



Domestic violence, social security and the couple rule

Key findings and future directions

ANROWS

AUSTRALIA'S NATIONAL RESEARCH
ORGANISATION FOR WOMEN'S SAFETY
to Reduce Violence against Women & their Children

RESEARCH TO POLICY & PRACTICE
ISSUE 04 | JULY 2019

Acknowledgement of lived experiences of violence

ANROWS acknowledges the lives and experiences of the women and children affected by domestic, family, sexual violence and neglect who are represented in this report. We recognise the individual stories of courage, hope and resilience that form the basis of ANROWS research.

Caution: Some people may find parts of this content confronting or distressing.

Recommended support services include: 1800 RESPECT - 1800 737 732 and Lifeline - 13 11 14.

ANROWS Research to policy and practice papers are concise papers that summarise key findings of research on violence against women and their children, including research produced under ANROWS's research program, and provide advice on the implications for policy and practice.

This is an edited summary of key findings from ANROWS research project RP.17.02 - *Domestic violence, social security law and the couple rule*. Please consult the ANROWS website for more information on this project and the full project report: Sleep, L. (2019). *Domestic violence, social security and the couple rule* (Research report, 04/2019). Sydney, NSW: ANROWS.

ANROWS acknowledgement

This material was produced with funding from the Australian Government and the Australian state and territory governments. Australia's National Research Organisation for Women's Safety (ANROWS) gratefully acknowledges the financial and other support it has received from these governments, without which this work would not have been possible. The findings and views reported in this paper are those of the authors and cannot be attributed to the Australian Government, or any Australian state or territory government.

ANROWS research contributes to the six national outcomes of the *National Plan to Reduce Violence against Women and their Children 2010-2022*. This research addresses national plan outcome 4 - Services meet the needs of women and their children experiencing violence.

Acknowledgement of Country

ANROWS acknowledges the traditional owners of the land across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander elders past, present and future, and we value Aboriginal and Torres Strait Islander history, culture and knowledge.

Domestic violence, social security and the couple rule

In brief:

- Centrelink uses “the couple rule” to determine whether a person should be considered a member of a couple for social security purposes.
- The couple rule can cause difficulty for women attempting to leave a violent partner.
- This research explored the experiences of women who appealed Centrelink decisions about the couple rule, in cases where domestic violence was involved.

Key recommendations:

- The *Social Security Act 1991* (Cth) should be amended to explicitly include domestic violence as a factor to be considered when determining whether a person should be considered a member of a couple for social security purposes and whether a Centrelink debt should be waived.
- All Centrelink and Administrative Appeals Tribunal (AAT) decision-makers should be required to complete training in domestic violence.
- Centrelink and the AAT should develop guidelines regarding the use of domestic violence records from state institutions (including police and hospitals).
- AAT decisions should be de-identified before becoming publicly available to protect women’s safety.

The couple rule

Australia has a national social security system which provides regular payments to eligible people. Eligibility is means-tested and depends on both income and assets. The amount paid varies according to whether recipients are single or in a couple, with single people receiving more than half the couple rate to account for the greater costs of living alone. If a person is a member of a couple, then eligibility is determined jointly, that is, a couple's income and assets are assessed jointly.

It is not always clear whether a person should be considered to be single or in a couple for the purpose of receiving social security payments. For example, a person might be in a de facto relationship, or might be married but recently separated.

Centrelink uses [guidelines](#) to determine whether a relationship exists, that is, whether a person's income and assets should be assessed jointly or separately. In Australia, these guidelines are known as “the couple rule” and incorporate 5 criteria:

- the financial aspects of the relationship;
- the nature of the household;
- the social aspects of the relationship;
- the presence or absence of a sexual relationship; and
- the nature of the commitment.

Centrelink collects information from a variety of sources to decide whether a person is single or in a couple. These include bank transaction records, school records, hospital records and police domestic violence reports.

Individuals are required to advise Centrelink when their circumstances change, including when they become partnered or separated. People who receive payment at the single rate but are found by Centrelink to be members of a couple may be ineligible to receive further payments once the means test is applied jointly. Moreover, they may find themselves in debt for overpayments received and may be criminally prosecuted for fraud.

If a person is unsatisfied with a Centrelink decision about their social security payment, they can appeal to the Administrative Appeals Tribunal (AAT). The AAT re-makes Centrelink's decision on the merits of the case. The AAT uses all the evidence collected by the original decision-maker and can also collect new evidence.

The couple rule and domestic violence

For women attempting to leave violent partners, the couple rule can be problematic. The end-date of the relationship will not necessarily be clear-cut — it is common for women to make multiple attempts to leave. Perpetrators often intensify their abuse at this time, increasing the risk to women's safety. In order to leave their relationships, women may require additional financial support.

Centrelink recognises the needs of domestic violence victims/survivors in that it provides them with access to a one-off crisis payment, allocated on the basis of a domestic violence screening process. However, information acquired through this screening process may subsequently be used as evidence that a relationship exists. Some women who have claimed a single person's benefit at the time they were trying to leave a violent relationship have been found to be in breach of the couple rule on the basis of evidence collected by Centrelink. Centrelink's processes for assisting women to leave violent relationships may therefore also contribute to increasing their financial vulnerability.

Section 24 of the *Social Security Act 1991* (Cth) allows for a person **not** to be treated as though they are a member of a couple when there is a "special reason". The *Social Security Act 1991* (Cth) also makes provision through s. 1236 and s. 1237 for debt to be waived in special circumstances or hardship. In January 2019, the *Guide to Social Security Law* (Australia. Department of Social Services, 2018), an online guide for decision makers administering social security law, was updated to clarify that domestic violence is a factor which might indicate that a person should not be considered a member of a couple. The *Guide to Social Security Law* (the "Guide") was also updated to clarify that the presence of domestic violence might be a reason for applying the "special reason" provisions so that a Centrelink debt can be waived. However, decision-makers are not legally bound to use the *Guide*. Without legislative amendments to the *Social Security Act 1991* (Cth), decisions may still be made that do not take the dynamics of domestic violence into account.

The interplay between domestic violence and the social security system more broadly has been comprehensively explored by the National Social Security Rights Network in their 2018 report: [*How well does Australia's social security system support victims of family and domestic violence?*](#) (Cameron, 2018).

Domestic violence, social security and the couple rule by Lyndal Sleep

This research examined publicly available AAT decisions that involved domestic violence and the couple rule. Seventy AAT matters were identified over the period 1992 to 2016. Decisions were analysed with the aim of detailing the dynamic between domestic violence, social security payments and the couple rule.

The research also explored the extent to which women applying to the AAT belonged to the priority groups identified in the ANROWS National Research Agenda (2014), being:

- culturally and linguistically diverse (CALD) women;
- Aboriginal and Torres Strait Islander women;
- older women;
- women with disability;
- women who are or have been incarcerated;
- lesbian, bisexual, intersex and transgender women; and
- women living in rural or remote areas.

The research explored the ways in which these groups are impacted by the application of the couple rule.

The full report is available at www.anrows.org.au/publication/domestic-violence-social-security-and-the-couple-rule

Key findings

The nature of violence and control by the perpetrator was rarely considered in AAT decisions about the couple rule

Even when domestic violence was identified at the AAT, the reality of women's lived experiences was seldom taken into account in decisions. There was little indication that the AAT regularly applied the "special reason" provision to override the couple rule in cases involving domestic violence.

Records used at the AAT as evidence of a relationship might be inaccurate if domestic violence was involved

Intimate records of day-to-day living are used to construct an image of an alleged couple's finances, household, sex life, commitment and social life, and this image is used as the basis for the decision as to whether a couple relationship exists. There was little indication that the AAT considered whether, in cases involving domestic violence, the information presented to the tribunal as evidence might be inaccurate due to systems abuse, i.e. due to having been manipulated by a perpetrator.

EXAMPLE:

Shared bank account opened under duress:

Karen,¹ who worked at a school, explained that the perpetrator intimidated her to allow him to access her bank account after separation:

During the time when I was trying to enforce a separation from [Perpetrator], I changed my bank account at the St George Bank into joint names so that [Perpetrator] could also use the account. It was at [Perpetrator's] insistence that I did this. He said that he would contact the School about my past and made other threats about what he would do if I did not cooperate....I did not question why he wanted the account. (AAT Matter No. 2001/282 [8])

¹ Names in the reported AAT decisions were changed to protect the identity of the women.

EXAMPLE:

Shared loan obtained through forged signature:

In relation to the purchase of a Toyota motor vehicle, the applicant agreed that he caused his wife's name to be recorded as the co-borrower but said that a representative of the finance company forged her signature. He agreed that he knew that her signature had been forged by that person and said that he allowed it to occur because: "I want to buy the vehicle, to get the finance." (AAT Matter No. 2007/1320 [28])

EXAMPLE:**Control of information regarding residential address:**

In some cases the perpetrator used the woman's address as his postal address, leading to evidence that he was residing with his alleged partner:

The husband said that he used the....address for the purposes of having his mail delivered. He was therefore required to attend those premises on a regular basis to collect it. He did have a post office box which he disclosed on some application forms....but said that he preferred to have mail delivered to the....address because he could not always attend the post office during business hours. (AAT Matter No. 2007/1321 [54], 2007/1320 [28])

Police and health records documenting past domestic violence were often used during AAT hearings as evidence that there was a couple relationship

In 80% of couple rule decisions where the relationship involved domestic violence, police and health records documenting domestic violence were used as evidence of a relationship. This information had originally been collected with women's safety in mind, yet it was used to make adverse findings against women at AAT hearings.

Police records of a domestic violence incident at a residential address could be used as evidence that the couple had shared living arrangements. This is particularly an issue when a perpetrator attempts to continue his control over his ex-partner post-separation by harassing her at her home.

Hospital and police records which included statements by the attending health staff member or police officer as to the nature of the relationship, or the nature of the commitment by either partner, were also used as evidence at the AAT.

EXAMPLE:**Police records:**

...the admission by the wife to Police after the date of alleged separation of being in partnership with her husband....point to them being members of a couple. (AAT Matter No 2007/1321 [69])

EXAMPLE:**Health records:**

The frequency of the hospital admissions by the wife as a consequence of assault by her husband, the times of her admissions and the frequency of attendances by police all point to him being at those premises on many occasions. (AAT Matter No 2007/1321 [54])

Women who applied to the AAT about couple rule decisions were generally in a position of intersectional disadvantage

Most AAT decisions (86%) involved a woman identified as:

- Aboriginal and Torres Strait Islander;
- culturally and linguistically diverse;
- older;
- having disability;
- incarcerated, or having been incarcerated;
- lesbian, gay, bisexual, intersex or transgender; and/or
- living in a rural or remote area.

These groups have a heightened vulnerability to experiencing; increased frequency of violence; increased severity of violence; unique forms of violence; and/or for whom there are additional barriers, to seeking support and securing safety.

The groups most frequently identified in the AAT decisions were:

- women living in rural or remote areas (identified in 40% of decisions studied);
- women with a disability (37%); and
- women from culturally and linguistically diverse backgrounds (26%).

Many AAT decisions involved women who could be identified with a number of these groups.

The number of decisions involving Aboriginal and Torres Strait Islander women was unexpectedly small relative to their over-representation in domestic violence statistics. The number of decisions involving older women was also unexpectedly small, relative to the high proportion of this group accessing the age pension. This may reflect issues of access to the AAT appeals process.

“Special reason” provisions were rarely used by AAT decision-makers in couple rule decisions involving domestic violence

Of the 70 AAT decisions studied, there were only three in which the decision-maker used section 24 of the *Social Security Act 1991* (Cth) “special reason” provision to override the finding that a couple relationship existed. In a further five decisions, the decision-maker used the provisions under s. 1236 and s. 1237 to waive debt due to hardship or special circumstances.

This is of particular note given the high level of vulnerability experienced by this cohort, as described above.

EXAMPLE:

An AAT decision from 2011 described how Mary, a woman with a disability, had taken out a restraining order against her ex-partner, who was the father of her children. Mary suffered from a number of psychological issues as well as renal issues, which meant that she often found caring for her children on her own difficult. Since Mary did not have family or close friends whom she could ask for help, “her only recourse was to ask her estranged husband to help with the children, because she knew that they would be put in foster care otherwise” (AAT Matter No. 2011/23 [44(f)]). Mary was found to be in a couple relationship with her ex-partner. Her dependence on him for care was not considered a special condition when applying the couple rule, and Mary was required to repay the full amount of debt she incurred while claiming the single rate of payment.

The publication of AAT decisions poses safety risks for women who have experienced domestic violence

Written AAT decisions are published on the AustLII website. In almost every case examined in this study, identifiable details about the individuals who appeared before the AAT were published. These included full names, street addresses, places of work and children’s schools. This is a serious violation of privacy for all involved. It is also a safety risk for those who are victims/survivors of domestic violence and their children.

Implications for policy and practice

Centrelink and AAT decision-makers should recognise the dynamics of domestic violence and how this intersects with the couple rule

To achieve this:

- The *Social Security Act 1991* (Cth) should be amended to explicitly include domestic violence as a factor to be considered when determining whether a person should be considered a member of a couple for social security purposes and whether a Centrelink debt should be waived.
- Centrelink and the AAT should be mindful of the possibility of systems abuse, and if this is identified, then relevant records should not be admissible as evidence.
- Domestic violence should be taken into consideration by Centrelink and the Office of the Commonwealth Director of Public Prosecutions before proceeding with fraud charges in relation to couple rule matters. This aligns with recommendation 10 of the National Social Security Rights Network report (Cameron, 2018): [*How well does Australia's social security system support victims of family and domestic violence?*](#)

All Centrelink and AAT decision-makers should be required to complete training in domestic violence

Where decisions are being made about the livelihoods of women at risk of violence, decision-makers should have an understanding of the dynamics of domestic violence. This training should include a focus on the tactics and impacts of financial abuse and systems abuse. In particular, this training should highlight the interplay between domestic violence and the couple rule, as its impact on vulnerable women's lives can be significant.

This recommendation aligns with proposal 10-3 of the Australian Law Reform Commission (2018), in their [*Review of the Family Law System: Discussion Paper*](#), that an understanding of family violence and an ability to identify and respond to risk should be core competencies of the family law system workforce. It also aligns with recommendation 23 of the National Social Security Rights Network in their 2018 report (Cameron, 2018).

Centrelink and the AAT should develop guidelines regarding the use of domestic violence records from state institutions (including police and hospitals)

This information is collected for the purpose of increasing women's safety and reducing risk, and should not be used for other purposes without the victim's/survivor's permission — particularly where information may be used in evidence against the victim/survivor in future. Guidelines for the use of information should be developed, incorporating an understanding of the dynamics and impact of domestic violence.

Further research should be funded to investigate the possibility that eligibility for social security payments should always be assessed on an individual (not couple) basis

Currently, single individuals are paid a higher rate of social security than members of a couple to accommodate the higher cost of living for single people. If the individual were the basis of all social security payments, women would find it easier to access to a fair level of independent income support after leaving a violent relationship. This approach would also align with Australian taxation law, where the individual is the basic economic unit for income tax assessment.

The AAT should de-identify all published information to protect women's safety

New AAT decisions to be published on the AustLII website should omit all identifying information (such as names and addresses, names of children and family members, and details of children's schools) before they are made publicly available. Existing AAT decisions should be edited so that this information is deleted.

References

- Australia's National Research Organisation for Women's Safety. (2014). *National Research Agenda to Reduce Violence against Women and their Children*. Sydney: ANROWS.
- Australia. Department of Social Services. (2018). Guides to social policy law. Social security guide: 2.2.5.10 Determining a de facto relationship. Retrieved January 27, 2018 from <http://guides.dss.gov.au/guide-social-security-law/2/2/5/10>
- Australian Law Reform Commission. (2011). *Family violence and Commonwealth laws: Improving legal frameworks*. Sydney: ALRC.
- Australian Law Reform Commission. (2018). *Review of the Family Law System: Discussion Paper No. 86*. Sydney: ALRC.
- Cameron, S. (2018). How well does Australia's social security system support victims of family and domestic violence? Canberra, ACT: National Social Security Rights Network. http://www.nssrn.org.au/wp/wp-content/uploads/2018/08/NSSRN_Report2018_FamilyViolence_SocialSecurity_sm.pdf
- Cortis, N., & Bullen, J. (2016). *Domestic violence and women's economic security: Building Australia's capacity for prevention and redress: Final report* (ANROWS Horizons, Issue 05/2016). Sydney: ANROWS.
- Costello, M., Chung, D., & Carson, E. (2005). Exploring alternative pathways out of poverty: Making connections between domestic violence and employment practices. *Australian Journal of Social Issues*, 40(2), 253-67.
- Douglas, H. (2018). Legal systems abuse and coercive control. *Criminology & Criminal Justice*, 18(1), 84-99.
- Sleep, L. (2016). *Sex-snooping in Australian Social Welfare provision: The Case of Section 4(3) Surveillance* (PhD Thesis). Griffith University, Gold Coast.
- Sleep, L. (2018). Entrapment and institutional collusion: domestic violence police reports and the "couple rule" in social security law. *Alternative Law Journal* 44(1), 17-22.
- Sleep, L. (2019). *Domestic violence, social security and the couple rule* (Research report, 04/2019). Sydney, NSW: ANROWS.
- Social Security Act 1991 (Cth)*
- Tranter, K., Sleep, L., & Stannard, J. (2008). The cohabitation rule: Indeterminacy and oppression in Australia social security law. *Melbourne University Law Review*, 32(2), 698-738.

Further reading

Resources and factsheets

Domestic Abuse Intervention Programs. (2019). *The Power and Control Wheel*. Minnesota: DAIP. <https://www.theduluthmodel.org/wheel-gallery/>

Tweed Valley Women's Service. (2014). *Charmed and Dangerous: A Woman's Guide to Reclaiming a Healthy Relationship*. https://www.wdvcasnw.org.au/images/pdf/Charmed_and_Dangerous.pdf

Financial abuse and immigrant women. Sydney, NSW: ANROWS. <https://d2rn9gno7zhxqg.cloudfront.net/wp-content/uploads/2019/01/19030612/FINAL-ASPIRE-fact-sheet-financial-abuse.pdf>

University of New South Wales Social Policy Research Centre. (2016). *Responding to economic abuse* (Issues paper 2). Kensington, NSW: SPRC. https://www.sprc.unsw.edu.au/media/SPRCFile/Issues_paper_2_Responding_to_economic_abuse.pdf

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Published by

Australia's National Research Organisation for Women's Safety Limited (ANROWS)
PO Box Q389, Queen Victoria Building, NSW, 1230 | www.anrows.org.au | Phone +61 2 8374 4000
ABN 67 162 349 171

Domestic violence, social security and the couple rule: Key findings and future directions / ANROWS (Ed.).

Sydney : ANROWS, c2019.

Pages ; 30 cm. (Research to policy and practice, Issue 04/2019)

I. Family violence - Financial aspects - Australia. II. Family violence - Government policy - Australia. III. Family violence - Economic aspects - Australia. IV. Victims of family violence - Government policy - Australia.
I. Australia's National Research Organisation for Women's Safety.

Suggested citation

Australia's National Research Organisation for Women's Safety. (2019). *Domestic violence, social security and the couple rule: Key findings and future directions* (Research to policy and practice, 04/2019). Sydney, NSW: ANROWS.

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Please check the online version at www.anrows.org.au for any amendment.

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