rights, to the extent they have not exhausted them. An individual can seek review of other aspects of their debt. For example, if the person accepts a resolution payment in respect of a debt they can still, in relation to that debt:

- Seek review of the decision to treat them as a member of a couple.
- Seek review of the amount of income assessed (for example, if they had evidence showing their partner earned less over the relevant period than what was assessed). In this case, the income would be re-assessed using the prospective decision-making rules that are set out Schedule 1 of the Bill.
- Seek a waiver of the debt under the waiver provisions (e.g. sole administrative error or special circumstances).

The effect of accepting an offer under the Scheme will be clearly outlined to those applying, including in the notice outlining the offer.

People can choose to receive the resolution payment as a one-off payment or as a reduction on an outstanding debt due to the Commonwealth (if they choose). The acceptance process would require the collection of bank account information in order to progress the payment, where applicable.

Review of scheme decisions

The Scheme will have its own internal review process. Due to the time limited nature of the Resolution Scheme, it is appropriate that a single internal review process is provided for in the determination rather than relying on the review and appeal processes in Part 4 and 4A of the *Social Security (Administration) Act 1999*.

Internal review of entitlement decisions under the Scheme will be limited to the assessment of whether the debt is eligible under the scheme and the determination of the amount of the resolution payment. The review would not involve reviewing other contributing factors or circumstances related to the debt itself, as individuals will retain their existing rights to internal and external merits review under Parts 4 and 4A of the *Social Security (Administration) Act 1999* in respect to decisions made under the social security law as usual. As the Scheme is an optional, time-limited scheme, it is appropriate that a specific internal review process is specified through the determination.

Any overpayments of amounts under the Scheme are a debt owed to the Commonwealth. These debts are subject to the debt recovery provisions of the *Social Security Act 1991*, including the associated waiver provisions.

Other aspects of the Scheme

To assist those affected by income apportionment to navigate the resolution scheme, Economic Justice Australia and the Australian Council of Social Service will each receive \$400,000 in funding for 2025-26. This will support them to:

- communicate information about the Scheme to peak body members and the sectors they represent.
- contribute to and provide feedback on the Government's policy around the Scheme.
- facilitate engagement between the Department and the sector on the Scheme.
- provide education and training to those engaging with the Scheme.

The Department will monitor the uptake of the Scheme and number of grant and refusal decisions made. The Department and Services Australia work with key stakeholders to ensure those potentially affected by income apportionment are aware of the Scheme.

Schedule 4 – Appropriation

Schedule 4 to the Bill creates a new special appropriation. This appropriation is available for any amounts payable under Schedules 1 or 3 of the Bill.