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Ms Sabina Wynn
Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Dear Ms Wynn,

**Re: Family Violence and Commonwealth Laws: Child Support and Family Assistance Issues Paper (IP) 38
National Legal Aid submission**

About National Legal Aid (NLA) and Legal Aid Commissions (Commissions)

NLA represents the Directors of the eight State and Territory Legal Aid Commissions (Commissions) in Australia. The Commissions are independent statutory authorities established under respective State or Territory enabling legislation. They are funded by State or Territory and Commonwealth governments to provide legal assistance to disadvantaged people.

NLA aims to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- Obtain access to independent legal advice;
- Afford the appropriate cost of legal representation;
- Obtain access to the Federal and State and Territory legal systems; or
- Obtain adequate information about access to the law and the legal system.

Commissions have for many years provided legal services in the area of child support, and child maintenance, family violence, and family law. Services are available to assist both carer and liable parents.

Introduction

This submission focuses on the questions in relation to which Commission lawyers have experience.

It is made in the context of NLA's submission to the consultation paper *Family Violence: Improving Legal Frameworks*, issued by the Australian Law Reform Commission (ALRC) and the New South Wales Law Reform Commission (NSWLC) (July 2010); NLA's submission to the ALRC Issues Paper 37 *Family Violence and Commonwealth Laws: Immigration*; the Attorney-General's Department's public consultation on the Exposure Draft of the Family Law Amendment (Family Violence) Bill 2010 dated 14 January 2011 ('the Exposure Draft'); and the current inquiry by the Senate and Legal Constitutional Committee into the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. A copy of each of the NLA submission to the Consultation Paper Family Violence: Improving Legal Frameworks, and to the Senate Committee inquiry into the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011, is enclosed.

Overview

There are complexities in relation to child support that are broader than the financial arrangements between the parties for the care of their children. Care arrangements and child support being so closely entwined does, we think, expand the environment in which the potential for family violence exists.

We suggest that, to this point in time, the level of expertise required to work effectively in the area of child support has not been sufficiently recognised in systems responses. For example, child support will usually require an understanding of family law and the nature and dynamics of family violence and appropriate responses, including legal responses, as well as understanding of financial matters such as formulas, income and tax implications.

"The response that is required to ensure the safety of victims should be a systems response, rather than the responsibility of the victim".¹ Currently the responsibility is largely on the victim. For example, NLA considers that an appropriate systems response to the issue of family violence in the context of child support would include a cultural shift in relation to the role of "private collect".

NLA's view is that the definition/s of family violence used across Australia's geographic and legal jurisdictions, including in relation to child support, should be consistent and should reflect appropriately informed contemporary understandings of family violence.

¹ p. 5 NLA submission to ALRC/NSWLRC Family Violence: Improving Legal Frameworks July 2010

In addition to legislative reform, the following are suggested including in the child support context:

- improved/education/training for professionals and decision makers working with people affected by family violence about the nature, dynamics and effects of family violence including cultural aspects
- community education about the nature, dynamics and effects of family violence;
- improved systems for information sharing across agencies;
- collaborative professional approaches, and
- coordinated case management.

In relation to the above, the following recent initiatives have been announced or launched:

1. A "new national training package [Avert Family Violence: Collaborative Responses in the Family Law System] to help professionals within the family violence system improve the way family violence is addressed".²
2. A national register for domestic and family violence orders has been agreed by the Standing Committee of Attorneys-General to "implement a national scheme for domestic and family violence orders that will improve protection for victims of family violence".³
3. A tender by the Commonwealth Attorney-General's Department for the development of a family violence screening and risk assessment tool has been recently released.
4. A Child Support Agency Family Violence Reference Group.

NLA envisages that each of the developments referred to above will help to support the identification of family violence and appropriate responses to it, including generating support for victims.

Commission staff are ready to assist in achieving safety and resolution of issues for people, and to act as a resource for other service providers as far as possible. In this regard, NLA would like to work with CSA, Centrelink and other providers to ensure appropriate contacts for referral for legal advice and also for liaison between providers.

² Attorney-General media release 17 March 2011, *New national training to improve responses to family violence*

³ Joint Media Release Hon. Robert McClelland MP, Attorney-General, and Hon. Kate Ellis MP, Minister for the Status of Women, 4th March 2011.

Response to questions raised in the Issues Paper

Question 1 - Should the Child Support (Assessment) Act 1989 (Cth) and the Child Support (Registration and Collection) Act 1988 (Cth) be amended to insert a definition of family violence consistent with that recommended by the Australian Law Reform Commission and NSW Law Reform Commission in Family Violence—A National Legal Response (ALRC Report 114)?

Yes.

The definition of family violence in child support legislation should be the definition that was recommended by the ALRC Report 114 with the inclusion of a further subparagraph (j) **threats** to carry out the behaviours referred to in (a) - (h) above or to commit suicide or self harm. The wording of the proposed section does not include threats to an animal, but rather requires that the animal have been injured or killed for the definition of family violence to be met. In our family violence casework and advice experience “threats to harm” to pets are common and have been effectively used to exercise control over victims.

The proposed definition reflects the broad range of behaviours that family violence encompasses. Definition/s of family violence should be consistent across jurisdictions. This will help to ensure as far as possible that people receive consistent responses and outcomes in relation to their interactions with the systems involved in family violence issues. Consistency in legislative definitions would also facilitate consistency in education/training methods in relation to family violence.

Placing a definition of family violence in the *Child Support (Assessment Act) 1989 (Cth)* and the *Child Support (Registration and Collection) Act 1988 (Cth)* would elevate and emphasise the importance of family violence considerations and resultant risk factors in child support matters.

Question 2 - What changes, if any, are needed to improve accessibility to child support payments for non-parent and non-guardian carers of children at risk of family violence?

Question 3 - Does the requirement that the child be at ‘serious risk’ constitute a barrier to child support for non-parent and non-guardian carers, where parents or legal guardians do not consent to them providing care?

To ensure appropriate access to child support payments by non-parent and non-guardian carers of children at risk of family violence:

- Each case should be assessed by a Centrelink social worker on the basis of its particular circumstances rather than on the basis of “serious risk” or “extreme family breakdown”.

- CSA staff should actively refer non-parent and non-guardian carers for legal advice to ensure that they and the child/ren in their care are appropriately protected from family violence (eg by way of personal protection order) and are receiving financial support which is adequate as far as possible.

It is understood that the “serious risk” and “extreme family breakdown” provision was introduced largely in response to some concerns that teenage children were being ‘encouraged’ to leave their family home, and that the legislation was fostering family breakdown. These requirements of “serious” and “extreme” may present too high a barrier to non-parent/non-guardian carers securing payments leaving the very challenging option of either withdrawing their support for the child or suffering financial hardship.

CASE STUDY 1

The Child Support Legal Service (CSLS) of a Legal Aid Commission assisted a grandmother who assumed care of her grandchild in circumstances where the child’s mother was unable to provide care due to deterioration in her mental health. The child’s father had no involvement with the child and this had been the case for many years. The mother and father were parties to an arranged marriage. There was a history of family violence which caused the mother to be concerned about the father being approached to obtain his consent to the care arrangements for the child. In addition there was a risk that the ill-health of the mother might be exacerbated by communication with the father. The grandmother had experienced difficulties demonstrating to the CSA that the case fulfilled the conditions of ‘extreme family breakdown’ or ‘a serious risk’ to the child’s wellbeing.

The person who is caring for the child should receive financial assistance to carry out that role when it is appropriate. Family Dispute Resolution and other family law processes can be used to determine and resolve issues in relation to care arrangements.

Question 4 - In relation to the legislative requirement that a person take reasonable maintenance action, in order to receive more than the base rate of Family Tax Benefit Part A, what changes, if any, are needed to family assistance and child support legislation and policy to:

(a) ensure that exemptions are accessible to victims of family violence; (b) ensure that exemption periods are of an appropriate duration; and (c) address any financial disadvantage of victims of family violence who are exempted?

(a) ensure that exemptions are accessible to victims of family violence and (b) ensure that exemption periods are of appropriate duration;

Currently, customers whose records would suggest that they have not "taken reasonable maintenance action", may not be aware of the exemption, or they may be aware and not/properly informed of the consequences, but have decided not to pursue an exemption. The decision not to pursue an exemption may be grounded in a number of reasons including for example fear, privacy concerns, and/or because the customer thinks that even with the exemption they will not receive an increased rate of FTB by reason of income.

The priority should be ensuring sufficient screening processes and training to identify family violence issues and to respond appropriately. Staff at Centrelink and CSA should provide adequate information to customers about their option to seek a family violence exemption, the confidentiality of that exemption from the other parent, the associated consequences, such as not being able to backdate a child support application, the duration of the exemption, the review arrangements and cancellation options.

Some customers who are affected by family violence may still wish to proceed with an application despite their possible eligibility for an exemption. Staff should recommend legal advice. Centrelink and CSA should clearly explain the steps that the CSA would take to contact the other parent about payment of child support, including the time frames involved, allowing sufficient time for the customer to obtain advice and plan for their safety.

The Family Assistance Guide provides some information in relation to exemptions. It is suggested that it is important for policy in relation to exemptions to be clear and consistent with the rationale for decisions being readily capable of being ascertained.

Specialist and appropriately resourced family violence teams within Centrelink and the CSA would be helpful. Warm referrals to other professionals who may be able to assist and immediate face to face appointments should be facilitated wherever possible.

Training should include information about local legal and family violence support services and when and how to make referrals. That information should include what the service offers, any cost/s, waiting times, and referral processes. Referral protocols between agencies/services should be created where they do not already exist. Commissions currently have some concerns that the Community Services Directory used by the CSA could be improved. Currently it appears that the Directory is not sufficiently refined, with there being no sub-categories for legal, and no capacity to cross reference requirements and then search. It would also be helpful if some prioritisation could be given around the likely usefulness to the customer of the services listed, eg specialist legal child support services funded by the Commonwealth to assist people could be prioritised. Many of these services, such as Legal Aid Commissions, also offer related services which a customer might need, eg a family violence protection order, or assistance in resolving other family law related matters.

CASE STUDY 2

A woman who had been on an exemption for six years due to family violence, discovered later that the liable parent was on a substantial income and that she had foregone a considerable amount of funds which could have provided significant financial support for the child. She sought advice on whether she could back date an assessment and was very disappointed when she was advised that this was not possible. The client suffered what she considered a significant financial penalty by having an exemption in place to protect herself from family violence. The funds in question would have made a demonstrable difference to the child in terms of education and other opportunities.

Customers should be provided with appropriate advice and support, so as to make informed decisions about their safety and the effect of pursuing child support. The client's decision may be influenced by the quantum of child support they are likely to receive.

(c) address any financial disadvantage of victims of family violence who are exempted?

Please also refer to the response to questions 6 and 7.

The unfortunate paradox of the family violence exemption is that in some circumstances although the exemption may be in the best interests of the child to ensure their safety and that of the resident parent, it may deny them the financial support that is necessary to adequately meet their day to day needs. This can occur in circumstances where the potential payer has significant financial resources. The safety of victims must be the priority and the reality is that there are not sufficient resources to ensure that all customers with a family violence exemption are fully compensated for their loss of child support. Compensation will be limited to receipt of full Centrelink benefits including the Family Tax Benefit.

For this reason it is important that options are explored in the process of identifying whether a family violence exemption is appropriate.

Question 5 - Should Child Support Agency staff be required to provide information about family violence exemptions when dealing with applications for child support assessment?

Yes. Please refer to the response to Question 4.

Question 6 - What reforms, if any, are needed to ensure that persons who use family violence are not relieved from financial responsibility when victims obtain exemptions from the requirement to take reasonable maintenance action?

We agree with the ALRC that safety of victims must be the priority. We also agree with the ALRC's suggestion that "Requiring a person who has used violence to pay a child support debt at a later stage - when the exemption is lifted - may still compromise the safety of victims".⁴

As safety of victims must be the priority, NLA thinks that the best systems response is appropriate education/training about family violence including in the child support context, screening and risk assessment, and that there is collaboration between agencies to ensure consistency in the information provided and that all options are explored with the customer. All agencies should work together to identify any gaps that are occurring in relation to their current approach eg in the provision of information about the period and consequences of exemption. This will help to ensure that the response to customers who are victims of family violence is co-operative, consistent, and supportive.

An exploration of approaches that have been implemented in other jurisdictions to create a balance in the management of the competing issues (safety.v. financial responsibility for children) could be of assistance. It is suggested that a forum of key stakeholders provided with informative background materials in advance could be asked to consider the issues and to identify possible options. Such a forum would also assist in the development of constructive working relationships between service providers.

Question 7 - Should a person who has been granted an exemption from the requirement to take reasonable maintenance action due to family violence, also be exempt from paying child support to the person who has used family violence?

This question requires consideration of the protection of former partners from ongoing abuse, the safety and well being of children, and their appropriate financial support as competing priorities.

Notwithstanding that parents should have responsibility to financially maintain their children, we have some concerns that violent non-paying parents may perpetrate what is in effect further family violence by threatening to seek increased care of the children because of the perception of/potential financial benefit. We are aware of cases where threats have been made that if any payment of child support is actually/sought that the person who has made the threat will want the children more. If such a threat were acted upon, as a general proposition it is unlikely to be in the child's best interests.

If a person who has been granted an exemption from the requirement to take reasonable maintenance action due to family violence, also becomes exempt from paying child support to the person who has used family violence we expect that the

⁴ Paragraph 53 IP

risk of family violence would be reduced along with the threat of children being moved into the environment of the violent/controlling parent for financial reasons. This approach might also be an encouragement for parents to seek the exemption when they are in need of it for their safety.

Changes in care arrangements can occur for a range of reasons. Introducing such a "blanket rule" could result in children not being supported by a parent in situations where it would be appropriate for the parent to pay child support/make some financial contribution. It is also possible that the parent with the family violence exemption may in fact want to provide support to their child, notwithstanding the changed care arrangements.

On balance, the least potentially detrimental solution seems to be that proposed by the question which would ensure clarity and would be relatively simple to administer.

We suggest that further exploration of possible solutions is warranted, and that this is also a matter which could benefit from consideration by a forum of key stakeholders.

Question 8 - Exemption policy in relation to the requirement to take reasonable maintenance action is currently provided for in the Family Assistance Guide and the Child Support Guide. Should legislation provide that a person who receives more than the base rate of Family Tax Benefit Part A may be exempted from the requirement to take reasonable maintenance action on grounds of family violence?

We are unsure that there will be any practical gain in incorporating the policy as set out in the *Child Support Guide* and *Family Assistance Guide* in legislation, but accept the propositions contained in the Issues Paper that including exemptions in legislation "would recognise their significant role in protecting victims" and that "such provisions would be more authoritative and transparent and may provide victims of family violence with increased procedural certainty".⁵

Question 9 - Do any other issues arise for victims of family violence in obtaining exemptions from the requirement to take reasonable maintenance action?

Please refer to our response to Question 4.

Question 10 - Should application forms for a child support assessment, or other Child Support Agency forms - including electronic forms - seek information about family violence? If so, how?

⁵ P.12, paras. 55 & 56 IP

Question 11 - Should Child Support Agency staff be required to inquire about family violence when a person makes a telephone application for a child support assessment? In what other circumstances, if any, should Child Support Agency staff be required to inquire about family violence when dealing with customers?

Whether an application for child support is by form or by telephone, screening for family violence should occur.

Screening should be an ongoing process. It should also occur whenever any new action is taken in relation to a case. As part of these processes privacy concerns and the need to ensure that victims of family violence are not re-traumatised by having to describe/repeat what has happened to them should be taken into account.

Non Agency Payments (NAPs), and agreements have long been recognised as an opportunity for the violent parent with an obligation to pay to exercise some control over the other parent. This is particularly the case since the requirement to obtain Centrelink approval was removed in July 2008. This provision was a 'safety net' for customers who were in receipt of FTB (A).

We note the recent release of a tender by the Attorney-General's Department for development of a screening and risk assessment tool, which may be capable of use/adaption for use in these circumstances, and matters under consideration of the Child Support Agency's Family Violence Reference Group.

Case Study 3 - Hypothetical

A new assessment issues with an increased liability. The receiving client calls CSA requesting the case be made private collect. If the staff member asks questions about family violence they may discover that this is the reason for the request and that the paying parent has refused to pay "one cent more" and that, in addition, no payment will be made unless the case is taken out of CSA's hands.

Question 12 - Should Centrelink staff be required to inquire about family violence when referring a person to the Child Support Agency?

Yes. Please refer to the response to Question 4.

Centrelink staff should also be required to inform customers about the family violence exemption when making referrals to the Child Support Agency, and of the availability of referral for legal advice.

Where a customer confirms that they have concerns about family violence, their safety, or the wellbeing or safety of their children, there must be a clear, timely and effective protocol for the communication of this information to CSA with the

customer's consent, to minimise the need for the customer to have to retell their story.

Question 13 - Are Centrelink social workers, Indigenous Service Officers and Child Support Agency staff able to access information about persons who have identified themselves as victims of family violence as to whether they have obtained a protection order or similar? Should Centrelink social workers, Indigenous Service Officers and Child Support Agency staff be able to access the national register recommended in Family Violence—A National Legal Response, Report 114 (2010)?

NLA agrees in principle that in the event a national register is implemented in accordance with the recommendations of the ALRC Report 114, certain Centrelink and CSA staff should have access to the register.

Issues that would require exploration, clarification and definition are how that information is to be interpreted and used. In our view, it would be appropriate that access to the register be limited to staff with specialist training not only in family violence issues but issues concerning the register itself, such as privacy and use of information.

It must also be understood by staff that not all victims of family violence will be on such a register. Many victims do not report the abuse, which makes it even more difficult for them to be recognised. Not being on the register should not exacerbate the victim's circumstances by disqualifying them from appropriate assistance.

Question 14 - In what circumstances, if any, should information about family violence be shared between the Child Support Agency and other government agencies, such as Centrelink?

We suggest that information about family violence should be shared between CSA and Centrelink with the consent of the client. The priority must be to better identify and protect victims of violence.

Information such as the existence of a protection order could be represented by a symbol which appears on every screen, to act as a prompt to customer service officers to check agency records in relation to the customer.

Questions 15 - In what ways, if any, can the legislative basis for Child Support Agency determinations about the percentage of care, be improved for victims of family violence?

The legislative reforms introduced in 2008 made the care arrangements for children a central issue in the child support formula. It was intended that the reforms would

encourage parents to maintain a relationship with their children. In practice, difficulties arise when parents try to manipulate care to achieve a financial outcome.

An unintended effect of the reforms has been to encourage parents to seek a care arrangement that delivers a financial goal, which does not always coincide with the best interests of the child. This can impact adversely on primary carers and in particular victims of family violence.

A common financial goal is to acquire 'Regular Care' status by caring for a child for a minimum number of 52 nights per year. This will reduce or negate a child support liability.

Another common goal is to acquire 'Shared Care' (>127 nights per year). In addition to reducing or negating child support, this level of care will also provide an opportunity to claim part of the FTB A.

Shared care reduces the Fixed Annual Rate to nil.

The relevant consideration should be the needs of each child and the capacity of each parent to meet those needs rather than the time spent in each parent's care.

Question 16 - In what ways, if any, can the rules, as stated in the Child Support Guide, for the Child Support Agency to verify actual care when parents dispute the care that is occurring, be improved for victims of family violence?

Forensic evidence is often required to accurately identify what the care arrangements are in a particular case.

There are obvious practical difficulties for CSA in resolving entrenched conflict as to actual care. Determining levels of care when parents provide conflicting information is very difficult. Many institutions such as schools, child care programmes, and sporting clubs are reluctant, or do not have the resources, to provide supporting evidence about which parent collects or drops off children.

We appreciate that it would be resource intensive but consideration should be given to use of proactive investigative powers with proper safeguards in entrenched cases.

Question 17 - Is family violence adequately taken into account in the grounds for a departure determination?

Question 18 - What reforms, if any, are needed to ensure that victims of family violence obtain a departure determination where appropriate?

Please refer to our responses to Question 4 and 7.

The effects of family violence should be capable of consideration without it being necessary to specify it as a separate ground, for example reduced capacity for self support as a direct result of family violence, extra expenses incurred by victims such as the need to relocate, or replace damaged property.

Education/training and published materials should address the capacity to take the effects of family violence into account when considering an application for a departure order.

Questions 19 - Should the Child Support Agency be required to ask payees if they have concerns about family violence before it initiates departure determinations?

Yes. Please refer to our response to Question 11.

Many victims of family violence do not pursue Change of Assessment (COA) because they do not want to ‘rock the boat’, and do not want to reveal information about their financial circumstances. Among the consequences they may fear are:

- immediate/threats to personal safety, their own and that of the children;
- an increase in the level of conflict that they and the children have to endure at handover and/or during the period of contact;
- an application by the perpetrator for a greater level of care of the children, including with consequences of increasing the exposure of the children to family violence behaviour ;
- an interruption to any payment arrangement (in cases where payments are actually being made).

Given the nature of these fears, CSA should always consult customers, before undertaking a Registrar Initiated Change of Assessment (RICA).

Many victims are reluctant to make a COA application themselves, but want CSA to take the lead in initiating a RICA. There should be a mechanism for clients who are too fearful to exercise their right to lodge an application themselves, to be able to request that CSA undertake the application. Such a request could still be subject to the CSA determining whether there was merit in making the application.

The COA team should be well resourced to thoroughly investigate decisions based on capacity or financial resources (Reason 8), which clients, in their own right, might not have the resources to do, and should also be encouraged to exercise the powers that they have at their disposal to obtain enough information to make a just and equitable decision.

Where the CSA undertakes a RICA, the agency should continue to play an active role in responding to an objection and appeal if they are lodged. Clients have on occasion expressed that they felt unsupported in circumstances where they became responsible for carriage of the matter in the absence of the forensic evidence on which the CSA decision to initiate a COA was based. The CSA should remain involved, actively refer people for legal advice, and provide resources to ensure the necessary forensic evidence is available to the Tribunal and the parties.

Question 20 - Should the Child Support Agency be required to ask customers about family violence prior to initiating other proceedings or actions? If so, which proceedings or actions should this requirement apply to?

Yes. Please refer to the responses to Questions 4, and 11.

A client who has been identified as being a victim or at risk of family violence, should be contacted before a significant action is taken on the case. For example, in circumstances where a collection opportunity arises, a RICA, a Prescribed NAP recorded, a Departure Prohibition Order (DPO) executed, and proceedings for enforcement.

Appropriately educated/trained CSA staff would then be better informed about whether/not to proceed with the intended action. Commission staff have experience of clients becoming anxious because they have become aware that some action is occurring but they are not sure of the nature of that action. If victims are notified sufficiently in advance of any intended action, then it might allay any concerns, and also provide an opportunity for them to take any extra/precautions in relation to the safety of themselves and their children.

Question 21 - What reforms, if any, are needed to protect victims of family violence who, due to fear of persons who have used violence:

- (a) elect to collect child support privately, or elect to end collection by the Child Support Agency; and***
- (b) privately collect less than the assessed amount of child support, or no child support?***

Question 22 - In practice, how does the requirement to take reasonable maintenance action affect victims of family violence who collect less than the full amount of child support? What reforms, if any, are needed to ensure that victims of family violence in these circumstances are not financially disadvantaged by receiving less Family Tax Benefit Part A?

Question 23 - What reforms, if any, are needed to ensure that victims of family violence are not required by Child Support Agency to privately collect child support?

Question 24 - What reforms, if any, are needed to protect victims of family violence who, due to fear of persons who have used violence, elect to:

- (a) end Child Support Agency collection of child support debt?**
- (b) request that Child Support Agency revoke a Departure Prohibition Order?**

Commission clients report that they are actively encouraged by CSA to collect privately.

The point of election to collect privately or to end the collection by the CSA should be a prompt for further/screening for family violence. If as a result of this further/screening there are any concerns about the appropriateness of private collection, then appropriate referrals should follow.

NLA considers that an appropriate systems response to the issue of family violence would require a cultural shift in relation to “private collect”. Collection of child support by the CSA should be encouraged with CSA collect to be the default wherever family violence is identified. All communications by the CSA with the payer should emphasise that decisions are the responsibility of the CSA and not the victim.

Case Study 4 - Hypothetical

A mother who has been the victim of family violence has a private collect case, but is not receiving full or part payment. No steps have been taken to collect the liability either privately or by making the case CSA collect, because she is fearful of the consequences from the father of any efforts to collect the payment.

After a care change, the father (the former payer) applies for child support. His outstanding debt cannot be offset against the mother's current liability because the case has been a private collect case. If the mother's case had been CSA collect, the debt could be offset with the non-payment of the previous liability being taken into account.

There could be two different outcomes, depending on whether a liability has been registered for collection with CSA.

Some possible reforms/changes could include:

- Improved education/training re the identification of family violence.
- Improved screening and risk assessment (noting the developments currently underway)
- Education/training about capacity to recover accumulated arrears for up to 9 months in cases involving family violence. It appears that people are generally not aware of the capacity to collect beyond 3 months.
- Improved referrals, including for specialist and related legal advice.

- In cases where a change to the assessment is created retrospectively (for example reconciliation of an estimate), resulting in arrears being created from a private collect period, that the CSA should collect this debt, rather than the current situation which relies on the victim pursuing the matter.
- Where a change results in an overpayment, any offset should not occur at 100% of the liability which, in our experience, is the standard practice. Instead, a person should be given 56 days from the date of being notified of the overpayment to lodge a COA application, before any offsetting of the debt occurs.
- If a COA application is made, collection of the overpayment should be suspended until a final determination has been made. In such cases the 18 month rule, should apply from the date the change to the assessment is made, not the date of child support period affected.
- safety net provisions to allow customers to reinstate debt where decisions have been made in circumstances of coercion and duress.
- Where family violence has been identified there should be an annual reconciliation of child support debt and receipts by Centrelink and where there are discrepancies then the enforcement response should be with the CSA, and appropriate referrals for legal advice should be made.
- Community education about child support should identify that there is a requirement on payees to seek child support in order to receive their full entitlement of FTB(A). Understanding that payees in these circumstances do not have a choice may reduce the risk to their safety. Education should also promote the use of the CSA for collection of child support. A recent DVD released by CSA for indigenous clients (It's not about the Money, It's about the Kids) downplayed the requirement for reasonable maintenance action, in order to promote the possibility of parents reaching their own agreement without CSA involvement. It suggested that "CSA did not have to be involved" which would assist perpetrators to apply pressure to payees to forego child support payments.
- Informing customers in relation to intended decisions and offering referrals for legal advice as decisions could have implication for their safety and well-being and will enable time for any appropriate action to be taken.
- a default provision of CSA collection for all family violence cases and a framework for all correspondence and interactions with the liable parent that suggests that CSA is the payee/debtor. Every effort should be made to distance the payee from the debt and the process to actively counter pressure on the payee.

Question 25 - In cases where victims of family violence are subject to pressure to enter into child support agreements, are the provisions in the Child Support (Assessment) Act 1989 (Cth) providing that:

- (a) independent legal advice must be provided; or**
- (b) annual child support assessments may not be decreased**

sufficient to protect victims from entering into disadvantageous agreements, and if not, what reforms are needed?

The provisions in the Act in relation to binding child support agreements should be sufficient to protect victims from entering disadvantageous agreements. To ensure that the provisions are effectively applied then appropriate education/training for all people working in the system, including legal practitioners, must be provided.

Customers contemplating limited agreements should always be referred for legal advice, because limited agreements are sometimes used to have the payee pay the payer's share of an expense from the child support payments. This should not occur without the payee receiving advice about the terms of the agreement. Such a referral could also facilitate any other necessary family law or personal safety advice.

The "new national training package [Avert Family Violence: Collaborative Responses in the Family Law System] to help professionals within the family violence system improve the way family violence is addressed"⁶ and other initiatives such as the tender for a screening and risk assessment tool will help to support the intended effect of the legislation.

NLA recommends that lawyers certify that they have advised their clients in relation to family violence, and that a checklist to support the certification be completed. A checklist would act as a prompt for lawyers and a further safeguard to ensure that these issues are canvassed with the client.

We have some concerns that applying the principles of contract law to child support is inappropriate, and fails to allow for the exigencies of life as they may occur. For this reason, it is suggested that binding agreements should be limited to no more than 5 years, and that the requirements to set aside such an agreement be reduced from 'exceptional' to 'significant' circumstances. When responding to the future financial support of children, greater flexibility is required than can be delivered by contract law.

It is suggested that longitudinal research into the operation and effectiveness of child support agreements would be of assistance in the planning of future policy in this area.

⁶ Attorney-General media release 17 March 2011, *New national training to improve responses to family violence*

Question 26 - What reforms, if any, are necessary to protect the safety of victims of family violence, where the Child Support Agency discloses information about one party to another in accordance with child support legislation? Are changes to the legislation required, and if so, what changes?

There is a tension between the requirements of natural justice and the protection of personal information. Information about parents' incomes, relevant dependent children and the recorded level of care are integral components of the formula and should be recorded on the assessment. However, clients do express concerns that information provided to the other party is often the impetus for comments, criticisms and generally antagonises already strained relations.

NLA is aware that the CSA has been undertaking a review/project in relation to the way that the agency corresponds with customers. We look forward to the outcome of this project. In our experience one aspect of CSA correspondence that causes some concern is that customers can receive multiple letters, which are difficult to comprehend, on one day which may be because, for example, that there are different care arrangements in relation to each of the children of the relationship. This can be confusing for people.

All correspondence should be framed to suggest as far as is possible, that CSA is the other party to the case and/or the payments are for the benefit of the child or children thereby reducing pressure on victims of family violence. In cases where family violence has been identified, it may be necessary for any correspondence to be modified and/or any communications to be managed by a specialist team within the agency.

Question 27 - Are victims of family violence adequately protected by the Child Support Agency's procedures to deal with threats made to the Child Support Agency against them by family members? What reforms, if any, are needed to protect victims where family members make threats against them to the Child Support Agency?

NLA understands that the CSA takes all threats seriously immediately reporting in/direct threats to the person to the police, and supports such an approach.

Question 28 - Is the personal information of persons at risk of family violence adequately protected by Child Support Agency practices, such as the Restricted Access Customer System (RACS)? In what ways, if any, can the protection of personal information be improved?

Commission experience is that the RACS process provides adequate protection of personal information.

If the RACS process is to be used generally for victims of family violence, it is suggested that CSA will need to expand the number of staff who have access to it.

In one case when acting for a customer on restricted access, some experience of unreturned calls and information not being provided was experienced.

Question 29 - Are there any other concerns about the interaction of child support law and practice and the protection of safety of victims of family violence? What reforms, if any, are necessary to improve the safety of victims of family violence?

In addition to legislative reform and as suggested above, the following are suggested including in the child support context:

- improved/education/training for professionals and decision makers at Centrelink and the CSA working with people affected by family violence about the nature, dynamics and effects of family violence including cultural aspects;
- community education about the nature, dynamics and effects of family violence;
- improved systems for information sharing across agencies;
- collaborative professional approaches, and
- coordinated case management.

Team/s within agencies with specialist knowledge and expertise in dealing with issues presented by family violence and threats of violence could assist and would be likely to achieve improved collaboration across systems. They could be tasked with dealing with more difficult cases, and could also provide a contact point for other staff and other professionals such as legal practitioners who assist customers/clients with cases involving issues of family violence. This would facilitate comprehensive case management thereby helping to ensure the safety and well-being of people and ensuring effective and efficient referrals.

Protocols for referring customers who are experiencing family violence to appropriate local services for legal advice, and support services, should be developed and implemented. Referral tools should be accurate, informative, and provide information relevant to the locality of the caller. (Please refer to answer to question 4). Being repeatedly referred from one service to another can be exhausting and frustrating. Victims of family violence can be further traumatised by having to retell their stories. Potential/perpetrators can be inflamed by it. Commissions have observed that when CSA reorganized its operations on national business lines, much local knowledge was lost. We suggest that these important referral networks need to be restored.

In relation to the dissemination of information, flexibility as well as consistency in the approach to communications with customers/clients reflecting their many and varied personal circumstances is necessary for all service providers. For example, it may not be sufficient to limit the provision of information about reasonable maintenance action and exemptions to publications and the customer's regular correspondence. There will be customers who face literacy or language barriers and who have difficulties receiving correspondence.

Question 30 - Should family assistance legislation be amended to insert a definition of family violence consistent with that recommended by the Australian Law Reform Commission and NSW Law Reform Commission in Family Violence—A National Legal Response (ALRC Report 114)?

Please refer to our answer to Question 1.

Question 31 - In what ways, if any, can the legislative basis for Family Assistance Office determinations about the percentage of care, be improved for victims of family violence?

Question 32 - In what ways, if any, can the rules, as stated in the Family Assistance Guide, for the Family Assistance Office to verify actual care when parents dispute the care that is occurring, be improved for victims of family violence?

Please refer to our answers to questions 15 and 16.

Question 33 - What reforms, if any, are needed to ensure that the Family Assistance Office identifies, and refers to social workers, cases in which children living in informal care may be at risk of harm because of family violence?

Question 34 - What reforms, if any, are needed to improve the safety of children considered at risk of family violence, when the Family Assistance Office, due to a change in care, cancels a former carer's Family Tax Benefit, or starts paying Family Tax Benefit to a new carer?

It is suggested that reforms should include specific referencing in the Guide of family violence, and appropriate education and training about family violence including with relation to screening, and risk assessment.

Question 35 - What, if any, improvements are needed to ensure that applicants for family assistance are aware of, and using, the exemption from providing their partners' tax file numbers in cases of family violence? Should A New Tax

System (Family Assistance) (Administration) Act 1999 (Cth) expressly refer to family violence as an example of an indefinite exemption?

Yes, we cannot see reason why an express reference to family violence should not be included as an example of indefinite exemption.

Question 36 - What, if any, reforms are needed to ensure that baby bonus applicants who are victims of family violence are referred to social workers, Indigenous Service Officers and Multicultural Service Officers?

Question 37 - What, if any, reforms are needed to ensure that social workers, Indigenous Service Officers and Multicultural Service Officers are able to access information about whether a baby bonus applicant has a protection order or a child subject to a child protection?

Question 38 - Are increases in weekly Child Care Benefit hours and higher rates of Child Care Benefit sufficiently accessible in cases of family violence? What reforms, if any, are needed to improve accessibility?

Please refer to answers to questions 33 and 34.

Question 39 - Does the legislative requirements that the child be at 'risk of serious abuse' serve as an unreasonable barrier to eligibility for higher rates of Child Care Benefit and increased weekly hours of Child Care Benefit?

Question 40 - Should A New Tax System (Family Assistance) Act 1999 (Cth) and A New Tax System (Family Assistance) (Administration) Act 1999 (Cth) be amended to insert definitions of 'abuse' or 'serious abuse'? Should the Family Assistance Guide provide definitions of 'abuse' of 'serious abuse'?

Definitions of abuse including in relation to family violence should be consistent across jurisdictions. We note the Family Law Amendment Bill is currently before Parliament.

Question 41 - Are there any other concerns about the interaction of family assistance law and practice and the protection of safety of victims of family violence? What reforms, if any, are needed to improve the safety of victims of family violence?

Please refer to our response above.

Conclusion

Thank you for the opportunity to comment on the Child Support and Family Assistance Issues Paper.

Should you require any further information please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Andrew Crockett".

Andrew Crockett
Chair