



How well does Australia's
social security system
support victims of family
and domestic violence?



**NATIONAL
SOCIAL SECURITY**
RIGHTS NETWORK



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NSSRN notes that some people prefer to identify as victims of violence and others as survivors if violence. When NSSRN uses the term 'victim' this is intended to mean both victims and survivors.

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About the NSSRN

The National Social Security Rights Network (NSSRN) is a peak community organisation focussing on income support law, policy and administration. Our members are community legal centres (CLCs) across the country which provide free and independent legal assistance to current and former social security and family assistance claimants and recipients. Our members comprise:

- Barwon Community Legal Service
- Basic Rights Queensland Inc
- Canberra Community Law Limited
- Darwin Community Legal Service
- Fremantle Community Legal Centre
- Hobart Community Legal Service Inc
- Illawarra Legal Centre
- Launceston Community Legal Centre
- Northern Australian Aboriginal Justice Agency (Associate Member)
- Social Security Rights, Victoria
- Sussex Street Community Law Service
- Townsville Community Legal Service
- Uniting Communities Law Centre
- Welfare Rights & Advocacy Service
- Welfare Rights Centre (NSW)
- Welfare Rights Centre (SA) Inc

The NSSRN's research and policy positions are informed by our members' unique access to client-related experience. This allows us to make meaningful contributions to a range of policy and service delivery areas.

Executive Summary

Family and domestic violence is common and its impact is far reaching. It occurs across all ages, and socioeconomic and demographic groups, but predominantly affects women and children.

The *National Plan to Reduce Violence against Women and their Children: 2010-2022* aims to achieve a significant and sustained reduction in family and domestic violence. Access to social security income is a critical component of that plan, and the broader strategy to support women to leave and not return to violent relationships. Moreover, social security accessed at times of greatest vulnerability can be critical to victims of violence re-establishing themselves so they may rebuild their lives and move on.

Between March and June 2018, the National Social Security Rights Network (NSSRN) undertook a research project to consider the relationship between the Australian social security system and family and domestic violence and to identify areas where support for victims of family and domestic violence could be improved. Primary research, comprising a review of NSSRN files (January 2017 to March 2018) and a survey of NSSRN members, identified a number of systemic issues and trends.

The social security system's response to family and domestic violence has improved enormously since the early 1970s, as have other community and government services, now including targeted measures to respond to family and domestic violence. These include numerous specific provisions in the *Social Security Act 1991* ('The Act'), *A New Tax System (Family Assistance) Act 1999* (FA Act) and related legislation, explanations in the *Guide to Social Security Law* and *Family Assistance Guide*, procedures relating to staffing and protection of client information, as well as numerous other critical points of intersection. Despite significant efforts to increase support to people who are experiencing or have recently experienced family and domestic violence, some significant issues remain.

The NSSRN research found that domestic and family violence intersected with eligibility and rate of social security entitlement across a broad range of payments and issues. In most cases, violence had been perpetrated by partners or ex-partners, but also by parents, siblings, adult children, other family members and carers. More than one third of cases involved a debt, often incurred without the debtor being aware they were not being paid the correct payment or rate of payment.

NSSRN members intervened in a range of ways including providing advice directly to clients to support their interaction with Centrelink, interacting directly with Centrelink on clients' behalf, and/or providing legal assistance/representation through formal appeal mechanisms. Notably, in many instances, cases were resolved in the client's favour following NSSRN's intervention, suggesting that Original Decision Makers and Authorised Review Officers are not always 'getting it right the first time'. The consequence of those decisions is that vulnerable clients who have recently experienced family and domestic violence are forced to go through unnecessary and often drawn-out appeal processes, adding significantly to their stress and trauma. In some instances, cases were not resolved because clients had become so stressed or fatigued by the appeal process they felt they could not continue despite a high likelihood of success. The level of distress experienced by some clients as a result of their interactions with Centrelink cannot be overstated.

One of the most striking observations from the research was the high proportion of cases that intersected with homelessness or risk of homelessness: 60% of cases. This finding supports other recent research, which has found that family and domestic violence often disrupts housing security and is the leading cause of homelessness for women in Australia¹. The situation was particularly dire for women who did not fulfil residency requirements because, despite wanting to leave, their inability to secure independent income meant they were unable to secure housing and stayed with the violent perpetrator. The Newly Arrived Residents Waiting Period (NARWP) remains an obstacle to some women accessing social security and consequently, escaping family and domestic violence.

The social security system includes particularly harsh treatment of New Zealand permanent residents who arrived in Australia on or after 26 February 2001 and fall into the non-protected Special Category Visa holder category. Unlike other migrants, New Zealanders can move to Australia, and are automatically granted a Special Category Visa under which they have the right to remain indefinitely and to work, thereby contributing to compulsory superannuation and paying tax. Unlike other nationalities, New Zealanders are not required to apply for permanent residence. Consequently, unlike other newly arrived migrants (who may have arrived much more recently), even if their circumstances change (including if they have lived here for years, worked and paid tax before becoming destitute), New Zealanders are not eligible for social security payment. This places women from New Zealand at particular risk of violence, as they are more likely to find themselves unable to leave given they cannot access income support.

The research found that Centrelink's obligation to assess whether a person is a member of a couple continues to pose enormous challenges for staff, particularly where relationships are complex, are 'on again/off again', or where there are complex income and assets arrangements (which may take considerable time to disentangle post-separation). The system's presumption of couples sharing income placed some women at increased risk of violence and/or pushed them to provide limited information to Centrelink which resulted in debts being raised. Cases included:

- Men refusing to share their income with their female partner and dependent child/children.
- Men taking (stealing) their female partner's money.
- Men withholding information about income or assets making it impossible for their female partner to accurately inform Centrelink.
- Intimidation and physical violence by men forcing their female partner to not declare income or to claim social security payments to which they were not entitled.
- Men delaying tax returns as a means to delay Child Support payments.

The consequences of family and domestic violence can be long lasting, including the ongoing impact of economic abuse post-separation. The research identified a number of cases where women had received sizeable compensation payments and, as a result, were subject to lengthy compensation preclusion periods during which they could not receive social security payment. Over time, their violent partners had coerced them to allow access to those funds but, post-separation, refused to repay them or

1 Australian Institute of Health and Welfare, *Domestic & family violence & homelessness 2011–12 to 2013–14*. Web Report (3 February 2016) Australian Institute of Health and Welfare <<https://www.aihw.gov.au/reports/domestic-violence/domestic-family-violence-homelessness-2011-12-to-2013-14/contents/the-intersection-of-domestic-violence-and-homelessness>>; NSW Women Refuge Movement and the UWS Urban Research Centre, 'The impact of housing on the lives of women and children post domestic violence crisis accommodation' (Report, the NSW Women Refuge Movement and the UWS Urban Research Centre February 2009) <http://www.uws.edu.au/_data/assets/pdf_file/0011/69590/Microsoft_Word_-_Finalreport.pdf>; Tanya Corrie, 'A wider lens: Domestic violence, homelessness and financial security' (2013) 26(2) *Parity* 21–23.

provide any other financial support despite their ongoing inability to access social security income. Centrelink did not recognise their history of family and domestic violence as reason to waive the remaining portion of the preclusion period. Similarly, in many cases Centrelink did not recognise family and domestic violence as contributing to 'special circumstances' allowing debts to be waived, including where the person had no idea they had been receiving incorrect payments.

The review considered the utility of Crisis Payment, which can be paid to support a person leaving a violent relationship, finding its function continues to be undermined by a number of factors. Crisis Payment:

- Can only be paid if claimed within seven days, which can be too short for some people escaping a violent relationship who may be traumatised, seriously injured or hospitalised, and/or who may face difficulties accessing the required documentation within the short timeframe.
- Can only be paid if the perpetrator or victim has permanently left the family 'home', which means that some of the most vulnerable people in crisis are excluded from obtaining Crisis Payment, including: those who are living in substandard accommodation or experiencing homelessness; those who have left the family home but are forced to move again when the perpetrator tracks them down and recommences harassment and/or violence; and those whose circumstances regarding their removal from the home may be considered 'temporary'.
- Is equivalent to a single week's payment, which may be vital in a crisis situation but often is insufficient to enable victims of family and domestic violence to start re-organising their living and financial arrangements to stabilise their situation.
- Is limited to four payments a year, so although that may suffice to support some victims of violence, it may not be enough to support the needs of some women trying to leave a violent relationship, particularly clients who are most vulnerable.
- Is not available to victims of family and domestic violence who are not receiving income support but are experiencing or anticipating severe financial hardship resulting from their efforts to leave a violent relationship.

Having children adds considerable complexity to relationships where there is family and domestic violence. Care of children, whether it is classified by social security as 'residence' or 'percentage of care' remains a weapon used by perpetrators to continue family and domestic violence post-separation. Misleading claims about child residence by perpetrators are not uncommon. More care needs to be taken in establishing residence of children, and the system would be greatly improved if payments could continue to a parent where care is interrupted for a short period (of up to three months), as a means to secure stable accommodation and ongoing care for the child.

Generally, Centrelink staff members do an impressive job supporting people to access their social security entitlement, often in difficult circumstances. Capacity in this area appears to have been bolstered by the development of the Department of Human Services' *Family and Domestic Violence Strategy 2016-19* and the delivery of targeted family and domestic violence training. The development of key performance indicators to track performance is critical to ensuring the investment leads to real impact. The designation of expert positions in the Department of Human Services (DHS) and the Department of Social Services (DSS) would help to achieve this, along with a mechanism coordinating the interface between those Departments including access by community and other government agencies.

The research suggests that more staff support is needed to ensure consistent, high quality levels of service. The report recommends consideration of ways to increase the availability of safe spaces for disclosure of family and domestic violence, and an increased emphasis on staff training so that they are able to assist clients with complex needs and/or requiring greater levels of support. The case data indicates that access to social workers remains pivotal to the effective management of issues relating to family and domestic violence, particularly when access to social workers is granted quickly and on-site. A greater reliance on information and communication technologies (over face-to-face interactions) has left many clients feeling unsupported and stressed by requirements to manage much of the claim process themselves, inhibiting disclosure of violence. These issues are amplified for those with limited access to, or understanding of, computer-based technologies.

While not necessarily typical of the majority of victims of family and domestic violence seeking social security entitlements, many clients in this report reported a sense of the social security system having failed them when they most needed support, including some staff appearing to act as gatekeepers and not facilitating their access to the system. This perception is at odds with the social security system's mandate to operate as a safety net to support vulnerable people. The social security system remains a critical support mechanism for victims of family and domestic violence. It is vital that this overarching purpose is not lost in both the development of laws and policy, and during daily considerations about how specific laws and policies relate to individual cases.



Recommendations

DEFINITION OF FAMILY AND DOMESTIC VIOLENCE

1. That the note at 1.1.D.235 of the Guide to Social Security Law on 'Domestic and/or family violence (CrP)' stating "This definition applies to CrP" be removed to allow the definition of family and domestic violence to be applicable across the *Social Security Act 1991* beyond Crisis Payment.
2. That the definition of family and domestic violence (referred to in Recommendation 1) be referenced in the Guide to Social Security Law, particularly where there is mention of special circumstances.
3. That a definition and/or examples of economic abuse be included in the Guide to Social Security Law.

MEMBER OF A COUPLE

4. That the Guide to Social Security Law be amended to include clarification of the reasons why the presence of family and domestic violence may indicate that:
 - a. Two people living together may not be a member of a couple; and/or
 - b. Section 24 of Act (allowing discretion to treat a person as not being a member of a couple for a special reason) may be appropriately applied.
5. That the Guide to Social Security Law be amended to include the issue of family and domestic violence, including economic abuse, as an important indicator to be considered when determining:
 - a. Whether a person is separated and living under the one roof; and/or
 - b. Whether the application of section 24 of the Act (which allows discretion to treat a person as not being a member of a couple for a special reason) may be appropriately applied.
6. That the Guide to Social Security Law be amended to include clarification of the impact of financial abuse and the rationale that financial abuse may be an indicator of a lack of commitment suggesting that:
 - a. Two people living together may not be a member of a couple; and/or
 - b. Section 24 of the Act (which allows discretion to treat a person as not being a member of a couple for a special reason) may be appropriately applied.

SPECIAL CIRCUMSTANCES

7. That section 4.13.4.10 of the Guide to Social Security Law, which provides an overview of the application of the special circumstance provisions to allow waiver of all or a portion of a compensation preclusion period, be amended to include specific reference to family and domestic violence and the evidence that will be accepted as demonstrating its financial impact, particularly where compensation has been stolen or used by a violent partner or ex-partner so that a victim of family and domestic violence is without funds.
8. That section 6.7.3.40 of the Guide to Social Security Law, which outlines the circumstances in which special circumstance provisions allow waiver of a debt, be amended to include the client's experience of family and domestic violence as a factor to be considered.
9. That section 6.7.3.40 of the Guide to Social Security Law be amended to clarify that a history of family and domestic violence must be considered in relation to debt waiver, particularly where a person has accrued a debt under duress or coercion, and consequently statements or representations may not constitute 'knowledge' by the debtor.
10. That when considering whether a case may be referred to the Commonwealth Director of Public Prosecutions, consideration be given to how the debt arose and whether coercion or duress was involved. In such circumstances of family and domestic violence, cases should not be referred for prosecution.

PAYMENT

11. That part 2.23 of the Act be amended to allow Crisis Payment to be paid to any person suffering severe financial hardship who has recently experienced family and domestic violence: removing the nexus of 'home'.
12. That section 3.7.4.20 of the Guide to Social Security Law be amended to allow a claim for Crisis Payment within 14 days of the extreme circumstances occurring.
13. That the DHS's website be amended to include the current, short time limit for claiming Crisis Payment on the Crisis Payment homepage.
14. That Crisis Payment be extended to victims of family and domestic violence who are not receiving income support but are experiencing or anticipating severe financial hardship resulting from their efforts to leave a violent relationship.
15. That Crisis Payment be increased to the equivalent of 'four weeks' single rate pension: approximately \$1640.
16. That eligibility for Crisis Payment be extended to allow Crisis Payment to be paid up to six times per year.

NEWLY ARRIVED RESIDENTS WAITING PERIOD (NARWP)

17. That the Act be amended to enable non-protected Special Category Visa holders to access Special Benefit, particularly if it is unreasonable to expect that person to leave Australia, for example, a victim of family and domestic violence who is a parent and needs to remain in Australia in order for the children to continue to have access to both parents, or a person who fears violence from their partner or from their partner's family if they return to their home country.
18. That the Government review the particularly harsh treatment of New Zealand permanent residents living in Australia who experience a substantial change of circumstances and find themselves in extreme financial hardship, enabling them to access Special Benefit where there has been a 'substantial change of circumstances beyond their control' so they are treated equitably with newly arrived migrants.

CARE OF CHILDREN

19. That Centrelink institute a process of confirming care arrangements with both parents before cutting payment to a parent who is currently receiving Parenting Payment or Family Tax Benefit.
20. That section 2.1.1.60 of the Family Assistance Guide be amended to enable payment of Family Tax Benefit to continue when a person has care of a child but that care is interrupted for a period of up to three months (currently four weeks) as a means to secure stable accommodation and ongoing care for the child.
21. That consideration of retrospective exemption should always include assessment by a social worker so that a detailed interview with the client may be undertaken to assess the barriers the client faced in seeking a Child Support Exemption due to experiencing domestic violence.
22. That the DHS engage in a proactive campaign to identify clients who are not receiving their full Family Tax Benefit entitlements and assess their eligibility for the Child Support Exemption.

CENTRELINK'S SERVICE ENVIRONMENT

23. That training of general staff continues to increase staff capacity to deal with family and domestic violence: Not only building awareness but also developing the practical skills and resources required to discretely and effectively interact with clients who may be experiencing family and domestic violence, including making an appointment with a social worker and/or other specialist staff as soon as possible.
24. That DHS consider ways to make Centrelink offices safer spaces, enabling clients' disclosure of family and domestic violence.
25. That family and domestic violence training of frontline Centrelink staff include efforts to assist staff to flag clients who may be in or have recently left a relationship including family and domestic violence.
26. That frontline staff be given more in-depth training to better support clients' interaction with the social security interface, particularly when clients are referred away from face-to-face service and support to complete forms and supply other required documentation.
27. That processing times be reduced to provide some financial certainty for people escaping situations of family and domestic violence. This should include consideration of a triage system where payments associated with family and domestic violence are treated as urgent.
28. That DHS consider establishing a dedicated phone line for clients experiencing family and domestic violence to discuss issues relating to their social security entitlements.
29. That timely access to social workers, particularly on-site social workers, be increased to better support victims of family and domestic violence, with references in the Guide to Social Security Law to assist staff in determining when a referral to a social worker is appropriate.
30. That, in appropriate cases, where victims of family and domestic violence are unable to access official documents, Centrelink uses its information gathering powers to access required documents held by other government departments, including Births, Deaths and Marriages, and to assist clients to access those documents.
31. That DHS and the DSS develop transparent and accessible mechanisms to address the impact of family and domestic violence on social security entitlements, including designated family and domestic violence policy and programme specialists, and a mechanism coordinating interdepartmental work on this issue.
32. That DHS develops key performance indicators (KPIs) to measure implementation of, and performance against, the Family and Domestic Violence Strategy.



Background

FAMILY AND DOMESTIC VIOLENCE IN AUSTRALIA

Definitions of Family and Domestic Violence

There is no agreed definition of family and/or domestic violence in Australia although definitions generally include the concept that family and domestic violence involves a person exercising power and control over a victim to induce fear. Domestic violence involves violence by a person against their current or former intimate partner, with family violence extending the definition to include other family members or persons living in the same household. Notably, family violence is understood to be the preferred term by Aboriginal and Torres Strait Islanders people as it encompasses the broad range of extended family and kinship relationships in which violence may occur.²

The Department of Human Services' *Family and Domestic Violence Strategy 2016–2019* defines family and domestic violence as conduct that is violent, threatening, coercive or controlling, or intended to cause the family or household member to be fearful. It can include (but is not limited to):

- Physical violence
- Sexual assault and other sexually abusive behaviour
- Economic (financial) abuse
- Emotional or psychological abuse
- Stalking
- Kidnapping or deprivation of liberty
- Serious neglect where there is a relationship of dependence
- Damage to property, regardless of whether the person affected by violence owns the property
- Causing injury or death to an animal, regardless of whether the person affected by violence owns the animal
- Verbal abuse
- Spiritual or cultural abuse, or
- Exposing a child to the effects of these behaviours.

NSSRN applauds DHS recognition that family and domestic violence can impact social security entitlement and its development of the *Family and Domestic Violence Strategy*, including the broad range of examples it lists.

The Guide to Social Security Law³ ('the Guide') also includes a definition of family and domestic violence (at [1.1.D.235](#)) that states:

- domestic and family violence occurs when someone tries to control their partner or other family members in ways that intimidate or oppress them. Controlling behaviours can include threats, humiliation ('put-downs'), emotional abuse, physical assault, sexual abuse, financial exploitation and social isolation, such as not allowing contact with family or friends, and/or
- family violence means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family to fear for, or to be apprehensive about, his or her personal well-being or safety.

2 Australian Institute of Health and Welfare, *Family, domestic and sexual violence in Australia 2018* (28 February 2018) Australian Institute of Health and Welfare <<https://www.aihw.gov.au/reports/domestic-violence/family-domestic-sexual-violence-in-australia-2018/contents/summary>>; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending family violence and abuse in Aboriginal and Torres Strait Islander communities: Key issues: An overview of research and findings by the Human Rights and Equal Opportunity Commission, 2001-2006* (20 June 2006) Human Rights Commission <<https://www.humanrights.gov.au/publications/ending-family-violence-and-abuse-aboriginal-and-torres-strait-islander-communities-key>>.

3 Australian Government, *The Guide to Social Security Law* (7 May 2018) v1.244 <<http://guides.dss.gov.au/guide-social-security-law/updates/previous-updates/2018>>.

That definition of domestic violence includes “violence to someone who is not a family member, for example co-tenants and people in shared housing situations”. NSSRN supports this definition, particularly as it allows consideration of violence in various domestic arrangements. Notably, the Guide also includes a specific note that the definition applies only to Crisis Payment, although in practice it seems Centrelink staff apply it more broadly, perhaps because there is no other definition of family or domestic violence included elsewhere in the Guide or the Act.

Arguably, the inclusion of a definition of family and domestic violence in the Guide has greater utility for staff going about their day-to-day business than the definition in the *Family and Domestic Violence Strategy*. Consequently, inclusion in the Guide of a definition of family and domestic violence, applicable across all social security payments and referenced in particular where special circumstances is mentioned, would provide clarity and encourage consistency of approach to family and domestic violence across social security entitlements. NSSRN recommends that the note limiting application of the family and domestic violence definition to Crisis Payment be removed to formalise what appears to be a default application of the definition across the Act, providing clarity and consistency of approach across social security entitlements.

Recommendation 1 *That the note at 1.1.D.235 of the Guide to Social Security Law on ‘Domestic and/or family violence (CrP)’ stating “This definition applies to CrP” be removed to allow the definition of family and domestic violence to be applicable across the Act beyond Crisis Payment.*

Recommendation 2 *That the definition of family and domestic violence (referred to in Recommendation 1) be referenced in the Guide to Social Security Law, particularly where there is mention of special circumstances.*

The current definition of domestic and/or family violence does not include examples of types of abuse. Given the centrality of financial arrangements to social security eligibility and limited community understanding of economic abuse, it would be useful for the Guide to include a description and examples of economic abuse, including accessing a person's funds without permission, denying a partner access to income or assets when they are without adequate income or assets of their own, withholding information about income or assets, forcing a partner to relinquish control of their income or assets, coercing a person to claim social security payments, preventing a person from seeking or keeping employment, and demanding money from a partner or relatives using standover tactics (sometimes referred to as ‘humberging’ in Indigenous communities).⁴

Recommendation 3 *That a definition and/or examples of economic abuse be included in the Guide to Social Security Law.*

Prevalence of Family and Domestic Violence

Family and domestic violence sits within the broader context of societal violence which includes violence by current or previous partners, siblings, parents, children, other family members, friends, acquaintances, employers, customers, clients and other, including strangers. Recent, comprehensive data compiled by the Australian Institute of Health and Welfare (AIHW) shows family and domestic violence is common and its impact is far reaching.

Family and domestic violence occurs across all ages, and socioeconomic and demographic groups, but it predominantly affects women and children. The most pervasive form of violence experienced by women in Australia is violence perpetrated by a male intimate partner, while men are more likely to experience violence from strangers and in a public place⁵.

An estimated one in six (1.6 million) Australian women and one in sixteen (500,000) men have been subjected to physical and/or sexual violence by a cohabiting partner since the age of 15⁶. Approximately, 2,800 women and 560 men are hospitalised each year as a result of an assault by a spouse or partner (2014-15 data). One woman is killed each week, and one man is killed each month by a current or former partner (2013-2015 data).⁷

4 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence—A National Legal Response*, ALRC Report 114 NSWLRC Report 128 (8 October 2010).

5 Janet Phillips et al, ‘Domestic violence: issues and policy challenges’ (Research Paper No 2015-16, Parliamentary Library, Parliament of Australia, 2015).

6 Australian Bureau of Statistics, *Personal Safety Survey 2016* (8 November 2017) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>>.

7 Willow Bryant and Samantha Bricknell, ‘Homicide in Australia 2012-13 to 2013-14: National Homicide Monitoring Program Report’ (Report No 2, Australian Institute of Criminology 2017).

Children can experience family violence as a witness and/or a victim. More than two-thirds (68%) of mothers who had children in their care when they experienced violence from their previous partner said their children had seen or heard the violence.⁸ One in six (16%, or 1.5 million) women reported having experienced physical and/or sexual abuse before the age of 15 (as girls), and one in nine (11%, or 992,000) men reported having experienced abuse when they were boys.⁹

Some groups are at greater risk of family, domestic and sexual violence. The Australian Bureau of Statistics' 2016 Personal Safety Survey found that those at greatest risk include Indigenous women,¹⁰ young women,¹¹ pregnant women,¹² women with disability,¹³ women ending a relationship and/or separating from partners,¹⁴ people with a history of abuse,¹⁵ people experiencing financial hardship¹⁶, unemployed women or women who rely on government payments as their main source of income,¹⁷ and children witnessing domestic violence.¹⁸

Effects of Family and Domestic Violence

Family violence causes terrible physical and psychological harm, particularly to women and children. It destroys families and undermines communities. Intimate partner violence causes more illness, disability and deaths than any other risk factor for women aged 25–44. Qualitative research has shown that children exposed to family, domestic and sexual violence can experience long-term effects on their development and have increased risk of mental health issues, and behavioural and learning difficulties.¹⁹ It is also the leading cause of homelessness for children.²⁰ Children who witnessed partner violence against their parents were two to four times as likely to experience partner violence themselves (as adults) as people who had not (ABS 2017).

The effects of family violence are severe: reducing victims' physical and mental health and wellbeing, their capacity for social and economic participation, and their ability to live free from fear. Whether the violence first occurs during a relationship, after separation, after the relationship ends, or throughout all these stages, its effects can be long term and damaging in many ways.²¹ Often, an abusive relationship will continue to affect a person for the remainder of their lives.²²

Family and domestic violence is also expensive. In 2015–16, the financial cost of violence against women and their children in Australia, including direct costs such as healthcare and welfare support and indirect costs such as lost wages, was estimated at \$22 billion.²³ It is likely that Aboriginal and Torres Strait Islander women, pregnant women, women with a disability, and women experiencing homelessness were underrepresented in this calculation. Accounting for these women may add another \$4 billion.²⁴

8 Australian Bureau of Statistics, above n 6.

9 Ibid.

10 Colleen Bryant and Matthew Willis, 'Risk factors in Indigenous violent victimisation' (Report No 30, Australian Institute of Criminology 2008).

11 Tanya Abramsky et al, 'What factors are associated with recent intimate partner violence? Findings from the WHO multi-country study on women's health and domestic violence' (2011) 11 *BMC Public Health* 109; Michael Flood and Laura Fergus, 'An assault on our future: the impact of violence on young people and their relationships' (Report, White Ribbon Foundation, 2008) 24–8 <https://www.whiteribbon.org.au/wp-content/uploads/2016/10/An_assault_on_our_future_FULL_Flood_Fergus_2010.pdf>.

12 Anthony Morgan and Hannah Chadwick, 'Key issues in domestic violence, Australian Institute of Criminology Research in Practice' (Report No 7, Australian Institute of Criminology, 2009); Jo Richardson et al, 'Identifying domestic violence: cross-sectional study in primary care' (2002) 324(7332) *British Medical Journal*, 274.

13 Ibid.

14 Charlene Baker, Sarah Cook and Fran Norris 'Domestic violence and housing problems: a contextual analysis of women's help-seeking, received informal support, and formal system response' (2010) 9(7) *Violence Against Women* 754–83; Ruth Fleury, Cris Sullivan and Deborah Bybee 'When ending the relationship does not end the violence: women's experiences of violence by former partners' (2000) 6(12) *Violence Against Women* 1363–83; Jinseok Kim and Karen Gray 'Leave or stay? Battered women's decision after intimate partner violence' (2008) 23(10) *Journal of Interpersonal Violence* 1465–82.

15 Anthony Morgan and Hannah Chadwick, above n 12.

16 Zohre Ahmadabadi et al, 'Income, Gender, and Forms of Intimate Partner Violence' (2017) 1(26) *Journal of Interpersonal Violence*.

17 Anthony Morgan and Hannah Chadwick, above n 12.

18 Lorana Bartels, 'Emerging issues in domestic/family violence research' (Report No 10, Australian Institute of Criminology 2010).

19 Monica Campo, 'Children's exposure to domestic and family violence: key issues and responses' (CFCA Paper No 36, Australian Institute of Family Studies, 2015).

20 Ibid.

21 Victoria, Royal Commission into Family Violence, *Summary and recommendations report no 132*, (2016).

22 Illsa Evans, 'Battle-scars: Long-term effects of prior domestic violence' (Report, Centre for Women's Studies and Gender Research Monash University, February 2007).

23 KPMG, 'The cost of violence against women and their children in Australia' (Report, Department of Social Services, May 2016) <https://www.dss.gov.au/sites/default/files/documents/08_2016/the_cost_of_violence_against_women_and_their_children_in_australia_-_summary_report_may_2016.pdf>.

24 Ibid.

The National Response to Family and Domestic Violence

Australia's primary instrument to address family and domestic violence is the *National Plan to Reduce Violence against Women and their Children: 2010-2022* (the National Plan)²⁵, which aims to achieve a 'significant and sustained reduction in violence against women and their children' (COAG 2011). It focuses on six national outcomes:

- Communities are safe and free from violence
- Relationships are respectful
- Indigenous communities are strengthened
- Services meet the needs of women and their children experiencing violence
- Justice responses are effective
- Perpetrators stop their violence and are held to account.

Strategy 4 includes (at 4.3) the funding of income support and family assistance payments, including Crisis Payment for women experiencing violence. The (current) Third Action Plan 2016 -19²⁶ to deliver the National Plan is currently being implemented.

THE RELATIONSHIP BETWEEN SOCIAL SECURITY AND FAMILY AND DOMESTIC VIOLENCE

International Instruments

This report has been developed with regard to a number of international instruments to which Australia is signatory. These include:

- The Universal Declaration of Human Rights, which includes the right to social security and its realisation (Article 22).
- The International Covenant on Economic, Social and Cultural Rights, which includes the right to social security (Article 9) and the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and the continuous improvement of living conditions (at Article 11).
- The International Covenant on Civil and Political Rights, which includes a commitment to ensure equality of rights and responsibility of spouses in relation to marriage and its dissolution (Article 23), and the right of children to protective measures including in the family, society and the State (Article 24).
- Convention on the Elimination of Discrimination Against Women, which includes taking all appropriate measures to eliminate discrimination against women in areas of economic and social life in order to ensure equality of men and women relating to family benefits (Article 13).
- Declaration on the Elimination of Violence against Women, which outlines measures States should take to eliminate violence against women, including cooperation with non-governmental organisations in addressing the issue of violence against women (Article 5.h)
- Convention on the Rights of the Child, including that social welfare institutions have the best interest of the child as the primary consideration in decision-making (Article 3) and that each child has the right to benefit from social security, including that resources and circumstances of the child and persons having responsibility for the child being taken into account (Article 26).
- Convention on the Rights of Persons with Disabilities, including the right to enjoy liberty and security of person (Article 14); that appropriate measures be made to protect persons with disabilities in and outside the home from all forms of abuse (including exploitation) (Article 16); and that persons with disabilities have access to personal assistance necessary to support living (Article 19 and Article 28).
- United Nations Declaration on the Rights of Indigenous People, which includes that particular attention should be paid to the rights and special needs of Indigenous Elders, women, youth, children and persons with disabilities in the continuing improvement of their economic and social conditions (Article 21).

25 Council of Australian Governments, 'National Plan to Reduce Violence against Women and their Children 2010-2022' (National Plan, 2011).

26 Council of Australian Governments, 'National Plan to Reduce Violence against Women and their Children 2010-2022' (Third Action Plan 2016-2019, 2016).

Relationship between Social Security and Family and Domestic Violence

The social security system is designed to operate as a safety net to support vulnerable people. During the daily considerations about how specific laws and policies relate to individual cases, it is vital that this overarching rationale is not lost.

In short, the social security system is based on four key principles that:

1. Access is based on need, usually measured with reference to a person or their partner's income and assets.
2. All who are able should undertake activities to improve their skills with a goal to find work.
3. Whether or not a person is a member of a couple determines both eligibility and rates of payment, with a person who is a member of a couple receiving less than a person who is single.
4. Benefits are generally limited to those who are settled in the Australian community, using a number of criteria to test residence.

While reasonable as stand-alone concepts, these principles frequently intersect with each other and with other factors including family and domestic violence, to ignore inequities and exacerbate disadvantage. Often there is no discretion meaning that if a person does not meet specific criteria, they are not eligible for payment, including in situations of financial distress. Where discretion is possible, it is often applied sparingly.

Social security entitlement intersects with family and domestic violence in many ways, including situations where:

- **A couple's income is not shared**

The social security system's assumption that members of a couple will talk openly and honestly about their earnings and assets does not apply to many relationships where there is family and domestic violence. Often abusers control money and do not inform their partners of, or actively hide, their income and assets. Withholding money is also a common form of family and domestic violence, however, if a person is deemed to be a member of a couple, the perpetrator's wage affects entitlement of both partners (and their children), significantly reducing payment or precluding payment altogether. Financial abuse and controlling behaviour may also result in a perpetrator controlling a victim's social security income, including using (essentially stealing) funds solely for their own benefit.

- **Incorrect information causes a victim to accrue a debt**

It can be extremely difficult for a victim of family and domestic violence to provide accurate household income when their partner will not tell them what they earn. A person may unwittingly mislead Centrelink about their partner's income and assets because their partner won't provide information or provides false information. A partner may refuse to provide details of their income or to share income so a person cannot correctly declare their partner's income. They are faced with the prospect of either having no income, or securing income to support themselves (and their child/ren) while possibly accruing an income support overpayment. At other times, a perpetrator may coerce or force a person to provide false information to Centrelink. In both instances, the victim is liable for repaying the funds, whether or not they received any financial benefit. Larger debts may be prosecuted.

- **Fear of being caught out by Centrelink reduces a victim's capacity to leave**

Sometimes a victim who is without any means of financial support will not disclose that they are living in the same house as their violent partner because they are without any means to obtain independent income and/or alternative housing. This can give the perpetrator leverage to force the victim to stay in the violent home, using threats to "dob them in" if they leave. Leaving may become increasingly difficult as the size of a possible debt increases. Clients in this position may also be scared to reach out to other support services.

- **Social security income is too low to secure safe accommodation**

People whose only source of income is a social security payment often have no savings and no way to leave a violent shared home and set up a new home. Similarly, if a victim wants to leave their partner who is the sole income earner, it is extremely difficult to secure funds to move into alternative accommodation. Further, maintaining a home on a single social security income may not be feasible, causing victims to return to abusive relationships.

- **Establishing social security entitlement becomes too difficult**

Victims of family and domestic violence experiencing high levels of stress can face enormous difficulty establishing their social security entitlement, including difficulty dealing with Centrelink administration required following the breakdown of a relationship.

Conversely, access to independent income and financial security through social security entitlement can enable victims of family violence to leave violent relationships, avoid returning to violent relationships, and to take steps to rebuild their lives. As research by Evans established, 'many victims of family and domestic violence access security income at times of optimum vulnerability but, given sufficient time to re-establish themselves, are able to re-enter the workforce'.²⁷

The social security system's response to family and domestic violence has improved enormously since the early 1970s, as have other community and government services, now including targeted measures to respond to family and domestic violence. These include specific provisions in the legislation, explanations in the Guide, and procedures relating to staffing and protection of client information. They also include numerous other critical points of intersection.

Table 1: Examples of social security law, policy and practice directly impact victims of family and domestic violence

Payments/arrangements where family and domestic violence is referenced	
Crisis Payment	A one-off payment for some people who have recently experienced domestic violence
Weekly payment	Payment of a person's regular social security payment for some people who have experienced domestic violence who have difficulty managing their money if paid fortnightly
Exemptions from Activity Tests	Exemption from requirements associated with different payments including requirements to undertake training or look for work for some people who have recently experienced domestic violence
Independence	Assessment of a young person as 'independent' because they are unable to live at home due to extreme circumstances (including domestic violence), enabling Independent Youth Allowance to be payable
Exemption from seeking Child Support	Exemption from pursuing Child Support from an ex-partner in order to receive more than base rate Family Tax Benefit Part A if a person fears their partner will react violently towards them or their family
Partner's tax file number exemption	Exemption from providing a partner's tax file number before other social security payments can be paid if a person or their dependents may be at risk of violence or there are other safety concerns
Payments/arrangements used to respond to family and domestic violence where not referenced	
Urgent Payment	Urgent payment of a person's regular social security payment may be made in 'exceptional and unforeseen circumstances' (which may include domestic violence) where a person is in severe financial hardship
Debt Waiver	Waiver of a debt where a person did not 'knowingly' make a false statement or fail to comply with social security law if 'special circumstances' exist (including domestic violence in combination with other factors) and it would be unjust for a person to repay the debt

²⁷ Evans, above n 22.

Other key provisions that frequently intersect with issues of family and domestic violence

Member of a couple	Assessment as a member of a couple (through reference to a range of factors); affecting eligibility and/or rate of payment
Principal carer	Assessment of whether a person is the principal carer of a dependent child, determining eligibility for Parenting Payment or for other payments with reduced participation requirements
Care of a child	Assessment of the degree to which a person has care of a dependent child, affecting eligibility for and rate of payment for Family Tax Benefit payments
Residency	Assessment of Australian residence, including reference to particular visas or subclass of visas affecting eligibility for, and type of income support
Compensation Preclusion Period	Reduction or waiving of a compensation preclusion period in special circumstances where lack of access to social security could lead, or has led, to extreme hardship or created an inequitable, unjust or unreasonable situation.

Administrative Arrangements

Staff Training	Training of DHS staff to recognise and deal with issues relating to family and domestic violence
Access to social workers	Access to Centrelink social workers trained and resourced to work with clients with complex needs, including those who are or have recently experienced family or domestic violence
Privacy protections	Protection of personal information held by DHS with reference to laws and formal policy guidelines including the <i>Privacy Act 1988 (Cth)</i> , the <i>Act</i> , the <i>Guide</i> and the <i>Criminal Code Act (Cth)1995</i>

Despite significant efforts over the last few decades to improve the social security system's capacity to support victims of family and domestic violence, some issues remain. Ironically, at a time of unprecedented support for family and domestic violence initiatives (as evidenced by the National Plan) some of these remaining issues appear to be a consequence of recent changes to the social security system: perhaps the unintended consequences of a 'tightening up' of eligibility criteria and pressure to reduce expenditure on public sector staff.



Project Methodology

Between March and June 2018, the NSSRN undertook a research project to consider the relationship between social security and domestic or family violence, and to identify areas in which support for victims of family and domestic violence could be improved.

An Advisory Group was appointed to provide:

- Advice and support to help steer the direction of the research;
- Input on specific aspects of the research according to members' areas of expertise;
- Advice on ethical considerations, process and content of the proposed client survey;
- Comments on the content of the draft research report; and
- Assistance promoting the report and its findings.

Advisory Group members were appointed from academic, legal and social work practice with expertise related to social security law and policy, family and domestic violence (including economic abuse and understanding of domestic violence court support schemes), human rights, feminist legal theory, homelessness, disability discrimination, Aboriginal and Torres Strait Islander legal issues, and issues affecting culturally and linguistically diverse communities.

The Advisory Group comprised:

Helen Dalley-Fisher	Manager, Equality Rights Alliance
Elizabeth Divers	SSRV Project Lawyer, Social Security Rights Victoria
Beth Goldblatt	Associate Professor, Faculty of Law, UTS
Sally Kenyon	Solicitor, Economic Abuse Reference Group (Women's Homelessness Project, Justice Connect), Victoria
Rayila Maimaiti	Community Worker, Welfare Rights Centre Sydney
Lulu Milne	Principal Social Worker, Women's Legal Service Qld
Cathy Pereira	Principal Solicitor, Aboriginal and Torres Strait Islander Women's Legal & Advocacy Service NQ
Jessica Raffal	Solicitor/Community Legal Education Officer, Women's Legal Service NSW
Scarlet Wilcock	Lecturer, School of Law, University of Wollongong

Primary research included:

- Identification and analysis of systemic issues and trends identified during a review of NSSRN member files from the period January 2017 to March 2018. That process included:

Scoping of all NSSRN members' casework to gauge the frequency of family or domestic violence issues arising in social security casework during the period 1 January 2017 to 31 March 2018.

Identification of the number of NSSRN members' social security cases opened between 1 January 2017 and 31 March 2018 that include identification of issues related to family and domestic violence. That review showed that family and domestic violence is a recurring issue in social security cases around Australia.

In-depth review of all Welfare Rights Centre (NSW) cases flagged with the Community Legal Assistance Services System (CLASS) Family Violence indicator during the period 1 January 2017 to 31 March 2018.

Comment by NSSRN members on the draft report to ensure the description of issues encountered by WRC (NSW) was indicative of issues encountered nationally.

The NSSRN and WRC (NSW) undertook an initial review of all WRC (NSW) files opened between 1 January 2017 and 31 March 2018 using CLASS: the data base used to manage and record community legal centres' legal advice and cases.

An initial search was undertaken to identify files where the CLASS's Family Violence Indicator had been flagged indicating a client had answered 'yes' to the question, 'Are you currently or have you recently experience domestic violence', or a question of a similar nature. The search identified 3628 instances of advice, assistance or other support between 1 January 2017 and 31 March 2018. Cross tabulation by client number showed assistance had been given to 2708 discrete clients. Of those, 204 clients stated they had recently experienced or were experiencing family or domestic violence: approximately 8% of clients.

The case list of 204 clients (who had recently experienced or were experiencing family or domestic violence) was reviewed to identify details about the ways family or domestic violence had interacted with their social security entitlement. In some instances, case records contained only limited descriptions of family and domestic violence and its relationship to the primary social security issue, particularly where only referral or limited legal assistance had been provided²⁸. Those cases were discarded. A total of 93 cases containing adequate detail remained for final review.

The small sample size precludes broad generalisations about the experience of all people accessing social security support who have experienced family or domestic violence. Notably, the sample is not representative because WRC (NSW) is only contacted by people who seek support to resolve issues relating to social security. However, the case histories of the 93 WRC (NSW) clients do enable useful observations to be made about the relationship between family and domestic violence and social security entitlement.

The WRC (NSW) case review formed the focal point of the research project. All case studies in this report are from WRC (NSW) cases unless otherwise stated.

- Reference to the experiences of clients, drawing on information gathered during a survey of NSSRN member centres.

The NSSRN currently conducts two member centre surveys each year to elicit information from member centres about the profile of member centre clients or emerging trends or issues in income support policy or service delivery.

In May 2016, the NSSRN surveyed member centres asking about their clients' experiences trying to resolve social security issues while affected by family or domestic violence: (Appendix 1). Responses were provided in writing or by phone interview.

28 Note that consideration of the relationship between family and domestic violence and social security entitlement was not the purpose of case records when original notes were taken.

Observations contained in this report were led by the primary research data.

Primary research was supported by:

Identification and review of Administrative Appeals Tribunal (AAT) and Federal Court cases including considerations of family and domestic violence in relation to social security law during the two-year period 1 January 2017 to 31 March 2018.

The review identified seven AAT cases related to social security entitlement in which family and domestic violence had been identified as a relevant issue: (Appendix 2). No cases were identified at Federal Court level. These cases are referenced where relevant in the body of the report.

A literature review of recent Australian and international (New Zealand, Canada and U.K.) research published since 2008, and a review of Centrelink and DHS resources and other data (such as statistics) relating to family and domestic violence and Social Security.

Information identified during those reviews is included in the body of this report, including reference to the KPMG Post Implementation Review of the Human Services Family and Domestic Violence Strategy 2016-2019.²⁹

RESEARCH FINDINGS

Summary of Demographic Data

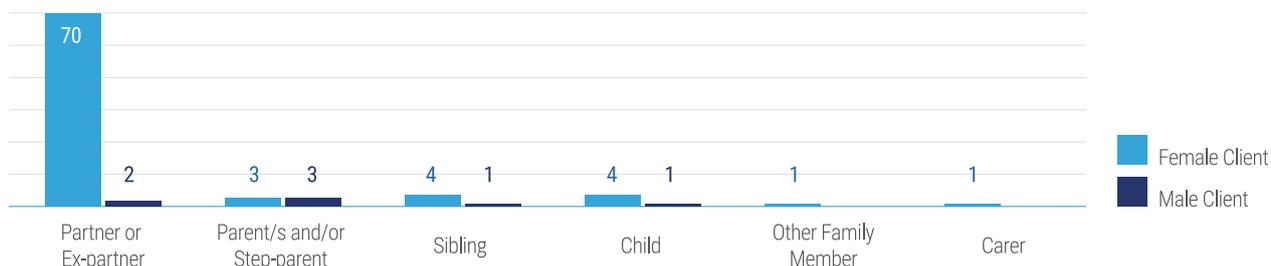
Review of the 93 selected family and domestic violence cases opened between 1 January 2017 and 31 March 2018 found that:

- 86 clients were women (93%) and seven were men (8%).
- 67 (72%) were born in Australia including five clients (5%) who were Aboriginal and/or Torres Strait Islander. Twenty-six clients (28%) were born outside Australia: China, Egypt (2), Fiji (2), Greece, Hungary, Iran (3), Japan, Kenya, Lebanon (3), Malta, New Zealand (3), Nicaragua, Pakistan, Poland, Russia, Samoa, Trinidad and Ukraine. Those who provided information about their arrival dates arrived in Australia between 1965 and 2017.
- Of those 26 clients born outside Australia, five did not speak or read English well, and one client did not speak or read English at all.
- Of the 59 clients whose full address details were recorded, 48 (81%) were from urban areas of NSW, and 11 (19%) were from regional areas.

In most cases, family and domestic violence was perpetrated by partners or ex-partners, however, violence was also perpetrated by parents, siblings, adult children, other family members and carers.

Perpetrator of violence

(number of cases)



In 70 cases (75%), violence had been perpetrated by a female client's partner or ex-partner. In two cases, intimate partner violence was by women against men. For men, family violence was more likely to be by someone other than their intimate partner.

In six cases, violence had been perpetrated by a parent and/or step-parent. These included cases where a young man in foster care accrued a debt because his study load was deemed to have been too low; a young woman who left her mother's home because her step father was violent towards her was deemed to be a member of a couple with the person she moved in with; and a young man with a severe cognitive disability who couldn't live at home due to violence by his parents failed his reporting obligations.

²⁹ KPMG, KPMG Post Implementation Review of the Human Services Family and Domestic Violence Strategy 2016-2019 (2017) Unpublished.

In five cases, violence was by a sibling. These included cases where a woman was living in a car after moving out due to violence by her brother (for which she had an Apprehended Violence Order [AVO]); a boy who left home to live with his grandmother after sustained abuse by his brothers with Centrelink saying reasons for leaving were not good enough; a case of abuse by an adult sister over disputed care of children; and another case of abuse by an adult sister over disputed care of a parent.

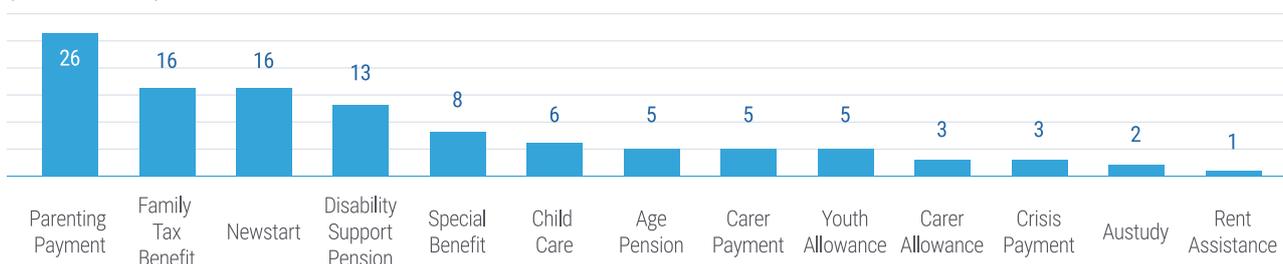
In five cases, violence was by an adult child. These included a case where a woman was homeless as a result of having to leave the family home so she was temporarily living with another adult child, and a case of another woman still living with her adult son. In one case, violence was by a live-in carer, leading the woman to leave her home and search for an alternative carer who would be eligible for a carer payment.

Numerous clients disclosed violence by more than one family member, including young people where both parents and step-parents were violent. Many clients disclosed a history of family violence by other perpetrators, including a case where a young woman left her home due to family violence and started a relationship with a young man of a different religion, who also became violent towards her. She was unable to return to her parents' home as they had disowned her.

Family and Domestic Violence Impacted Eligibility and Rate Related to a Broad Range of Payments.

Payment type

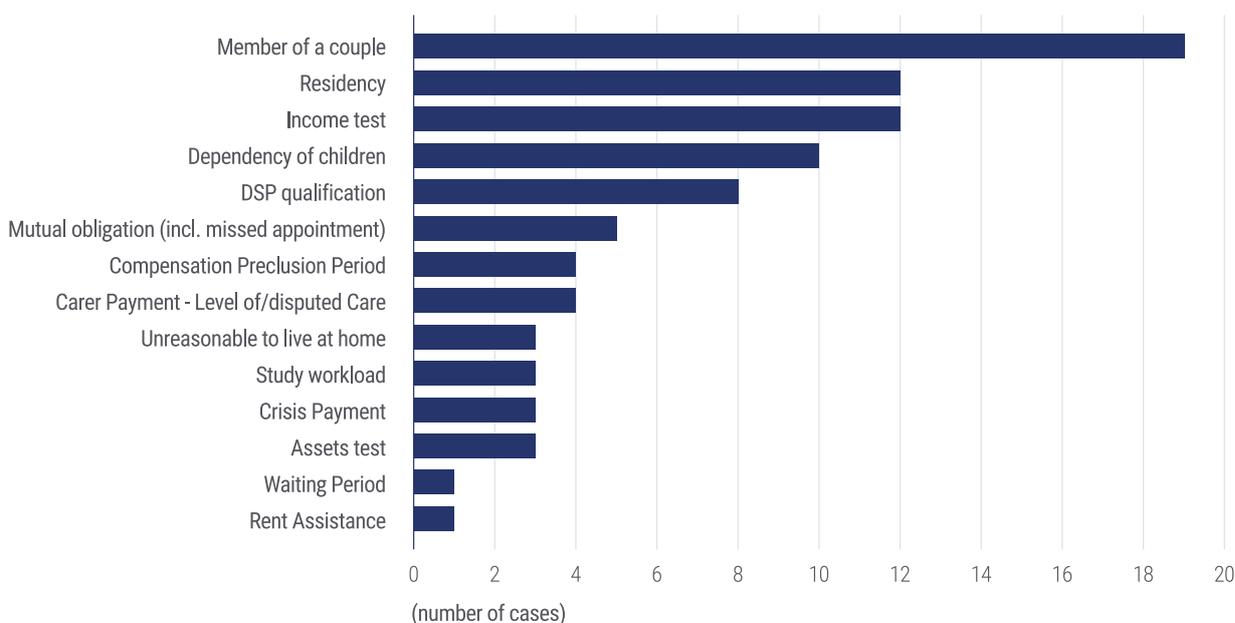
(number of cases)



Family and domestic violence was a factor complicating social security entitlement in relation to 13 different payment types (noting Parenting Payment Single and Parenting Payment Partnered were counted as one payment type). This large spread of payment types suggests that family and domestic violence affects people in different circumstances in many different ways.

Family and Domestic Violence Intersected with Social Security Across a Range of Issues.

Key social security intersections with family and domestic violence



Family and domestic violence impacted social security entitlement across a range of eligibility and payability issues. These are discussed in more detail below.

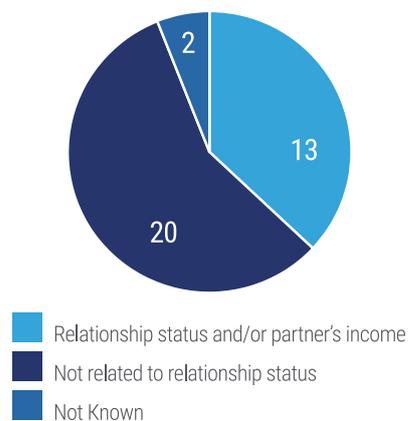
Debts

Thirty five of the 93 clients' (38%) cases included a social security debt. In 13 of those cases, Centrelink alleged the client had a debt resulting from an assessment that they were a member of a couple. That is:

- The client had not disclosed they were a member of a couple so they were not eligible for payment or they had been paid at the wrong rate, i.e. they should have been paid at single rate or their rate should have been reduced because of their partner's income; or
- The client had not disclosed their partner's income (noting that at times this was because they were not aware of their partner's income or were coerced into not providing that information).

Note, the 'not related to relationship status' category includes the case of a woman whose debt related to reduced care of children after her ex-partner frequently demanded more days with their children, and a woman who had a debt raised after her partner was forced to pay two years of child support arrears.

Reason for debt



Outcomes

Case outcomes were not analysed for quantitative data as, in many instances, cases were still proceeding at the time research was concluded. Importantly, a basic review of case decisions at 30 June 2018 showed that many cases in our sample were resolved in the client's favour following NSSRN's intervention, suggesting that Original Decision Makers and Authorised Review Officers are not always 'getting it right the first time'. This means that vulnerable clients who have recently experienced family and domestic violence are being forced to go through unnecessary and often drawn-out appeal processes, adding significantly to their stress and trauma. In some instances, cases were not resolved because clients had become so stressed or fatigued by the appeal process they could not continue despite high likelihood of success.



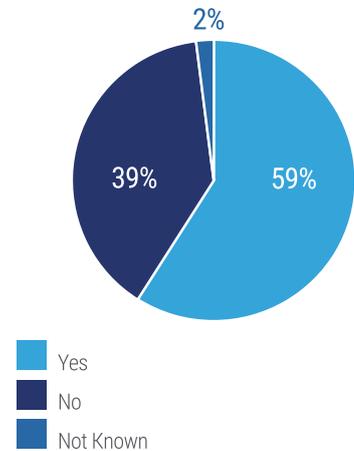
Findings

HOUSING SECURITY

One of the most striking observations from the study was the high proportion of cases that intersected with homelessness or risk of homelessness. While it is widely recognised that family and domestic violence often disrupts housing security³⁰, and that family and domestic violence is the leading cause of homelessness for women³¹, researchers did not expect to find that almost 60% of clients were either homeless or at risk of homelessness.

Cases included women living short term in a friend's or an adult child's home, women with rent arrears at imminent risk of eviction, elderly women who had been 'kicked out' of the family home by a violent partner, and people living in cars. There were numerous cases of women facing homelessness who had not yet left their violent household because they had been unable to secure social security payment, including women unable to access the refuge system or community housing because those systems required income to pay rent. It also included women who had been separated for some time but were struggling to re-establish housing security following separation. This is a common issue for women who have left violent relationships for a range of reasons including loss of 'shared' income, delays in Centrelink processing payments, ex-partners' failure to pay Child Support, having reduced assets, eroded confidence in financial capability, and other mental health issues resulting from the trauma of separation and the experience of family and domestic violence.³²

Homeless or at risk of homelessness



Notably, clients who stated they were not at risk of homelessness included women who were in significant distress as they battled to retain their family home. For example, one woman had used her compensation payments to purchase a modest family home. She had budgeted carefully to ensure her funds would not run out before her compensation preclusion period ended. Her violent husband had used some of her last remaining funds to establish a business but since their separation had refused to provide her or their children any financial support. She was destitute, in debt and living off food vouchers and other support from charities.

The review identified a number of cases where women remained with their violent partner or ex-partner only because they saw no other option. For example, one client had three children and was divorced but living in the same rented house as her violent ex-husband. She had no money at all. Her ex-husband worked but would not give her any money unless she 'begged' and he would routinely humiliate her before he gave her a few dollars. She had approached a charity for housing support but had been told she had to be receiving a Centrelink payment to be eligible. She had applied for income support but had been rejected.

The review found that in situations of domestic and family violence against women who do not fulfil residency requirements, the situation can be dire. For example, one woman had moved from New Zealand to Australia seven years ago. Two years after arriving she had a child. Her husband was violent and she eventually separated from him, taking out an (AVO) against him. Despite that, she continued to live in the same property as him as she had no income. She was surviving on Family Tax Benefit B (\$150/fortnight) but struggled to afford even basic necessities and the gas and electricity had been cut off. She was not eligible for payment because she was a non-protected Special Category Visa holder.

The high prevalence of homelessness and risk of homelessness points to the centrality of social security income in minimising the risk of homelessness among women leaving violent relationships. The effects of homelessness include both immediate and longer-term distress and disruption to victims' capacity for social and economic participation, making it more difficult for people to re-establish a productive life. Homelessness also adversely affects children's education, health and wellbeing. In some cases, victims feel they have no alternative but to return to an abusive relationship.

While there is some temporary crisis accommodation available for women leaving situations of family and domestic violence, they are only able to stay for a very short time. Usually they will have to relocate to another area, with children having to change schools, which is both disruptive and expensive.

30 Australian Institute of Health and Welfare, *Domestic & family violence & homelessness 2011–12 to 2013–14* (3 February 2016) < <https://www.aihw.gov.au/reports/domestic-violence/domestic-family-violence-homelessness-2011-12-to-2013-14/contents/the-intersection-of-domestic-violence-and-homelessness>>; NSW Women Refuge Movement and the UWS Urban Research Centre, above n 1.

31 Tanya Corrie, above n 1.

32 Ibid.

ASSESSING MEMBERS OF A COUPLE

Whether or not a person is a member of a couple determines their social security entitlement in two ways. Firstly, a single person can receive a higher fortnightly payment than a person who is a member of a couple because single rate of payment is more than half couple rate, based on the premise that it is cheaper to live as a couple than as a single person. Secondly, if a person is a member of a couple, the income and assets of a person's partner will be taken into account and may reduce the person's rate of payment, including to a point where they are not entitled to any payment at all. Where a person has been paid as a single person and Centrelink later deems them to be a member of a couple, a debt will be raised.

NSSRN recognises that relationships are inherently difficult to define. Section 4 of the Act outlines factors to be considered when determining whether a person is a member of a couple, noting consideration must be given to the following five factors:

- the financial aspects of the relationship
- the nature of the household
- the social aspects of the relationship
- any sexual relationship between the people
- the nature of the people's commitment to each other

These criteria do not operate as a checklist or balancing test as all factors must be considered when a determination is being made. The checklist is elaborated in the *Guide*, however, the checklist does not outline how different factors should be weighed against each other when the circumstances of a relationship are not clear. Notably, under nature of commitment, the Guide states consideration should be given to "evidence of domestic violence, e.g. court documentation, which may indicate the absence of commitment and/or emotional support" but it is unclear how evidence of domestic violence should be considered. In some instances, evidence of domestic violence has been used by Centrelink to establish that a person is a member of a couple:

- A client requested Crisis Payment, so she could move out of the house where her boyfriend assaulted her. Centrelink raised a Family Tax Benefit debt of almost \$4000 saying she had been living as a member of a couple and not declaring her partner's income.

The presence of family and domestic violence complicates determination of whether a person is a member of a couple. The Guide would be improved with the addition of more information describing the ways that family and domestic violence may change the way criteria in section 4(3) may be considered to demonstrate that two people living together may not be a member of a couple.

Recommendation 4 *That the Guide to Social Security Law be amended to include clarification of the reasons family and domestic violence may indicate that:*

- a. Two people living together may not be a member of a couple; and/or*
- b. Section 24 of the Act (allowing discretion to treat a person as not being a member of a couple for a special reason) may be appropriately applied.*

NSSRN acknowledges that Centrelink staff are faced with the unenviable task of not only deciding whether two people are members of a couple, but often, they are required to determine the precise date at which two people became members of a couple so that payments may be adjusted accordingly. Perhaps fiscally motivated, when two intimate parties commence living in the same property, Centrelink tends to default to a presumption that a person is a member of a couple. This includes people who consider themselves to be boyfriend and girlfriend and begin living together, with no intention of sharing assets and income at this point. Issues relating to assessment of whether a person is a member of a couple appear to be more likely to arise in complex situations.

Relationships That Are On-again/Off-again

CASE STUDY: DEBT RESULTING FROM ASSESSMENT THAT A PERSON IS A MEMBER OF A COUPLE IN A COMPLEX RELATIONSHIP

Ms CG arrived in Australia as a child after her family were granted refugee status. She completed university before meeting her future husband. Due to her family and religious background she was never alone with her husband before they were married so did not know him well. After marrying, she moved into an apartment with her husband. Approximately a year later they purchased a property with her father, which was developed into a duplex. Ms CG and her husband's name were on one title. Her father's name was on the other.

Ms CG had a difficult relationship with her husband from the beginning of their marriage as he expected her to look after him as his mother had. She suspected he was having affairs and found photos of naked women and text messages from other women on his phone. There were incidents of domestic violence that included police being called. Less than two years after being married, when Ms CG was four months pregnant, her husband moved out. She barely saw him again until she gave birth to their child. Numerous friends and relatives state Mr CG's belongings were not in the apartment at that time. Soon after her child was born, Ms CG claimed Parenting Payment Single.

About four months after the child was born, Ms CG's husband suggested reconciling. Ms CG was under a lot of pressure from family to make the marriage work, so she agreed to go on a holiday with him. The holiday began well but after a few days they began arguing and she returned to Australia early. Ms CG continued living alone in her apartment while Mr CG paid her child maintenance and lodged tax returns as a single person.

A few months later, Ms CG moved into the investment property she had purchased with her husband, organising the move herself and agreeing to pay him rent or to accept reduced child maintenance to that effect. She lived independently, was completely responsible for household costs and undertook all household activities such as cooking and cleaning. Mr CG continued to visit his son and they again talked about reconciling, agreeing to go on a one week holiday together. Again, things did not go well. They did not have a sexual relationship during the holiday and Ms CG returned to live at their investment property as a single parent.

Soon after, Ms CG began a relationship with another man, Mr KL, who she would meet two or three times a week. About three months after that relationship began, during a visit by Mr CG to see his son, Ms and Mr CG slept with each other and she became pregnant as a result. Mr KL ended his relationship with Ms CG.

Ms and Mr CG decided to reconcile, partly as a result of parental pressure and also because Ms CG didn't want her children to be raised by another woman should her husband partner again. Mr CG told her that he had a girlfriend, but he would terminate the relationship. Ms and Mr CG signed a lease on a property and Mr and Ms CG decided to sell their investment property and buy a property to live in together. Despite their marital issues, Mr CG's accountant advised them to buy the property in joint names saying it would be a simple matter to amend documents if their relationship failed and they could easily get legal advice if they decided to divorce. Mr CG did not end his relationship with his girlfriend so did not move in to the rental property leased in joint names. Ms CG has never resided in the property that was purchased in joint names.

Centrelink raised a debt alleging Ms CG had been a member of a couple throughout the entire period she had been receiving Parenting Payment. Ms CG appealed to the Authorised Review Officer but was unsuccessful. She was also unsuccessful at the Administrative Appeals Tribunal (Tier 1). Ms CG was advised to appeal to the Administrative Appeals Tribunal (Tier 2) but was too overwhelmed and exhausted to continue. Her matter was finalised through a commercial settlement which reduced the debt, despite the fact there should have been no debt at all, as she was not a member of a couple during the entire debt period.

Centrelink's assessed Ms CG as being a member of a couple throughout this period, failing to place enough value on a number of criteria articulated in the Guide:

- The manner in which the persons present themselves to the community.
- Whether or not family, friends and associates perceive that they are a couple.
- Whether or not the claimant/recipient and the other person have an ongoing exclusive sexual relationship
- The claimant/recipient's own ideas and perceptions about their relationship
- Whether the couple have a mutual commitment to the relationship and what is the strength of emotional ties?
- Evidence of domestic violence, e.g. court documentation, which may indicate the absence of commitment and/or emotional support.
- Whether the people consider that the relationship is likely to continue indefinitely.

People's lives aren't neat and Centrelink staff struggle to apply criteria to complex relationships. On paper, Ms GC's story (two pregnancies and property transactions) may appear to support an assessment that she was a member of a couple. However, on closer investigation, Ms GC's case reflects the situation of a woman who married before she knew her husband very well and who shortly after marriage realised he was sleeping with other women. She wanted her marriage to work, particularly once she had a child, and she was also under considerable pressure from family to reconcile. She was financially independent from him during the period of separation but attempted to reconcile a number of times although those attempts proved unsuccessful. Subsequently she commenced a relationship with another man.

Relationships Between People Living as Separated Under One Roof

Patterns of violence and lack of alternative accommodation may mean that a person has no choice but to remain in the same house, known as 'separation under one roof'. The Guide states that a person may be considered separated under one roof if they are separated and living apart on a permanent or indefinite basis. Consideration should be given to all relevant information regarding the person's separation including information about the financial aspects of the relationship. A person is considered to be separated where there is evidence that the relationship has completely broken down and the parties are living separately and apart on a permanent or indefinite basis. The separation must involve more than a physical separation within the household as it must include the destruction of the relationship (the consortium vitae), and one or both parties form the intention to sever or not to resume that relationship and act on that intention³³.

Secrecy associated with family violence may exacerbate embarrassment about having separated so that a person continues to hold themselves out as a member of a couple. The review identified two cases where older women were prepared to stay in the same home (at least for the interim) but were very embarrassed about people learning that they had separated:

A client (on married rate Disability Support Pension) was separated from her husband while living under the same roof. Her partner had a gambling problem and was also emotionally abusive. She was very embarrassed and did not want her friends and family to know about the separation although she had spoken with her doctor.

A client (on married rate Age Pension) had been separated under one roof for three months. She had told Centrelink of her separation twice but had had no response. She was receiving \$50/fortnight but had no other form of income. She remained at risk of domestic violence but was very embarrassed about her separation and hadn't yet told anyone else.

The Guide acknowledges that at times a separation may not be publicly known, noting when independent referees are not available to verify a separation, a departmental social worker's report may be required to assist with the decision-making. This approach may be taken where the separation is not public knowledge, for example, due to the threat of domestic violence. It is important that victims of domestic violence are supported and are able to access independent income as a means of removing themselves from an abusive relationship, even if they remain living in the same property.

33 Australian Government, Social Security Guide Determining Separation Under One Roof (13 December 2017) <<http://guides.dss.gov.au/guide-social-security-law/2/2/5/30>>.

Recommendation 5 That the Guide to Social Security Law be amended to include the issue of family and domestic violence, including economic abuse, as an important indicator to be considered when determining:

- a. Whether a person is separated and living under the one roof; and/or
- b. Whether the application of section 24 of the Act, which allows discretion to treat a person as not being a member of a couple for a special reason, may be appropriately applied.

Relationships that Involve Complicated Income or Assets Arrangements

People escaping violent relationships can be disadvantaged by delays related to the disentangling of finances, or information about financial arrangements, between them and their ex-partner, with victims continuing to be affected by their ex-partner's assets:

- An NSSRN member centre client, a 54-year-old woman with limited English, had arrived in Australia with her husband, who set up a small business as a mechanic. She looked after their family and helped clean her husband's workshops. He controlled all the finances, paperwork and paid for household bills. Following domestic violence, she fled to a refuge where she had been living for five months. She claimed Special Benefit, however, Centrelink deducted \$90/fortnight due to her husband's 'business capital' about which she knew nothing, and from which she received no income. When she appealed the decision, she was asked to provide a large amount of information including tax returns, balance sheets, profit and loss statements and tax returns. She was at a loss how to proceed as she had no contact with her ex-partner and no access to his business records.

The family home can also become a disputed issue under the assets test when a member of a couple leaves the home. The recent AAT case of Chaplyn³⁴ considered whether a marital home could be considered a place of residence after a person had left due to domestic violence for the purposes of the assets test.

Ms Chaplyn separated from her husband after 44 years of marriage. She moved out of the marital home and took out an AVO against her husband. She was also awarded a victim's compensation payout related to injuries sustained as a result of the domestic violence.

Ms Chaplyn decided to rent for 12 months while her property settlement was undertaken although she lost her job as a result of having to relocate. Centrelink decided Ms Chaplyn's assets exceeded the Age Pension assets test. Centrelink's assessment included funds she received from her property settlement relating to her former home. The Act allows for sale of a person's home to be disregarded for up to 24 months where there is a sale and replacement home. Ms Chaplyn argued, and the Tribunal accepted, that if she had been able to return to the marital home, she would have. Ms Chaplyn had proceeded to purchase a home with the proceeds of her property settlement. The AAT decided that the marital home should have been considered Ms Chaplyn's principal home and that proceeds from its sale should not have been considered assets for the purposes of Age pension. The AAT further noted that there had been no consideration of the domestic violence which resulted in her having to vacate her home.

Presumption of Shared Income among Members of a Couple

The presumptions that families operate as 'financial communities', pooling financial resources for the collective use of the household, fails to recognise power imbalances in relationships when abuse is present.³⁵ Expectations of shared family income and expenditure (and shared information about income and expenditure) may mask financial abuse. Further, 'evidence' of shared financial resources may ignore circumstances of economic abuse, which obviate a person's consent to their partner's use of their income and/or assets.³⁶ For example, even though a person may have bank account in their name or joint names, they may have no control over it.

³⁴ Chaplyn and Secretary, Department of Social Services (AAT second tier review) [2018] AATA 673 (22 March 2018)

³⁵ Elizabeth Branigan, "Who Pays in the End?" *The Personal and Political Implications of Financial Abuse of Women in Intimate Partner Relationships* (2007) (44) *Journal of Criminal Justice: Just Policy* 31-36; Betty Green and Irene Pearce 'The Criminalisation of Women: The impact and implications of financial abuse' (2002) *Bankstown Women's Health Centre* 20-23; Australian Law Reform Commission, *Equality Before the Law: Justice for Women*, ALRC Report 69 (1994).

³⁶ Patricia Easteal and Derek Emerson-Elliot 'Domestic Violence and Marriage-Like Relationships' (2009) 34(3) *Alternative Law Journal* 173; Terry Carney, 'Women and Social Security/Transfer Payments Law' in Patricia Easteal (ed) *Women and the Law in Australia* (LexisNexis Butterworths, 2010) 424.

Financial abuse can take many forms. This review of WRC (NSW) files identified numerous types of economic abuse including:

- **Men refusing to share their income with their female partner and dependent child/children.**

Client was forced to cease work due to illness. She began experiencing domestic violence, which included her partner denying her access to any money. She wanted to leave the house and escape to a refuge but couldn't without money.

- **Men taking their female partner's money**

Client had just moved into public housing when her partner took her debit card and removed all funds from her account. She was left without money for food or rent.

Client with a disability due to a car accident. Her partner abused drugs and alcohol and was physically violent. He would threaten her for money and take her debit card without her knowledge.

Client's partner logged into her account and transferred \$1500 to his account. Police were involved.

- **Men withholding information about income or assets. Often clients who have been subject to financial abuse have little or no knowledge of their partners' financial situation:**

Client, an 84-year-old woman, was forced out of the family home by her husband and was living temporarily with her daughter in accommodation which could not accommodate her walking frame. She was trying to repay social security income she had been overpaid due to her husband's undeclared income and was unable to save to find alternative aged care accommodation.

Client receiving DSP was married for 14 years during which time she experienced severe financial, physical and sexual abuse. Although her husband had significant assets and income he would not financially support her or her children, so she told Centrelink she was single. She considered it important to her 'healing' that she admit her history to Centrelink and tell them she had 'done the wrong thing' but may be liable for a debt exceeding \$100,000.

- **Intimidation and physical violence forcing female partner to not declare income or to claim social security payments to which they were not entitled**

Client's husband forced her to tell Centrelink that she was single, including choking her and threatening to kill her. She was being prosecuted for fraud.

Client's partner forced her to tell Centrelink that she was single including forcing her to co-sign his statement to Centrelink saying he was living somewhere else and was not the father of their children.

- **Delaying tax returns as a means to delay child support payments**

Client left home with five dependent children due to family violence. She lost benefits as her husband claimed he was caring for their children. Her husband delayed doing his tax returns to delay calculation of child support.

Client had an AVO against her husband but decided to pursue Child Support. She received Family Tax Benefit for approximately a year while he refused to lodge his tax return as a means to delay assessment. When assessment was finally made (on his income exceeding \$150,000/year) he was ordered to pay \$18,000 arrears but paid only \$7000. The Client then received a debt for more than \$8000 for overpayment of Family Tax Benefit. She decided not to pursue legal action for the remainder of the child support arrears as she was concerned that if she lost she might be awarded costs.

Economic abuse is a gendered issue, with the majority of victims being women, and the majority of perpetrators being men. Many women experiencing domestic violence are faced with a 'choice' between poverty (if they leave the relationship) and violence. Indeed, economic abuse is a key reason why women stay in, and return to, violent relationships. This difficulty tends to be exacerbated by the lack of adequate social security support in Australia.³⁷

Section 4(3) of the Guide includes a description of nine indicators to be considered with reference to financial aspects of the relationship, including issues related to names on financial agreements, bank accounts and tax documents. The section also states:

Financial aspects can be an important factor, but lack of financial interdependence would not necessarily be a strong indicator that the claimant/recipient is not in a de facto relationship due to the increasing trend for couples to maintain separate finances. However, it is likely most couples in a de facto relationship will be financially intertwined in some way.

37 Fiona Macdonald, *Spotlight on Economic Abuse: a Literature and Policy Review* (Good Shepherd Youth & Family Service 2012).



The Guide includes no reference to indicators which may point to financial abuse and the denial of one party's access to economic resources. As noted in the Australian Law Reform Commission's report, *Equality Before the Law: Justice for Women* (ALRC Report 69), the assumption that couple relationships will provide equal financial support for the people in that relationship is inaccurate and there is a need to address entitlement to income independently.³⁸

Recommendation 6 *That the Guide to Social Security Law be amended to include clarification of the impact financial abuse and the rationale that financial abuse may be an indicator of a lack of commitment suggesting that:*

- a) *Two people living together may not be a member of a couple; and/or*
- b) *Section 24 of the Act, which allows discretion to treat a person as not being a member of a couple for a special reason, may be appropriately applied.*

COMPENSATION PRECLUSION PERIODS AND THE FAILURE TO ACKNOWLEDGE THE CONSEQUENCES OF EX-PARTNER'S FINANCIAL ABUSE

The consequences of family and domestic violence can be long lasting, including the ongoing impact of economic abuse post-separation which can intersect with social security entitlement. One example is the impact of compensation preclusion periods.

If a person receives compensation for economic loss due to injury, they are generally precluded from receiving social security payments for a period of time. The Act allows for a preclusion period to be reduced in special circumstances. Section 1184K states the Secretary may disregard some payments under special circumstances where the compensation provisions could lead or have led to extreme hardship or created an inequitable, unjust or unreasonable situation. The Guide further explains situations in which special circumstances may be applied. The discretionary nature of the special circumstances provisions means a precise list of factors is not possible, with each case being considered on its own merit.³⁹ Special circumstances do require that usually a number of factors must combine to make a situation unusual, unforeseen or exceptional,⁴⁰ and that the situation must lead to extreme hardship or create an inequitable, unjust or unreasonable situation.

The WRC (NSW) casework review identified a number of cases where women had received sizeable compensation payments and as a result were subject to lengthy compensation preclusion periods during which they could not receive social security payment. Centrelink refused their application for the latter part of the compensation preclusion period to be waived.

³⁸ Australian Law Reform Commission, above n 35.

³⁹ *Secretary, Department of Social Security v Hulls* (1991) FCA 58.

⁴⁰ *Secretary, Department of Social Security v Hales* (1998) FCA 219.

CASE STUDY: COMPENSATION PRECLUSION PERIOD – SPECIAL CIRCUMSTANCES

In 2009, Ms DC was injured in a serious accident which left her with serious physical injuries and reduced capacity to communicate. She was awarded \$900,000 compensation and as a result was precluded from receiving a social security payment until 2020. Ms DC used approximately half of the money to purchase a house and a car, paid her legal fees, and kept the remaining funds to live off.

Ms DC married in 2012 and had three children. In early 2017, she separated after years of serious and sustained domestic violence. She has an AVO against her husband but despite her separation, is still at risk of violence, with police recently seeking an extension of the AVO.

Ms DC has expended all her funds, is currently \$20,000 in debt and supports herself and her children using only her Family Tax Benefit payment, food vouchers, free meals from charities and other charity payments subsidising essential bills.

Ms DC applied for a Centrelink payment explaining that her circumstances had changed significantly since the preclusion period commenced nine years earlier. Under duress, she had allowed her husband access to more than \$80,000 which he spent to establish a business on the understanding that he would support the family throughout the remainder of the preclusion period. Ms DC has been granted an exemption from seeking child maintenance due to family violence and her husband now provides no financial support for herself or their children. Her ability to find work is highly restricted given she is now a single parent responsible for three young children, has difficulty communicating, and she is receiving counselling for depression, anxiety and complex trauma.

Ms DC presented persuasive evidence to Centrelink's decision makers, including medical and legal evidence, and evidence from three family support/social workers, one of whom was a Centrelink social worker who advised that Ms DC had been unable to exercise control in her relationship and that the preclusion period should be waived due to her history of domestic violence. The Authorised Review Officer who reviewed the matter accepted that Ms DC had experienced special or unusual circumstances as she was forced to spend more than \$80,000 under duress, however, her claim for Parenting Payment was rejected. Welfare Rights Centre (NSW) is currently supporting her to appeal that decision.

Ms DC's claim was rejected despite her actions to live modestly on her compensation payment until after the compensation preclusion period, before her husband coerced her into allowing access to her funds and subsequently failed to use the income generated from those funds to support her and their children. At the time her husband accessed the funds, their separation was not foreseen, and the consequences were dire. Further, Ms DC had already served more than 80% of the preclusion period before requesting waiver of the remaining period.

Similarly:

- In 2014 a client received approximately \$300,000 in compensation and was subject to a preclusion period until mid-2019. She started a relationship and found herself supporting her partner and his children. Her partner had drug and alcohol problems and was emotionally and physically abusive. Her partner accessed her money and lent money to his family and friends. Finally, her partner left her when all the compensation funds were expended, leaving her with thousands of dollars of debt, and owing money for rent and electricity. He would not return her calls. As a result of the relationship breakdown and loss of funds, she lost \$20,000 on a house deposit and attempted suicide. She is currently homeless. She is appealing the decision to refuse to waive the compensation preclusion period to the AAT (Tier 1).

Recommendation 7 *That section 4.13.4.10 of the Guide to Social Security Law, which provides an overview of the application of the special circumstance provisions to allow waiver of all or a portion of a compensation preclusion period, be amended to include specific reference to family and domestic violence and the evidence that will be accepted as demonstrating its financial impact, particularly where compensation has been stolen or used by a violent partner or ex-partner so that a victim of family and domestic violence is without funds.*

SPECIAL CIRCUMSTANCES TO ALLOW DEBT WAIVER

The Act states that a debt may be waived where a person can demonstrate that he or she did not 'knowingly' make a false statement or 'knowingly' fail to comply with social security law, and 'special circumstances' exist.⁴¹ Special circumstances are those that are unusual, uncommon or exceptional, and they can only be applied if it would be unjust for a person to repay the debt.

The *Guide to Social Security Law* (6.7.3.40) does not define 'special circumstances' but states that special circumstances should take into account all of the person's circumstances and would usually be based on a combination of factors, including the physical and emotional state of the person together with their decision-making capacity and financial circumstances. While domestic violence is not defined, it is sometimes included as one of a number of factors to be considered. It is not known how often domestic violence is considered and the proportion of cases where the argument is successful.

CASE STUDY: WAIVER OF DEBT DUE TO SPECIAL CIRCUMSTANCES

Ms GK married in 2007. She went from full-time to part-time work following the birth of her first child and now has four children, aged under 10.

In 2012, while on unpaid leave following the birth of her fourth child, Ms GK claimed Parenting Payment. Shortly after, Centrelink sent Ms GK a letter titled 'Your Parenting Payment' in which they noted her partner's income of \$1100/fortnight. From May 2013, Centrelink sent a series of eight letters estimating Ms GK's income as between \$76,000 and \$80,732 per annum. Those letters included a variety of headings including 'Your Family Assistance' and 'Your Centrelink Statement for Parenting Payment'. Not surprisingly, Ms GK understood that these estimates related to her entitlement to Parenting Payment. In fact, they related to her Family Tax Benefit which is assessed using a different method.

During that same period, Ms GK struggled to manage a number of other issues. These included numerous instances of her and her children's hospitalisation as a result of illness or injury. She was at risk of domestic violence as her husband became increasingly stressed as his business began to fail and he had difficulty dealing with his gambling. His drug addiction increased and his mental health deteriorated, which led to his admission to hospital in 2017 following an overdose. After years of abuse, Ms GK formally separated from her husband in late 2017 and is now a single parent with four children to support.

In fact, Ms GK and her husband's combined income of \$76,000 meant Ms GK should never have been paid Parenting Payment. Despite endeavouring to provide accurate information to Centrelink, administrative error resulted in Ms GK being pursued for a debt of more than \$30,000 for the period May 2013 to October 2015. Ms GK appealed the debt of \$30,000 arguing special circumstances, but the Authorised Review Officer decided her circumstances were not special and there had been no administrative error as Centrelink's letters put her on notice that her husband's income was not being considered. Ms GK appealed to the AAT (Tier 1) and her debt was waived based on a combination of factors including Centrelink's administrative error and special circumstances.

41 *Social Security Act 1991* (Cth) s 1237AAD.

Centrelink is responsible for ensuring customer payments are correct but even when an overpayment occurs as a result of Centrelink's error(s), the overpayment becomes a debt that Centrelink will recover. The flexibility built into the social security system allows for waiver in special circumstances but Ms GK's debt was not waived. The decision not to waive Ms GK's debt is particularly surprising given that Centrelink's reporting framework can be, and in this instance was, misleading.

GK's case bears similarities to the recent Tomlin's case⁴² (which did not include family and domestic violence) where Ms Tomlin accrued a debt of almost \$40,000 as a result of her Parenting Payment (Partnered) being overpaid over four years. Like GK, Ms Tomlin had informed Centrelink of her and her partner's income and had continued to update Centrelink online. During the period, Ms Tomlin had received a series of Centrelink letters which only referred to her husband's annual income when in fact Ms Tomlin was required to report fortnightly income: a fact of which she'd never been made aware. In Ms Tomlin's case, the AAT was:

not satisfied that Ms Tomlin – or any other person of reasonable mind – would be able to understand there are different reporting requirements for the income of a person's partner for family tax benefit and parent payment (partnered)....By conflating information about the payment types of parenting payments and family tax benefit, the information provided in the documents from Centrelink was not only confusing, but misleading. [The debt] was solely the administrative responsibility and error of Centrelink.

The debt was waived under section 1237A of the Act, because the debt was attributable solely to an administrative error made by the Commonwealth and Ms Tomlin received the payment in good faith. Arguably, in GK's case, which included domestic violence and other unexpected and chaotic events, her debt should have been waived.

The special circumstances provision related to waiver of debts could be more consistently applied if family and domestic violence were referenced and described in the Guide to the Act. It may then have been applied in the case of Ms GK but should also have been applied in the case of Ms TL:

CASE STUDY: WAIVER OF DEBT DUE TO SPECIAL CIRCUMSTANCES

Ms TL, an Aboriginal Elder, had her 15-year-old granddaughter living with her as the child's parents were not capable of looking after her due to their drug use and homelessness. Despite being in ill health as a result of conditions including heart disease, diabetes and depression, she also had her son and his girlfriend living with her. They were often drunk and aggressive and would also abuse drugs. Her son's feud with another family resulted in people coming to her house to attack him, using weapons such as machetes. Police were involved on numerous occasions. The neighbours often complained and Ms TL was facing eviction.

Against this background, Ms TL felt it was unsafe for her granddaughter to stay at the house so sent her to stay with some relatives for a few weeks until things settled down. In the short term, she sent some money to the relatives to support her granddaughter. However, things did not settle down quickly and, to complicate matters, the other relatives refused to let the granddaughter return. Ms TL was late in informing Centrelink of the change of care, partly because she presumed her granddaughter would be away only temporarily and partly because she had sent some money to support her. Her granddaughter did return to her care but much later than she had expected. Centrelink raised a Family Tax Benefit debt of more than \$4000.

In fact, Ms TL was the victim of entrenched elder abuse by members of her family which included relatives constantly asking her for money and rarely contributing to household expenses, rent and other liabilities despite her asking them to do so. She was in severe financial hardship, including having more than \$12,000 in outstanding debts some of which resulted from tenant responsible property damage associated with her son's aggressive behaviour. She felt under constant threat which exacerbated her fragile health.

Ms TL requested that the Family Tax Benefit be waived under special circumstances given the combination of factors including family violence and elder abuse but the AAT (Tier 1) found that 'domestic violence and elder abuse is so prevalent in society that it is not uncommon.' Therefore, it found no special circumstances in the case. Ms TL decided she could not appeal the decision as she felt exhausted by the process and exacerbated by her fragile health combined with the many other family issues she was endeavouring to deal with.

42 Tomlin and Secretary, Department of Social Services (Social services second review) [2017] AATA 1810 (20 October 2017).

The notion that family violence and elder abuse is too commonplace to be applicable to a definition of 'special circumstances' is highly problematic and goes against the intention of the special circumstances provisions. The argument that family violence and elder abuse is common and consequently special circumstances are inapplicable in the context of Aboriginal communities is particularly concerning.

Naming family and domestic violence as a factor that may be considered under special circumstances would provide clarity that family and domestic violence can be relevant. It would avoid cases being progressed up the appeal chain or people giving up, although their case may satisfy special circumstances criteria. Notably, one of the ten cases that progressed to AAT Tier 2 review during the research period related to a Single Parent Payment and Family Tax Benefit debt that was waived because domestic violence-related special circumstances applied.⁴³

Recommendation 8 *That section 6.7.3.40 of the Guide to the Social Security, which outlines the conditions under which special circumstance provisions allow waiver of a debt, be amended to include the client's experience of family and domestic violence as a factor to be considered.*

Special circumstances do not apply where a person has 'knowingly' given false information to Centrelink, including where a person has been forced or coerced into providing false information through the threat of, or actual, physical violence.

The review identified a number of cases where women had accrued a debt while in a violent relationship because their partners had forced them to provide false information:

- A client was in an abusive relationship until her husband died from a drug overdose. Her husband forced her to give Centrelink false information saying she was single by threatening to kill her and using violence including choking. She was too scared to go to the police and too embarrassed to tell anyone about his violence. At the time of contacting WRC (NSW) she faced prosecution.
- A client had a debt of almost \$200,000 from overpayment of Newstart Allowance and Family Tax Benefit. Her husband had made her sign documents saying he was living somewhere else and was not the father of their children. Additional to her husband's abuse, she was dyslexic and had difficulty reading Centrelink documents. She wanted to appeal to the AAT to explain her situation but was concerned that doing so may raise evidence that could lead to prosecution.

In May 2017, Independent MP, Andrew Wilke put forward the *Social Services Legislation Amendment (Relieving Domestic Violence Victims of Debt) Bill 2017* which aimed to amend family assistance and social security law to allow the debts of people affected by domestic or family violence to be waived. The Bill sought to clarify the legislative framework for debts to be waived in domestic or family violence situations, which under the current legislation may not always fall under "special circumstances".

The Bill extended provision to situations where a debtor may have been aware that they were making a false statement but did so in a domestic or family violence situation. The Bill would allow the Secretary to waive a debt if the debtor was unable to pay the debt due to being subjected to domestic or family violence. It would also allow a debt to be waived in cases where a debtor had made a false statement or failed to comply with another provision of social security or family assistance law due to being subjected to family or domestic violence. Unfortunately, the Bill was not supported by Parliament.

This issue remains a pressing concern because not only do women end up with debts accrued as the result of abusive relationships, they can also be prosecuted and imprisoned for fraud. Importantly, this punishment can occur after a woman has left the violent relationship, as she is attempting to rebuild a life that is independent from her abuser.

In 2011, the Australian Law Reform Commission (the ALRC) made recommendations to address this area, including that section 1237AAD of the Act be amended to read:

The Secretary may waive the right to recover all or part of a debt, if satisfied that the debt did not result wholly or partly from the debtor, or another person acting as a nominee for the debtor, knowingly:

making a false statement or a false representation; or

failing or omitting to comply with a provision of the Act, the Social Security (Administration) Act 1999 (Cth) or the Act 1947 (Cth).⁴⁴

43 Brown and Secretary, Department of Social Services (Social services second review) [2018] AATA 770 (23 March 2018).

44 Australian Law Reform Commission, *Family Violence and Commonwealth Laws— Improving Legal Frameworks*, ALRC Report 117 (2011).



That amendment was effectively made, with the additional proviso that it apply where there are special circumstances (other than financial hardship alone) that make it desirable to waive the debt.

To clarify the purpose of the above amendment, the ALRC further recommended that:

- The *Guide to Social Security Law* should refer to examples of family violence, noting duress and coercion may not constitute knowledge on the part of the debtor.
- The *Guide to Social Security Law* should refer to family violence as a 'special circumstance' for the purposes of s 1237AAD of the *Act 1991 (Cth)*.⁴⁵

Neither of those recommendations has been adopted. Section 4.13.4.10 of the Guide does include notes on interpretation of 'knowingly' for the purpose of s 1237AAD, however those notes do not adequately address the ALRC's recommendations. Consequently, it remains likely that victims of family and domestic violence will retain liability for debts accrued as a result of duress and coercion, debts for which they may be prosecuted.

The Department of Social Security and the Commonwealth Director of Public Prosecutions retains discretionary powers to determine which cases proceed to prosecution. Those who have accrued a debt as a result of coercion in a situation of family and domestic violence should not be prosecuted.

In this context, NSSRN reiterates the importance of the above NSSRN Recommendation 7 and 8, and recommends further:

Recommendation 9 *That section 6.7.3.40 of the Guide to Social Security Law be amended to clarify that a history of family and domestic violence must be considered in relation to debt waiver, particularly where a person has accrued a debt under duress or coercion, and consequently statements or representations may not constitute 'knowledge' by the debtor.*

Recommendation 10 *That when considering whether a case may be referred to the Commonwealth Director of Public Prosecutions, consideration be given to how the debt arose and whether coercion or duress was involved. In such circumstances of family and domestic violence, cases should not be referred for prosecution.*

45 Ibid.

CRISIS PAYMENT

Crisis Payment is a one-off payment (equivalent to one week's payment) which can be paid to a person leaving a violent relationship if that person is eligible for social security, is in severe financial hardship, and has recently experienced an extreme life change such as leaving a violent relationship which includes one party leaving the family home. The payment is equal to one week's payment of the person's pension, benefit or allowance.

The scale of family and domestic violence and DHS's commitment to assist victims of family and domestic violence is apparent from the frequency with which Crisis Payments are made. In 2016-17 alone, 17,220 people received a domestic violence-related Crisis Payment. That was a slight increase on previous years although demand has remained relatively consistent. It has only slightly increased over time:

Number of people receiving family and domestic violence-related Crisis Payment – 2012/13 to 2016/17⁴⁶

Financial year	VICTIM LEFT HOME			VICTIM REMAINED IN HOME		
	Female	Male	Total	Female	Male	Total
2012-2013	12,080	1,720	13,800	1,387	68	1,455
2013-2014	11,433	1,703	13,136	1,244	69	1,313
2014-2015	12,160	1,689	13,849	1,271	70	1,341
2015-2016	13,312	1,646	14,958	1,459	80	1,539
2016-2017	12,904	1,537	15,442 ⁽⁴⁶⁾	1,689	89	1,778

The Act states that a person may qualify for Crisis Payment if they:

- remain in their home following removal of a family member due to domestic or family violence (1061JHA); or
- experience extreme circumstances forcing their departure from home (1067JH).

That means that as well as payment being possible for victims where a perpetrator has left their home, payment may be made to a perpetrator, with the intention of facilitating their exit from the shared home.⁴⁷

Unfortunately, the nexus of Crisis Payment with the family home can have unintended consequences. 'Home' is defined under the Guide to be:

the person's house or other shelter that is the fixed residence of a person for the foreseeable future. Fixed residence includes a house, apartment, on-site caravan, long-term boarding house or moored boat. A home is not a refuge, overnight hostel, squat or other temporary accommodation.⁴⁸

That means it excludes victims of family and domestic violence who are living in substandard accommodation or are experiencing homelessness even though they may be the most vulnerable of claimants and in crisis. It excludes victims who have left the family home but are forced to move again when the perpetrator tracks them down and recommences harassment and/or violence and it may also exclude claimants where the circumstances of their removal from home is considered 'temporary'.

- A client's partner had been jailed following a domestic violence incident. She remained in the house with her five young children. Her claim for Crisis Payment was rejected because she told a Centrelink worker she might let him return to the home when he was released from jail.

The exclusion of this client from payment does not reflect the policy intention of Crisis Payment, which is intended to support people who are trying to escape family or domestic violence and are in extreme financial hardship as a result of unexpected events. At the very least, having a partner jailed for a domestic assault should be considered 'life changing'. Importantly, this case study can be seen as a lost opportunity to support a victim of domestic violence to establish some independence, increasing the likelihood of her escaping the relationship.

⁴⁶ Australian Institute of Health and Welfare, above n 2.

⁴⁷ Discussions with Department of Human Services staff during NSSRN and DHS Biannual Meeting, 12 June 2018.

⁴⁸ Australian Government, above n 3, 3.7.4.25.

Recommendation 11 *That part 2.23 of the Act be amended to allow Crisis Payment to be paid to any person suffering severe financial hardship who has recently experienced family and domestic violence: removing the nexus of 'home'.⁴⁹*

Eligibility for Crisis Payment is also restricted by a very short claim period, being seven days from the day the family member has left or been removed from the home. That requirement is based on the premise that Crisis Payment is intended as an emergency payment to cover an immediate lack of funds. In most instances the seven day claim period may be adequate but in some circumstances, such as a person being traumatised, seriously injured or hospitalised,⁵⁰ the seven day claim period excludes people for whom the payment was intended. Further, contacting Centrelink may be the last thing on the mind of some victims of violence who are managing significant complexities in the days following the violent incident. It is not uncommon for some people to diminish their savings, access credit and/or borrow money from family or friends before tackling the logistical difficulties of accessing Centrelink.

- A sixty year old NSSRN member centre client was injured and distressed after fleeing her home following domestic violence. She sought an AVO and then contacted Centrelink, where staff told her she could apply for income support. She was overwhelmed by the amount of information she was required to provide and unable to access her computer which was being held by her ex-partner. By the time she lodged her application she had exceeded the seven day claim period for Crisis Payment. She was very frustrated and felt the Centrelink process was too onerous for people dealing with the immediate trauma of domestic violence and the logistics of trying to find a safe, secure place to stay.
- An NSSRN member centre client sought Crisis Payment after leaving a violent relationship and finding somewhere to stay but was declined because she exceeded the seven day time limit as a result of her waiting until she had all the necessary documentation in order.

Recommendation 12 *That section 3.7.4.20 of the Guide to Social Security Law be amended to allow a claim for Crisis Payment within 14 days of the extreme circumstances occurring.⁵¹*

The DHS's website includes information about Crisis Payment,⁵² however the requirement to "apply or make an intent to claim within 7 days of your crisis" is not highlighted until a person has clicked through two pages to a third screen. Given there is no discretion to waive the seven day rule, it is strongly recommended that the time limit be disclosed on the main page. This recommendation may be considered consistent with KPMG's recommendation (2) to keep information and resources up-to-date and reviewed on a regular basis.⁵³

Recommendation 13 *That the DHS's website be amended to include the current, short time limit of seven days for claiming Crisis Payment on the Crisis Payment homepage.*

Eligibility for Crisis Payment is further restricted by the requirement that a person must be on, or eligible for, income support. For example, if a woman's partner earns too much money for her to be eligible for a payment but she needs to leave the family home, she will be unable to secure access to Crisis Payment before she leaves, making it difficult to plan and acquire suitable housing. Even after leaving she will not be able to secure payment unless she commences the arduous process of applying for income support within a few days. This forces women to go through the difficult process of trying to demonstrate that they are separated under one roof. Many women may not pursue this because they are not aware that such provisions exist or lack the foresight to apply. This is a significant barrier for women wanting to leave a violent relationship, pushing women onto an already overburdened refuge system or leaving them homeless.

49 Noting, this recommendation is consistent with a recommendation made by the Australian Law Reform Commission in 2011: ALRC *Family Violence and Commonwealth Laws* n 44.

50 Australian Law Reform Commission, above n 44.

51 Noting, this recommendation is consistent with a recommendation made by the Australian Law Reform Commission in 2011: ALRC *Family Violence and Commonwealth Laws* above n 44

52 Department of Human Services, *Crisis Payment* (12 May 2018) <<https://www.humanservices.gov.au/individuals/services/centrelink/crisis-payment>>.

53 KPMG, above n 29.

Recommendation 14 *That Crisis Payment be extended to victims of family and domestic violence who are not receiving income support but are experiencing or anticipating severe financial hardship resulting from their efforts to leave a violent relationship.*

Crisis Payment is a one-off payment paid at the same rate as one week of a person's current income support payment. This is approximately \$250 for those on an allowance or \$400 for those on a pension. While that money may be vital in a crisis situation, it is often not enough to enable victims of family and domestic violence to re-organise their living and financial arrangements. There is also clear inequity given the difference in rates of payment for allowances and benefits. Crisis Payment should instead be increased to approximately four weeks' payment and, given the inequity between rates of allowances and pensions, should be equivalent to four weeks' single rate pension (currently approximately \$1640) regardless of the type of income support payment a person receives.

Recommendation 15 *That Crisis Payment be increased to the equivalent of four weeks' single rate pension: approximately \$1640.*

Some victims of family and domestic violence make multiple attempts to leave a violent relationship before they are successful. Payment of Crisis Payment is capped at four times per year and includes criteria other than family and domestic violence. In some circumstances, women trying to leave a violent relationship may not be eligible. While more than four payments per year would not commonly be required, they would address the needs of clients who are particularly vulnerable when they are required.

Recommendation 16 *That eligibility for Crisis Payment be extended to allow Crisis Payment to be paid up to six times per year.*

In making five recommendations requesting extension of eligibility criteria for Crisis Payment, NSSRN point out that such changes are not unprecedented. Crisis Payment eligibility has previously been extended to remedy unforeseen hardship on numerous occasions, including extending eligibility to include: people recently released from prison or psychiatric confinement (November 1999); people forced to leave their home and establish a new home due to extreme circumstances (November 1999); people who remain in their home after removal of a family member due to domestic or family violence (January 2007); and people who enter Australia for the first time on a qualifying humanitarian visa (January 2008). Notably, the primary eligibility criteria applied to family and domestic violence has been in place for less than 12 years. Extending eligibility criteria for Crisis Payment could better support people affected by family and domestic violence by addressing a number of unanticipated shortfalls that fail to support people trying to leave violent domestic circumstances.

NEWLY ARRIVED RESIDENTS WAITING PERIOD (NAWRP)

A person is required to meet a threshold of Australian residency before they are eligible for social security payments. To qualify for payment, a person must be either an Australian resident or the holder of a specified subclass of visa. Often newly arrived residents are required to wait 104 weeks before being able to access social security payments. NSSRN further notes that there is a proposal before Parliament to extend the waiting period to 156 weeks and also a 2018 Federal Budget measure proposing to further extend the waiting period to 208 weeks.

Not all payments exclude the same visa categories. Special Benefit is a discretionary benefit available to a person who is not eligible for any other payment, is in severe financial hardship for reasons beyond their control, is unable to earn enough to support themselves or their family and is unable to get another income support payment. Special Benefit may be paid to a newly arrived resident serving a waiting period if a person 'has suffered a substantial change in circumstances beyond his or her control', which includes the claimant having been 'the victim of substantiated domestic violence'.⁵⁴

Special Benefit undoubtedly fills a gap in the social security safety net for many newly arrived individuals who are forced to leave a violent household, however, some issues remain. These issues include eligibility for people who do not have an appropriate class of visa, people whose spouse visa category will change if they leave a violent relationship, and people with an appropriate visa category who do not meet the onerous eligibility criteria for Special Benefit.

⁵⁴ Australian Government, above n 3, 3.7.2.20.

- **Visa category**

A client who is Japanese, married her husband who had permanent residency in New Zealand. They have a four-year-old child who was born in Japan with dual Japanese/New Zealander citizenship. She was with her husband for 12 years during which time they resided in Australia on a number of occasions. She experienced ongoing domestic violence at the hands of her partner throughout the relationship until she finally left to live in a refuge where she was unable to access social security income for herself (because of her visa category) or for her child (as her child has been in Australia for less than 2 years). She is unable to leave Australia with her child as the police have an airport alert on the child who is unable to leave the country. She has now waited months for an urgent Family Court hearing, for the custody of the child to be determined.

Special Benefit requires a claimant to be in extreme financial hardship although at times a client's financial circumstances can be misinterpreted, particularly when a victim of domestic violence has borrowed money because they have no means of securing income.

- **Extreme financial hardship**

A client separated from her partner following domestic violence, taking their child and her child from a previous relationship with her. Despite having an AVO in place, the abuse continued post-separation, including one occasion where her partner told Centrelink that both of the children were living with him. He received Family Tax Benefit while she had no income at all. She was not receiving child support as she had been exempted from applying due to her ex-partner's violence. Her family lent her \$5000 to live off while she tried to organise her social security entitlement. She applied for Special Benefit but was rejected, by which point she had \$3000 remaining. Terrified that she would run out of funds completely, and in debt to her family, she contacted WRC (NSW) who intervened on her behalf. Four months after originally applying for Special Benefit, payment was granted.

The need to fully expend all funds before becoming eligible for Special Benefit places victims in a precarious position. Further, the requirement for claimants to be in extreme financial hardship can make it take far longer for victims of family and domestic violence to re-establish themselves.

Eligibility for Special Benefit where a person is subject to a NAWRP also requires a claimant to have suffered a substantial change in circumstances beyond his or her control. This requirement has also been interpreted very narrowly, for example:

- **Substantial change in circumstances**

A Client arrived in Australia from Lebanon in 2013 on a 115 visa, as she was the only member of her family living outside Australia. Her brother was abusive during her time in Australia which prompted her to return to Lebanon after a few months. As a result of experiencing depression, she returned to Australia in 2017 (again on a 115 visa) with her brother providing an assurance of support. She stayed with her brother for only a short time as he was verbally abusive causing her to move in with a friend. At the stage she contacted WRC (NSW) she was depressed, living in a garage and unable to afford medication. She was receiving food from charities but had difficulty eating. She was unable to apply for work due to her depression. Her Special Benefit claim was rejected on the basis that she had not demonstrated a change in circumstances because she had depression in Lebanon and had arrived in Australia without financial support.

Recommendation 17 *That the Act be amended to enable non-protected Special Category Visa holders to access Special Benefit, particularly if it is unreasonable to expect that person to leave Australia, for example, a victim of family and domestic violence who is a parent and needs to remain in Australia in order for the children to continue to have access to both parents, or a person who fears violence from their partner or their partner's family if they return to their home country.*

Special note on New Zealanders

New Zealanders' migration rights differ from other nationalities. Unlike other migrants, New Zealanders can move to Australia and are automatically granted a Special Category Visa under which they have the right to remain in Australia indefinitely and work, thereby contributing to compulsory superannuation and paying tax. Unlike other nationalities, New Zealanders are not required to apply for permanent residency. Consequently, even if their circumstances change (including if they have lived here for years, worked and paid tax before becoming destitute), New Zealanders are not eligible for Special Benefit. This exclusion places victims of family and domestic violence at risk.

- A Client, who is a New Zealand citizen, came to Australia in 2008. In January 2018, she was fired from her job due to difficulty managing back pain and other psychological issues, caused by a car accident four years earlier. She had lived with her family but left because of domestic violence and did not want to return. Her claim for Newstart Allowance was rejected because she was a few months short of meeting the 10 year residency requirement that would enable her to receive payment for 6 months. At the point of contact with WRC (NSW) she was forced to stay at a friend's house with no income.
- A Client, a New Zealand permanent resident, moved to Australia with her Tongan partner in 2011 and they had a child in 2013. She had an AVO which was about to expire but she could not afford to move out of the shared home. She was living on Family Tax Benefit (approximately \$150/fortnight) and struggling to buy basic necessities. Her former partner only worked occasionally and refused to share income. Her gas and electricity had been cut off.

NSSRN members report other cases of New Zealander clients being forced to stay in a violent home because they are unable to support their children if they leave.

Commentary on the severe treatment of New Zealanders who find themselves in crisis is not new. For example, the 2012 AAT decision of *Filipovski and Secretary, Department of Family and Community Services* notes that it is harsh and hard to understand why New Zealanders are precluded from obtaining Special Benefit even if there has been a 'substantial change of circumstances beyond their control' when social security law provides relief to other newly arrived residents in the same circumstances.

Recommendation 18 *That the Government review the particularly harsh treatment of New Zealand permanent residents living in Australia who experience a substantial change of circumstances and find themselves in extreme financial hardship, enabling them to access Special Benefit where there has been a 'substantial change of circumstances beyond their control' so they are treated equitably with newly arrived migrants.*

Recommendations 17 and 18 align with the *Third Action Plan of the National Plan to Reduce Violence Against Women and their Children*,⁵⁵ which outlines the following actions to address the gaps identified above for migrants experiencing family and domestic violence:

- 3.8 Ensure migration rules and eligibility requirements for support services do not disempower victims of violence or discourage them from leaving violent relationships.
 - 3.8(a) Develop appropriate visa arrangements for temporary residents who are experiencing violence.
 - 3.8(b) Revise eligibility requirements to enable more victims of violence to access support.
 - 3.8(c) Work with service providers to improve access of temporary residents to available support services

CARE OF CHILDREN

The presence of children adds considerable complexity to relationships where there is family and domestic violence. Children affect financial independence and often it is the female partner in heterosexual relationships who will stop working to care for children, leaving her financially dependent on her partner. If the relationship is abusive, lack of access to an independent income can be a significant barrier to leaving the relationship. Lengthy processing times for payments can mean that a woman who has recently left a violent relationship faces the prospect of weeks without an income. Even if a woman manages to take her children and leave, lack of income can encourage result in them returning to the violent home. Unfortunately, the onus falls to the victim to prove the factual circumstances of the children's residence.

- A Client and her 10-year-old daughter were living with the client's mother. She was seriously ill and had no source of income. She had applied for Family Tax Benefit, but Centrelink had told her they could not process her claim until her ex-partner signed the required paperwork confirming the child was living with her. She could not get in contact with the child's father. To date, custody-related legal fees had amounted to almost \$30,000. She had no savings and significant medical related costs.

⁵⁵ Council of Australian Governments, above n 26.

Care of children, whether it be classified by social security as 'residence' or 'percentage of care', remains a weapon used by perpetrators to prolong family and domestic violence post-separation. Misleading claims about child residence by perpetrators are not uncommon.

The definition of 'principal carer' applies to numerous social security payments (Parenting Payment, Newstart Allowance, Youth Allowance or Special Benefit) but only one person (usually a parent) can be considered the principal carer of a particular child. Being defined as principal carer means a person may be eligible for Parenting Payment or other payments with reduced participation requirements. In some situations, a person can still be considered a principal carer if their child is prevented from being in their care without their consent but only if they have taken reasonable steps to recover care of the child. Unfortunately, Centrelink's common response to being told a child is no longer with a parent appears to be to discontinue payment, leaving victims of violence without any income.

- A Client had a custody dispute with her violent ex-partner regarding their child. Her ex-partner left the state with the child, refusing to return. The ex-partner told Centrelink he was the principal carer and the client's Parenting Payment Single and Family Tax Benefit were stopped. The client was left without income while waiting for a court date for a custody hearing for a recovery order.

The unexpected cancellation of a payment can be extremely stressful, particularly when caused by the perpetrator of family and domestic violence. Centrelink should institute a system of checking facts with the parent who is to lose payment before any changes are made.



Recommendation 19 *That Centrelink institute a process of confirming care arrangements with both parents before cutting payment to a parent who is currently receiving Parenting Payment or Family Tax Benefit.*

Care of children, including percentage of care, is also a major issue related to Family Tax Benefit, which is only payable if a person has care of a dependent child. For Family Tax Benefit A or B to be payable, a person must have care of their child at least 35% of the time. In situations of share care responsibilities, Family Tax Benefit B can be split between parents according to a sliding scale. Monitoring and notifying changes to percentages of care can be onerous and extremely stressful for women monitoring ongoing abuse post-separation and if not done methodically can result in significant overpayments.

- A Client left a domestic violence relationship with her three dependent children. Her husband continually demanded additional days with children (including during mediation) and kept threatening to cease paying child support unless he was given more time with the children. The psychological and physical abuse continued. The client tried to keep Centrelink up to date and was confident that she had informed Centrelink that she had the children five days per fortnight however a debt of \$17,000 was raised.

Other cases from NSSRN member centres include:

- A woman who had left a violent relationship received no Family Tax Benefit despite having 50% care of the youngest children.
- A woman was hospitalised as a result of domestic violence by her ice-addicted partner, during which time her mother in law had care of her children. Her mother in law refused to return the children for a number of weeks after her release from hospital, resulting in a debt of approximately \$2,500 being raised.
- A woman from New Zealand separated from her Australian partner as a result of domestic violence, taking her children to a refuge. Her former partner claimed shared care even though the children were living with her. This meant she was unable to receive the maximum rate Family Tax Benefit. She was unable to access any other social security income because she did not have Australian residency.
- A woman arrived in Australia on a tourist visa and began a relationship with an Australian man. She became pregnant and had a child although the father would not recognise paternity and he became abusive. She was not able to receive any income for herself as she did not have Australian residency. Eventually she managed to secure Special Benefit for her son while she waited to obtain permanent residency.
- A woman who had no income and was homeless applied for Family Tax Benefit but received no decision for months. Each time she went into Centrelink to check on progress, her query was treated as a new claim. Her children were in and out of her care during that time due to her homelessness and other health issues.

Issues of children's residence and shared care are recurring issues for Indigenous clients because kinship care is common practice. Often, children are cared for by the community with costs shared. This model that does not fit within Centrelink's definition of principal residence and principal carer. Informal carers are usually relatives or close friends.

Recommendation 20 *That section 2.1.1.60 of the Family Assistance Guide be amended to enable payment of Family Tax Benefit to continue when a person has care of a child but that care is interrupted for period of up to 3 months (currently 4 weeks) as a means to secure stable accommodation and ongoing care for the child.*

CHILD SUPPORT EXEMPTION

A person may be granted an exemption from pursuing child support from their ex-partner in order to receive more than base rate Family Tax Benefit if they fear that their former partner will react violently towards them or their family. This provision aims to prevent a victim of family violence from having to interact with the person who has used violence against them with the effect of minimising ongoing trauma and abuse. Unfortunately, it also means that those who are fearful of ongoing family and domestic violence despite separation receive less income support for themselves and their children. In other circumstances, clients who have experienced family and domestic violence may have a child support assessment in place and agree to a private arrangement because they are not advised of other options for collection but sometimes end up not receiving child support in accordance with the private agreement.

Accessing the child support exemption relies on clients being prepared to disclose family and domestic violence and also being proactive in seeking an exemption. Unfortunately, clients are not always willing or able to disclose their experience of family and domestic violence and to seek appropriate support.

- A NSSRN member centre client had ongoing issues related to child support. The centre suggested she make an appointment to see a social worker to discuss her continued fear of violence from her ex-partner, however, she was battling severe depression and has not been able to do so.

If a person does not seek a child support exemption and fails to take reasonable action to seek child support, they may end up with a Family Tax Benefit debt.

Recommendation 21 *That consideration of retrospective exemption should always include assessment by a social worker so that a detailed interview with the client may be undertaken to assess the barriers the client faced in seeking a child support exemption due to experiencing domestic violence.*

It is not unusual for men to delay tax returns as a means to delay paying child support. As well as reducing income for victims and their children during this period, it can also result in debts being raised, an issue that may be particularly frustrating for women who are attempting to re-establish a stable and secure home for themselves and their children.

- A Client separated from her husband as a result of domestic violence. She had an AVO against him. Her husband, who was earning more than \$150,000 per year delayed lodging his tax returns to avoid his child support obligations. When he finally lodged returns after two years, he was required to pay \$18,000 in arrears. He paid \$7000. Our client began a process through Legal Aid to recover the remainder of the arrears but stopped because the process was too stressful and she became fearful she may become liable for costs if she was unsuccessful. The client received a debt of more than \$8000 for overpayment of Family Tax Benefit, more than she had received in child support.

NSSRN member centres regularly become aware of clients who are not receiving their full Family Tax Benefit payments because they have 'failed to take maintenance action' due to fear of their ex-partner but they have been reluctant to approach a social worker to explain their situation. In other instances, clients have not received their full rate of payment due to communication breakdown between the Child Support Agency and Centrelink. These agencies are often aware of a client's history of family and domestic violence.

Recommendation 22 *That DHS engage in a proactive campaign to identify clients who are not receiving their full Family Tax Benefit entitlement and assess their eligibility for the Child Support Exemption.*

CENTRELINK ADMINISTRATION

Centrelink staff members deal with an enormous number of people experiencing family and domestic violence, noting that more than 17,000 Crisis Payments were made in the 2016-2017 financial year.⁵⁶ To ensure recognition of the impact of family and domestic violence on social security, and a systemic and proactive response to it, DHS has its own *Family and Domestic Violence Strategy: 2016-2019*, which is now available in 36 languages. Senior Departmental leaders are responsible for acting as sponsors, advocating awareness and driving accountability for the Strategy.

The review of WRC NSW's casework and NSSRN member centres' survey responses suggest that although there are extensive systems in place to assist clients experiencing family and domestic violence, issues regarding their effectiveness remain.

Training of Centrelink Staff

Centrelink staff face a challenging task administering and explaining payments with rigid and sometimes complex criteria to large numbers of people, many of whom are stressed and frustrated by the time they come in contact with staff. Many clients experience a range of complex issues including mental health problems and drug and alcohol use, which can sometimes result in behaviours that are confrontational and stressful for staff to manage. Staff members need as much support as possible to

⁵⁶ Australian Institute of Health and Welfare, above n 2.

effectively assist people who have experienced family and domestic violence. Notably, the issue of staff support and training was addressed in two of KPMG's seven recommendations from its post-implementation review of the Family and Domestic Violence Strategy.⁵⁷

DHS undertakes training to better equip staff with the skills and confidence they need to support customers affected by family and domestic violence. It is NSSRN's understanding that staff training programs currently include:

- Family and Domestic Violence (FDV) Risk Identification and Referral Model training;
- Family and Domestic Violence post learning activity;
- Family and Domestic Violence Supporting Staff training;
- Family and Domestic Violence Managers Supporting Staff training; and
- SES Family and Domestic Violence training.⁵⁸

Clearly specialist staff, such as social workers, are required to have a comprehensive understanding of family and domestic violence, including strategies to enable access to social security entitlements and referral to other appropriate support services. However, the capacity of frontline staff is also critical. If a person believes their experience of family and domestic violence has been minimised by staff they have sought assistance from they will be less likely to disclose their personal circumstances in the future.

As at June 2018, approximately 20,000 of DHS's 36,000 staff had undertaken family and domestic violence training during the last few years.⁵⁹ That training generally comprised a two-hour training module on risk identification and appropriate responses. Refresher training of approximately half an hour is also available on a Learning Delivery Module.

The Department recognises that family and domestic violence training may raise difficult issues for some staff. For this reason it is a requirement that a social worker is present at all training sessions. Alternatively, staff may opt-out of the standard training model, undertaking supported discussions with senior staff instead. The Department has established a stand-alone support line for staff experiencing issues associated with family and domestic violence. The phone line has had strong uptake.⁶⁰ This initiative is to be commended and recognised for its compliance with KPMG's fourth recommendation to increase staff support in this area.⁶¹

The NSSRN member survey found that while generalist Centrelink staff are often responsive to, and supportive of, clients affected by domestic or family violence, this is not always the case. At this point in time, not all staff 'have the capability to respond effectively and appropriately to the diversity of customers' per the Department's Family and Domestic Violence Strategy. Limited awareness and understanding of family and domestic violence has undoubtedly contributed to the negative experiences of some clients trying to access social security entitlements, including at times of crisis. Observations included: staff not asking adequate screening questions to identify clients who may be experiencing family and domestic violence; staff lacking sensitivity in their communication about family and domestic violence; and the provision of inconsistent answers from various staff in relation to family and domestic violence. NSSRN supports KPMG's sixth recommendation that the DHS embed training as 'business-as-usual' to minimise gaps in staff skills, particularly as new staff join the Department, and ensure the issue 'is understood, tackled and addressed in a safe and supportive workplace environment'.

Recommendation 23 *That training of general staff continues to increase staff capacity to deal with family and domestic violence: Not only building awareness but also developing the practical skills and resources required to discretely and effectively interact with clients who may be experiencing family and domestic violence, including making an appointment with a social worker and/or other specialist staff as soon as possible.*

57 KPMG, above n 29.

58 Question on notice no. 57 Portfolio question number: SQ17-000211. 2017-18 Supplementary budget estimates Community Affairs Committee, Human Services (part of Social Services) Portfolio Senator Murray Watt: asked the Department of Human Services on 25 November 2017.

59 Discussions with Department of Human Services staff during NSSRN and DHS Biannual Meeting, 12 June 2018.

60 Ibid.

61 KPMG, above n 29.

Lack of Safe Spaces for Disclosure

The DHS's Family and Domestic Violence Strategy includes a commitment to 'provide a supportive environment which encourages customers affected by family and domestic violence to tell us their concerns'. Unfortunately, the layout of Centrelink offices, which generally include open plan office space and very public reception areas, is not conducive to clients' disclosure of family and domestic violence. Many people who have experienced family and domestic violence experience shame and embarrassment discussing their highly personal experiences, a situation which is exacerbated by a real or perceived lack of privacy. This issue is particularly prevalent when family and domestic violence has included sexual violence.

Numerous NSSRN member centres raised the issue of clients' discomfort with the need to disclose family and domestic violence to 'a random Centrelink staff member', with one describing the process as 'feeling like disclosing to an AusPost officer'.

Issues related to disclosure were exacerbated by other areas of disadvantage. For example, Aboriginal and Torres Strait Islander clients often face an additional barrier of fear and mistrust of government agencies, including fear that if they disclosed family and domestic violence they risked losing custody of their children. Some people from culturally and linguistically diverse backgrounds were uncomfortable because of Centrelink staff's lack of cultural awareness or understanding and they were fearful they would be misunderstood. In rural, regional and remote communities, clients were concerned about disclosing information to staff due to the likelihood staff may know those involved. Other clients said they had previously not disclosed to Centrelink because they do not want to be perceived as the negative 'stereotype' of a social security recipient. The consequence of clients' discomfort disclosing family and domestic violence is that Centrelink will not have an accurate representation of the client's circumstances.

Recommendation 24 *That the DHS considers ways to make Centrelink offices safer spaces, enabling clients' disclosure of family and domestic violence.*

Opportunities for General Staff to be more Proactive

DHS has introduced a system whereby clients are asked a standardised question at designated points in their interaction with Centrelink staff, such as 'are you or is anyone in your family concerned about your safety?'. These points include where a client is changing from Parenting Payment Partnered to Parenting Payment Single, changing nominee related to Family Tax Benefit and commencing arrangements for child support. This systematic approach to 'screen' for cases involving family and domestic violence is to be applauded.

A number of centres raised the issue that frontline staff members do not always proactively provide information to clients experiencing family and domestic violence about the range of available assistance. Vulnerable clients are not always informed of their entitlements. Centrelink counter staff do not routinely ask questions which would help identify whether someone may be at risk of family violence and consequently support systems are not triggered, including access to appropriate payment and social work support. In fact, many clients are unaware that Centrelink can provide access to social work services. As well as a lack of information about payments, clients are not always aware of other supports available to them, such as the maintenance exemption or a restricted access file.

Frontline staff tend not to note when clients are deeply traumatised and are unable to engage with Centrelink as a result of their trauma, or they may perceive behaviours associated with this trauma as harassment. These same clients are often referred to online systems with which they repeatedly fail to engage with. This can be particularly difficult for clients who are overwhelmed as a result of ongoing violence or the turmoil associated with leaving a violent relationship and establishing a new, separate life.

Recommendation 25 *That family and domestic violence training of frontline staff include efforts to assist staff to identify instances where a person may be in or have recently left a relationship involving family and domestic violence.*

Opportunities for General Staff to be More Responsive

Staff are not always open to assisting clients who have been impacted by family and domestic violence trauma, appearing to act as gatekeepers to minimise clients' engagement with the social security system. A number of NSSRN member centres relayed a perception that some Centrelink staff appeared reluctant to engage with clients in person, with clients in Centrelink offices now frequently diverted from face-to-face interaction with staff to onsite or at-home computers. Clients reported considerable distress about being provided no assistance other than being directed to websites and being given no assistance to complete

forms. Ideally, staff would show greater capacity to assist clients to negotiate the social security system while impacted by family and domestic violence and would make use of external referral pathways when the issue of family violence extends to areas outside social security (Noting KPMG's recommendation 7 also calls for consideration of improved referral pathways⁶²).

Importantly, while:

Centrelink is on one level, a transactional, government institution dealing with thousands of social security claims and enquiries on a daily basis. On another level, it is an interface to which people bring their vulnerabilities and sometimes tragedies in the process of looking for help.⁶³

Clients have also described wait times as a major barrier to support, with NSSRN member centres observing a reduction in Centrelink office staff numbers, including social workers, consequently reducing capacity to respond to the immediate needs of clients in timely manner. A particular disincentive for clients to disclose information about family and domestic violence was the long wait times to get an appointment with a social worker or specialist support officer. As one NSSRN member centre describes:

The common experience from welfare rights advocates, refuge workers and our own solicitor, who deals with family and domestic violence clients, is that there are long waits to get an appointment with the social workers at Centrelink. This can exacerbate clients' situations.

Given the power imbalance between clients and staff, some clients feel as though they are required to answer all questions put to them even when they believed they were inappropriate or irrelevant to their claim. The expectation on clients to disclose personal matters, including specific details of the violence they have experienced, left some clients feeling traumatised by having to retell their story, sometimes numerous times. This was particularly disempowering when they believed it was not relevant to the current issue being discussed.

Recommendation 26 *That frontline staff be given more in-depth training to better support clients' interaction with the social security interface, particularly related to referral away from face-to-face support and support to complete forms and supply other required documentation.*

Impact of Administration Requirements and Delays on Clients

A significant proportion of WRC NSW cases included clients who were managing mental health issues and/or were very distressed by their interactions with Centrelink. Reasons for distress included perceived lack of empathy from staff but also issues relating to administration including:

- An inability to obtain clear information about what they needed to do. This resulted in clients feeling lost in the process and unable to explain their situation clearly. Notably, when interacting with NSSRN member centres staff, clients' descriptions of 'the problem at Centrelink' routinely turned out to be a misunderstanding of the issue.
- Frustration at having to provide 'mountains' of information, including:
 - Scanning documents which many people found stressful because they weren't sure how to do it and whether they were doing it correctly. It seemed more onerous than taking a document into an office and showing it to someone.
 - Not understanding why so much documentation was required.
- Receiving letters that they were unable to understand or letters containing a decision without describing the reasons for it.
- A general sense that no one would help them when they were genuinely distressed.

The level of distress experienced by some clients cannot be overstated. For many, their perceived inability to gain help from Centrelink felt like the final straw. Case studies include numerous instances of clients thinking about, threatening to, or attempting to, commit suicide – including at the point of receiving a letter from Centrelink notifying them of a debt.

In particular, clients were distressed by processing delays, during which they were unsure whether they would receive payment and how much payment they would receive. This left many women who were or had experienced family and domestic violence agitated and distraught.

62 KPMG, above n 29.

63 Greg Hall et al, 'Mutual Benefits: Developing Relational Service Approaches Within Centrelink' (2012) 65 (1) *Australian Social Work* 87-103.

One of the worst cases of delays relates to an Aboriginal woman who had care of her five children, who did not receive a payment for almost five months:

CASE STUDY: LACK OF CASE MANAGEMENT

Ms OL had an AVO in place preventing her husband from living with her. She was receiving Parenting Payment Single and Family Tax Benefit to support her and her five children. In mid-July 2017, she received a letter from Centrelink saying they were aware she was sharing accommodation with someone (her husband) and asking her for information about their relationship. Three weeks later she received another letter saying she had not provided enough information, as a consequence her Parenting Payment and her Family Tax Benefit ceased.

Ms OL contacted Centrelink the next working day and was told to reclaim Parenting Payment which included a requirement to provide multiple documents including bank statements. Approximately one month later, in late September, her Family Tax Benefit was restored. However her Parenting Payment was not.

In early October, Ms OL notified Centrelink that she had experienced domestic violence. That report did not appear to trigger any action. The following day, she received a letter saying she would be paid Parenting Payment Partnered. She received a second letter saying she must complete her claim.

The next day, Ms OL again contacted Centrelink requesting Parenting Payment. She advised Centrelink that her partner had been arrested for domestic violence and was incarcerated, charged with assault. During the ensuing conversation, Ms OL stated that she might allow her partner to return to the house when he was released. Centrelink then decided that she was not eligible for Crisis Payment, despite his removal from the home for domestic violence, her having no savings, and her having been off payment for two and half months by that point. Ms OL was given a Family Tax Benefit Advance grant of \$500.

After a further two and a half weeks passed Ms OL was told that her claim for Parenting Payment Single (which there is no record of lodging), had been cancelled as weeks earlier she'd told Centrelink staff she may allow her husband to return to the home when he was released. A week later, Ms OL was told she would be paid Parenting Payment Partnered from 15 November 2017. The following week, she received an overpayment notice of \$820 for Parenting Payment Single over a seven month period.

Ms OL received two payments for Parenting Payment Partnered before she received a notice saying her payment had been cancelled because she no longer had a partner. Her Family Tax Benefit was also cancelled. In January, Centrelink sent a series of letter stating that Ms OL's claim for Parenting Payment Single would be processed and letters estimating, paying and raising debts for Family Tax Benefit. She was also advised her Family Tax Payment would be stopped if she did not take reasonable action to obtain Child Support. Her Family Tax Payment was finally restored on 4 February 2018, with Centrelink still threatening to cut off her Family Tax Benefit if she did not take action to obtain Child Support.

All in all, Ms OL's documents that were requested under the Freedom of Information legislation detail sixty-two separate pieces of correspondence, telephone or face-to-face interactions between Ms OL and Centrelink between August 2017 and February 2018. Ms OL was without income support for herself and her five children for the vast majority of that period of more than five months. Her husband did not return to the family home after release from prison.

Ms OL's case points to a lack of case management that should be applied when a person who has experienced family or domestic violence is without income support. It is unclear why Ms OL's requests to Centrelink were not treated with a greater sense of urgency. What is clear is that systems to respond to family and domestic violence should have flagged ongoing failures in Ms OL's endeavours to seek income support.

Recommendation 27 That processing times be reduced to provide some financial certainty for people escaping family and domestic violence. This should include consideration of a triage system where payments associated with family and domestic violence are treated as urgent.

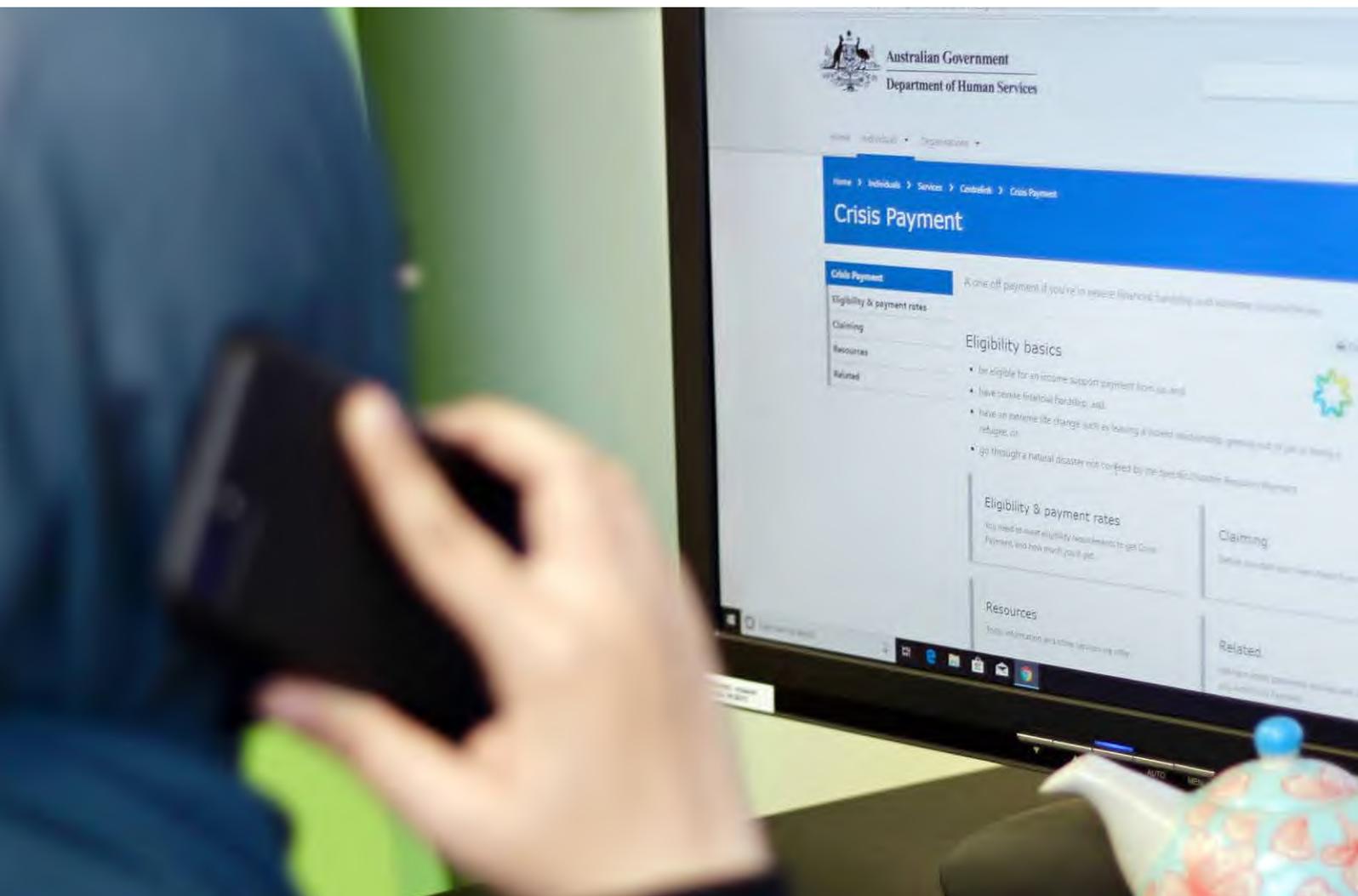
Impact of Increasing Reliance on Information and Communication Technologies

The move to 'the convenience' of information and communication technology systems has undoubtedly improved access for many Centrelink clients, including people with limited mobility and people in regional or remote areas. However, this shift in service provision has also delivered unintended consequences. As outlined above, now when a person goes into their local Centrelink office they will often be referred to the computer to access MyGov or telephone to access Centrelink's call centre. This shifting priority appears to have effectively removed resources from Centrelink offices, sometimes to the detriment of clients. As one NSSRN member centre describes:

Centrelink staff routinely apply a "one size fits all" policy in the way they engage with clients, so when people come to them for help with claims/submitted documents etc., they are invariably pointed to the computers (to access MyGov).

And another NSSRN member centre:

Clients are often unaware of what is needed to make an application. Clients may not be tech-literate. There is an expectation that people will be able to complete online forms. These are complex and many clients do not have the skills. Centrelink provides no support to assist with forms. If they approach counter staff for assistance they are often directed to a self-help computer.



At times, providing documents has become more stressful as a consequence of Centrelink's insistence on self-managed uploading of documents. It presumes people have access to appropriate technology, access to a reliable internet connection and that they are technologically savvy. Further, the Centrelink App is not always reliable.

- A NSSRN member client was having great difficulties uploading her claim for Parenting Payment Single online. The system kept saying she needed to provide more documentation and would not accept the claim. The NSSRN member centre intervened, with Centrelink identifying the system was at fault and the claim was eventually accepted.

In the experience of NSSRN member centres, there are not enough frontline staff or social workers to: deal with cases involving family and domestic violence; resolve issues that cannot be resolved by referral to a depersonalised telephone-based system that undermines the ability to build rapport between staff and client; build rapport which increases the likelihood of a client disclosing details of their difficult circumstances because they feel supported.

Attempts to access phone support routinely involves lengthy delays in connecting clients to Centrelink staff. Sometimes, callers simply fail to get through. This is a significant problem for some clients who are experiencing family and domestic violence and particularly for those in distress. The long waiting times inhibit clients from disclosing violence, particularly if they are feeling overwhelmed dealing with other issues concerning their children, accommodation etc. and so do not have the capacity to wait on hold for extensive periods of time. Despite the DHS's Family and Domestic Violence Strategy noting a commitment to 'refine our risk identification approaches to ensure we can support customers who interacting in the face-to-face, telephony and online channels', a number of NSSRN member centres observed that appropriate referrals appear to be less commonly made by call centre staff (Noting here, KPMG's recommendation 7 to improve referral pathways). If clients are not able to access adequate services in Centrelink offices, it may be more appropriate for information and communication technology (ICT)-based family and domestic violence services to be centralised.

Recommendation 28 *That DHS consider establishing a dedicated phone line for clients experiencing family and domestic violence to discuss issues relating to their social security entitlement.*

Access to Social Workers

Within the Centrelink environment, social workers are uniquely equipped to work with clients with complex needs, including those who are or have recently experienced family or domestic violence.

In 2016-17, Centrelink's social workers:

- responded to more than 65,000 referrals to assist and support recipients affected by family and domestic violence; and
- granted 18,000 crisis payments for family and domestic violence consisting of more than 15,000 assisting people to seek safe accommodation away from home, 1,900 assisting people to remain in their homes, and 900 assisting people who were removed from their homes due to their use of violence against family members.⁶⁴

NSSRN member centres agreed that social workers provide a valuable service to clients who are experiencing family and domestic violence, including providing a more consistent and appropriate response than other staff. Despite the DHS's Family and Domestic Strategy noting, 'we will offer direct support (such as a referral to a social worker ...) where this best meets the needs of customer', access to social workers is problematic for a range of reasons including:

- Clients are not always referred to social workers and are not always aware that Centrelink social work support exists. NSSRN member centres regularly intervene in cases where assistance would not have been necessary had a client been referred for social work support in the first instance. For example, one NSSRN member centre commented:
I have referred numerous clients directly to Centrelink social workers where I would have expected them to have already been referred internally.
- Clients often have to wait for social work support, expressing frustration at not being able to get an appointment in a timely manner when it is most needed.

⁶⁴ Question on notice no. 15 Portfolio question number: SQ17-000162 2017-18 Supplementary budget estimates Community Affairs Committee, Human Services (part of Social Services) Portfolio Senator Louise Pratt: asked the Department of Human Services on 25 November 2017.

- Clients are often only provided the option of a phone appointment with a social worker. Lacking face-to-face contact and associated body language and other cues makes it more difficult for social workers and clients to build rapport, noting:
 - Many clients expressed uncertainty about whether the social worker understood and acknowledged the gravity of their circumstances;
 - Clients were not comfortable enough to share information about their personal circumstances with someone over the phone who they did not know; and
 - Some groups of clients may be disproportionately disadvantaged.
- Access to social workers appears inconsistent across different regions or offices, including both whether and what kind of social worker access is provided.
- Clients are not always allowed a choice about the gender of the social worker which can be a crucial factor in accessing help.
- Phone appointment calls appear on client's phones as a private number so clients do not always answer the call.

The loss of social workers permanently located in every Centrelink office is keenly felt. Many NSSRN member centres commented on a sense of dwindling social worker support. There appears to be far fewer social workers employed in Centrelink offices, resulting in shared workloads and employment only for certain days in particular locations, or worse:

We recently had a client with mental health and domestic violence issues approach their local Centrelink office to make an appointment with a Centrelink social worker. The client was advised the service was no longer available and the Department contracted their social work externally and as a result the client would be better off making their own arrangements. (NSSRN member centre)

Recommendation 29 *That timely access to social workers, particularly on-site social workers, be increased to better support victims of family and domestic violence.*

Administrative Arrangements

- **Privacy protections**

DHS collects and holds 'a large amount of sensitive personal information about its customers'. Confidentiality provisions are included under numerous pieces of legislation, including the *Privacy Act 1988*. The Act and the *Guide to Social Security Law* also include specific provisions to protect clients' privacy and confidentiality, including restrictions on accessing or communicating information about a client. Specified Personnel have 'an obligation to safeguard any personal information collected through the course of the business they conduct on behalf of the department'.⁶⁵ Current or former staff may be charged with a criminal offence under the *Criminal Code Act 1995 (Cth)* if they disclose any confidential or sensitive information they became aware of during the course of their work to anyone other than an authorised person.
- **Proof of Identity and other required documents**

Some clients experiencing family or domestic violence face particular issues providing documentation to Centrelink, including proof of separation or information about their partner's financial details. Providing documentation can be onerous and extremely stressful during times of great vulnerability. It may be particularly difficult in situations where the perpetrator has tightly controlled access to all documents and records.

Clients often leave situations of family and domestic violence in a hurry and do not take all documentation required by Centrelink with them. It may not be safe to return to a property to collect documents and/or an order preventing contact between the parties may be in place. Some perpetrators of violence will deliberately hide or destroy documents. Delays and costs associated with securing new documents add significantly to a client's stress and vulnerability and usually cause further delays completing Centrelink claims. In some cases, clients will consider returning to a violent relationship because it does not seem possible for them to secure their social security entitlement without access to documents:

⁶⁵ Australian Government Department of Human Services Privacy, *Confidentiality and Security Responsibilities* (2011) <<https://www.humanservices.gov.au/sites/default/files/2017/09/access-point-declaration-of-confidentiality-2014.pdf>>.

I recently supported a client who left her husband due to domestic violence and gave birth while living at a refuge. She couldn't work out how to get the birth certificate for her baby, and without it she couldn't access payments from Centrelink. She was without income support and wanted advice about varying the AVO, so she could return to her husband's home. (NSSRN member centre)

Sometimes clients with no income are deterred by the paperwork required to demonstrate their role in a business, partnership or trust. Clients may have little knowledge or be unaware of the existence of, or financial arrangements associated with, the venture and/or their former partner may refuse to provide documents. NSSRN member centres have assisted clients separated due to family and domestic violence who have had to wait four to six months for their income support claim to be finalised due to issues finalising paperwork about their former partner's company or trust. These issues are not necessarily resolved at the time of separation.

- A NSSRN member centre client who is currently in a refuge after fleeing family and domestic violence managed to get Special Benefits, however, Centrelink began deducting \$90/ per fortnight after they learned her former partner had a small amount of business capital she was unaware of (as outlined in the case study on page 27).

Recommendation 30 *That in appropriate cases where victims of family and domestic violence are unable to access official documents, Centrelink use its information gathering powers to access required documents held by other government departments, including Births, Deaths and Marriages, and to assist clients to access those documents.*

Centralising and Formalising Monitoring and Expertise

Although DHS has a Family and Domestic Violence Strategy, with practical consideration of cases involving family and domestic violence appropriately delegated to social workers, responsibility for social security also rests with DSS. From an external perspective, it is unclear how the impact of family and domestic violence on social security is managed at policy level within the DSS, including whether responsibility for the issue falls to designated staff. It is also unclear whether there is a formal mechanism and coordinating interface between the DHS and the DSS on this issue.

Social security law, and its administration, is broad ranging and complex. Strategies to address family and domestic violence would be improved by the appointment of designated specialists in both the DHS and DSS, and a mechanism coordinating focus on this issue. To maximise benefit, these systems should be transparent and accessible to community agencies to enable effective communication between stakeholders.

Recommendation 31 *That DHS and the DSS develop transparent and accessible mechanisms to address the impact of family and domestic violence on social security entitlements, including designated family and domestic violence policy and programme specialists and a mechanism coordinating interdepartmental work on this issue.*

KPMG's post-implementation review of DHS's Family and Domestic Violence Strategy recommended that key performance indicators (KPIs) be developed to measure ongoing implementation efforts and track its overall performance against the Strategy. NSSRN strongly supports this recommendation, agreeing that measurement of progress against KPIs will ensure that the Strategy 'maintains continued prominence among staff, reaffirms DHS's commitment to tackling family and domestic violence, and supports its goal to provide better support for recipients and staff affected by FDV'.⁶⁶

Recommendation 32 *That DHS develop key performance indicators (KPIs) to measure implementation of, and performance against, the Family and Domestic Violence Strategy.*

⁶⁶ KPMG, above n 29.



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Appendix 1

Family and Domestic Violence Survey Questions

This survey has been designed to inform NSSRN's current project considering the relationship between social security and family and domestic violence. Please consider the following options for responding:

1. Discussion with colleagues at a staff meeting. Single response from your centre forwarded by email.
2. Circulation to numerous caseworkers at your centre. Multiple responses forwarded by email.
3. Phone interview to provide answers direct to researcher.

Given the very short timeframe for this project, could you please return survey forms or arrange a phone interview by Friday 25th May. For any further questions, please contact Sally at sally@nssrn.org.au or phone 0432 109 476.

Please answer the following questions about your clients' experiences trying to resolve social security issues while affected by family and domestic violence:

1. How would you describe staff attitudes, expertise and willingness to help clients experiencing family and domestic violence? Are there factors that tend to make staff more/less helpful?
2. Does Centrelink have effective systems in place to help clients disclose family and domestic violence? Are there particular barriers to disclosure?
3. Are clients able to access effective Centrelink social work support when needed?
4. Do Centrelink staff make effective referrals for clients to access additional support services?
5. Are some clients less likely to be able to access support from Centrelink staff? How would you characterise those clients?
6. How is clients' access to social security impacted by having children, including consideration of definitions such as 'principle carer' and 'residence'?
7. Do clients face particular issues providing documentation to Centrelink, for example, proof of separation or partner's financial details?
8. Do clients' experiences differ (in relation to Qs1-6) depending on whether they have ended a relationship involving family and domestic violence or are in an ongoing violent relationship?
9. Do clients' experiences differ (in relation to Qs1-5) depending on whether they're already receiving social security payment or are trying to claim a payment for the first time?
10. How well is the issue of shared income dealt with when assessing whether a person is a member of a couple (especially where income/assets are not shared)?
11. Do you and/or your clients believe their reliance on a Centrelink allowance increases their vulnerability or likelihood of staying in, or returning to, a violent relationship? If yes, how?
12. Are there measures Centrelink could take to increase clients' safety?
13. Do you have any other observations or suggestions to improve social security law or Centrelink's practice to better support people dealing with issues of family and domestic violence?

Appendix 2

Administrative Appeals Tribunal Family and Domestic Violence-Related Appeals

(1 January 2017 – 31 March 2018)

Location	Date	Citation	Surname	Issue	Outcome for:
Adelaide	23.03.2018	[2018] AATA 770	Brown	PPS & FTB Special Circumstances Debt Waiver	Client
Brisbane	22.03.2018	[2018] AATA 673	Chaplyn	Age Pension Assets Test: Marital Home	Client
Melbourne	7.03.2018	[2018] AATA 412	Sheikh	Newstart Income Test: Extension of Time to Review Debt	Department
Brisbane	2.08.2017	[2017] AATA 1236	Cook	PPS & FTB Debt Write Off	Client
Melbourne	26.04.2017	[2017] AATA 538	Alicier	DSP Unlimited Portability Period	Department
Brisbane	20.04.2017	[2017] AATA 515	Prescott	Youth Allowance Unreasonable to Live at Home	Department
Brisbane	28.11.2016	[2016] AATA 949	Irving	Parenting Payment Percentage of Care	Department





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