

25 September 2025

Darwin Community Legal Service submission on the Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025

Introduction

About us

1. Established in 1991, the Darwin Community Legal Service (**DCLS**) is a non-profit, community-based organisation committed to legal and social justice and the protection of human rights in the Northern Territory (**NT**). We assist those who are disadvantaged to access justice by providing legal advice and advocacy services, identifying issues and advocating for law reform, and promoting an understanding of rights and how to assert them. DCLS efforts include the:

- General Legal Service (**GLS**) which focuses on civil law rights including discrimination, human rights, due process and fair treatment in areas such as social security/family assistance, employment, consumer affairs, and adult guardianship;
- Tenants' Advice Service which works with tenants, on access to housing and systemic issues relating to housing and homelessness; and
- Seniors and Disability Rights Service which advocates with and for older people and people with disabilities.

2. DCLS acknowledges the Larrakia people as the Traditional Owners of the Darwin region/Garramilla. We pay our respects to Larrakia elders past, present, and emerging. We also acknowledge and pay our respects to the Traditional Owners of country throughout Australia. We recognise their continuing connection to land, waters, and culture.

Our GLS

3. The GLS maintains a broad practice encompassing many areas of civil law. Our generalist solicitors regularly advise clients residing throughout the Northern Territory on

matters involving social security (especially, the social security and family assistance legislation).

4. These matters account for approximately 4.31 per cent of services delivered by the GLS, which equates to approximately one client per week. Many of these clients come from culturally and linguistically diverse backgrounds and reside in rural, regional, or remote areas with limited access to services. DCLS are currently working to address unmet legal need in the NT by undertaking monthly outreach to Katherine, NT but acknowledges broader resource constraints across free legal services is creating barriers to legal assistance in civil matters.

Debt waiver reform

5. On 4 September 2025, the Honourable Tanya Plibersek MP, Minister for Social Security introduced the Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025 (**the Bill**). The Bill, among other things, delivers necessary debt reform to Australia's social security system.

6. We welcome the Bill as a step towards promoting a fairer and more efficient social safety net relied upon by many of our clients (which include the NT's most vulnerable people). We especially welcome the retrospective broadening of the Secretary's power to waive social security debts in special circumstances under the following Acts:

- *Student Assistance Act 1973* (Cth) (**SAA**);
- *Social Security Act 1991* (Cth) (**SSA**);
- *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) (**FAAA**); and
- *Paid Parental Leave Act 2010* (Cth) (**PPLA**) (collectively, '**the Acts**').¹

7. Our sole recommendation is that waivers for administrative error are also amended to ensure consistency across Australia's social security system.

¹ Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025 (Cth) sch 2 pt 1.

Recommendation – a consistent approach to waiving debts arising from administrative error

8. Australia's social security system requires a debt attributable solely to an administrative error made by the Commonwealth be waived. The rationale for such waivers has been observed by the judiciary that:

Innocent people should not suffer where they have been placed in a position of hardship solely as a result of bureaucratic error. They are entitled to relief as of right.²

9. Although such waivers are contained in all the Acts,³ the waivers differ in their requirement for the debtor to suffer 'severe financial hardship' to be entitled to relief. Currently, both the FAAA and the PPLA require that a debtor would suffer severe financial hardship if a debt attributable solely to an administrative error were not waived while the SAA and the SSA do not.

10. It is our view the additional criteria applied to debtors under the FAAA and the PPLA is arbitrary and leads to unjust outcomes, whereby debts occurring by no fault of the debtor cannot be waived. Therefore, the Bill should also:

- amend the FAAA by removing section 97(2)(b); and
- amend the PPLA by removing section 195(b).

Client case study –

Our client (**OC**) resided in a remote First Nations community raising their child as a single parent. There was no secondary school on community, so OC arranged for their child to continue their education at boarding school. OC started receiving Family Tax Benefit (**FTB**) and ABSTUDY.

Early in the school term, OC arranged for the child to live with their grandparents while continuing to attend secondary school as a day student because the child became homesick. OC called Services Australia in relation to the ABSTUDY payment and informed them the child was living with their grandparents. In response Services Australia advised OC that no changes were required and OC continued to receive both FTB and ABSTUDY.

Approximately 18 months later, OC contacted Services Australia to inquire whether they should allow the grandparents to claim FTB because of the child's living arrangements. This time, Services Australia informed OC that they were ineligible for FTB. Services Australia immediately cancelled the FTB payment but continued the ABSTUDY payment for a further 24 months.

² *Sekhon v Secretary, Department of Family and Community Services* [2003] FCAFC 190, [18] (Heerey J).

³ *Student Assistance Act 1973* (Cth) s 43B; *Social Security Act 1991* (Cth) s 1237A; *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) s 97; *Paid Parental Leave Act 2010* (Cth) s 195.

Services Australia then raised debts against OC of:

- approximately \$50,000 for ABSTUDY; and
- approximately \$11,250 for FTB (collectively, '**the debts**').

OC asked Services Australia to review the debts. OC received two decisions from separate Authorised Review Officers (**ARO**) resulting in:

- the ABSTUDY debt being waived because the ARO's view the debts solely resulted from administrative error, which also constituted special circumstances; and
- the FTB debt not being waived because another ARO's view the debts were not the result of administrative error.

During the relevant periods these debts accrued, OC was experiencing homelessness and severe financial hardship. When OC sought our assistance, they had made commendable efforts to get their life back on track with a private rental and gainful employment. We assisted OC to seek a review of the FTB debt at the then Administrative Appeals Tribunal (**Tribunal**).

The Tribunal found the FTB debt was solely attributable to an error by Services Australia and OC received the payments in good faith. The Tribunal also found the facts constituted special circumstances for the purposes of the discretionary waiver. Despite these findings, the Tribunal determined the debt could not be waived because OC could, by that stage, enter a payment plan for the debts and would not suffer severe financial hardship by doing so.

Appendix

Student Assistance Act 1973 (Cth)

43B Waiver of debt arising from error

Administrative error

- (1) Subject to subsection (2), the Secretary must waive the right to recover the proportion of a debt that is attributable solely to an administrative error made by the Commonwealth if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt.

Note: Subsection (1) does not allow waiver of part of a debt that was caused partly by administrative error and partly by one or more other factors (such as error by the debtor).

Circumstances under which subsection (1) applies

- (2) Subsection (1) only applies if:
- (a) the debt is not raised within a period of 6 weeks from the first payment that caused the debt; or
 - (b) if the debt arose because a person has complied with an obligation to provide information or documents to the Department under this Act, the debt is not raised within a period of 6 weeks from the end of the period within which the person was required to comply with that obligation;
- whichever is the later.

Underestimating value of property

- (3) If:
- (a) a debt arose because the debtor, the debtor's partner, or the debtor's parent or parents underestimated the value of particular property; and
 - (b) the estimate was made in good faith; and
 - (c) the value of the property was not able to be easily determined when the estimate was made;
- the Secretary must waive the right to recover the proportion of the debt attributable to the underestimate.

Proportion of a debt

- (4) For the purposes of this section, a proportion of a debt may be 100% of the debt.
- (5) In this section:

child: without limiting who is a child of a person for the purposes of this section, someone is the *child* of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

parent, in relation to a person, means:

- (a) if the person is not an adopted child—a natural parent of the person or someone of whom the person is a child because of the definition of *child* in this section; or
- (b) if the person is an adopted child—an adoptive parent of the person.

partner has the same meaning as in the *Social Security Act 1991*.

Social Security Act 1991 (Cth)

1237A Waiver of debt arising from error

Administrative error

- (1) Subject to subsection (1A), the Secretary must waive the right to recover the proportion of a debt that is attributable solely to an administrative error made by the Commonwealth if the debtor received in good faith the payment or payments that gave rise to that proportion of the debt.

Note: Subsection (1) does not allow waiver of a part of a debt that was caused partly by administrative error and partly by one or more other factors (such as error by the debtor).

- (1A) Subsection (1) only applies if:
- (a) the debt is not raised within a period of 6 weeks from the first payment that caused the debt; or
 - (b) if the debt arose because a person has complied with a notification obligation, the debt is not raised within a period of 6 weeks from the end of the notification period;
- whichever is the later.

Underestimating value of property

- (2) If:
- (a) a debt arose because the debtor or the debtor's partner underestimated the value of particular property of the debtor or partner; and
 - (b) the estimate was made in good faith; and
 - (c) the value of the property was not able to be easily determined when the estimate was made;
- the Secretary must waive the right to recover the proportion of the debt attributable to the underestimate.

Proportion of a debt

- (3) For the purposes of this section, a proportion of a debt may be 100% of the debt.

A New Tax System (Family Assistance) (Administration) Act 1999 (Cth)

97 Waiver of debt arising from error

- (1) The Secretary must waive the right to recover the proportion (the *administrative error proportion*) of a debt that is attributable solely to an administrative error made by the Commonwealth if subsection (2) or (3) applies to that proportion of the debt.
- (2) The Secretary must waive the administrative error proportion of a debt if:
- (a) the debtor received in good faith the payment or payments that gave rise to the administrative error proportion of the debt; and
 - (b) the person would suffer severe financial hardship if it were not waived.
- (3) The Secretary must waive the administrative error proportion of a debt if:
- (a) the payment or payments were made in respect of the debtor's eligibility for family assistance for a period or event (the *eligibility period or event*) that occurs in an income year; and
 - (b) the debt is raised after the end of:
 - (i) the debtor's next income year after the one in which the eligibility period or event occurs; or
 - (ii) the period of 13 weeks starting on the day on which the payment that gave rise to the debt was made;whichever ends last; and
 - (c) the debtor received in good faith the payment or payments that gave rise to the administrative error proportion of the debt.
- (4) For the purposes of this section, the administrative error proportion of the debt may be 100% of the debt.

Paid Parental Leave Act 2010 (Cth)

195 Waiver of debts—administrative error

The Secretary must waive the right to recover so much of a debt as is attributable solely to an administrative error made by the Commonwealth, or an agent of the Commonwealth, if:

- (a) the debtor received in good faith the payment or payments that gave rise to that proportion of the debt; and
- (b) the debtor would suffer severe financial hardship if it were not waived.