

# National Social Security Rights Network Pre-Budget Submission 2020 - 2021.

***“For a fair social security system”***

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## A. About the NSSRN

The National Social Security Rights Network (NSSRN) is the peak body for community legal centres (CLCs) in Australia which provide specialist legal assistance in relation to social security and family assistance law, policy and administration.

The NSSRN seeks to inform the Federal Government's decision-making about the Budget by focusing on priority areas for reform in social security and family assistance law and policy.

## B. Overview

In January and March 2019 we welcomed changes made to improve the support provided to victims of domestic violence in response to the NSSRN's research report, *How Well Does Australia's Social Security System Support Victims of Domestic Violence?*, which was released in August 2018.<sup>1</sup>

Our 2020 -2021 Pre-Budget Submission highlights the recommendations in the report which have not yet been implemented, in particular drawing attention to the dire situation of people escaping domestic and family violence if they are a migrant subject to the Newly Arrived Residents Waiting Period (NARWP), on a temporary visa, or from New Zealand.

We also make key recommendations in line with the views we have expressed in various submissions to Senate Inquiries and research reports throughout the year, on issues including the rate of Newstart Allowance, ParentsNext, Cashless Debit Card, Community Development Program, Targeted Compliance Framework (TCF) and the proposed drug testing of income support recipients.

Our most recent report released in December 2019,<sup>2</sup> *Homeward Bound*, highlights the link between lack of access to adequate social security and homelessness, and provides further evidence of the need to address many of these issues

We re-emphasise the need for additional Commonwealth funding for community legal centres to assist people with their social security-related matters, particularly in light of the above issues which in many cases require legal assistance to resolve and contribute to the significant unmet legal need in this area. Our members are still assessing the full impact of the announcement that social security debts will no longer be raised on the basis of the flawed system of averaging ATO income data, but expect that additional resources will need to be directed towards advising people affected by the OCI scheme, commonly referred to as 'Robodebt'.

## C. Summary of recommendations

### **Recommendation 1: Continue improving support to people experiencing domestic violence**

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<sup>1</sup> National Social Security Rights Network, 'How well does Australia's social security system support victims of family and domestic violence?' (Research Paper, National Social Security Rights Network, 2018).

<sup>2</sup> National Social Security Rights Network and Canberra Community Law, 'Homeward Bound' (Research Paper, National Social Security Rights Network and Canberra Community Law, 2019).

The Commonwealth Government should continue to implement the recommendations made in the National Social Security Rights Network 2018 Report, *How Well Does Australia's Social Security System Support Victims of Domestic Violence?*

In particular:

- Remove or reduce the Newly Arrived Residents Waiting Period (NARWP) and make it easier to access Special Benefit payments in cases of ongoing domestic violence, by relaxing the requirement to demonstrate a substantial change in circumstances in order to receive Special Benefit as an exemption from the NARWP.
- Consider the introduction of a new visa type which provides those escaping violence access to income support.
- Give New Zealanders the same access to Special Benefit as other newly arrived migrants.

#### **Recommendation 2: Raise the rate of Newstart Allowance**

- Increase the single rates of Newstart, Youth Allowance and related payments by at least \$75 per week to reduce poverty and inequality in Australia.
- Index payments twice a year to wages as well as CPI to ensure they maintain pace with community living standards.
- Increase Commonwealth Rent Assistance by 30%.

#### **Recommendation 3: Fully restore the onus of proof reversed by 'Robodebts'**

- The Department of Human Services:
  - o thoroughly re-examine all debts raised via the system of averaging ATO reported annual income across fortnightly reporting periods, commonly referred to as 'Robodebt',
  - o set aside all debts which have been raised without legal basis, and
  - o ensure that refunds are issued where such debts have already been unlawfully enforced and partly or fully recovered.
- In abandoning the sole reliance on income averaging, new debts should only be raised where the Department of Human Services has obtained the required fortnightly income information in line with the practice adopted prior to the introduction of the 'Robodebt' scheme.

#### **Recommendation 4: Abolish compulsory participation in the Cashless Debit Card scheme**

#### **Recommendation 5: Abolish the Community Development Program and instead reinvest resources to:**

- Establish a new remote employment scheme, based on the framework set out in the Fair Work and Strong Communities proposal, which has as its primary goal long term improvements in employment rates, increased incomes and empowering local communities.

- Fund the establishment of at least 12,000 new jobs in remote communities to be wholly, or predominantly, created in Indigenous community organisations.
- Establish new governance arrangements for a remote employment scheme that are independent from Government, legislatively based and Indigenous led.
- Make the new scheme bottom-up, not top-down, with the ability for local people to set objectives within the long term goals of the scheme and to adapt program settings to local circumstances.
- Ensure that any new program arrangements will not directly or indirectly discriminate against Indigenous people.

#### **Recommendation 6: Abolish the Targeted Compliance Framework**

- Replace punitive compliance mechanisms with tailored support services to assess the strengths and barriers faced by an individual to finding paid work.
- While the TCF continues to operate:
  - Reduce the distress and financial hardship caused by automated payment suspensions by:
    - removing computer-automated suspensions and ensuring that a human decision-maker is responsible for imposing a suspension; and
    - ensuring that suspensions are imposed only where a human decision-maker has made contact with a recipient and confirmed that they have committed a mutual obligation failure.
  - Update the TCF Reference Guide to provide that recipients should be contacted about appointments at least 48 business hours in advance.
  - Legislate safeguards in social security law to ensure all decisions about compliance, demerits and penalties are the responsibility of Centrelink and subject to administrative review.

#### **Recommendation 8: Abandon government proposals to drug test social security payment recipients.**

- Abandon any proposal to drug test income support recipients, along with any form of income management and cashless debit card.
- Reinvest the budgeted amount for the trial of drug testing income support recipients into community drug and alcohol services.

#### **Recommendation 9: Inject \$5 million per annum of ongoing core funding to the 15 specialist social security CLCs and programs across Australia and NSSRN as the peak.**

## **D. Key measures**

### **1. Continue improving support to people experiencing domestic violence**

The NSSRN makes a total of 32 recommendations in its major research report, *How well does Australia's social security system support victims of domestic violence?*,<sup>3</sup> including amendments to the **Social Security Act 1991** (SSA) (Cth) and the **Guide to Social Security Law** (the Guide), as well as improvements to Centrelink's service environment.

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<sup>3</sup> National Social Security Rights Network, 'How well does Australia's social security system support victims of family and domestic violence?' (Research Paper, National Social Security Rights Network, 2018).

While we welcomed the changes in January and March 2019 in response to some of the recommendations, we continue to work with government, particularly the Departments of Human Services (soon to transition to Services Australia) and Social Services to see implementation of all the recommendations.

This submission draws attention in particular to the dire situation of people escaping domestic and family violence if they are a migrant subject to the Newly Arrived Residents Waiting Period (NARWP), on a temporary visa, or from New Zealand.

Last year, the *Social Security Act 1991* was amended to increase the NARWP from two to four years for working age payments. In certain circumstances where migrants hold particular subclasses of visa, Special Benefit is available if the newly arrived resident has experienced a substantial change beyond their control following their first arrival to Australia. However, the nature of domestic violence is often complex and multifaceted. In circumstances where Domestic Violence has gradually worsened for migrant women following arrival to Australia, we are concerned that it may be difficult for them to demonstrate a substantial change in circumstances beyond their control. We are concerned that people experiencing violence who are unable to access Special Benefit for up to four years will be left with a choice of leaving to become homeless and destitute or be subjected to violence.

For this reason, we recommend the removal or reduction of the NARWP. However, while the NARWP remains in place, we recommend making it easier to access Special Benefit in cases of ongoing domestic violence by relaxing the requirement to demonstrate a substantial change in circumstances in order to receive Special Benefit as an exemption to the NARWP.

For those who hold a subclass of visa which does not give them access to Special Benefit or any other form of income support, we support the recommendation made in the *Blueprint for Reform: Removing Barriers to Safety for Victims/Survivors of Domestic and Family Violence who are on Temporary Visas*,<sup>4</sup> that:

“a new subclass of temporary visa be introduced to protect victims/survivors of domestic, family and sexual violence who:

- have their temporary visa cancelled as a result of the actions of the perpetrator; or
- are unable to comply with the conditions of their temporary visa due to the domestic, family and sexual violence; or
- are in Australia and hold a temporary visa, but cease to be a family member of the perpetrator; or
- are offshore because they were threatened, coerced or deceived into leaving Australia by the perpetrator and/or the perpetrator’s family, or
- have ongoing family court matters related to children.”

The proposal is that holders of this new subclass of temporary visa would have access to income support.

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<sup>4</sup> National Advocacy Group on Women on Temporary Visas Experiencing Violence, *Blueprint for Reform: Removing Barriers to Safety for Victims/Survivors of Domestic and Family Violence who are on Temporary Visas*, available at [https://s3-ap-southeast-2.amazonaws.com/awava-cdn/awava/wp-content/uploads/2019/10/21130646/Blueprint-for-Reform\\_web\\_version.pdf](https://s3-ap-southeast-2.amazonaws.com/awava-cdn/awava/wp-content/uploads/2019/10/21130646/Blueprint-for-Reform_web_version.pdf)

New Zealand citizens generally receive a ‘special category visa’ on arrival in Australia and are not required to take out permanent residence to be able to live, work and pay taxes in Australia. As a result, many New Zealanders living in Australia do not become permanent residents and are therefore ineligible for income support in the event of a substantial change in circumstances, including domestic violence. We recommend that New Zealanders in these circumstances be provided with at least the same access to Special Benefit as other newly arrived migrants as outlined above.

## 2. Raise the rate of Newstart Allowance

Joined by an ever-growing list of supporters from the community, business and all sides of politics, we have long advocated and continue to call for an immediate rise in the rate of Newstart Allowance. At \$279.50 a week for a single adult, Newstart Allowance is less than 40 per cent of the current minimum weekly wage.

We note that while there are many economic and social policy reasons to raise Newstart, our members have the most direct experience in providing legal assistance to various vulnerable groups of people and see first-hand the impact of inadequate income support on their ability to resolve the issues in their lives which led to their legal problems. We draw particular attention to those groups who would have previously received various pension payments but are now forced to struggle to survive on Newstart - single parents, the elderly, and those living with disabilities.

Our most recent report released in December 2019,<sup>5</sup> *Homeward Bound*, highlights the link between lack of access to adequate social security and homelessness. The clients forming the data sample for the research persistently identified that they experienced housing stress due to low payment rates. This is consistent with the national trend which has seen a 75% increase in people on Newstart Allowance seeking assistance from homelessness services over the last six years which has far outstripped the growth of 28% in the number of people receiving Newstart Allowance over the same period.

We strongly urge the Government to:

- Increase the single rates of Newstart, Youth Allowance and related payments by \$75 per week to reduce poverty and inequality in Australia.
- Index payments to wages as well as CPI to ensure they maintain pace with community living standards.
- Increase Commonwealth Rent Assistance by 30% or \$20 per week for a single person on Newstart.

## 3. Fully restore the onus of proof reversed by ‘Robodebts’

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<sup>5</sup> National Social Security Rights Network and Canberra Community Law, ‘Homeward Bound’ (Research Paper, National Social Security Rights Network and Canberra Community Law, 2019).

At this stage, we have requested, but not yet received, a briefing from the Department of Human Services about what will happen in the cases of people affected by the Federal Court case last month that has led the Australian Government to concede that Centrelink acted unlawfully in raising and enforcing a debt because it relied on income averaging.

Having long-advocated for the end of the system of averaging ATO reported annual income across 26 fortnights, we welcome the Government's announcement that sole reliance on income averaging would be abandoned.

However, in practical terms, restoring the onus of proof on Centrelink to establish that a debt exists will require that if there is insufficient evidence to prove the debt, the debt cannot be raised. In abandoning the sole reliance on income averaging, new debts should only be raised where the Department of Human Services has obtained the required fortnightly income information in line with the practice adopted prior to the introduction of the 'Robodebt' scheme.

For people who have already received a debt notice based solely on income averaging, and perhaps made payment to Centrelink or debt collectors in response to it, the onus should be on Centrelink to identify and set aside these debts and ensure repayment of any debt amounts raised and enforced without legal basis.

We recommend that:

- The Department of Human Services:
  - o thoroughly re-examine all debts raised via the system of averaging ATO reported annual income across fortnightly reporting periods, commonly referred to as 'Robodebt',
  - o set aside all debts which have been raised without legal basis, and
  - o ensure that refunds are issued where such debts have already been unlawfully enforced and partly or fully recovered.
- In abandoning the sole reliance on income averaging, new debts should only be raised where the Department of Human Services has obtained the required fortnightly income information in line with the practice adopted prior to the introduction of the 'Robodebt' scheme.

#### 4. Abolish Cashless Debit Card

We have opposed the Cashless Debit Card (CDC) program since its conception in 2015. The CDC quarantines the majority of a person's income support payments, and prevents it from being used to purchase alcohol, gambling products, and gift cards, or to withdraw cash.

We oppose the Bill currently before the Senate to amend the Social Security (Administration) Act 1999 (Cth) to extend the current CDC trials and expand the program to include Cape York and the entire Northern Territory. This amendment would also remove the cap on the number of trial participants, and give the Minister broad powers to unilaterally determine the percentage of quarantined income for certain classes of trial participants.

In summary our key concerns with the expansion of the CDC program are that it:

- (a) Is based on flawed evaluations;
- (b) Is a poorly targeted and ineffective measure;
- (c) Is an unjustified expansion of Ministerial powers;



- (d) Causes undue hardship to vulnerable people relying on income support; and
- (e) Disproportionately impacts First Nations communities.

There is no evidence to support the expansion of the CDC trial and, given the evidence of hardship it causes to both individuals and communities impacted by it, it is our view that the compulsory CDC program should be abolished.

## 5. Abolish the Community Development Program (CDP)

The NSSRN continues to call for the abolition of the CDP. The CDP is the Australian Government's employment and community development service for people who receive unemployment social security payments and live in remote Australia. The CDP was introduced in July 2015. It was an amendment to, rather than a fundamental redesign of, the Remote Jobs and Communities Program introduced in 2013 by the then Federal Labor Government.

The CDP applies to job seekers living in remote regions and who are in receipt of a working age unemployment payment. It is estimated that 11% of people living in remote communities participate in the CDP, with 67.8% of participants living in "Very Remote Australia" and 24.5% living in "Remote Australia".<sup>6</sup> There are approximately 32,000 CDP participants and more than 80% of participants identify as Indigenous.<sup>7</sup>

A forthcoming research report by the NSSRN paints a picture that the reality for CDP participants and their communities is that the CDP program, rather than alleviating structural barriers to finding paid work, appears to be creating further obstacles.

CDP participants, their families and broader communities, experience financial hardship which negatively impacts on their food and housing security, physical and mental health and well-being, through the imposition of penalties in a system which is little understood by the people subjected to it and certainly seems to have little relevance to their hopes of finding paid work.

To ensure that Indigenous communities are empowered and that effective community development occurs, we advocate for the following:

- Establish a new remote employment scheme, based on the framework set out in the Fair Work and Strong Communities proposal, which has, as its primary goal, long term improvements in employment rates, increased incomes and empowering local communities.
- Fund the establishment of at least 12,000 new jobs in remote communities to be wholly, or predominantly, created in Indigenous community organisations.
- Establish new governance arrangements for a remote employment scheme that are independent from Government, legislatively based and Indigenous led.

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<sup>6</sup> Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM133, Additional Budget Estimates 2017-2018, Prime Minister and Cabinet Portfolio, 4.

<sup>7</sup> National Indigenous Australians Agency, The Community Development Programme (CDP), [https://www.niaa.gov.au/sites/default/files/publications/cdp-regions\\_25-June-18.pdf](https://www.niaa.gov.au/sites/default/files/publications/cdp-regions_25-June-18.pdf) ; Senate Finance and Public Administration Legislation Committee, Answers to Questions on Notice PM133, Additional Budget Estimates 2017-2018, Prime Minister and Cabinet Portfolio, 4

- Make the new scheme bottom-up, not top-down, with the ability for local people to set objectives within the long term goals of the scheme and to adapt program settings to local circumstances.
- Ensure that any new program arrangements will not directly or indirectly discriminate against Indigenous people.

## 6. Abolish the Targeted Compliance Framework (TCF)

NSSRN continues to oppose the TCF as introduced by the Social Services Legislation Amendment (Welfare Reform) Act 2018.<sup>8</sup>

The TCF raises several key concerns about decision-making, accountability and the reviewability of decisions that affect the lives of social security recipients. It involves mutual obligation requirements and a demerit point system which has now been outsourced to employment service providers. Demerits are applied if the social security recipient is logged as having failed to fulfil their obligations to look for jobs, attend appointments, attend activities or record attendance at activities. Any demerit points issued are not reviewable (as they are an action by the employment service provider and not a final decision of Centrelink) or subject to any external oversight. This leaves vulnerable job seekers with limited options for review. We reiterate the recommendation of the Senate Standing Committee on Education and Employment that government ensure that Centrelink has discretion over penalties, including demerit points and suspensions and that these decisions be reviewable.<sup>9</sup>

The biggest impact of the TCF is the increase in the number of payment suspensions incurred by recipients. Under the TCF, payments are automatically suspended by a computer system on the same day that the recipient is logged as committing a mutual obligation failure. Payments resume only once the recipient has completed a re-engagement requirement, for example, attending a work-related activity. Between September 2018 and December 2018, the number of recipients who had at least one demerit point and who had therefore incurred a payment suspension rose by 10 percent, with almost half of all participants impacted. This is particularly concerning in light of the fact that in the 2015-16 financial year around 50% of penalties imposed by Centrelink were found to have been imposed in error.<sup>10</sup>

We therefore recommend that computer-automated suspensions be abolished, and that suspensions are only imposed where a human decision-maker has made contact with a recipient and confirmed that they have committed a mutual obligation failure.

Our most recent report released in December 2019,<sup>11</sup> *Homeward Bound*, highlights how the rigid nature of the mutual obligation system, lack of control over scheduling appointments and the inability to customise employment pathway plans to accommodate the complexity of

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<sup>8</sup> *Social Services Legislation Amendment (Welfare Reform) Act (No 26) 2018* (Cth).

<sup>9</sup> Commonwealth of Australia, 'Jobactive: failing those it is intended to serve: the appropriateness and effectiveness of the objectives, design, implementation and evaluation of jobactive', 2019, 8.24

<sup>10</sup> *Ibid*, 8.22

<sup>11</sup> National Social Security Rights Network and Canberra Community Law, 'Homeward Bound' (Research Paper, National Social Security Rights Network and Canberra Community Law, 2019).

people's lives and their circumstances meant that the Centrelink recipients studied for the research often had their payments reduced or cancelled.

Given the issues outlined above, we are particularly concerned about the automation of employment services and expansion of TCF to other conditionality programs such as ParentsNext.

We continue to recommend the improvement of the system in a manner that will build the agency of participants, introduce greater flexibility to employment pathway plans, provide flexible and holistic assessments models, recognise the complex and varied barriers to employment, and introduce regulation and evaluation of employment services providers. We support the Expert Advisory Panel's report '*I Want to Work: Employment Services 2020*'<sup>12</sup> which includes 11 system design principles for the future of employment services with a focus on tailored support and ways to better connect employers with the labour market when they need it and are ready to enter it. We highlight that the new Employment Services system must properly resource providers to appropriately service vulnerable and disadvantaged clients, including by investing in a high level of staff training, ensure that providers comply with their legal obligations and function in such a way as to avoid the punitive and unnecessary imposition of suspensions, demerits and payment reductions.

## 7. Abandon drug testing proposal

We remain opposed to the forced drug testing of people on income support.

The Social Services Legislation Amendment (Drug Testing Trial) Bill 2019 ("the Bill") is the third attempt in as many years by the Government to introduce a two-year trial of mandatory drug testing for 5000 people receiving Newstart or Youth Allowance in three specified regions.

We reiterate our concerns raised in our Senate Committee submissions regarding all three of the previous bills, that the proposal:

- a. is an expensive measure that will not help those living with addiction;
- b. forces people onto a cashless debit card that quarantines 80% of their income;
- c. fails to consider the impact of payment cancellations on the individual's circumstances;
- d. is a coercive regime that compels individuals to have unwanted medical treatment; and
- e. forces children to be subjected to invasive drug testing without freely given consent.

We recommend that the proposal to drug test income support recipients be abandoned along with any form of income management and cashless debit card, and that the budgeted amount for the trial should be reinvested into community drug and alcohol services.

## 8. Adequate and stable funding to Specialist Social Security CLCs

We continue to advocate for adequate and stable funding to enable our member community legal centres to respond to the significant social security legal need in Australia. Failing to address these issues leads to:

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<sup>12</sup> Commonwealth of Australia, Department of Jobs and Small Business, 'I Want to Work: Employment Services 2020 Report' (2018) <[https://docs.jobs.gov.au/system/files/doc/other/final\\_-\\_i\\_want\\_to\\_work.pdf](https://docs.jobs.gov.au/system/files/doc/other/final_-_i_want_to_work.pdf)>.

- Vulnerable people compromising their safety, rights or entitlements.<sup>13</sup>
- Increased incidence of legal problems in at least one if not several of the following jurisdictions: family, government, health, housing and rights, with the high levels of government problems being largely due to problems related to receipt of government payments.<sup>14</sup>
- No action being taken to address legal problems and poor outcomes.<sup>15</sup>

Many people and service providers do not recognise that their problems with Centrelink could be a legal issue and do not think about contacting a legal service for advice.<sup>16</sup> Even where people do reach out for legal help, there are few legal services with the necessary expertise available as, unlike family and criminal law, there is no private sector equivalent in social security law.

In its final report, The Law Council's Justice Project highlighted the extraordinary pressure which was placed on community legal centres by Robodebt as an example of laws, policies and practices which drive the legal needs of people experiencing disadvantage. The recommendation of the Justice Project to invest significant additional resources to address critical civil and criminal legal assistance service gaps in light of flawed programs like Robodebt is all the more relevant now that it has been confirmed by the Federal Court and the Federal Government as having no legal basis.<sup>17</sup>

Our members are still assessing the full impact of the announcement that social security debts will no longer be raised on the basis of the flawed system of averaging ATO income data, but expect that additional resources will need to be directed towards advising people already affected by Robodebt.

Although specialist social security legal services have been deemed critical in ensuring access to justice it is recognised that the 'sector remains chronically underfunded'.<sup>18</sup>

The NSSRN continues to seek an initial injection of \$5 million per annum of ongoing core funding to the 15 specialist social security community legal centres and programs across Australia, and to the NSSRN itself in its role as a peak sector body. The proposed initial investment would significantly increase the capacity of existing centres and programs to assist its disadvantaged and vulnerable clients and the workers who support them, to provide education and resources, and to identify and propose appropriate responses to policy and systems issues that result in a more efficient legal system and costs savings in avoiding unnecessary appeals.

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<sup>13</sup> Law Council of Australia, *Justice Project* (2018) 13.

<sup>14</sup> Christine Coumarelos et al, Law and Justice Foundation of New South Wales, *Legal Australia-Wide Survey: Legal need in Australia*, 2012, p 177.

<sup>15</sup> Law Council of Australia, above n 11, 4.

<sup>16</sup> Liz Curran and Mary Anne Noone 'Access to Justice: a new approach using human rights standards' (2008) 15 *International Journal of the Legal Profession* 195, 213.

<sup>17</sup> *Ibid* 2.1.

<sup>18</sup> Commonwealth and Canberra, Productivity Commission of Inquiry into Access to Justice Arrangements, *Final Report* (2014), 812.

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