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

About Economic Justice Australia

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 member centres across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 40 years.

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
- improves people's lives by reducing poverty and inequality.

Summary of recommendations

Recommendation 1: Amend the Bill so as to repeal paragraph (a) from section 101 of *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth), section 199 of *Paid Parental Leave Act 2010* (Cth), section 1237AAD of *Social Security Act 1991* (Cth), and section 43F of *Student Assistance Act 1973* (Cth).

Recommendation 2: Pass the proposed changes to the small debt waiver provisions as currently drafted in the Bill.

Recommendation 3: Amend the Bill to include a limitation period on recovery of social security debts. This should be at least as beneficial to social security recipients as the limitation period which existed prior to 2016.

Recommendation 4: Amend the Bill to include a note clarifying that the Income Apportionment Resolution Scheme will not impact on a person's ability to seek merit review of a social security debt through provisions under social security law.

Submission re Schedule 1 – Income Apportionment

1. EJA broadly accepts the approach taken by Schedule 1 to validate income apportionment as a retrospectively lawful method of calculating payments.
2. The practice of income apportionment, as applied by Services Australia (and its predecessors) prior to 2020, whilst not lawful, was not inherently unfair. It was just one of a number of ways of resolving the issue of a person's employment pay period and Centrelink pay period not being aligned. Injustice arose after the practice was identified as unlawful, and Services Australia began reviewing people's payments, often looking back to a period so long ago that an affected person wouldn't reasonably have retained evidence that could be used to establish or challenge the accuracy of the debt.
3. Validating the practice as it was applied likely resolves this issue for most people, and for this reason EJA is not opposed to this part of the Bill passing into law. However, we note that we have previously advocated for any affected debts to simply be waived as a class or written off permanently. Our view is that this would still be the most appropriate and fair way to resolve this situation, and would likely lead to similar certainty for affected people.
4. EJA notes there is a currently an application for special leave to appeal on foot at the High Court of Australia in relation to *Chaplin v Secretary, Department of Social Services* [2025] FCAFC 89 (otherwise known as the income apportionment test case). We would urge caution passing these changes before this application is decided.

Submission re Schedule 2 – Debt Waivers

Special Circumstances Debt Waiver

5. EJA generally welcomes the changes to debt waiver provisions introduced in Schedule 2, and specifically the intention to make waiver in special circumstances more available, particularly in circumstances of family and domestic violence. However, we do have reservations about the wording used in this Bill.
6. The special circumstances waiver provisions in each Act, once amended, will allow waiver in three situations in which it wasn't previously available:

- Where the debtor caused the overpayment by knowingly making false statements or knowingly failing to comply with the relevant legislation, but the debtor's actions were *justified in the circumstances*.
 - Where a person other than the debtor caused the debt by knowingly making false statements or knowingly failing to comply with the relevant legislation, but the debtor was not aware of the other person's actions.
 - Where a person other than the debtor caused the debt by knowingly making false statements or knowingly failing to comply with the relevant legislation, and the debtor was aware of the person's actions but their failure to correct the issue was *justified in the circumstances*.
7. Our main concern is with the phrase "justified in the circumstances". The concept of an action being "justified" is not common within the social security law, so there is very little guidance as to how this is likely to be interpreted by decision-makers. Our concern is that this will, in time and with relevant jurisprudence, become an additional hurdle for victim-survivors attempting to access waiver in circumstances of family and domestic violence, contrary to the intention of these reforms.
 8. EJA recommends simply repealing paragraph (a) from each of the special circumstances waiver provisions. That is, remove any mention of whether a debt was incurred by the debtor or someone else knowingly doing or failing to do anything, and allow waiver based entirely on whether the circumstances are special and make it desirable to do so.
 9. EJA notes that repealing paragraph (a) would *not* likely lead to debts being waived in circumstances of fraud or other dishonesty. While waiver may be a legally available option in those circumstances, a decision maker would still be required to weigh the circumstances as a whole, and a finding of fraud is likely to significantly weigh against the exercise of a waiver. Guidance to this effect could be provided in policy documents, including the Social Security Guide.¹
 10. The following case examples demonstrate the kinds of situations accessing debt waiver has been problematic under the current version of the legislation, and why it is important that the changes focus on removing barriers debts being waived as a priority.

Case example – Tessa²

Tessa was 20 years old when she approached an EJA member centre with a \$50,000 debt. She had grown up a ward of the state in residential care, and had battled addiction over her life, receiving little to no family support.

When Tessa was 18 years old, she gave birth to her daughter. Tessa's Aunt, who she considered a mother figure, invited Tessa to live with her. Shortly afterward, her Aunt kicked

¹ Department of Social Services (2025). [Social Security Guide](#).

² Name has been changed.

Tessa out of the house and would not let Tessa take her baby. Tessa's Aunt told Tessa to keep the Parenting Payment for the time being, which Tessa did, hoping that meant her Aunt was keeping the baby temporarily.

Tessa was devastated when she learned that her Aunt had purposely told her to keep the Parenting Payment, as she knew Tessa was ineligible and if caught, would have a Centrelink debt. Her Aunt then used the threat of dobbling Tessa in as leverage to get her to sign over custody of her baby to her Aunt.

The strict 'knowingly' provisions prevented Tessa from accessing special circumstances debt waiver, because Tessa's Aunt had purposely lied to Centrelink to create this situation, and had coerced Tessa to lie also. Those provisions had been weaponised by Tessa's Aunt to continue years of family violence, entrenching her vulnerability through the ongoing abuse and trauma she experiences while leaving her liable for a debt that will take years to repay.

Case example – Kirsty³

Kristy approached an EJA member centre after receiving a letter telling her she had a \$50,000 Centrelink debt. She also had numerous other debts to different creditors. All of these debts had been incurred by her violent ex-partner, who controlled all of her finances and had set himself up as her Centrelink nominee. He had purposely reported incorrect income to Centrelink in relation to Kristy's payments to receive a higher rate of Family Tax Benefit for their children. He had also taken out a car loan for \$40,000 in Kristy's name, then sold the car and kept the cash.

Kristy's ex-partner had no property because he spent all money he came into on drugs and alcohol. This meant Kristy could not use family law processes to try hold her partner liable for the Centrelink debt or any of the other debts. Centrelink's special circumstances waiver, 'knowingly' provisions, prevented Kristy from accessing debt waiver because her partner had purposely lied to Centrelink.

The EJA member centre assisted Kristy with her debts, including the \$40,000 car loan, which they were able to have waived in its entirety under the bank's family violence provisions. The same could not be achieved for the Family Tax Benefit debt given the 'knowingly' provisions in the Social Security Act. Kristy remained liable for the full \$50,000 social security debt.

Recommendation 1: Amend the Bill so as to repeal paragraph (a) from section 101 of A New Tax System (Family Assistance)(Administration) Act 1999 (Cth), section 199 of Paid Parental Leave Act 2010 (Cth), section 1237AAD of Social Security Act 1991 (Cth), and section 43F of Student Assistance Act 1973 (Cth).

Small Debt Waiver

³ Name has been changed.

11. EJA supports the proposed changes to the small debt waiver provisions.

Recommendation 2: Pass the proposed changes to the small debt waiver provisions as currently drafted in the Bill.

Limitation Period on Debt Recovery

12. EJA notes that the current draft of this Bill *does not* include the reintroduction of a limitation period on debt recovery. We consider this to be the perfect opportunity to reintroduce this provision, thereby giving effect to Recommendation 18.2 of the Royal Commission into the Robodebt Scheme.
13. EJA notes that reintroducing this limitation period is also an opportunity to improve on the previous version. We strongly recommend that any changes are at least as beneficial to social security recipients. For example, the length of the limitation period could be shorter, giving recipients certainty sooner, but must not be longer than the previous six years.

Recommendation 3: Amend the Bill to include a limitation period on recovery of social security debts. This should be at least as beneficial to social security recipients as the limitation period which existed prior to 2016.

Submission re Schedule 3 – Income Apportionment Resolution Scheme

14. EJA does not object to the proposed resolution scheme as per Schedule 3 of the Bill, however we note that much of the detail of the scheme is contained in an instrument that has yet to be released (at time of writing). We will consider providing further submissions once a draft instrument is released.
15. Sections 2(5) and 2(6) of Schedule 3 provide that, very broadly, a person who accepts a payment under the scheme also waives their standing to sue or take other actions in relation to income apportionment. While for the vast majority of people this will likely have no negative impact, we note this could have serious consequences for some people depending on their individual circumstances. It is critical that people have access to legal advice about this issue before making such a decision.
16. We also understand the above sections *will not* impact on a person's right to merit review. That is, a person who accepts a payment under this scheme *will* still be able to seek review of their debt by an Authorised Review Officer or the Administrative Review Tribunal through typical procedures. We recommend adding a further note to these sections to clarify this point.

Recommendation 4: Amend the Bill to include a note clarifying that the Income Apportionment Resolution Scheme will not impact on a person's ability to seek merit review of a social security debt through provisions under social security law.

Contact

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