



Committee Secretary
Senate Standing Committees on Community Affairs

By email: community.affairs.sen@aph.gov.au

Economic Justice Australia submission to inquiry into the extent and nature of poverty in Australia

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 members across Australia have provided people with free and independent information, advice, education and representation in the area of social security for over 30 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; and
- Improves people's lives by reducing poverty and inequality.

EXECUTIVE SUMMARY

The right to social security and a basic income is a fundamental building block of all human rights; other legal and human needs cannot be fulfilled without financial security. This right is also central to guaranteeing human dignity for all people.

A fair social security system is fundamental to addressing poverty. It provides a safety net necessary to keep a person (and their children) clothed, housed and fed, as well as stability to enable them to plan for the future and engage in their community.

In this submission we call for action to address the longstanding need to substantially boost basic rates JobSeeker Payment and other working age payments. This is particularly urgent as the cost of living soars and Australians recover from the economic effects of the COVID-19 pandemic.

We also outline aspects of Australia's social security policy framework that can completely exclude particular cohorts from income support, either through exclusions prescribed by

legislative qualification criteria and waiting periods, or resulting from pervasive systemic barriers to accessing and maintaining payments. Such exclusions often arbitrarily prevent the most vulnerable in our community from accessing payments needed for their survival, and they must be addressed in order to meet the fundamentals of a fair and effective social security system. These include:

- Special Benefit access barriers
- Disability Support Pension inequities
- Compulsory income management
- Anomalous social security debt waiver provisions
- Services Australia staffing issues
- Client advocacy barriers for legal services
- Unmet need for social security legal help.

Summary of recommendations

- **Recommendation A:** Permanently increase social security income support payment rates, and provide supplementary payments that reflect specific costs people face, as per ACOSS recommendations to this inquiry.
- **Recommendation B:** Amend the *Social Security Act 1991* (Cth) (Social Security Act) so as to abolish the Liquid Assets Waiting Period and Ordinary waiting period and replace it with a comprehensive means test, as per ACOSS submission to this inquiry.
- **Recommendation C:** Permanently abolish the newly arrived residents waiting period (NARWP) for Special Benefit, so that people in financial hardship without a sufficient livelihood have equitable access to the payment.
- **Recommendation D:** Provide all New Zealand citizens living in Australia with access to Special Benefit.
- **Recommendation E:** Extend the list of visa sub-classes that attract Special Benefit, with extended coverage including:
 - Bridging Visas, all sub-classes
 - Student Visa
 - Temporary Resident (Skilled Employment) Visa
 - Pacific and Seasonal Worker Visa
 - Temporary Graduate Visa
- **Recommendation F:** Amend s737(1) of the Social Security Act to enable full-time students to access Special Benefit, with no new arrival waiting period (NARWP) applying.
- **Recommendation G:** Amend section 94 of the Social Security Act to remove the Disability Support Pension program of support requirement; OR, in the alternative, amend section 94 so as to include criteria for exempting a person from the 'program of support' requirement.
- **Recommendation H:**
 - Cease all compulsory income management.
 - Pending the dismantling of social security compulsory income management, reform Income Management exemption and exit policies and procedures to identify and address systemic barriers to access to

exemptions and exits, particularly for First Nations people in remote and very remote communities.

- **Recommendation I:**
 - Amend section 1237AAD of the Social Security Act to insert the words “and willingly” after “knowingly”.
 - Amend section 1237AAD of the Social Security Act so as to limit the relevant false statement or false representation of “another person” to a person whose statements, representations, acts or omissions, were authorised (whether formally or informally) by the debtor in circumstances free of coercion or duress.
- **Recommendation J:** Implement the recommendations in EJA’s report, Compensation preclusion periods and the impact of COVID-19.
- **Recommendation K:** Resource Services Australia to enable engagement of additional Mobile Service Centres, Indigenous Service Officers and Multicultural Service Officers.
- **Recommendation L:** Allocate substantial additional funding to enable Services Australia to employ additional Centrelink social workers, particularly given COVID-19 impacts and the rise in risk and incidence of domestic and family violence, and homelessness.
- **Recommendation M:** Provide funding to enable establishment of a Centrelink nationwide specialist hotline for community legal centre advocates.
- **Recommendation N:** Provide funding of \$3,630,000 to provide for one additional position to each of EJA’s 21 legal centre members around Australia providing specialist social security legal assistance and programs, including to EJA as the peak organisation representing these services. This is a measure that can be immediately actioned while the community legal sector works with the Government on the co-design of a longer-term funding proposal.

PROPOSALS

Rate inadequacy

Lives were transformed by the effective doubling of non-pension payment rates from April 2020 with the addition of the Coronavirus Supplement. Research reports produced by the Australian Council of Social Services (ACOSS) and other peak organisations show that the complete removal of this supplementary payment from April 2021 has plunged people on activity-tested social security income support payments back to unacceptably low rates, entrenching extreme poverty for vulnerable cohorts.

The current cost of living crisis makes the need to raise the rate of working age social security payments even more apparent and urgent. This is evidenced, for example, by soaring demand for community services offering emergency relief, such as Foodbank Australia.¹ Our previous

¹ Foodbank Australia, ‘Millions of households struggling to put food on the table’ (Press release, 17 October 2022) <<https://www.foodbank.org.au/foodbank-hunger-report-2022/>>.

submissions have outlined the inadequacy of income support payments, even before the current surges in the cost of essentials like food, rent and energy bills.²

As the case studies from EJA members below demonstrate, it is impossible to live on the current rate of JobSeeker Payment. Rather than outline the protracted assistance our members provided to these clients, we have provided a snapshot of their situation when they presented at EJA member centres for assistance. It must be said that for such clients outlining their struggles to budget on JobSeeker Payment is humiliating and demeaning, despite the fact that the fundamental reason for their budgeting difficulties is the inadequacy of the JobSeeker Payment rate.

Case studies

Entrenched cycle of poverty – Anne and Mick

- *Anne’s JobSeeker Payment was automatically suspended because she was ill and unable to attend job interview. She called up her employment services provider to explain, but they refused to lift her suspension or accept her medical certificate for non-attendance. Anne advised that she desperately needed to have her suspension lifted as it was the end of her payment fortnight and she had no money left for food or other essentials, so she decided to go by train to her employment service’s office to sort it out. She didn’t have any money to top up her public transport card, but was desperate so decided to catch the train anyway. Anne was apprehended at the train station and issued with a fine for over \$400. Upon arrival at the employment service they initially refused to see her, and told her to come back the next day. Anne knew that if she left, she risked getting another fine and she wouldn’t be able to buy any food until her payments were reinstated.*
- *With the help of one of our member centre’s lawyers Anne’s suspension was lifted that afternoon. However, the money was not credited to her account in time for her to add credit to her public transport card, and she received a further \$200 fine on the way home. Anne now had a \$600 debt, with no savings to draw from, so she decided to cut back from 2 meals a day to just 1 meal a day for the next few months in order to pay it off.*
- *Mick was 43 and had been receiving Newstart/JobSeeker payments since he was made redundant four years previously. As a single parent with a 14 year old son, he said he found it extremely difficult to cover all of his basic household expenses. This often meant Mick ran out of money in the second week of his fortnightly payment period, leaving him with no money for public transport, and unable to attend job interviews that weren’t within walking distance of his home. He also often couldn’t afford to top up the credit on his phone, which made it hard for him to engage with employers and employment service providers – sometimes leading to his payments*

² See, eg, Economic Justice Australia, Submission to the Treasury, *Pre-budget submission 2022-2023* (February 2022) <<https://www.ejaustralia.org.au/pre-budget-submission-2022-2023/>>; Economic Justice Australia, Submission to the Senate Standing Committee on Community Affairs, *Social Services Legislation Amendment (Strengthening Income Support) Bill 2021* (March 2021).

being suspended, increasing his hardship, and making it more difficult for him to pay for the costs associated with job hunting.

Risk of homelessness - Michaelia

- Michaelia was 59 years old and facing eviction from her Canberra home when she approached our member centre. She had been solely dependent on JobSeeker Payment since her husband left her 6 months previously, and this was not enough to cover the rent for her small apartment. For a time, she had managed by not paying her utility bills, but on contacting the centre she was in significant rental arrears and facing homelessness due to limited affordable housing options for people her age.

Health at risk - Christian

- Christian was in his early 60s and had been struggling with poorly controlled diabetes on JobSeeker Payment for 2 years when he approached our member centre. He regularly split his diabetes tablets in half to make them last longer, as he couldn't afford to buy them every few weeks. He advised that his doctor had told him not to do this, that he needed to take the full dose or risk having serious complications, but Christian was convinced that this was the only way he could ensure he had enough left over to buy his weekly groceries. He said he knew he should listen to his doctor but didn't see the point in taking medication if he was not going to have anything to eat.

Access barriers for people with disability - Merissa, Jamal and Beryl

Changes to the Disability Support Pension (DSP) eligibility and assessment criteria over the last two decades has severely restricted access to the pension. This has led to a growing cohort of people living with a disability relying on JobSeeker Payment. The rate of JobSeeker Payment is insufficient to meet the cost of disability or chronic health conditions, and without pensioner concessions the cost of specialist consultations, medication, and aids can be prohibitive. Many people are forced to choose between vital medication or care, and paying their electricity bills.

- Merissa was receiving the DSP for several years until on review she was determined by Centrelink to no longer qualify. She was then granted JobSeeker Payment. Merissa suffers from chronic depression, chronic fatigue, and an autoimmune disorder, and when she contacted our member centre had not worked for nearly seventeen years. Under her JobSeeker Payment job plan, Merissa was required to seek employment of at least 15 hours per week. Merissa said she felt as if she was being bullied into work that she is not capable of doing. She said she was extremely exhausted, depressed, and in constant pain. The whole process was making her condition worse, and she found herself struggling physically and psychologically.
- Jamal, a 41 year old man, had previously received DSP but his pension had been cancelled and he was trying to live on JobSeeker Payment. He had ongoing severe mental illness and was experiencing suicidal ideation. Jamal advised that his

JobSeeker Payment was insufficient for meeting the costs of his medication and treatment, which caused him further distress. Jamal advised that he wanted to save enough money to pay for specialist medical reports so he could apply for DSP again but he knew that saving money was not a real option. He advised that he regularly ran out of money and had to skip meals to get by. Whenever he received an electricity bill, he could not buy his medication for that fortnight because he couldn't afford to pay for both.

- *Beryl was 32 and living with severe psychiatric and physical disability, and was a survivor of domestic violence. She was struggling to pay living expenses and for medications while on JobSeeker Payment, and found her mutual obligation job search requirements excessive. She had recently been hospitalised but despite this she had been unable to get an exemption from her job search requirements, and her JobSeeker Payment was suspended and a penalty imposed. Our member centre assisted Beryl in successfully appealing the penalty decision to the AAT, but the entire process took over a year to resolve – during which time Beryl's mental health significantly deteriorated.*

Poverty drivers for older people – Jack

People over the age of 55 are the fastest growing cohort of people on JobSeeker Payment. The increasing Age Pension qualification age means that people in this cohort may receive JobSeeker Payment for years before receiving the significantly higher pension payment. Age discrimination can limit job opportunities for this cohort, with many older people struggling to comply with mutual obligations for JobSeeker Payment due to disability, chronic health conditions and poverty. Older people also face higher health and medical costs.

- *Jack was an elderly client just short of the Age Pension age (66 at the time), with numerous physical disabilities, chronic health conditions, and a mental health condition. He had claimed DSP but the claim was refused and he was struggling to survive on JobSeeker Payment. Jack lived in regional Queensland and he advised that he was spending a lot on petrol to travel to and from compulsory appointments with his employment service provider and for job interviews. This compounded the difficulties Jack was having paying for essentials, and he became suicidal. (Fortunately, Jack soon reached Age Pension age and is now able to afford his medication, food and other essential provisions. He advises that this has greatly improved his mental health.)*

Rate inadequacy for single parents – Clodagh

- *Clodagh is a single parent with three children over the age of eight. On contacting our member centre she and her children lived in a tiny 2 room apartment, where Clodagh shared a bedroom with her youngest daughter. The apartment was damaged but the landlord threatened to evict her if she requested repairs, and Clodagh could not afford to pay for them herself. Since transferring from Parenting Payment to JobSeeker*

when her youngest child turned eight, Clodagh had been struggling to meet the costs of basic essentials for her and her children. Clodagh advised that she was often forced to rely on emergency aid and food vouchers to ensure her kids were properly fed - regularly going without food herself to make sure her children had enough. Her children often missed out on social activities because she could not afford them. Her eldest daughter was beginning to feel socially isolated, complaining that she couldn't have friends over because their apartment is so badly damaged.

It is clear that social security working age income support rates are inadequate to meet living costs, especially for people without assets or substantial savings in vulnerable cohorts - including single parents, people with disability who are unable to access DSP, and older people.

EJA endorses ACOSS's Budget 2024 proposals to lift base rates of working-age income support payments to the current pension rate. This is currently \$513 per week for a single person (as at September 2022) and would require an increase of \$175 per week to the single maximum rate of JobSeeker Payment and \$232 per week for single, maximum rate of Youth Allowance. Increases would apply to all allowance payments, including Austudy and Abstudy. All payments should be increased twice per year in line with wages or inflation (whichever is higher). Additionally, maximum rent thresholds should be increased by 50 per cent.

EJA also endorses ACOSS's proposal that supplementary payments be provided that reflect specific living costs faced, including for people with disability or illness, and single parents.

EJA welcomes the establishment of the Economic Inclusion Advisory Committee. This means the Government will be provided with advice on the adequacy, effectiveness and sustainability of income support payments ahead of this and every Federal Budget. EJA supports ACOSS's recommendation that indexation of these income support payments should be to wages as well as consumer prices.

Recommendation A: Permanently increase social security income support payment rates, and provide supplementary payments that reflect specific costs people face, as per ACOSS recommendations to this inquiry.

Ordinary waiting period and liquid assets test waiting period

EJA continues to endorse ACOSS proposals that the ordinary waiting period and the liquid assets waiting period, which affect start dates for certain social security income support payments, be revoked. We agree that these waiting periods are anomalous and counter-productive to effective job search, forcing people with modest savings to expend financial buffers needed to meet ongoing costs such as utility bills, and car registration.

Recommendation B: Amend the Social Security Act so as to abolish the Liquid Assets Waiting Period and Ordinary waiting period and replace it with a comprehensive means test, as per ACOSS submission to this inquiry.

Special Benefit access barriers

Recently arrived migrants

The cost-of-living crisis has highlighted the precarious position of newly arrived migrants who do not have access to social security income support payments, many of whom were effectively encouraged to migrate to Australia to address skills shortages.

A four-year newly arrived residents waiting period (NARWP) generally applies³ for social security income support working age payments - including for the payment of 'last resort', Special Benefit.

People subject to a NARWP for other working age payments, or who do not meet the DSP or Age Pension residential criteria, may qualify for Special Benefit if they are in financial hardship and without means of support. However, unless they meet one of the legislative exemptions from the Special Benefit NARWP⁴ they must then show that their current financial hardship and lack of means of support is due to having "suffered a substantial change of circumstances beyond (their) control" after arrival in Australia. This is very difficult to establish in practice.

The qualification criteria for Special Benefit under the Social Security Act which apply to all applicants, including citizens and long-term residents, are extremely tight - eligibility is restricted to people in hardship for reasons beyond their control.⁵ The additional criteria that people subject to the Special Benefit NARWP must meet means that payment can be denied to a person who is destitute, even if they have dependants, leaving them without access to any form of social security income support, including the safety net payment - despite the fact that they may be relying on charitable support with no capacity to return to their home country.

The four-year NARWP generally applying to Special Benefit was temporarily suspended from April 2020 as a special COVID support measure. This suspension was in recognition of the need to ensure that new residents would not face destitution and homelessness during COVID as a result of the additional hurdle the NARWP poses to accessing Special Benefit. The NARWP was subsequently reinstated. However, the need to give new migrants equitable access to the social security safety net is arguably even stronger at present— many community organisations reporting that demand for emergency relief services is greater now than it was during the height of the COVID-19 lockdowns.⁶

Applying a NARWP to Special Benefit, during a pandemic or at any other time, runs contrary to Australia's international human rights obligations. The measure undermines the rights of individuals to social security, an adequate standard of living, equality and non-discrimination. The waiting period itself is arbitrary, and it applies on the basis of a person's visa status. The NARWP also undermines the rights of family and children to special protection and assistance, by removing access to payments intended to assist with the cost of raising children. Our human

³ For exemptions, see Australian Government, *Social Security Guide* (January 2023) [3.1.2.43] <<https://guides.dss.gov.au/social-security-guide/3/1/2/43>>.

⁴ Ibid

⁵ Qualification is prescribed by in *Social Security Act 1991* (Cth) s 729. See also Australian Government, *Social Security Guide* (January 2023) [3.7.1.10] <<https://guides.dss.gov.au/social-security-guide/3/7/1/10>>.

⁶ See, eg, ACOSS, *Helping people in need during a cost-of-living crisis: Findings from the Australian Community Sector Survey* (2022) <<https://www.acoss.org.au/helping-people-in-need-during-a-cost-of-living-crisis-findings-from-the-australian-community-sector-survey/>>.

rights obligations require that all Australian residents, whether they are new residents or long-term residents or citizens, should be provided with an adequate standard of living, including access to adequate food, shelter and clothing. The social security system should ensure that individuals have access to basic essentials, and assists to prevent those experiencing financial hardship from homelessness and destitution, as well as providing complementary assistance by way of access to employment services.

Rather than encouraging self-sufficiency and cost savings, subjecting new migrants to a NARWP for Special Benefit undermines best efforts to settle and secure employment. The NARWP fuels poverty and homelessness and leads to pressure on charities and community organisations. The NARWP was abolished during COVID-19, demonstrating that it is entirely possible to remove it swiftly and permanently.

Recommendation C: Permanently abolish the newly arrived residents waiting period (NARWP) for Special Benefit, such that people in financial hardship without a sufficient livelihood have equitable access to the payment.

Long-stay visa holders

There are cohorts of people living in Australia on long-stay work or student visas who cannot qualify for Special Benefit under the legislative eligibility criteria applying under section 729 of the Social Security Act. These visas include:

- Bridging Visas, all sub-classes
- Student Visa
- Temporary Resident (Skilled Employment) Visa
- Pacific and Seasonal Worker Visa
- Temporary Graduate Visa

During the COVID lockdowns and subsequent economic downturn, the inability to access Special Benefit or JobKeeper Payment forced many international student and migrant workers who lost work to either return to their home country (if possible and viable), seek charitable support, or work in the cash economy – and be exposed to exploitation. The exodus of many students and migrant workers from Australia had broader repercussions, creating ongoing issues for recovery of the Australian economy which were the subject of discussions at the September 2022 Jobs and Skills Summit.

As Australia looks to attracting migrant workers back to Australia, with a comprehensive review of Australia's migration system underway, it will be important to ensure that access to income support is incorporated as an underpinning of these reform measures.

Recommendation D: Provide all New Zealand citizens living in Australia with access to Special Benefit

Recommendation E: Extend the list of visa sub-classes that attract Special Benefit, with extended coverage including:

- Bridging Visas, all sub-classes
- Student Visa
- Temporary Resident (Skilled Employment) Visa
- Pacific and Seasonal Worker Visa
- Temporary Graduate Visa

Recommendation F: Amend s737(1) of the Social Security Act to enable full-time students to access Special Benefit, with no NARWP applying.

Disability Support Pension inequities

Many vulnerable people with disability who are prima facie eligible for DSP are effectively consigned to JobSeeker or other activity tested payments indefinitely, struggling to comply with mutual obligations. Working age payments are intended as short-term relief for people who are unemployed. Forcing people with disability onto these payments by making it extremely difficult to satisfy the qualification criteria for DSP entrenches poverty among people with disability.

In EJA's submission to the Senate inquiry into the 'Purpose, intent and adequacy of the Disability Support Pension', we argued that the current DSP legislative framework and system for assessing DSP eligibility imposes fundamental systemic barriers to accessing DSP for particular cohorts of people with disability.

While the DSP legislative framework needs to be overhauled, EJA is encouraged by the draft new DSP Impairment Tables. The exposure draft of the revised Tables included proposed changes to the requirement that a person's condition be 'fully' 'diagnosed', 'treated' and 'stabilised' as a prerequisite to assigning a rating under the Tables. The term 'fully' as a qualifier has now been removed in the new draft, which will lead to a clearer and fairer assessment process. This proposed change reflects recommendations made in EJA's consultation input, as well as in our submission to the DSP Senate inquiry⁷ and our research report, Barriers to Disability Support Pension access for people with psychiatric impairments and their experiences on JobSeeker Payment.⁸

EJA's DSP research report also highlights how the barriers to accessing DSP are particularly problematic for people with psychosocial disability across already vulnerable cohorts - including people in remote First Nations communities and refugees. People in these cohorts may have strong claims for DSP, but they lack access to support and legal advocacy to navigate

⁷ Economic Justice Australia, Submission to the Senate Community Affairs Legislation Committee, *Inquiry into the Purpose, Intent and Adequacy of the Disability Support Pension* (30 July 2021) <<https://www.ejaustralia.org.au/wp/policy-submission/inquiry-into-the-purpose-intent-and-adequacy-of-the-disability-support-pension/>>

⁸ Louise St Guillaume et al, *Barriers to disability support pension access for people with psychiatric impairments and their experiences on Jobseeker payment*

(July 2021) <<https://www.ejaustralia.org.au/wp/latest-news/barriers-to-disability-support-pension-access-for-people-with-psychiatric-impairments-and-their-experiences-on-jobseeker-payment/>>

the process. In the absence of this, many people, including those with severe psychosocial disability, are effectively relegated to JobSeeker Payment or other activity tested payments indefinitely or until they reach Age Pension age. They can also be at high risk of incurring payment suspensions and non-payment penalties as a result of an inability to comply with mutual obligation requirements.⁹

Ongoing requirements to negotiate mutual obligations with Employment Services Provider staff who may have no real understanding of the impact of particular impairments or chronic multiple health conditions on work capacity, can cause considerable distress and hardship. This is particularly the case for people who cannot access DSP until they have participated in a 'program of support' for at least 18 months.¹⁰

Recommendation G: Amend section 94 of the Social Security Act to remove the Disability Support Pension program of support requirement; OR, in the alternative, amend section 94 so as to include criteria for exempting a person from the program of support requirement.

Compulsory income management

EJA continues to strongly oppose compulsory quarantining of social security payments. The legislative change which abolished the Cashless Debit Card (CDC) last year is a positive first step towards this outcome, along with welcome Government investment in infrastructure projects and employment pathways in former CDC communities.

Although implementation of the *Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Act 2022* (Cth) means that the CDC program will cease from March 2023, compulsory income management will remain firmly in place in the Northern Territory (NT) and Cape York. The Government has made commitments to consulting with these communities regarding the future of compulsory income management, but the consultation process and timeline is yet to be determined.

EJA endorses and adopts the Australian Income Management Network's (AIMN's) position that all compulsory income management be immediately brought to an end; and that if income management continues as a policy measure, participation should be voluntary and opt-in only.

Recommendation H: Cease all compulsory income management; and pending the dismantling of social security compulsory income management, reform Income Management exemption and exit policies and procedures to identify and

⁹ Louise St Guillaume et al, *Barriers to disability support pension access for people with psychiatric impairments and their experiences on Jobseeker payment* (July 2021) <<https://www.ejaustralia.org.au/wp/latest-news/barriers-to-disability-support-pension-access-for-people-with-psychiatric-impairments-and-their-experiences-on-jobseeker-payment/>>

¹⁰ For discussion of the CATCH-22 represented by the program of support requirement, see Economic Justice Australia, *Submission to the Senate Community Affairs Legislation Committee, Inquiry into the Purpose, Intent and Adequacy of the Disability Support Pension* (30 July 2021) <<https://www.ejaustralia.org.au/wp/policy-submission/inquiry-into-the-purpose-intent-and-adequacy-of-the-disability-support-pension/>>

address systemic barriers to access to exemptions and exits, particularly for First Nations people in remote and very remote communities.

Anomalous social security debt waiver provisions

Victim-survivors of family and domestic violence

A key issue identified in EJA's report, *Debts, Duress and Dob-ins: Centrelink compliance processes and domestic violence*¹¹, is domestic violence victim-survivors' vulnerability to accruing social security debts as a direct result of the actions of abusers. Having such debts compounds financial stress and insecurity faced by those attempting to leave an abusive situation, making it more difficult to leave if the choice is between violence and poverty.

Our research report reveals instances where the actions of perpetrators directly contribute to victim-survivors' debts. This includes where a violent partner refuses to provide information, or provides false information, about their income and assets. This can lead to inaccurate eligibility assessment and rate calculations. In other cases, women have been forced by their partner to provide false information to Centrelink to conceal their co-residence. Such debts, which can be for large amounts, effectively saddle victim-survivors with debts that are a by-product of abuse and undermine efforts to secure safety.

Section 1237AAD of the Social Security Act provides that a person's debt may be waived if it can be established that there are "special circumstances" to do so. The fact that a woman is a domestic violence victim-survivor may certainly be considered "special circumstances" under the provision. However, for section 1237AAD to apply, the debt cannot have been incurred as a result of the debtor or "another person ... knowingly" making a false statement, representation or omission.

Legislative amendment is required to address barriers to special circumstances debt waiver when a victim-survivor of domestic violence is liable for a debt incurred as a direct result of the actions of the perpetrator, including where it is the perpetrator (only) who has knowingly made false statements or omissions.

Firstly, we propose that section 1237AAD of the Social Security Act be amended by adding "and willingly" after "knowingly". This re-wording would enable waiver of a victim-survivor's debt where their false statement was made under duress relating to the domestic violence, or where their or failure to comply with a requirement was the result of coercion by the perpetrator.

Secondly, the fact section 1237AAD of the Act precludes waiver where the debt was caused by a false statement, misrepresentation, or failure to comply by "another person", means that victim-survivors of domestic violence are forced to repay debts that are the direct result of abuse. We propose that the wording of s1237AAD be amended so as to limit the relevant false statement or false representation of "another person" to a person whose statements,

¹¹ Economic Justice Australia, *Debt, duress and dob-ins: Centrelink compliance processes and domestic violence* (November 2011) <<https://www.ejaustralia.org.au/wp/latest-news/debt-duress-and-dob-ins-centrelink-compliance-processes-and-domestic-violence/>>.

representations, acts or omissions, were authorised (whether formally or informally) by the debtor in circumstances free of coercion or duress.

Recommendation I:

- Amend section 1237AAD of the Social Security Act to insert the words “and willingly” after “knowingly”.
- Amend section 1237AAD of the Social Security Act so as to limit the relevant false statement or false representation of “another person” to a person whose statements, representations, acts or omissions, were authorised (whether formally or informally) by the debtor in circumstances free of coercion or duress.

Compensation preclusion periods

Where a person receives a lump sum compensation payment for a compensable injury that includes payment for loss of earning capacity, social security law enables application of a compensation preclusion period (CPP) – during which time specified social security income support payments are not payable, often for several years. CPPs can be waived in ‘special circumstances’.

COVID has served to highlight a long-standing need for policy reform in this area. EJA’s report entitled *Compensation preclusion periods and the impact of COVID-19*¹² presents case studies from our member centres and examines AAT cases which indicate a lack of consideration of the impacts of poverty and homelessness in the context of CPPs.

Our review of CPP case law makes it clear that it is as difficult as ever for claimants to argue successfully that their CPP should be reduced or waived completely. Current Departmental guidelines fetter decision-makers in the exercise of the discretion provided by the legislation, leaving people in destitution who may have strong grounds for waiver. Our report argues that Departmental guidelines regarding application of the CPP waiver discretion are in urgent need of revision.

Case study – Bill

Bill is a 38-year-old who was in a motor vehicle accident which rendered him disabled. Bill received a compensation payout, so his Centrelink payments were stopped for a period of time. Due to the rising costs of living, medical costs, accommodation and food, Bill quickly used the full amount of his compensation payout. With no source of income and no ability to work, Bill contacted one of our member centres for any support or information about how long he would not be eligible for Centrelink payments. While our member centre provided advice, Bill disclosed that he was so concerned about becoming homeless that

¹² Economic Justice Australia, *Compensation preclusion periods and the impact of COVID-19* (2021) <<https://www.ejaustralia.org.au/wp-content/uploads/CPP-Project-Report-FINAL-online-version.pdf>>.

he had even considered committing a crime in order to be housed in incarceration facilities.¹³

Recommendation J:

- Implement the recommendations in EJA's report, *Compensation preclusion periods and the impact of COVID-19*.

Services Australia staffing issues

One of the most critical areas of investment required to improve outcomes for all people who need support through the social security system is Centrelink staffing, particularly investment to improve access to social workers. Within the Centrelink environment, social workers are uniquely equipped to work with clients with complex needs, including in relation to domestic and family violence (DFV) and homelessness.

EJA is encouraged to see the Community Partnership Pilot with resourcing of Community Partnership Specialist Officers co-located in community services trial sites around Australia. These officers are able to answer questions regarding social security eligibility, income tests and mutual obligation requirements, and assist in resolving issues – enhancing access to justice by addressing social security issues before they escalate into legal problems.

It is critical that similar additional public service resources are invested into all areas of complex need, including to enable provision of additional Mobile Service Centres, and appointment of sufficient Indigenous Service Officers and Multicultural Service Officers to meet local needs. These specialist staff are often at the frontline when it comes to dealing with issues such as family and domestic violence, and homelessness, but staffing levels are inadequate for adequately assessing clients' needs and making appropriate referrals.

Case study – Sharlene

Sharlene was a 24-year-old single mother with two children. She lived with her family in a remote area and had difficulty accessing Centrelink Services over the phone and online. Due to COVID-19 travel restrictions, the Centrelink remote servicing team had not visited this area for over 2 years. Sharlene had noticed that her payments had significantly reduced, so she made many attempts to contact Centrelink over the phone, but all were unsuccessful. While doing rural and remote outreach, one of our member centres was able to contact the remote servicing team at Centrelink for Sharlene. They advocated for Sharlene and were quickly able to figure out that Sharlene had been underpaid and that the error was made by Centrelink. Immediately, a Centrelink Officer was able to backpay \$6000 to Sharlene, as well as organise for her to be on the correct payment to support her and her children.¹⁴

¹³ Case study provided by Basic Rights Queensland. See Queensland Parliament, Community Affairs References Committee, *Inquiry into the extent and nature of poverty in Australia* (Fiona Hunt statement, 6 December 2022)

¹⁴ Case study provided by Basic Rights Queensland. Case study provided by Basic Rights Queensland. See Queensland Parliament, Community Affairs References Committee, *Inquiry into the extent and nature of poverty in Australia* (Fiona Hunt statement, 6 December 2022)

Resourcing is also needed to ensure there are sufficient specialist Services Australia staff to whom appropriate referrals can be made, particularly social workers. In EJA's experience, social workers within the Centrelink environment are uniquely equipped to work with clients with complex needs, including in relation to domestic and family violence,¹⁵ and homelessness.¹⁶

Despite the crucial role played by Centrelink social workers, EJA members report that many people in acute crisis struggle to access social worker support, with clients often having to wait two to three days – longer in regional and remote communities. Although clients in obvious urgent need of social worker support and referrals are generally offered a phone appointment on the day of contact, phone interviews are not conducive to disclosure of issues such as domestic and family violence, building trust and rapport, and providing warm referrals to local community services. There is a need for all Centrelink offices to have a social work unit, staffed at an appropriate level in light of local needs. Social workers are only able to engage effectively in community development if they are embedded in local customer service centres, and community development, including building of partnerships and linkages.

EJA's research into social security issues for women seeking to escape domestic violence¹⁷ indicates better outcomes for clients when they had timely access to Centrelink social workers. The assistance of Centrelink social workers is often key to: identifying cases of domestic violence; helping victims-survivors to obtain payment; and appropriately addressing cases where victims have incurred social security/family assistance debts or face repaying a substantial debt due to being coerced by an abusive partner into misreporting their circumstances.

Our members report that clients are generally more likely to disclose domestic violence to a Centrelink social worker at their local office than to teleservice or frontline office staff, and that social workers are able to take a holistic view of a client's circumstances in order to address circumstances of domestic violence and are able to make warm referrals to relevant local community support organisations.

Recommendation K: Resource Services Australia to enable engagement of additional Mobile Service Centres, Indigenous Service Officers and Multicultural Service Officers.

Recommendation L: Allocate substantial additional funding to enable Services Australia to employ additional Centrelink social workers, particularly given

¹⁵ Sally Cameron, *How well does Australia's social security system support victims of family and domestic violence?* (Report, August 2018) <<https://ejaustralia.org.au/general/how-well-does-australias-social-security-system-support-victims-of-family-and-domestic-violence/>>

¹⁶ Canberra Community Law and National Social Security Rights Network (now Economic Justice Australia), *Homeward Bound: Social Security and Homelessness* (Report, December 2019) <[Homeward Bound: Social Security and Homelessness | Economic Justice Australia \(ejaustralia.org.au\)](https://www.ejaustralia.org.au/wp/category/domestic-violence/)>

¹⁷ See EJA research reports, accessible at <https://www.ejaustralia.org.au/wp/category/domestic-violence/>.

COVID-19 impacts and the rise in risk and incidence of domestic and family violence, and homelessness.

Client advocacy barriers for legal services

EJA's member centres assist clients at risk of extreme and entrenched poverty due to their circumstances or vulnerability. The ability of our social security legal services to assist such clients is hampered by the erosion of advocates' access to decision-makers within Services Australia with the knowledge and capacity to exercise discretion in the interests of vulnerable clients.

The ability to immediately speak directly with the relevant decision-makers at Services Australia may be critical, for example where a client is homeless and the legal service has no way to contact the client again. Advocates may be assisting people with severe psychiatric or mental health conditions where it is manifestly evident that the person is qualified for a disability support pension or at least exemption from mutual obligations. There are also domestic violence situations where immediate access to a decision-maker is needed to take advantage of a window of time where it is safe for the victim-survivor to discuss their circumstances with Centrelink with the support of their advocate.

Streamlining access for EJA's member centre advocates to Services Australia staff who have the technical expertise and an understanding of administrative review rights to resolve complex client issues would not only ensure that highly vulnerable clients are dealt with promptly, but also relieve pressure on Centrelink frontline staff.

Unfortunately, EJA's member centres no longer have a regular channel to facilitate this kind of access, relying on individual personal contacts with particular Centrelink staff. This lack of access is coupled with the increasing need for FOI requests, both to access client records and internal policy guidelines (including the Services Australia Operational Blueprint). As a result, legal advocacy is being obstructed, which is negatively impacting access to justice for vulnerable and disadvantaged people and putting them at even greater risk of poverty.

Recommendation M: Provide funding to enable establishment of a Centrelink nationwide specialist hotline for community legal centre advocates.

Unmet need for social security legal help

The social security system and legal framework can be difficult if not impossible for individuals to navigate without specialist assistance – especially for people in poverty facing the types of issues outlined above.

Social security and family assistance law is second only to taxation law in its complexity, but with a significantly more disadvantaged and vulnerable population affected by adverse decisions. The stakes are particularly high for this group. Decisions can result in a person being left with inadequate means of financial support – for example being refused Disability Support Pension, or being treated as a member of a couple when they are in fact single; or no support at

all – due, for example, being refused Special Benefit because of the newly arrived residents waiting period, or due to a compensation preclusion period. People with social security debts often need expert advice and assistance on appeal rights, and advocacy, especially where there is a risk of criminal prosecution.

There is a high demand for specialist social security legal assistance that remains unmet. Unlike most other areas of specialist community legal centre practice, there is no private sector equivalent where people can go for legal advice or representation, either on a pro bono basis or from a private legal practice. Even if a person has the financial resources to pay for legal advice and representation, there is a lack of social security and family assistance expertise in the private legal sector.

Legal Aid does not provide representation in internal Centrelink appeals made to the Authorised Review Officer (ARO) in any jurisdiction.¹⁸ In some jurisdictions, Legal Aid also does not provide advice or representation at the AAT in social security matters, such as in Western Australia, Tasmania and ACT.

This means that, unlike other specialist and generalist community legal centres, our social security legal centres may have nowhere to refer people to for help with their social security problem if they are at capacity, which is increasingly the case. There are also fewer options to utilise volunteers within their centres, due to a lack of available expertise to supervise volunteers in providing social security legal advice. This leaves people at a dead end, even where they have a legitimate case due to a wrongful decision being made.

Specialist social security legal services are increasingly overwhelmed due to high demand and are forced to turn away many people who need their assistance. To provide a sense of scale, the caseload of the Social Security and Child Support Division (SSCSD) of the Administrative Appeals Tribunal (AAT) is almost three times the size of the AAT's NDIS caseload, (6703 SSCD lodgements in the period 1 July 2022 to 31 December 2022, compared with 2240 for the NDIS), with many cases of comparable if not greater complexity. Unlike the NDIS, advising and representing clients in social security and family assistance debt matters can be further complicated by the spectre of criminal prosecution.

National Legal Assistance Partnership (NLAP) funding arrangements have limited the capacity of EJA's membership to maintain and expand social security and family assistance law expertise. In particular, standalone social security workers in generalist centres do not have the capacity, or in some cases the support, to build their specialist expertise beyond the level required to provide advice and limited one-off assistance, and they have no capacity to develop Tribunal and Court advocacy skills.

The funding arrangements have also continued to affect the level of core /baseline funding required by statewide specialist centres. Relatedly, we note the importance of statewide specialist services in being a source of expertise and a resource to other legal

¹⁸ In some jurisdictions, Legal Aid provides access to some information/advice at this level, but does not represent. For example Victoria Legal Aid provides information via a helpline.

practitioners/centres, financial counsellors, social, community and health workers, who are assisting their clients with social security matters through secondary consultation, supported casework, warm referrals, professional development, placements, student clinics and other forms of collaboration.

At the same time as resourcing to support the maintenance and development of expertise is diminishing in the community legal sector, expertise among decision-makers is also being diluted through under-resourcing of Services Australia's internal review processes, and through well-publicised issues with the AAT.

Increasing access to social security legal advice and representation means not only that the system can work efficiently and as intended, but that people already entitled to payments can immediately receive the economic support they need and to which they are entitled.

Recommendation N: Provide funding of \$3,630,000 to provide for one additional position to each of EJA's 21 legal centre members around Australia providing specialist social security legal assistance and programs, including to EJA as the peak organisation representing these services. This is a measure that can be immediately actioned while the community legal sector works with the Government on the co-design of a longer-term funding proposal.

Contact

Linda Forbes
Law Reform Officer
Economic Justice Australia

Leanne Ho
Chief Executive Officer
Economic Justice Australia