

# DIVORCING MARITAL STATUS FROM SOCIAL SECURITY PAYMENTS

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*Alice has three children at primary school and, until a month ago, lived alone with the children in public housing. Six months ago, she entered into a relationship with Jeremy who has two children of his own who live with his ex-partner. Jeremy pays child support and visits his children regularly. Last month, Jeremy moved into Alice's house. Alice and Jeremy are in love and plan to stay together. Jeremy gets on well with Alice's friends and family, and the couple are hoping, financial considerations aside, to go on a holiday next year to New Zealand.*

*Alice informed both the public housing authority and Centrelink that Jeremy had moved in. As a result, Alice's rent increased while her parenting payment was reduced to the 'partnered rate'.*

*While contributing to Alice's emotional wellbeing, Jeremy's presence has not led to a reduction in her expenses. There has been no decrease in the amount of rent that Alice pays. Alice still incurs the same costs in relation to the children's food, education, medical and other expenses. Jeremy spends any discretionary income on his own children and the mechanical repair work he is doing on his motorbike. His sole financial contribution to Alice is to cover his portion of the rent and bills.*

*Now that Alice's income has been reduced, she is struggling to pay her rent and has been issued with a Notice to Vacate. This Notice has prompted her to seek assistance from a community legal centre.<sup>1</sup>*

Alice's story is not particularly remarkable. Her circumstances will sound familiar to any reader who has interacted with our welfare system.

By informing Centrelink about Jeremy moving in, Alice now faces a threat to her tenancy. On the other hand, failure to notify Centrelink would have left her vulnerable to the possibility of debt and criminal charges.

In reality, Alice would have been more financially and physically secure had Jeremy not moved in.

No-one can blame Alice for her predicament. Assumptions within the Australian legal and welfare systems set the parameters within which Alice lives her life. Family and employment law, public housing policies, tenancy law and the *Social Security Act 1991* (Cth) (SSA) all play a part in shaping Alice's poverty and potential homelessness.

My purpose in this article is to explore the role that the SSA plays in constructing Alice's financial position. More precisely, I explore the assumption contained within the

SSA that people in heterosexual relationships can and should financially support each other. This assumption does not measure up in Alice's case. Nor is it generally defensible. Further, the attempt to enforce it is costly and unworkable.

This article is divided into four parts. First, I examine the SSA's 'member of a couple' provision and look at explanations for the Act's concern with this specific relationship. Second, I explore the historical basis for the Act's focus on the couple as a financial unit. I ask whether the model underpinning this couple reflects today's reality and what strains retaining this model has on relationship dynamics. Third, I look at some practical and financial difficulties associated with the Act's definition of a member of a couple. I conclude with suggestions for the way forward.

## 'Members of a couple': who and why?

The SSA has different pay rates depending on whether a person is a 'member of a couple'.<sup>2</sup> Entitlement is also dependent on the size of a partner's income.<sup>3</sup> Partnered rates are always lower than single rates. These different rates apply to a number of Centrelink payments such as Parenting Payment, Newstart Allowance and the Disability Support Pension.

In 1974, the then Minister for Social Security, Bill Hayden, gave a rationale behind different rates of payment:

The reason for granting a higher rate of pension to a single person is that a married couple can share the costs of day-to-day living whereas a single person needs a relatively higher rate in order to enjoy the same living standard.<sup>4</sup>

At face value this statement suggests that the purpose for different rates of payment is to achieve financial equity between those who live alone and those who live with others.<sup>5</sup>

An analysis of the Act reveals that this is not, however, the way it works. There are a number of potential income sharers who remain entitled to payments at the higher rate. For example:

- people living in gay and lesbian relationships
- people living in group houses
- adult children who have returned home to live with their parent/s
- adult siblings living together
- grandparents and other family relations who share living arrangements

## REFERENCES

1. This case study is based on a client assisted in 2002 at the ACT Welfare Rights and Legal Centre. The names are changed to conceal identities.
2. SSA s 4.
3. SSA s 24 provides a rarely used exception to this rule.
4. Commonwealth, *Parliamentary Debates*, House of Representatives, 20 March 1974, 668–9 (Bill Hayden, Minister for Social Security).
5. This discrimination aims at creating substantive rather than formal equality: *South-West Africa Cases (Second Phase)* [1966] ICJ Rep 305–6: 'what is equal be treated equally and what is different is to be treated differently' (Tanaka J).

- people living together in education, employment or health institutions.

In all of these examples, the SSA fails to recognise the cost-sharing potential.

A further indicator that cost-sharing is not the basis for treating people in couples differently appears in reasons given by the Full Federal Court in *Lambe v Director-General of Social Security* ('*Lambe*').<sup>6</sup> In treating the cohabiting pair as a couple, the Court found significance in the fact that their association 'was more than one of simple cost-sharing between friends'.<sup>7</sup>

Even in the absence of cost-sharing, people can be awarded the lower rate of payment. In Alice and Jeremy's case, Alice was denied the higher rate despite receiving no financial support from Jeremy.<sup>8</sup> *Secretary, Department of Social Security v Cheryl Le-Huray* ('*Le-Huray*') provides another good example.<sup>9</sup> In this case, the Administrative Appeals Tribunal (AAT) held that two people living together were a member of a couple for the purposes of the SSA despite clearly separated financial arrangements. This arrangement was evidenced by a written agreement between the pair that they would not support each other financially either within the relationship or in the event of its breakdown. This case indicates that actual financial arrangements have little bearing on the amount of social security to which a person is entitled.

It is clear then that if the aim of the SSA is to achieve substantive equality through counteracting the benefits of cost-sharing, it has failed its task.

According to the Court in *Lambe*, the SSA is not concerned with need.<sup>10</sup> Instead, it is concerned, at least initially, with 'provid[ing] financial support to persons in particular categories'.<sup>11</sup> These categories appear to be specified for the purpose of giving expression to various policy positions that have nothing to do with need. Other recognised categories include people looking for full-time work (but not those looking for part-time work) people with stable, fully treated<sup>12</sup> disabilities (but not those whose illnesses are unstable and only partially diagnosed and treated) and widows (but not widowers, or lesbians). Need is irrelevant to the characterisation.

A heterosexual relationship is a recognised category and the SSA makes assumptions about sharing of financial resources between people in this category. Thus, regardless of the reality of their financial arrangements, a person in a heterosexual couple will be treated differently than a person who is not.

Even where a person chooses not to be supported by their partner (such as in *Le-Huray*) the SSA overrides that decision and requires the person to seek financial support from their partner rather than the state.<sup>13</sup> The underlying policy is that heterosexual partners ought to financially support each other. The result is that such partners are not free to organise their financial affairs separately.<sup>14</sup>

A person within a lesbian relationship on the other hand, is not in a recognised category. Regardless

of her partner's capacity to support her, a lesbian's entitlement will always be assessed individually and she will be paid at the higher rate of payment.

Just why the SSA fails to recognise people who live with others in non-heterosexual relationships is a curiosity. Is it denial? Does the federal government hope that through ignoring group houses, homosexual relationships and other living arrangements they will to go away? Is there any justification for the sole regulation of heterosexual couples' financial affairs?

By regulating the financial affairs of a heterosexual but not homosexual person in a couple, or a single person in a group house, the SSA discriminates on the basis of (heterosexual) marital (or marriage-like) status.<sup>15</sup> This is direct discrimination within the meaning provided for in the *Sex Discrimination Act 1984* (Cth). Discrimination is lawful however, because administrative acts done in accordance with the SSA, as a piece of legislation, are specifically exempted from the operation of the *Sex Discrimination Act*.<sup>16</sup>

It is important to note here that this article does not advocate that couple rates be extended to lesbians, gays and people living in group houses. Couple rates presume financial dependence. As will shortly be revealed, presuming financial dependence is more fundamentally problematic than inconsistent, discriminatory application.

## Breadwinners, homemakers and social reality

Let us now examine the historical basis of the assumption that a claimant in a heterosexual relationship is financially supported by his or her partner and explore whether the assumption is reasonable in contemporary society.

Due to explicit and legal exclusion from the workforce, women have historically had little choice than to become financially dependent on a husband. For example, until 1966 women who married were forced to resign from their permanent positions in the Commonwealth Public Service.<sup>17</sup>

This dependence was recognised in the minimum wage. Regina Graycar and Jenny Morgan note financial dependence on a single wage earner 'has a long and entrenched history in the wage fixing system ... and led to the development of the family wage'.<sup>18</sup>

In the 1907 *Harvester Case*,<sup>19</sup> Higgins J found that a fair and reasonable wage incorporated all the costs of living of a 'civilised human being'. This was the amount necessary to meet the reasonable expenditure of a labourer's household of about five people.<sup>20</sup> This decision is based on a model in which one member of a cohabiting pair was a breadwinner and the other, a homemaker. At that point in history this model was widely accepted.

A century has passed since this decision and the model underpinning the *Harvester Case* no longer has widespread acceptance.

6. (1981) 4 ALD 362.

7. *Ibid* 365.

8. Also see *R v Purdon* [1997] (Unreported, CA NSW, Hunt CJ, McInerney J and Donovan AJ, 27 March 1997), cited in Patricia Easteal, *Less than Equal: Women and the Australian Legal System* (2001) 66.

9. (1995) 36 ALD 682.

10. This contrasts with earlier decisions on member of a couple provisions such as *Re Waterford* (1980) 3 ALD 63, 71, as well as the direction of the Canadian Courts: see Terry Carney and Peter Hanks, *Social Security in Australia* (1994) 235 for a discussion of the Canadian decision, *Re Proc and Minister for Community and Social Services* (1974) 53 DLR (3d) 512.

11. Carney and Hanks, above n 10, 236; *Lambe*, above n 6, 366.

12. For example, a person with major depression will be expected to take anti-depressant medication before being assessed. A person using non-traditional medicines or techniques may not be classed as being fully treated.

13. Carol Smart, 'Marriage, Divorce and Women's Economic Dependency: A Discussion of the Politics of Private Maintenance' in Michael D A Freeman, *The State, the Law and the Family* (9th ed, 1984) 21.

14. For further discussion of this point, see *Spencer v the Secretary to DSS* (1987) 13 ALD 497, 501.

15. *Sex Discrimination Act 1984* (Cth) s 6 (SDA).

16. SDA s 40. See also Chris Ronalds, 'De Facto Relationships: Mixed Government Approaches' in Julian Disney (ed), *Current Issues in Social Security Law* (1994) 85, 91.

17. Andrew Hopkins and Heather McGregor, *Working for Change: The Movement against Domestic Violence* (1991) 5.

18. Regina Graycar and Jenny Morgan, *The Hidden Gender of Law* (1990, 1st ed) 87.

19. *Ex parte H v McKay* 1907 2 CAR 1.

20. John Wilson, Jane Thomson and Anthony McMahon (eds), *The Australian Welfare State* (1996) 23-4.

*It is clear that if the aim of the Social Security Act is to achieve substantive equality through counteracting the benefits of cost-sharing, it has failed its task.*

By 1970, the process of breaking down discrimination in the workplace had begun. As women, the traditional homemakers, entered the workplace in ever increasing numbers, the homemaker–wage earner model became less reflective of relationships between men and women. For example, in 1947, 6.5% of married women were in the workforce. By 1981, 42.3% of married women were working.<sup>21</sup> In 2002, 55% of women of working age were in the workforce.<sup>22</sup>

The fading legitimacy of the homemaker–wage earner model was legally recognised in a number of ways, including a series of decisions centred on the issue of ‘equal pay for equal work’ in the Industrial Relations Commission. The equal pay for equal work movement achieved theoretical success<sup>23</sup> in the 1974 National Wage Case where the Commission ‘finally rejected totally the notion that the minimum wage could continue to have a family needs component’.<sup>24</sup>

This shift was not recognised by changes to equivalent social security provisions. Despite the disaggregation of the family as an economic unit in the wage and personal income tax systems,<sup>25</sup> claimants of a social security payment who were also members of a couple continued to have entitlement assessed against a partner’s income.

The failure to recognise this shift is not isolated to Australian social security law. The International Labour Organisation, an international employment and social security human rights body, recognised this issue as one of global concern in Resolution 9 of its 2001 International Labour Conference (89th session):

As a result of the vastly increased participation of women in the labour force and the changing roles of men and women, social security systems originally based on the male breadwinner model correspond less and less to the needs of many societies.

Social security and social services should be designed on the basis of equality of men and women. Measures which facilitate the access of women to employment will support the trend towards granting women social security benefits in their own right, rather than as dependants.<sup>26</sup>

In addition to the significant entry of women into the workforce, three additional factors reduce the relevance of the breadwinner–homemaker model as a basis for social security policy. First, fewer people live with or remain with one heterosexual partner. Second, when people do live together as couples, financial sharing cannot be presumed. Third, financial sharing

cannot be practically enforced and may not even be possible or desired.

### *Reality of the model*

Australian Bureau of Statistics data from 1996 reveals that of all people aged 18–29, only 33.5% lived as a member of a couple.<sup>27</sup> This is projected to decrease to 26.6% in 2021.<sup>28</sup>

Thus, at least within this age cohort, a declining number of people live within an arrangement that could potentially fit the homemaker–wage earner model.

The question then arises as to whether people living within a unit that could fit this model actually do pool financial resources. Carney and Hanks make the important point that ‘even within married relationships it is doubtful whether economic resources are actually pooled’.<sup>29</sup>

Carol Smart notes that within existing marriage-like relationships, the person in the ‘homemaker’ role may live in poverty despite the wealth or otherwise of the breadwinner.<sup>30</sup> Discussing a 2004 study of financial abuse of 64 women by the Coburg–Brunswick Community Legal Centre, Elizabeth Branigan notes that:

Financial abuse ... is a profoundly under-recognised phenomenon that is hidden with societal expectations that couples will share their financial resources for the good of the whole family. Financial abuse can lead to a deeply concealed feminization of poverty within relationships regardless of the overall assets a family may hold.<sup>31</sup>

Thus, even within those relationships most approximating the traditional model, financial support cannot be assumed.

### *Won't pay, can't pay*

One of the cruellest assumptions within the homemaker–breadwinner model and the provisions of the SSA is that the claimant’s right to financial support from their partner is enforceable. In fact there is no practical way to force the sharing of resources between cohabiting people.<sup>32</sup>

The denial of the independent right to a social security benefits for people in heterosexual relationships leaves people vulnerable to extreme personal poverty. Examples abound in AAT decisions where non-financially supportive marriages, are nonetheless marriages for the purposes of losing entitlement to independent social security payments.<sup>33</sup>

According to Easteal, withholding financial support to a dependent spouse is a form of domestic violence.<sup>34</sup>

21. Hopkins and McGregor, above n 17, 3. Note that in the Second World War, women entered the workforce due to an absence of male workers. Thus female workforce statistics before the war will be much lower than 6.5%.

22. Barbara Pocock, *The Work/Life Collision: What Work is doing to Australians and What to do about it* (2003) 19.

23. Pay equity remains a live issue and was the subject of an inquiry in 2004 chaired by Dominica Whelan of Australian Industrial Relations Commission.

24. Graycar and Morgan, above n 18, 92.

25. Ibid 148.

26. International Labour Office, *Social Security: A New Consensus* (2001) 3. Also noted at the conference was that the *Social Security (Minimum Standards) Convention 1952* (No 102) ‘had been written as though men were the social security recipients and women merely their dependants’ and thus ‘was a “dinosaur”, representing the macho man as the sole provider ... [and further] was out of date in 2001’: 22.

27. <www.abs.gov.au> at 14 March 2005.

28. Interestingly, according to one commentator, ‘fewer than 15% of US families conform to the normative ideal of a domicile shared by a husband who is the sole breadwinner, a wife who is a full-time homemaker and their off-spring’: Nancy Fraser, *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory* (1989).

29. Carney and Hanks, above n 10, 240.

30. See, eg. Carol Smart, above n 13, 21. See also Meredith Edwards, *The Income Unit in the Australian Tax and Social Security Systems* (1984).

31. Elizabeth Branigan, *His Money or Our Money? Financial Abuse of Women in Intimate Partner Relationships: A Report by the Coburg Brunswick Community Legal and Financial Counselling Centre* (2004) ii.

32. Ngaire Naffine, *Law and the Sexes* (1990) 70. See also Ronald Sackville, *Law and Poverty in Australia* (1975) 270. Section 72 of the Family Law Act 1975 contains a legal obligation for parties to a marriage to support each other, an obligation that is in practice not enforced until after a marriage breaks down: Graycar and Morgan, above n 18, 127.

The SSA contributes to availability of this method of abuse by denying to members of a couple rights to independent financial support. While removing the tools of violence does not deal with the causes of domestic violence, it reduces the impact of violence on the victim. Providing all adults with an independent right to a social security benefit would limit the impact of financial abuse on a victim. It may indeed assist an otherwise poverty stricken victim to leave a violent relationship.

Not only is there no effective legal apparatus to enforce financial support within a relationship, in the absence of joint responsibility for children, there is little incentive (or often capacity) for another person to share financial resources. The 1986 Census of Population and Housing found that 17% of dependent children were not living with both their biological or adoptive parents.<sup>35</sup> By 2001, this figure had increased to 19.5%.<sup>36</sup> Almost 50% of children not living with both of their biological or adoptive parents lived in blended or step-parent families.<sup>37</sup> In many of these cases, at least one adult member of the household has financial resources directed towards children living in different households. Like Jeremy, in the case study, a person may be paying for children living in another household either through the Child Support Agency or voluntarily, leaving little income free to support a new family. This reality, coupled with the fact that wages no longer take into account the existence of people dependent on a wage earner, demonstrates that continued use of a model involving financial dependence is out of touch, harmful and poverty-creating. It is an unsustainable model on which to structure a social security system.

Also hidden within the model is the reality that people dependent on a wage earner are coerced into attempting to control each other's spending habits in order to deliver to themselves the means of survival. As a result, a partner's decision to gamble, travel overseas, spend on clothing, gifts or motorbikes becomes 'property' of the relationship.

There can be little doubt that attempting to control another person's spending habits is a major source of anxiety and distress in even the most stable and harmonious of relationships. The SSA forces people into this distressing situation. In doing so, the Act structures conflict into heterosexual relationships while leaving other couples free of such dynamics.

### Defining the indefinable

Drawing a conclusion as to whether two heterosexual people living together are 'members of a couple' is an inconsistent, unpredictable and arbitrary process.

The SSA defines a non-married cohabiting heterosexual couple as a member of a couple if they are in a 'marriage-like relationship'. Determining the existence of a marriage-like relationship depends on the decision-maker's<sup>38</sup> view of:

- (a) the financial aspects of the relationship, including:
  - (i) any joint ownership of real estate or other major assets and any joint liabilities; and

- (ii) any significant pooling of financial resources especially in relation to major financial commitments; and
- (iii) any legal obligations owed by one person in respect of the other person; and
- (iv) the basis of any sharing of day-to-day household expenses;

- (b) the nature of the household, including:

- (i) any joint responsibility for providing care or support of children and
- (ii) the living arrangements of the people; and
- (iii) the basis on which responsibility for housework is distributed;

- (c) the social aspects of the relationship, including:

- (i) whether the people hold themselves out as married to each other; and
- (ii) the assessment of friends and regular associates of the people about the nature of their relationship; and
- (iii) the basis on which the people make plans for, or engage in, joint social activities;

- (d) any sexual relationship between the people;

- (e) the nature of the people's commitment to each other, including:

- (i) the length of the relationship; and
- (ii) the nature of any companionship and emotional support that the people provide to each other; and
- (iii) whether the people consider that the relationship is likely to continue indefinitely; and
- (iv) whether the people see their relationship as a marriage-like relationship.<sup>39</sup>

### Legal difficulties

This definition has been soundly criticised by AAT members on numerous occasions.<sup>40</sup> For example, in *Le-Huray*, the Tribunal made the following remarks:

[First quoting the earlier decision of *Re Stuart*<sup>41</sup>]

'We feel we should say that the test imposed by the legislation is extremely difficult to apply. It is not easy to determine whether a man and a woman are living as man and wife. We think the time is fast approaching when changes of lifestyle will require either individually means tested assessments of rate of benefit for all individuals, whether married or not, or a hard and fast rule that those who are married are assessed on a joint basis and those who are not are assessed as individuals. We recognise that these are two extreme views. It may be that a more acceptable compromise can be formulated, but if it relies on 'marriage-type relationships' being 'recognizable' it will continue to be fraught with difficulties.'

Since that decision was delivered almost ten years ago, the meaning of the term 'marriage-like' has perhaps become even less clear. We are still having to grapple with the concept of whether or not a relationship between two adults of different sexes who live together without being married is 'marriage-like'.<sup>42</sup>

The AAT is not the only entity struggling with the definition in the SSA. As Jane Mussett points out:

Too often in criminal prosecutions, the Department of Social Security, the Director of Public Prosecutions, the Court and, through ignorance, the accused's own legal representative rely on statements made by an accused

33. See, eg, 'SRWW' and Department of Family and Community Services [2001] AATA 495 (6 June 2001); Karafoulidis and Department of Family and Community Services [2001] AATA 757 (27 August 2001); Francis Hucker and Secretary, Department of Social Security No 91/89 AAT No 7656.

34. Patricia Easteal, above n 8, 103. Financial abuse may constitute harassment under the *Domestic Violence and Protection Order Act 2001* (ACT). I have not seen a domestic violence order that requires one party to financially support another. As orders are generally made limiting rather than increasing the level of involvement between the parties, and are in practice targeted at reducing physical violence, I would not advocate the use of domestic violence orders as a reliable or desirable avenue for overcoming poverty.

35. Australian Bureau of Statistics, *Census of Population and Housing* (1986) table VF025, as re-produced in Gary Ocheltree, 'Living in a Stepfamily' (1989) 24 *Family Matters*: AIFS Newsletter.

36. David de Vaus, *Diversity and Change in Australian Families* (2004) 60.

37. *Ibid.*

38. For example, the Secretary of the Department of Social Security or their delegate would need to make this determination in deciding to raise a debt against a person who has claimed a Single Newstart benefit while living with a person of the opposite sex.

39. SSA s 4.

40. See, eg, *Stolkovic and Secretary to Department of Social Security* (1986) 29 SSE 362; *Spencer and Secretary to Department of Social Security* (1987) 13 ALD 497, 501.

41. *Re Stuart and Secretary to Department of Social Security* (1985) 9 ALN 38.

42. *Le-Huray*, above n 9.

*By regulating the financial affairs of a heterosexual but not homosexual person in a couple, or a single person in a group house, the Social Security Act discriminates on the basis of (heterosexual) marital (or marriage-like) status.*

person that she or he is living in a 'de facto' relationship, when the person may be completely unaware of what is required to establish the existence of such a relationship and whether the relationship she or he has with a person would be considered 'marriage-like' under the *Social Security Act 1991*.<sup>43</sup>

If expert forums and advocates struggle, how then, does the individual making a claim determine the issue?

#### **Practical difficulties**

In addition to the difficulties involved in applying the test to specific facts, the level of information required to even begin an assessment of a couple's relationship status is massive and leads, in practice, to extraordinary invasions of privacy.

In claiming a social security benefit, a claimant gives Centrelink the power to access personal bank accounts, loan details, immigration, taxation and medical records. Claimants must produce vast amounts of information about their current and past living arrangements and details of all those members of the opposite sex with whom they live.

When suspicious about a person's 'member of a couple' status, or when conducting a review, Centrelink investigators require claimants to attend interviews. Failure to attend can constitute an administrative breach and may be grounds to suspend or cancel a payment.<sup>44</sup> As part of the process of review, Centrelink investigators can contact school teachers, priests, employers, neighbours, family members and friends. They can also sit in surveillance outside homes and schools of social security recipients and their children. Centrelink investigators may also conduct unannounced home visits. In cases where the person under suspicion is unaware of their right to object, investigators have been known to examine bins, under beds and even wardrobes!<sup>45</sup>

Once a person claims Parenting Payment (Single), their continuing entitlement is reviewed at four, eight and, from then on, every 12 weeks.<sup>46</sup> Eastaale asserts that 'the Department of Family and Community Services justifies this systematic checking since it is believed that many lone parents reconcile with their partners or enter employment in the first few months after a pension is granted'.<sup>47</sup>

In July 2005, Centrelink plans to investigate all sole parents who have changed their addresses in the previous year. The number of separate investigations this will involve is estimated at 20 000.<sup>48</sup>

Centrelink's Annual Report of 2003–04 reveals that 4.1 million reviews were undertaken in the year. These reviews resulted in 4471 referrals to the Commonwealth DPP for prosecution of social security fraud.<sup>49</sup> The Commonwealth DPP Annual Report for the same year indicates that 3532 individuals were prosecuted on referral from Centrelink out of a total of 5628 individuals prosecuted under all Commonwealth legislation for the year.<sup>50</sup> This means that over 62% of all individuals prosecuted by the Commonwealth DPP for that year were related to SSA offences. While these statistics do not reveal the exact basis of the prosecution, anecdotal information from Welfare Rights centres in Victoria and the ACT indicates that the majority of callers to these centres facing prosecution proceedings are seeking advice about an alleged marriage-like relationship debt.<sup>51</sup>

I have not uncovered estimates of the cost to the Commonwealth in investigating and prosecuting people claiming single rather than partnered rates of social security payment. It must be significant. As noted above, 62% of individuals prosecuted by the Commonwealth DPP for the year are SSA-related. If 36%<sup>52</sup> of these prosecutions related to 'member of a couple' debt, this would mean a staggering 22% of all individuals prosecuted by the Commonwealth DPP faced charges relating to their marriage-like relationship status.<sup>53</sup>

As well as resources tied up in criminal proceedings, considerable resources are also involved in administrative debt recovery proceedings within Centrelink offices, in the Social Security Appeals Tribunal, the AAT and beyond.

#### **Recommendations**

There can be little doubt that retaining the couple rather than the individual as the financial unit of assessment under the SSA involves the federal government in costly investigatory activity and legal proceedings. This alone is a strong argument to abandon the attempt to tie payments to couple status.

Shifting to an individual assessment will increase the number of people entitled to claim a payment. Will the costs of these additional payments be greater than retaining the status quo? Not necessarily, as it must be remembered that a person claiming a benefit must also meet an entitlement category under the Act; that is, they must be sick, disabled, actively seeking work,

43. Jane Mussett, 'Crime? And Punishment! Sole Parent Pensioners, Criminal Convictions and Administrative Review', in Julian Disney (ed), *Current Issues in Social Security Law* (1994) 95, 105. Indeed it is entirely possible for a Criminal Court to find someone is a member of a couple and subsequently the AAT to find that no such relationship exists: see *Re Ridley and Secretary, Department of Social Security* (1992) 69 SSR 989.

44. *Social Security (Administration) Act 1999* (Cth) s 63. Other than attend the office, there is actually no legislative requirement to go to an interview.

45. Author's personal communication with clients at the Welfare Rights and Legal Centre. For a chilling example of the extraordinary lengths to which Centrelink investigators will go, see *Re Nisha and Secretary, Department of Family and Community Services* [2000] AATA 315 (20 April 2000).

46. Eastaale, above n 8, 60.

47. Ibid.

48. Adele Horin, 'Centrelink Checks Target Sole Parents', *The Age* (Melbourne), 31 March 2005, 3.

49. Centrelink, *Annual Report 2003–2004* (2004) ch 3, 55–6.

50. Commonwealth Director of Public Prosecutions, *Annual Report 2003–2004* (2004) 34–5.

51. Failure to declare employment earnings is the other significant area of prosecution activity. It is worth noting however, that prosecutions that do not involve member of a couple issues are less time consuming as they involve data matching against tax records rather than full investigations.

52. Eastaale, above n 8, 62, finds that 36% of people prosecuted for social security fraud from 1 July 1996 to 30 June 1999 were prosecuted in relation to their member of a couple status. It should be noted that these figures are over 5 years old.

53. As with many criminal matters, numbers of these individuals would have pleaded guilty, reducing the cost to the CDPP. However, each would have tied up significant Centrelink resources in investigation and referral to the CDPP.