# Advising on debts owed under the Status Resolution and Support Services Program

This fact sheet is for use by lawyers when advising people who have received a debt notice relating to payments received under the Commonwealth Government’s Status Resolution and Support Services Program. It is intended to be used together with the VLA factsheet, [Debts owed under the Status Resolution and Support Services Program](http://www.legalaid.vic.gov.au/find-legal-answers/migration/debts-owed-under-status-resolution-and-support-services-program).

## About the program

The Status Resolution and Support Services (SRSS) Program provides support and assistance to eligible asylum seekers and other non-citizens:

* as they seek resolution of their immigration status and
* once their immigration status has been resolved (whether by grant of a substantive visa or otherwise) as they transition to mainstream services in the Australian community, or prepare to leave Australia.

In most cases, people who are assessed as experiencing financial hardship, and are seeking to engage Australia’s protection obligations through the grant of an appropriate protection or humanitarian visas, will be eligible for SRSS payments.

A person (or family) is considered to be in financial hardship when:

* the income of the family unit is less than 89% of the Centrelink Special Benefit payment that would be paid to a family of similar size and composition
* there are no disposable assets or funds in Australia or overseas that the family can draw upon to sustain themselves
* there is no continuing and adequate support from family, friends or other people or organisation in the Australian community or overseas.

The support provided is ‘needs-based’ which means that the type and level of the service is determined by the needs of the individual and their residential status. The types of services mainly include financial, medical and housing. Case work and case management support may also be provided.

The SRSS program formally began on 1 January 2015 when it consolidated and replaced four existing programs: community assistance support; community detention; asylum seekers assistance scheme; and services to unaccompanied minor in alternative places of detention.

## How is the SRSS program funded and run?

The authority for government spending on the SRSS program is provided under the [Financial Framework (Supplementary Powers) Act 1997](https://www.legislation.gov.au/Current/C2015C00191). This Act gives the Commonwealth powers to make arrangements under which money can be spent, or grants of financial assistance can be made. The arrangements, grants and programs to be funded are set out in the [Financial Framework (Supplementary Powers) Regulations 1997](https://www.legislation.gov.au/Current/F2017C00916). Legislative authority for government spending on the SRSS program is provided in Schedule 1AB of the Regulations (Table item 187).

Services under the SRSS program are provided by various service providers contracted to the Department of Home Affairs (DHA), formerly the Department of Immigration and Border Protection. Financial assistance is provided through the Department of Human Services (DHS – Centrelink).

The DHA determines a person’s eligibility for the SRSS program before Centrelink provides any SRSS payment. If a person wants to apply for a SRSS payment, they can contact a SRSS service provider in their state or territory. The SRSS service provider will help them apply for the SRSS payment.

A bilateral agreement between the two departments sets out the arrangement in relation to the provision of services under the SRSS program. A detailed ‘Services Schedule’ (the Schedule) permits Centrelink to make payments to ‘eligible recipients’.

Centrelink must make SRSS payments in line with the ‘SRSS Payment Policy’ (Policy). Further, all internal reviews of decisions regarding payments are performed by Centrelink under the policy.

## SRSS overpayments and debt recovery

All eligible recipients of SRSS payments are required to sign a [debt agreement](https://www.border.gov.au/Forms/Documents/1448.pdf) upon being accepted into the program which requires a person to repay a debt in the event of overpayment, advance payment or other debt.

The debt agreement also provides authority and consent for the DHA and Centrelink to make enquiries in relation to the repayment of the debt or undertaking debt recovery action.

Under the debt agreement, recipients of SRSS payments are required to notify Centrelink immediately if and when there is a [change of circumstances](https://www.humanservices.gov.au/individuals/services/centrelink/status-resolution-support-services-payment#a4) so that their SRSS payment rate can be reassessed. Failure to notify of a change of circumstances may result in overpayments that must be repaid.

From time to time, the DHA may conduct a review to ensure that a receipt is still eligible for assistance.

Under the SRSS program, a person is no longer eligible for financial support once their immigration status is resolved, or if they are assessed as no longer being in financial hardship.

If they are no longer eligible, the DHA will advise Centrelink to stop payments and raise a debt where an overpayment has occurred.

Overpayments, which must be repaid, may also occur where a person receiving SRSS payments finds employment and fails to inform Centrelink that they are working, or where they give inaccurate or false information about their income.

In some circumstances, a SRSS recipient may incur a debt that must be repaid where they fail to make a payment for which they were responsible, such as a utility bill or damage to property

If an overpayment has been made, Centrelink will send a letter to a person stating that they have been overpaid and demanding payment of the overpayment debt.

Sometimes, overpayments may be due to administrative errors by Centrelink staff, such as a ‘data entry error’. In these cases, because SRSS payments are not social security payments, the provision under social security law for a waiver of debt arising from administrative error does not apply (ie. [s. 1237A](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ssa1991186/s1237a.html) of the *Social Security Act 1991* (Cth)).

There is case law which supports the recovery of monies owed to the Commonwealth in cases where payments have been made without statutory or other lawful authority, and where payments were made due to a mistake by a government employee (see: [Commonwealth of Australia v Burns [1971] VR 825](https://victorianreports.com.au/judgment/view/1971-VR-825) (25 May 1971)).

## What options are available where a SRSS debt has been raised?

A person faced with a SRSS debt essentially has four options:

1. [Pay the debt amount](#_Pay_the_debt)
2. [Internal review by Centrelink](#_Internal_review_by)
3. [Complaint to the Commonwealth Ombudsman](#_Complaint_to_the)
4. [Application to Department of Finance to waive debt](#_Application_to_Department)

### Pay the debt amount

If the DHA believes a person has received an overpayment, the DHA instructs Centrelink to send them a letter stating the amount that must be repaid.

A person is then expected to repay the amount in full by the due date. If they are unable to do so, the letter states that they should contact Centrelink to discuss alternative repayment options, such as payment by way of instalments.

Where a person is currently receiving a SRSS payment, the DHA may require Centrelink to reduce the recipient’s SRSS payment to recover the amount of the debt. This deduction is usually 5-10% of their fortnightly SRSS payment.

SRSS debts constitute a debt to the Commonwealth. Under migration law, the Minister for Immigration and Border Protection must look at whether an applicant has any outstanding debts owed to the Commonwealth when making a decision about whether to grant a person a visa (Public interest criteria, cr. 4004, Schedule 4, Part 1 of the *Migration Regulations* *1994* (Cth)). Therefore, it may affect a person’s eligibility for another visa if they have not either repaid the debt (or have a current payment plan in place) or made other satisfactory arrangements for dealing with the debt. A reasonable payment arrangement can also include an agreement that no payments be made, given the person’s financial circumstances.

### Internal review by Centrelink

Under the SRSS Policy, a person may seek confirmation from a Centrelink Customer Services Officer that a debt decision is correct.

If a person still does not agree with the decision, they may request a [Review of a Payment Decision](https://www.humanservices.gov.au/individuals/forms/ss351) in relation to a debt [Policy – para 10.14: Reconsideration of a debt]. A Review Officer will then investigate the decision and refer the matter to the DHA where applicable.

If the Review Officer confirms the debt, there are no further review options.

As there is no legislation regulating the SRSS program, the Administrative Appeals Tribunal (AAT) has no jurisdiction to review any decisions made under it. A person may only make a complaint to the Commonwealth Ombudsman if they disagree with the review decision.

### Complaint to the Commonwealth Ombudsman

If a person is not happy with how they have been treated by Centrelink staff, they have the right to complain.Sometimes the error that resulted in the overpayment may be due to the action (or inaction) of Centrelink staff.

The right to lodge a complaint is separate from the right to have the debt decision internally reviewed.

Complaints to the Commonwealth Ombudsman are usually a ‘last resort’ so an aggrieved person should first try and raise their service complaint internally with Centrelink.

Even if the Commonwealth Ombudsman finds the complaint valid, it cannot set aside a decision of Centrelink or take any action. It can only make recommendations, which may or may not be accepted by Centrelink.

### A person can make a complaint to the Commonwealth Ombudsman in the following ways:

### Phone: 1300 362 072

* **Online:** using the [online complaint form](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=oco-complaint-form) (<https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=oco-complaint-form>)
* **Post:** to Commonwealth Ombudsman, GPO Box 442, Canberra, ACT 2601

### Application to Department of Finance to waive debt

[Section 11](https://www.legislation.gov.au/Current/F2018C00014/Download) of the *Public Governance, Performance and Accountability Rule 2014* (Cth) requires that all Commonwealth entities pursue recovery of debts owed to the Commonwealth unless:

1. it is not economical to pursue recovery of the debt or
2. the debt is not legally recoverable or
3. the debt has been written off, under an Act.

However, the Finance Minister has a **discretionary power** to [waive a debt](http://www.finance.gov.au/resource-management/discretionary-financial-assistance/waiver-of-debt-mechanism/) owing to the Commonwealth (see [s. 63](http://www.austlii.edu.au/au/legis/cth/consol_act/pgpaaa2013432/s63.html) *Public Governance, Performance and Accountability Act 2013* (Cth).

Debts may be waived where recovery of the debt would be inequitable or cause ongoing hardship and where other debt treatment options (such as writing off the debt or deferring payment) are not appropriate.

**Financial hardship** exists when payment of the debt would leave a person unable to provide food, accommodation, clothing, medical treatment, education or other necessities for themselves, or their family.

To apply for a waiver, a person must complete an [application form](http://www.finance.gov.au/resource-management/discretionary-financial-assistance/waiver-of-debt-mechanism/information-for-applicants-debt-waiver/) which is available on the Department of Finance website (<http://www.finance.gov.au/resource-management/discretionary-financial-assistance/waiver-of-debt-mechanism/information-for-applicants-debt-waiver/>).

There is no right to appeal the decision of the Finance Minister. A waiver decision may only be reviewable by the Federal Circuit Court if there has been an error of law.

The following checklist sets out the suggested advice to be given to people who have an alleged SRSS debt.

# SRSS debts: Checklist for lawyers

1. [ ] Centrelink have sent me a debt letter

Check whether the overpayment relates to payments made under the Status Resolution and Support Services (SRSS) Program or another scheme or benefit.

* If payments were made under social security or family assistance laws, refer to VLA fact sheet, [Get help with Centrelink’s automated debts](http://www.legalaid.vic.gov.au/find-legal-answers/centrelink/get-help/get-help-with-centrelinks-automated-debts) and checklist, [Data-matching and Centrelink debts: Advice to callers](http://www.legalaid.vic.gov.au/information-for-lawyers/practice-resources/civil-law-resources).
* For more information on Centrelink debts generally, see the National Social Security Rights Network fact sheet, [Centrelink debts](http://www.nssrn.org.au/wp/wp-content/uploads/2017/01/Debt-Factsheet.pdf) (<http://www.nssrn.org.au/wp/wp-content/uploads/2017/01/Debt-Factsheet.pdf>).

If query relates to an SRSS overpayment, then advise that this is a **debt decision** of Centrelink (made on behalf of the DHA) that they can ask to have reviewed.

Clarify whether the query relates to the **debt decision** or a **complaint about the ‘service’** received:

* do you agree with the decision made? If not, then you can seek a review of the decision to raise a debt (refer to [part 2](#_☐_Seeking_a) below)
* are you unhappy with the way you were treated or spoken to? If so, then you can make a complaint (refer to [part 5](#_☐_I_want) below).

### [ ]  Seeking a review of a SRSS debt decision

* Centrelink has a special telephone number that you can call to speak with someone about an SRSS overpayment. To speak with a specially trained SRSS debt service officer, call **1800 316 556**.
* If you do not agree that you have been overpaid, or disagree with the amount of the overpayment, then you have a right to ask for a review of Centrelink’s decision.
* You can ask Centrelink to suspend any recovery action whilst the review is taking place.
* You can exercise your appeal rights by asking that the decision be ‘reviewed’ by a **Review Officer (RO)**. A RO is a senior Centrelink officer who has not previously dealt with your matter. They will have a fresh look at the decision and may call you to discuss. You can give new information to the RO to consider. The RO will either confirm, vary or set aside the decision. The RO will send you a detailed letter explaining their decision.
* The RO is required to make the ‘correct’ decision based on all the information available. In debt review matters the RO will be doing fresh calculations on the debt. This means that whilst a debt may be decreased or cancelled on review, there is also a risk that the debt could be increased.
* You can seek a review in the following ways:
	+ **In person** – at your local Centrelink office
	+ **By phone** – by calling the number on the notice of decision from Centrelink
	+ **Online** –via your myGov account by clicking on ‘Complaints’ and in the free text box note that you want a review by a Review Officer. Alternatively, you can download the [Review of decision form](https://www.humanservices.gov.au/sites/default/files/2016/10/ss351-1507en-f.pdf) (<https://www.humanservices.gov.au/customer/forms/ss351>) from the Centrelink website. *Note: the information under ‘Further right of review’ does not apply to SRSS debts. There is no right to a further review by the Administrative Appeals Tribunal.*
* **In writing** – to **Centrelink, Reply Paid 7800, Canberra BC ACT 2610. You can download a template letter to Centrelink requesting a review from our** [website](http://www.legalaid.vic.gov.au/find-legal-answers/migration/debts-owed-under-status-resolution-and-support-services-program)**.**
	+ **By fax** – **1300 786 102**
* Make sure you request a **receipt number** from Centrelink for every request you make and keep copies of any documents you lodge with Centrelink.
* There is no time limit to [appeal](http://www.legalaid.vic.gov.au/find-legal-answers/legal-glossary#appeal) a SRSS debt raised by Centrelink. However, you may have to start (or continue) making repayments during the review period. If a debt is cancelled on review, then any repayments you have made will be given back to you.
* If you are not happy with the decision of the RO, you **do not** have a right of appeal to the Administrative Appeals Tribunal (AAT). The AAT can only review decisions where a law gives it power. There are no laws regulating the SRSS program which provide a right of review to the AAT.

### [ ]  What happens if I just don’t pay?

* If, by the due date, you do not pay your debt, seek a review, or enter into a payment plan, Centrelink (or the Department of Home Affairs) may take legal action to recover the debt.
* If you have sought a review of a debt and are contacted by a debt collector, you can tell them that you want the debt referred back to Centrelink because you are having the debt reviewed. You do not have to enter into a payment plan with a debt collector.
* If you feel that a debt collector is harassing you or giving you misleading information, contact the **Australian Competition & Consumer Commission** on **1300 302 502** or via their website(<https://www.accc.gov.au/consumers/complaints-problems/make-a-consumer-complaint>).
* If you are unable to repay the overpayment amount, it will become a debt that you owe to the Commonwealth Government.
* It may affect your application for another visa if you have not made any arrangements for dealing with this debt. You may not have to repay this debt in full. A reasonable payment arrangement can include a payment plan or an agreement that no payments be made, given your financial circumstances. To request a payment plan, contact Centrelink (or the Department of Home Affairs). You will need to provide information about your financial situation.

### [ ]  What can I do if I am unable to repay the debt?

* In situations of severe financial hardship, or in other cases where repayment may be unfair due to your personal circumstances, you can apply to the [Department of Finance](http://www.finance.gov.au/resource-management/discretionary-financial-assistance/waiver-of-debt-mechanism/information-for-applicants-debt-waiver/) for a waiver of debt.
* You need to exhaust all the usual appeal avenues before applying to the Department of Finance (see [Seeking a review of a SRSS debt decision](#_☐_Seeking_a)).
* Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself or your family, or other people for whom you are responsible.
* The waiver of debt power is **discretionary** so even if you show financial hardship, you may not get a waiver.
* You can apply for a waiver by completing an [application form](http://www.finance.gov.au/resource-management/discretionary-financial-assistance/waiver-of-debt-mechanism/information-for-applicants-debt-waiver/) which is available on the Department of Finance website (<http://www.finance.gov.au/resource-management/discretionary-financial-assistance/waiver-of-debt-mechanism/information-for-applicants-debt-waiver/>).
* You will need to include evidence in support of your application such as:
* letters to and from from Centrelink about your debt, and any decision on review
* letters or reports from your case worker or financial counsellor (if any)
* letter or report from your doctor or health professional (if you have any medical conditions which prevent you from working).
* If you are applying for a waiver on the grounds of financial hardship then you will also need to complete a [Statement of Financial Details](http://www.finance.gov.au/resource-management/discretionary-financial-assistance/waiver-of-debt-mechanism/information-for-applicants-debt-waiver/) form. This form asks you questions about your personal circumstances including your employment status, income, assets and household expenditure.
* Once completed, send your application (and any supporting documents) to the Department of Finance:
* By email: sfc@finance.gov.au
* By post: **Discretionary Payments Section, Risk Insurance and Special Claims Branch, Department of Finance, 1 Canberra Avenue, FORREST ACT 2603.** You can d**ownload a template letter to the Department of Finance requesting a waiver from our** [website](http://www.legalaid.vic.gov.au/find-legal-answers/migration/debts-owed-under-status-resolution-and-support-services-program)**.**
* You can also contact the **Discretionary Payments Section** by phone if you have any questions on **1800 227 572**.
* It may take some time for you to get a decision on a waiver application.
* If your application for a waiver if refused, then you should contact Centrelink to discuss repaying the debt in instalments.
* A further application for a waiver is only possible where your circumstances have changed or you have new evidence.
* In limited cases, the waiver decision may be reviewable by the Federal Circuit Court if there has been an error of law.
* You should get legal advice if you are considering an appeal to the Federal Circuit Court.

### [ ]  I want to make a complaint about how I have been treated by Centrelink

* If you are not happy with the service you have received from Centrelink, you have the right to complain to Centrelink or the Commonwealth Ombudsman.
* Your right to lodge a complaint is separate from your appeal rights and should not have any negative impact on your appeal.
* It is possible to seek a review and complain at the same time.
* Also, if you are not happy with the way the Department of Finance has handled your request for a waiver, then you can also ask the Ombudsman to investigate. Once again, the Ombudsman has no power to change the decision.

### [ ]  Can you send me some more information?

Refer to VLA website for information on [SRSS debts](http://www.legalaid.vic.gov.au/find-legal-answers/migration/debts-owed-under-status-resolution-and-support-services-program).

* VLA has prepared a fact sheet on SRSS debts which is available on our website. It provides information on how to seek a review of a decision to raise a debt and apply for a waiver of the debt. There are also template letters for you to send to Centrelink and the Department of Finance.
* Further information is also available on the following websites:

**Victoria Legal Aid**

* + [Centrelink](http://www.legalaid.vic.gov.au/find-legal-answers/centrelink) (<http://www.legalaid.vic.gov.au/find-legal-answers/centrelink>)

**Department of Human Services**

* + [Status Resolution Support Services Payment](https://www.humanservices.gov.au/individuals/services/centrelink/status-resolution-support-services-payment#a2) (<https://www.humanservices.gov.au/individuals/services/centrelink/status-resolution-support-services-payment#a2>)
	+ [Owing money](https://www.humanservices.gov.au/customer/enablers/owing-money) (<https://www.humanservices.gov.au/customer/enablers/owing-money>)

**Department of Finance**

* + [Waiver of debt mechanism](http://www.finance.gov.au/resource-management/discretionary-financial-assistance/waiver-of-debt-mechanism/information-for-applicants-debt-waiver/) (<http://www.finance.gov.au/resource-management/discretionary-financial-assistance/waiver-of-debt-mechanism/>)
	+ [Information for applicants – waiver of debt](http://www.finance.gov.au/resource-management/discretionary-financial-assistance/waiver-of-debt-mechanism/information-for-applicants-debt-waiver/) (<http://www.finance.gov.au/resource-management/discretionary-financial-assistance/waiver-of-debt-mechanism/information-for-applicants-debt-waiver/>)

### [ ]  Further legal assistance

If you need further legal assistance, contact our **Legal Help** phonelineon **1300 792 387**.

If we are unable to help you, we can refer you to other organisations that can.

## Notes

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