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27th October 2011

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

Dear Ms Wynn,

Re: Family Violence and Commonwealth Laws (DP 76 Summary)
National Legal Aid submission

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

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 (NSWLRC) (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, and NLA's submissions to the ALRC Issues Papers Family Violence and Commonwealth Laws: Immigration Law (IP37), and Child Support and Family Assistance (IP 38). The ALRC has copies of these submissions.

Chapter 3: Common Interpretative Framework

Proposal 3–1 The *Social Security Act 1991* (Cth) should be amended to provide that family violence is violent or threatening behaviour, or any other form of behaviour, that coerces and controls a family member, or causes that family member to be fearful. Such behaviour may include, but is not limited to:

(a) physical violence;
(b) sexual assault and other sexually abusive behaviour;
(c) economic abuse;
(d) emotional or psychological abuse;
(e) stalking;
(f) kidnapping or deprivation of liberty;
(g) damage to property, irrespective of whether the victim owns the property;
(h) causing injury or death to an animal irrespective of whether the victim owns the animal; and
(i) behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(h) above.

NLA supports the adoption of a common definition of family violence across the different legislative schemes the subject of this Discussion Paper. This will help to ensure that, as far as possible, people receive consistent responses and outcomes in relation to their interactions with the systems involved in family violence issues. A common definition will also facilitate consistency in education/training in relation to family violence.

The common definition of family violence that should be used in the relevant legislation, including the *Social Security Act 1991* (Cth) 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. This definition reflects the broad range of behaviours that family violence encompasses.

Including a definition of family violence in the *Social Security Act 1991* (Cth) would elevate and emphasise the importance of family violence considerations and resultant risk factors in social security matters.

Proposal 3–2 The *Child Support (Assessment) Act 1989* (Cth) and the *Child Support (Registration and Collection) Act 1988* (Cth) should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1.

Supported. See also response to Proposal 3-1.

Proposal 3–3 *A New Tax System (Family Assistance) Act 1999* (Cth) should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1.

Supported. See also response to Proposal 3-1.

Proposal 3–4 *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1.

Supported. See also response to Proposal 3-1.

Proposal 3–5 The *Fair Work Act 2009* (Cth) should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1.

Supported. See also response to Proposal 3-1.

Proposal 3–6 The following guidelines and material should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1:

- **Department of Education, Employment and Workplace Relations and Job Services Australia Guidelines, Advices and Job Aids;**
- **Safe Work Australia Codes of Practice and other material;**
- **Fair Work Australia material; and**
- **other similar material.**

Supported with the preferred definition to be that set out in our response to Proposal 3-1.

Proposal 3–7 The *Superannuation Industry (Supervision) Regulations 1994* (Cth) and, where appropriate, all Australian Prudential Regulation Authority, Australian Taxation Office and superannuation fund material, should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1.

Supported with the preferred definition to be that set out in our response to Proposal 3-1.

Proposal 3–8 The *Migration Regulations 1994* (Cth) should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1.

Supported with the preferred definition to be that set out in our response to Proposal 3-1.

Proposal 3–9 The Department of Immigration and Citizenship's *Procedures Advice Manual 3* for decision makers should include examples to illustrate coercive and controlling conduct that may amount to family violence, including but not limited to:

(a) the threat of removal; and

(b) violence perpetrated by a family member of the sponsor at the instigation, or through the coercion, of the sponsor.

Supported. It is important that the Manual and related training clearly identify that the examples are illustrative rather than exclusive.

Chapter 4: Screening, Information Sharing and Privacy

Proposal 4–1 Information about screening for family violence by Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should be included in the *Child Support Guide,* the *Family Assistance Guide* and the *Guide to Social Security Law.*

Supported.

Proposal 4–2 Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should routinely screen for family violence when commencing the application process with a customer, immediately after that, and at defined intervals and trigger points (as identified

in Chapters 5 and 9–11).

Supported. See also response to Proposal 9-2 and 9-4.

Proposal 4–3 Screening for family violence by Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should be conducted through different formats including through:

- **electronic and paper claim forms and payment booklets;**
- **in person;**
- **posters and brochures;**
- **recorded scripts for call waiting;**
- **telephone prompts;**
- **websites; and**
- **specific publications for customer groups such as News for Seniors.**

Supported, noting that some of the formats referred to above are information/ educational tools which are likely to facilitate disclosure during screening processes.

The 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 draft screening questions being developed by the Child Support Agency's Family Violence Reference Group, are noted.

Proposal 4–4 In conducting screening for family violence, Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should take into consideration a customer's cultural and linguistic background as well as a person's capacity to understand, such as due to cognitive disability.

Supported. See also response to Proposal 4-3.

Question 4–1 In addition to the initial point of contact with the customer, at what trigger points should Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers screen for family violence?

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).

Proposal 4–5 Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should receive regular and consistent training and support (including resource manuals and information cards) in:

- **screening for family violence sensitively; and**
- **responding appropriately to disclosure of family violence, including by making referrals to Centrelink social workers.**

Supported.

The recently released national family violence training package [Avert Family Violence: Collaborative Responses in the Family Law System] which has been designed "to help professionals within the family violence system improve the way family violence is addressed".[1] might be an appropriate component of this training, particularly given that it will also be used by other government and non government family law service providers. The use of shared training resources will facilitate the development of a shared understanding of family violence and a shared language for communication in relation to these issues.

Proposal 4–6 Training provided to Child Support Agency and Family Assistance Office staff, and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should include:

- **the nature, features and dynamics of family violence, and its impact on victims, in particular those from high risk and vulnerable groups;**
- **recognition of the impact of family violence on particular customers such as Indigenous peoples; those from culturally and linguistically diverse backgrounds; those from lesbian, gay, bisexual, trans and intersex communities; children and young people; older persons; and people with disability;**
- **training to ensure customers who disclose family violence, or fear for their safety, know about their rights and possible service responses, such as those listed in Proposal 4–8; and**
- **training in relation to responding appropriately to and interviewing**

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

victims of family violence. In particular, training for Centrelink customer service advisers and social workers should include information about the potential impact of family violence on a job seeker's barriers to employment.

Supported. See also response to Proposal 4-5

Proposal 4–7 The Department of Human Services should ensure that monitoring and evaluation of processes for screening for family violence is conducted regularly and the outcomes of such monitoring and evaluation are made public.

Supported.

Proposal 4–8 The *Child Support Guide,* the *Family Assistance Guide* and the *Guide to Social Security Law* should provide that Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should give all customers information about how family violence may be relevant to the child support, family assistance, social security and Job Services Australia systems. This should include, but is not limited to:

- **exemptions;**
- **entitlements;**
- **information protection;**
- **support and services provided by the agencies;**
- **referrals; and**
- **income management.**

Supported.

Referral information should include information about legal services that specialise in assisting people who have experienced family violence and have expertise in child support and family law issues, such as legal aid commissions.

In relation to entitlements the Guide should be amended to expressly include family violence as a circumstance where a person may be living separately and apart under one roof (see Proposal 6-3).

Proposal 4–9 The Department of Human Services and other relevant departments and agencies should develop a protocol to ensure that disclosure of family violence by a customer prompts the following service responses:

- **case management, including provision of information in Proposal 4–8, and additional services and resources where necessary; and**

- **the treatment of that information as highly confidential with restricted access.**

Supported. See also the response to Proposal 4-8. Referrals should include services that specialise in assisting people who have experienced family violence and have expertise in child support and family law issues, such as Legal Aid Commissions.

Proposal 4–10 The *Guide to Family Assistance* and the *Child Support Guide* should provide that where family violence is identified through the screening process, or otherwise, Centrelink, Child Support Agency and Family Assistance Office staff must refer the customer to a Centrelink social worker.

Supported, noting that it is important that the Centrelink social worker be able to make referrals to relevant legal and non legal services that can provide ongoing support and assistance to referred customers. Collaborative working relationships should be developed with local support services to ensure that timely and appropriate referrals are made.

Proposal 4–11 Where family violence is identified through the screening process or otherwise, a 'safety concern flag' should be placed on the customer's file.

Supported.

Proposal 4–12 The 'safety concern flag' only (not the customer's entire file) should be subject to information sharing as discussed in Proposal 4–13.

However, information about the flag and its consequences should be provided to the customer and sharing the flag should be based on consent, ideally attained once and early on, so that the customer need not be engaged in unnecessary interactions. Information sharing should always be subject to consent.

Proposal 4–13 If a 'safety concern flag' is developed in accordance with Proposal 4–11, the Department of Human Services and other relevant departments and agencies should develop inter-agency protocols for information sharing between agencies in relation to the 'safety concern flag'. Parties to such protocols should receive regular and consistent training to ensure that the arrangements are effectively implemented.

Supported.

Proposal 4–14 The Department of Human Services and other relevant departments and agencies should consider issues, including appropriate privacy safeguards, with respect to the personal information of individual customers who have disclosed family violence in the context of their information-sharing arrangements.

Supported.

Proposal 4–15 The Department of Human Services and other relevant departments and agencies should develop policies and statements relating to family violence and child protection, to ensure consistency in service responses. These policies should be published on the agencies' websites and be included in the information provided to customers in Proposal 4–8.

Supported.

Part B—Social Security

Chapter 5: Social Security—Overview and Overarching Issues

Proposal 5–1 The *Guide to Social Security Law* should be amended to include:

(a) the definition of family violence in Proposal 3–1; and

(b) the nature, features and dynamics of family violence including: while anyone may be a victim of family violence, or may use family violence, it is predominantly committed by men; it can occur in all sectors of society; it can involve exploitation of power imbalances; its incidence is underreported; and it has a detrimental impact on children.

In addition, the *Guide to Social Security Law* should refer to the particular impact of family violence on: Indigenous peoples; those from a culturally and linguistically diverse background; those from the lesbian, gay, bisexual, trans and intersex communities; older persons; and people with disability.

Supported with the preferred definition to be that set out in our response to Proposal 3-1.

In relation to the suggestion of the Guide being amended to reflect the particular impact of family violence on certain groups, this would appear to contradict (b) above, and whilst agreeing with what we take to be the intention of the proposal, we suggest that further consideration to the words to be used is required. We suggest that in particular relevant factors are isolation and lack of access to help by reason of a range of barriers. Such barriers may be more likely to be experienced by some people within these groups, and can compound the difficulties they might be experiencing as a result of family violence.

Proposal 5–2 Centrelink customer service advisers, social workers and members of the Social Security Appeals Tribunal and Administrative Appeals Tribunal should receive consistent and regular training on the definition of family violence, including the nature, features and dynamics of family violence, and responding sensitively to victims of family violence.

Supported.

The training received should be consistent with that provided to CSA staff and other government agencies the subject of this discussion paper. The national family violence training package [Avert Family Violence: Collaborative Responses in the Family Law System] which has been designed "to help professionals within the family violence system improve the way family violence is addressed".[2] might be an appropriate component of the training for this reason.

The use of shared training resources will facilitate the development of a shared understanding of family violence and a shared language for communication in relation to these issues.

Proposal 5–3 The *Guide to Social Security Law* should be amended to provide that the following forms of information to support a claim of family violence may be used, including but not limited to:

- **statements including statutory declarations;**
- **third party statements such as statutory declarations by witnesses, employers or family violence services;**
- **social worker's reports;**
- **documentary records such as diary entries, or records of visits to services, such as health care providers;**
- **other agency information (such as held by the Child Support Agency);**
- **protection orders; and**
- **police reports and statements.**

Supported.

Proposal 5–4 The *Guide to Social Security Law* should be amended to include guidance as to the weight to be given to different types of information provided to support a claim of family violence, in the context of a particular entitlement or benefit sought.

Supported.

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

Proposal 5–5 Centrelink customer service advisers and social workers should receive consistent and regular training in relation to the types of information that a person may rely on in support of a claim of family violence.

Supported.

Proposal 5–6 The *Guide to Social Security Law* should be amended to provide that, where a person claims that they are experiencing family violence by a family member or partner, it is not appropriate to seek verification of family violence from that family member or partner.

Supported.

Proposal 5–7 Centrelink customer service advisers and social workers should receive consistent and regular training in relation to circumstances when it is not appropriate to seek verification of family violence from a person's partner or family member.

Supported.

Proposal 5–8 Centrelink customer service advisers and social workers should be required to screen for family violence when negotiating and revising a person's Employment Pathway Plan.

Supported.

Question 5–1 At what other trigger points, if any, should Centrelink customer service advisers and social workers be required to screen for family violence?

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.

Proposal 5–9 A Centrelink Deny Access Facility restricts access to a customer's information to a limited number of Centrelink staff. The *Guide to Social Security Law* should be amended to provide that, where a customer discloses family violence, he or she should be referred to a Centrelink social worker to discuss a Deny Access Facility classification.

Supported, noting that there will be likely resource implications for Centrelink. The

Centrelink officer should also have some capacity to make appropriate referrals to local legal and non legal family violence support services, and the Centrelink social worker should be able to make referrals to relevant legal and non legal services that can provide ongoing support and assistance to referred customers.

Collaborative working relationships should be developed with local support services to ensure that timely and appropriate referrals are made.

Question 5–2 Should Centrelink place a customer who has disclosed family violence on the 'Deny Access Facility':
(a) at the customer's request; or
(b) only on the recommendation of a Centrelink social worker?

NLA suggests option (b) following triage to identify safety risks and noting that the person who has experienced family violence may be best placed to understand the safety risk, and weight will need to be given to a request accordingly.

Implementation of the strategies proposed in Chapter 4 regarding the provision of information, screening, safety concern flags, information sharing, should be designed to optimise the potential to disclose family violence and that staff are able to make use of that information to make appropriate referrals to the Centrelink social worker.

Chapter 6: Social Security—Relationships

Proposal 6–1 The *Guide to Social Security Law* should be amended to reflect the way in which family violence may affect the interpretation and application of the criteria in s 4(3) of the *Social Security Act 1991* (Cth).

Supported. NLA agrees with the ALRC's conclusion that legislative amendment of the criteria in s 4(3) of the *Social Security Act 1991* to specifically add family violence as a criteria may diminish flexibility and have unintended consequences. The current criteria are sufficiently broad to enable family violence to be considered. The more appropriate approach is to ensure that appropriate guidance in relation to family violence is provided to decision-makers in the Guide to Social Security Law.

Proposal 6–2 Centrelink customer service advisers and social workers should receive consistent and regular training in relation to the way in which family violence may affect the interpretation and application of the criteria in s 4(3) of the *Social Security Act 1991* (Cth).

Supported.

Proposal 6–3 The *Guide to Social Security Law* should be amended expressly to include family violence as a circumstance where a person may be living separately and apart under one roof.

Supported.

Proposal 6–4 The *Guide to Social Security Law* should be amended to direct decision makers expressly to consider family violence as a circumstance that may amount to a 'special reason' under s 24 of the *Social Security Act 1991* (Cth).

Supported. A common definition of family violence and training in relation to it, should support this amendment.

Question 6–1 With respect to the discretion under s 24 of the *Social Security Act 1991* (Cth):

(a) is the discretion accessible to those experiencing family violence;

(b) what other 'reasonable means of support' would need to be exhausted before a person could access s 24; and

(c) in what ways, if any, could access to the discretion be improved for those experiencing family violence?

Legal aid commission experience is that decision makers applying s 24 of the *Social Security Act 1991* do not generally place sufficient weight on the existence of family violence. The test of "special reason" outlined in the Guide to Social Security Law (that it must be "unusual, uncommon, abnormal or exceptional") is incorrect (see French J in *Boscolo v Secretary, Department of Social Security* (1999) 53 ALD 277 at 281 and 282) and in our experience has sometimes been used to find against a person suffering from family violence. Anecdotally NLA is aware of Centrelink decision makers stating the "special reason" discretion is not available because 'domestic violence in our society is not, unfortunately, unusual'.

Legal aid commission experience is that customers are not generally aware that there is a discretion that they can access. Legal aid clients generally access relief under s 24 of the *Social Security Act 1991* after receiving information/advice from community workers, lawyers or tribunal staff. Access to the discretion could be improved if Centrelink staff were trained to identify family violence and inform customers of the option of accessing the discretion.

Proposal 6–5 The *Guide to Social Security Law* should be amended expressly to refer to family violence, child abuse and neglect as a circumstance in which it may be 'unreasonable to live at home' under the provisions of 'extreme family breakdown'—*Social Security Act 1991* (Cth) ss 1067A(9)(a)(i),

1061PL(7)(a)(i); and 'serious risk to physical or mental well-being'—*Social Security Act 1991* (Cth) ss 1067A(9)(a)(ii), 1061PL(7)(a)(ii).

Supported.

Question 6–2 Should the *Social Security Act 1991* (Cth) also be amended expressly to refer to family violence, child abuse and neglect as an example of when it is 'unreasonable to live at home'?

Supported.

Question 6–3 Should ss 1067A(9)(a)(ii) and 1061PL(7)(a)(ii) of the *Social Security Act 1991* (Cth) be amended:

(a) expressly to take into account circumstances where there has been, or there is a risk of, family violence, child abuse, neglect; and

(b) remove the requirement for the decision maker to be satisfied of 'a serious risk to the person's physical or mental well-being'?

(a) Yes, see also answer to Question 6-2 above.

(b) Yes, NLA supports the ALRC's preliminary view that the existence of family violence, abuse or neglect should be sufficient to allow a decision maker to find it is unreasonable for a person to live at home. It follows that if there is such violence, abuse or neglect there is a risk to the young person's well-being.

Proposal 6–6 DEEWR and Centrelink should review their policies, practices and training to ensure that, in cases of family violence, Youth Allowance, Disability Support Pension and Pensioner Education Supplement, applicants do not bear sole responsibility for providing specific information about:

(a) the financial circumstances of their parents; and

(b) the level of 'continuous support' available to them.

Supported. NLA agrees with the ALRC that Centrelink may be able to use the powers under ss192-195 of the *Social Security (Administration) Act* to collect the information referred to in (a) and (b). Centrelink and DEEWR may also be able to develop other strategies in collaboration with each other.

Chapter 7: Social Security—Proof of Identity, Residence and Activity Tests

Proposal 7–1 The *Guide to Social Security Law* should be amended expressly to include family violence as a reason for an indefinite exemption from the

requirement to provide a partner's tax file number.

Supported.

Question 7–2 Section 192 of the *Social Security (Administration) Act 1999* (Cth) confers certain information-gathering powers on the Secretary of FaHCSIA. In practice, is s 192 of the *Social Security (Administration) Act 1999* (Cth) invoked to require the production of tax file numbers or information for the purposes of proof of identity? If not, should s 192 be invoked in this manner in circumstances where a person fears for his or her safety?

Commission experience is that s192 of the *Social Security (Administration) Act 1999* is generally used by Centrelink officers to determine if a person is being paid the correct payment, at the correct rate and to determine if a debt should be raised. NLA is not aware of instances where it has been proactively used to assist customers to collect tax file numbers and other information relevant to proof of identity. S192 should be used in appropriate circumstances to assist people to obtain tax file numbers and proof of identity documents so they can receive social security payments. S192 should also be used whenever a person is experiencing ongoing difficulties obtaining these documents (eg due to homelessness), not just in circumstances where there is fear of violence.

Question 7–3 When a person does not have a current residential address, what processes are currently in place for processing social security applications?

Under social security law a residential address is not a requirement to obtain payments. A mailing address is usually all that is required. A residential address is only required if a person wishes to receive Rent Assistance.

Proposal 7–2 Proposal 20–3 proposes that the *Migration Regulations 1994* (Cth) be amended to allow holders of Prospective Marriage (Subclass 300) visas to move onto another temporary visa in circumstances of family violence. If such an amendment is made, the Minister of FaHCSIA should make a Determination including this visa as a 'specified subclass of visa' that:

- **meets the residence requirements for Special Benefit; and**
- **is exempted from the Newly Arrived Resident's Waiting Period for Special Benefit.**

NLA has some reservations about Proposal 20-3, see our response to Proposals 20-2 and 20-3. If such an amendment was made then we would support this proposal.

Proposal 7–3 The *Guide to Social Security Law* should be amended expressly to include family violence as an example of a 'substantial change in circumstances' for the Newly Arrived Resident's Waiting Period for Special Benefit for both sponsored and non-sponsored newly arrived residents.

Supported.

Proposal 7–4 Centrelink customer service advisers should receive consistent and regular training in the administration of the Job Seeker Classification Instrument including training in relation to:

- **the potential impact of family violence on a job seeker's capacity to work and barriers to employment, for the purposes of income support; and**
- **the availability of support services.**

Supported.

Proposal 7–5 The *Guide to Social Security Law* should expressly direct Centrelink customer service advisers to consider family violence when tailoring a job seeker's Employment Pathway Plan.

Supported.

Proposal 7–6 Exemptions from activity tests, participation requirements and Employment Pathway Plans are available for a maximum of 13 or 16 weeks. The ALRC has heard concerns that exemption periods granted to victims of family violence do not always reflect the nature of family violence. DEEWR should review exemption periods to ensure a flexible response for victims of family violence—both principal carers and those who are not principal carers.

Supported.

Proposal 7–7 The *Guide to Social Security Law* should expressly refer to family violence as a 'reasonable excuse' for the purposes of activity tests, participation requirements, Employment Pathway Plans and other administrative requirements.

Supported.

Chapter 8: Social Security—Payment Types and Methods, and Overpayment

Proposal 8–1 The *Social Security Act 1991* (Cth) establishes a seven day claim period for Crisis Payment. FaHCSIA should review the seven day claim period for Crisis Payment to ensure a flexible response for victims of family violence.

Supported.

Question 8–1 Crisis Payment is available to social security recipients or to those who have applied, and qualify, for social security payments. However, Special Benefit is available to those who are not receiving, or eligible to receive, social security payments. What reforms, if any, are needed to ensure that Special Benefit is accessible to victims of family violence who are otherwise ineligible for Crisis Payment?

The circumstances which would entitle a social security recipient to receive a crisis payment, should entitle special benefit payments to people not otherwise eligible for social security in appropriate circumstances.

Proposal 8–2 Crisis Payment for family violence currently turns on either the victim of family violence leaving the home or the person using family violence being removed from, or leaving, the home. The *Social Security Act 1991* (Cth) should be amended to provide Crisis Payment to any person who is 'subject to' or 'experiencing' family violence.

Supported, subject to the person being able to demonstrate that they are experiencing a "crisis" situation. Centrelink training and materials should include a non-exhaustive list of the sorts of situations which could meet the "crisis" requirement (ie which would include, but not be limited to, the current criteria re leaving/removal from home).

Proposal 8–3 The *Guide to Social Security Law* provides that an urgent payment of a person's social security payment may be made in 'exceptional and unforeseen' circumstances. As urgent payments may not be made because the family violence was 'foreseeable', the *Guide to Social Security Law* should be amended expressly to refer to family violence as a separate category of circumstance when urgent payments may be sought.

Supported.

Proposal 8–4 The *Guide to Social Security Law* should be amended to provide that urgent payments and advance payments may be made in circumstances of family violence in addition to Crisis Payment.

Supported.

Proposal 8–5 The *Guide to Social Security Law* should be amended to provide that, where a delegate is determining a person's 'capability to consent', the effect of family violence is also considered in relation to the person's capability.

Supported.

Question 8–2 When a person cannot afford to repay a social security debt, the amount of repayment may be negotiated with Centrelink. In what way, if any, should flexible arrangements for repayment of a social security debt for victims of family violence be improved? For example, should victims of family violence be able to suspend payment of their debt for a defined period of time?

Commission experience is that some flexibility in relation to arrangements for repayment is required. Situations encountered have included requirement for fortnightly payment (albeit reduced due to hardship) rather than suspension for a period of time and reduced repayments to be 'fixed' for 3 months before rising to the standard rate of recovery.

Proposal 8–6 Section 1237AAD of the *Social Security Act 1991* (Cth) provides that the Secretary of FaHCSIA may waive the right to recover a debt where special circumstances exist and the debtor or another person did not 'knowingly' make a false statement or 'knowingly' omit to comply with the *Social Security Act.* Section 1237AAD should be amended to provide that the Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that 'the debt did not result wholly or partly from the debtor or another person acting as an agent for the debtor'.

The amendment does not appear to be sufficient to allow for waiver of a debt where a person has been pressured by a violent partner to claim payments as a single person or not to declare income. In those cases the person has "knowingly" but not necessarily willingly made false statements to Centrelink. The amendment needs to address these situations.

Currently, the discretion available to the Secretary under section 1237AAD of the Social Security Act to waive social security debts in special circumstances requires that the Secretary be satisfied of the following:

"(a) the debt did not result wholly or partly from the debtor or another person knowingly;

(i) making a false statement or a false representation; or

(ii) failing or omitting to comply with a provision of this Act, the Administration Act or the 1947 Act; and

(b) there are special circumstances (other than financial hardship alone) that make it desirable to waive; and

(c) it is more appropriate to waive than to write off the debt or part of the debt."

We suggest that the following case studies illustrate the need for amendment alternative to that proposed.

Case Study 1

A is 42 and from Indonesia. She married R, an age pensioner in 2007 and relocated to Darwin where she lives with R in his public housing two bedroom flat. Her english and literacy skills are low, despite doing a settlement course at Charles Darwin University after she first arrived. A has few friends in Darwin and R doesn't allow her to call her family back home very often or catch up with friends. She is extremely isolated and lonely. The only person that A regularly spoke to was R, who she could converse with in Bahasa Indonesia.

After two years, R brought home some papers for A to sign. When she asked R what they were he told her they were papers to allow her to work in Australia and have a bank account. A signed where she was told to sign. She also went with R to the bank and to Centrelink for some meetings. No interpreters were used at these meetings. She had some idea about what Centrelink did from her settlement course but she did not feel she could question R further as that was not allowed.

After this, A soon started working as a cleaner at a school. She enjoyed this work and made some friends who included a good supervisor. R also became much happier for a while and gave her a little bit of money.

However after A had been working for 6 months a big fight broke out between her and R. R threw A against the wall breaking several of her ribs and he stomped on her left hand causing significant bruising. R threatened to send her back to Indonesia if she informed anyone. Nevertheless, A broke down and told her supervisor at work who in turn helped A to separate from R by taking her to a women's shelter and reporting the incident to police.

A's domestic violence worker took her to Centrelink to report her change in circumstances. A was shocked to learn that she had been claiming Newstart Allowance at the single rate for the past 6 months. A had no concept of what this meant but insisted that she had been married for the whole time. Centrelink had also not been aware that A was working. A significant social security debt was raised against A. A debt was also raised against R.

A sought a waiver of the debt under s 1237AAD of the Social Security Act. The basis for her waiver was special circumstances – given her limited literacy and english

skills, her exposure to domestic violence and her enforced isolation. This application failed repeatedly at several levels of review based on the 'any other person knowingly – that being R, making a false representation'. A was left with a significant social security debt which she continues to repay to this day. A also experienced trauma when she was informed that Cenrelink's Business Integrity Unit was considering referring her matter to the Commonwealth Director of Public Prosecutions (CDPP) for possible fraud related charges to be laid, a course which was ultimately and we would suggest appropriately not implemented.

Case Study 2

D is a 26 year old single mother to X (4) and R (3). She has been in receipt of Parenting Payment (single rate) since X's birth. Their father is currently in prison for multiple offences. D has been on the housing wait list for 3 years and is currently in private rental accommodation in Darwin. D met J and developed a relationship with him. At first J was good to her and her boys but he had a nasty streak and had pushed her around her house on one occasion. J started staying over at D's house, and proposed to her. After a time their leases were up and they decided to get a bigger more expensive house to live in. The rent for this property was $570 per week and for some reason, the lease was allowed to be only in D's name.

J changed very quickly. He had big mood swings and problems with his work. He got extremely angry when D wanted to change her Centrelink payment arrangements to the coupled rate. This was because his income was so high that it all but meant she would be getting no income. J told D that he would leave her if she took this action as he did not want to pay for her kids. He also told her that if they split up that he would kill himself. D felt trapped as she could not afford the rent on the new house alone. She also did not want to lose J and believed that he might suicide if they split up.

Over the following 18 months J became increasingly violent towards D. He hit her several times a fortnight then cried and threatened suicide if she ever left him. He was incredibly jealous of other men and constantly imagined that D was having affairs behind his back. J also threatened to dob her in to Centrelink if she ever did leave him. He told her that she would go to jail for fraud like her ex-partner.

Eventually, D left J with the help of a domestic violence support agency. J immediately retaliated by reporting the relationship to Centrelink. J had (almost) nothing to lose by this process as he had never signed any documents about the relationship. Until he gave his notice, Centrelink had no idea that he had anything at all to do with D.

D had a large social security debt raised against her and was referred by Centrelink to the CDPP. She also ended up having an Order for recovery of unpaid rent and damage on the rental house made against her at the Commissioner of Tenancies. D appealed the Social Security debt on the grounds of waiver due to special

circumstances. It was argued that whilst D did have knowledge that she was not complying with her reporting obligations and making false misrepresentations to Centrelink about her relationship status that she did so under duress. It was also argued that the elements of choice had been removed from her due to the blackmail that she experienced from J which did not allow her to leave her situation to thus reduce the debt and the personal danger that she would be in had she updated her details. None of these arguments were accepted on the strict interpretation of s 1237AAD.

Proposal 8–7 The *Guide to Social Security Law* should be amended expressly to refer to family violence as a 'special circumstance' for the purposes of s1237AAD of the *Social Security Act 1991* (Cth).

Supported. This may address the concern about circumstances where a person has been pressured by a violent partner to claim payments as a single person or not to declare income referred to in Proposal 8-6.

Part C—Child Support and Family Assistance

Chapter 9: Child Support—Frameworks, Assessment and Collection

Proposal 9–1 The *Child Support Guide* should be amended to include:

(a) the definition of family violence in Proposal 3–1; and

(b) the nature, features and dynamics of family violence including: while anyone may be a victim of family violence, or may use family violence, it is predominantly committed by men; it can occur in all sectors of society; it can involve exploitation of power imbalances; its incidence is underreported; and it has a detrimental impact on children.

In addition, the *Child Support Guide* should refer to the particular impact of family violence on: Indigenous peoples; those from a culturally and linguistically diverse background; those from the lesbian, gay, bisexual, trans and intersex communities; older persons; and people with disability.

Supported with the preferred definition to be that set out in our response to Proposal 3-1.

In relation to the suggestion of the Guide being amended to reflect the particular impact of family violence on certain groups, this would appear to contradict (b) above, and whilst agreeing with what we take to be the intention of the proposal, we suggest that further consideration to the words to be used is required. We suggest that in particular relevant factors are isolation and lack of access to help by reason of a range of barriers. Such barriers may be more likely to be experienced by some

people within these groups, and can compound the difficulties they might be experiencing as a result of family violence.

Proposal 9–2 The *Child Support Guide* should provide that the Child Support Agency should screen for family violence when a payee:

(a) requests or elects to end a child support assessment;

(b) elects to end Child Support Agency collection of child support and arrears; or

(c) requests that the Child Support Agency not commence, or terminate, enforcement action or departure prohibition orders.

CSA staff should be required to screen for family violence from the commencement of their interaction with all customers (see Response to Proposal 4-2), at times referred to in (a), (b), and (c) and periodically when there is contact with the customer.

Proposal 9–3 The *Child Support Guide* should provide that Child Support Agency staff refer to Centrelink social workers payees who have disclosed family violence, when the payee:

(a) requests or elects to end a child support assessment;

(b) elects to end Child Support Agency collection of child support and arrears; or

(c) requests that the Child Support Agency terminate, or not commence, enforcement action or departure prohibition orders.

Supported, however, in such circumstances customers should also be referred for legal advice to ensure that they are able to understand their options and make informed choices; including in relation to obtaining protective orders and other measures that may be appropriate in the particular circumstances.

Proposal 9–4 The *Child Support Guide* should provide that the Child Support Agency should contact a customer to screen for family violence prior to initiating significant action against the other party, including:

(a) departure determinations;

(b) court actions to recover child support debt; and

(c) departure prohibition orders.

Supported. See also response to Proposal 9-2. CSA staff should be required to screen for family violence from the commencement of their interaction with all customers (see Response to Proposal 4-2), at times referred to in (a) (b) and (c), and periodically when there is contact with the customer

Proposal 9–5 The *Child Support Guide* should provide that, when a customer has disclosed family violence, the Child Support Agency should consult with the customer and consider concerns regarding the risk of family violence, prior to initiating significant action against the other party, including:

(a) departure determinations;

(b) court actions to recover child support debt; and

(c) departure prohibition orders.

Supported, however, in such circumstances customers should also be referred for legal advice to ensure that they are able to understand their options and make informed choices, including in relation to obtaining protective orders and other measures that may be appropriate in the particular circumstances.

Proposal 9–6 The *Child Support Guide* should provide that the Child Support Agency should screen for family violence prior to requiring a payee to collect privately pursuant to s 38B of the *Child Support (Registration and Collection) Act 1988* (Cth).

Supported.

Chapter 10: Child Support—Agreements, Personal Information, Informal Carers

Question 10–1 Should the Child Support Agency ensure that notices of assessment pursuant to s 76 of the *Child Support (Assessment) Act 1989* (Cth) do not include parties' names?

We suggest that sufficient identifying information for meaningful communication about an assessment of child support is necessary. Provided that the "customer update and exchange of personal information" process is rigorously adhered to, then the issue would appear to be addressed. If identifying numbers/codes were to be included as an alternative to names, this might help minimise any risk of a new name being inadvertently included in correspondence.

Proposal 10–1 The *Child Support Guide* should provide that Child Support Agency forms or supporting documentation containing offensive material should be referred to a senior officer. The senior officer should determine whether to inform the other party of the offensive material and, where requested, provide it to the other party.

We have some concerns that the other party may need to know about offensive material as it might indicate escalating risk, and/or warrant a restraint order or be in breach of one.

We also note that communication of the offensive material may constitute an offence under communications legislation.

Officers making these determinations will need to be well trained including in relation to when the material would warrant a restraint order or constitute a breach of a restraint order.

Communications between the CSA and the other party should be such that the other party does not receive the material without being forewarned by the CSA. We are concerned that the other party is appropriately supported when they are provided with the information.

Proposal 10–2 The *Child Support Guide* should provide that, where a customer discloses family violence, he or she should be referred to a Centrelink social worker to discuss a Restricted Access Customer System classification.

Supported.

Question 10–2 Should the Child Support Agency provide a Restricted Access Customer System classification to a customer who has disclosed family violence:

(a) at the customer's request; or

(b) only on the recommendation of a Centrelink social worker?

NLA suggests option (b) following triage to identify safety risks and noting that the person who has experienced family violence may be best placed to understand the safety risk, and weight will need to be given to a request accordingly.

Implementation of the strategies proposed in Chapter 4 regarding the provision of information, screening, safety concern flags, information sharing, should be designed to optimise the potential to disclose family violence and that staff are able to make use of that information to make appropriate referrals to the Centrelink social worker.

Proposal 10–3 Where the Child Support Agency receives a threat against a customer's life, health or welfare by another party to the child support case, the *Child Support Guide* should provide that the Child Support Agency will:

(a) place a safety concern flag on the threatened customer's file; and

(b) refer the threatened person to a Centrelink social worker.

Supported, noting the Discussion Paper supports appropriate referrals by the Centrelink social worker.

Question 10–3 What reforms, if any, are necessary to improve the safety of victims of family violence who are child support payers?

The Discussion Paper refers to the Australian National University's 'Child Support Reform Study' noting the "small but growing group of female payers are most likely - at twice the level of other groups of payers and payees - to report a 'fearful' relationship with their former partners"[3] .

Further research into circumstances in which women have become the payers of child support appears warranted.

Following are some brief case studies which illustrate the problem.

Case Study 3

Two clients (female in the 18-25 age bracket) who have been paying Child Support to the other party for a number of years, and have no or little contact with their children due to a fear of the other party. On both occasions the other party took the child from the client and refused the client access. Neither woman wished to challenge this situation or Child Support Payments due to the risk of severe domestic violence. On one occasion the mother had gone back to the other party on the promise that she would gain access to her eldest child. During the parties "spend time with" visits, the mother became pregnant with the parties second child. The mother feared pursuing the other party for Child Support for the 2nd baby due to the risk of losing contact with the eldest child or becoming the victim of family violence once again. The client felt 'backed against a wall' as she was terrified of CSA contacting the other party for child support, and terrified that if she didn't pursue child support that she would not have enough Centrelink payments to live on, she feared the other party refusing her what little access she had to her eldest child and she feared the other party taking her youngest child. The client was referred to a Centrelink social worker for an exemption.

Case Study 4

Client is a woman with teenage children. In this instance the client advised that she left a domestic violence scenario when the children were very young. The father had not paid Child Support for many years and had accrued a $10,000 debt. When the CSA started putting pressure on him regarding the debt, the father became very proactive in 'grooming' the teenage children to live with him. The father denigrated and berated the mother and allowed the teenage children to do anything they liked and eventually convinced the children to live with him. The client's relationship with her children deteriorated, the teenagers became unruly and she felt that she was back in an abusive situation with her former partner. The client was in a quandary as, due to the age of the children, the Family Court would be unlikely to make orders

[3] At p. 336

re spending time with her and thus she went from being the sole carer for 15 years to never seeing her children. His debt was then offset by her child support liability.

We suggest that this is a very difficult area to address and that it is clearly a broader family law systems issue and not just a CSA concern. We would strongly suggest that early, effective screening for family violence issues and referral for legal advice as soon after separation as possible would assist to try and address the underlying issue of why care arrangements are being moved to the other party post separation.

We note that one commission has reported at least 3 intellectually disabled male clients who are paying Child Support for children they now don't believe are theirs. In each case, these male clients have spoken about being dominated by their former partners and admit to being victims of family violence. Two of these clients had short relationships with women and agreed to sign Child Support Statutory Declarations as they were overwhelmed when the CSA contacted them re paternity. One client was so concerned that he would get into trouble with CSA and his former partner's mother that he agreed to sign the statutory declaration. He did not realise at the time that if the other party was pregnant when he met her, that the child was not his.

The next proposals are presented as alternate options: Proposal 10–4 OR Proposals 10–5, 10–6 and Question 10–4

OPTION ONE: Proposal 10–4

Proposal 10–4 Section 7B(2)–(3) of the *Child Support (Assessment) Act 1989* (Cth) limits child support eligibility to parents and legal guardians, except in certain circumstances. The limitation on the child support eligibility of carers who are neither parents nor legal guardians in section 7B(2)–(3) of the *Child Support (Assessment) Act 1989* (Cth) should be repealed.

NLA prefers Option Two - see response to Proposal 10-5 below.

OPTION TWO: Proposals 10–5, 10–6 and 10–7, and Question 10–4

Proposal 10–5 The *Child Support (Assessment) Act 1989* (Cth) provides that, where a parent or legal guardian of a child does not consent to a person caring for that child, the person is ineligible for child support, unless the Registrar is satisfied of:

- **'extreme family breakdown'—s 7B(3)(a); or**
- **'serious risk to the child's physical or mental wellbeing from violence or sexual abuse' in the parent or legal guardian's home—s 7B(3)(b).**

Section 7B(3)(b) of the *Child Support (Assessment) Act 1989* (Cth) should be amended to:

(a) expressly take into account circumstances where there has been, or there is a risk of, family violence, child abuse and neglect; and
(b) remove the requirement for the Registrar to be satisfied of 'a serious risk to the child's physical or mental wellbeing'.

NLA supports this proposal.

The CSA should refer the parents/carers in such cases for legal advice to legal services which have family violence, family law and child support practices, such as the legal aid commissions, and in appropriate circumstances their local child protection authority.

Proposal 10–6 The *Child Support Guide* should provide that:
(a) where a person who is not a parent or legal guardian carer applies for child support; and
(b) a parent or legal guardian advises the Child Support Agency that he or she does not consent to the care arrangement; and
(c) it is alleged that it is unreasonable for a child to live with the parent or legal guardian concerned,

the following should occur:

(1) a Centrelink social worker should assess whether it is unreasonable for the child to live with the parent or legal guardian who does not consent, and make a recommendation; and
(2) a senior Child Support Agency officer should determine if it is unreasonable for the child to live with the parent or legal guardian who does not consent, giving consideration to the Centrelink social worker's recommendation.

In these circumstances as a third step, the parents and carers should be referred for legal advice in relation to both the child support and family law issues relating to the care arrangements for the child with a view to resolving these issues by consent or by a determination of the Court on all the evidence.

The role of the senior CSA officer should be limited to ensuring stability and financial support for the child while the dispute is determined.

Proposal 10–7 The *Child Support Guide* should include guidelines for assessment of circumstances in which it may be unreasonable for a child to live with a parent or legal guardian.

Supported in the context that it is an interim assessment and the parties are referred for legal advice.

Question 10–4 Should the *Child Support Guide* be amended to specify the Child Support Agency's response to an application for child support from a carer who is not a parent or legal guardian of the child, where:

(a) only one of the child's parents consents to the care arrangements; or
(b) neither of the child's parent consents to the care arrangements, and it is unreasonable for the child to live with one parent?

In practice, how does the Child Support Agency respond to an application for child support in these circumstances?

The *Child Support Guide* should be amended to specify the Child Support Agency's response to an application for child support from a carer in the circumstances described in both (a) and (b).

Chapter 11: Child Support and Family Assistance—Intersections and Alignments

Proposal 11–1 Exemption policy in relation to the requirement to take 'reasonable maintenance action' is included in the *Family Assistance Guide* and the *Child Support Guide*, and not in legislation. *A New Tax System (Family Assistance) Act 1999* (Cth) should be amended to 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 specified grounds, including family violence.

Supported.

Proposal 11–2 The *Family Assistance Guide* should be amended to provide additional information regarding:

(a) the duration, and process for determining the duration, of family violence exemptions from the 'reasonable maintenance action' requirement; and
(b) the exemption review process.

Supported.

It is important that the approach of the CSA and Centrelink in relation to exemptions be consistent, flexible and responsive to customer needs. Some customers will choose to access child support notwithstanding their experience of family violence, others will prefer to have an exemption until they feel safe with that exemption being periodically reviewed, and others will prefer a permanent exemption. In all of these circumstances there is a need to ensure that customers are able to make a fully informed decision with appropriate safety plans and supports in place.

Training for the staff of both agencies should promote consistency and flexibility with

shared training resources to be used where possible. There should also be regular communication between the agencies in relation to their application of exemption policy.

Proposal 11–3 The Centrelink e-Reference includes information and procedure regarding partial exemptions from the 'reasonable maintenance action' requirement. The *Family Assistance Guide* should be amended to make clear the availability of these partial exemptions.

Supported.

Chapter 12: Family Assistance

Proposal 12–1 The *Family Assistance Guide* should be amended to include:

(a) the definition of family violence in Proposal 3–1; and

(b) the nature, features and dynamics of family violence including: while anyone may be a victim of family violence, or may use family violence, it is predominantly committed by men; it can occur in all sectors of society; it can involve exploitation of power imbalances; its incidence is underreported; and it has a detrimental impact on children.

In addition, the *Family Assistance Guide* should refer to the particular impact of family violence on: Indigenous peoples; those from a culturally and linguistically diverse background; those from the lesbian, gay, bisexual, trans and intersex communities; older persons; and people with disability.

Supported with the preferred definition to be that set out in our response to Proposal 3-1.

Proposal 12–2 The *Family Assistance Guide* should be amended expressly to include 'family violence' as a reason for an indefinite exemption from the requirement to provide a partner's tax file number.

Supported

Proposal 12–3 In relation to Child Care Benefit for care provided by an approved child care service, the *Family Assistance Guide* should list family violence as an example of 'exceptional circumstances' for the purposes of:

(a) exceptions from the work/training/study test; and

(b) circumstances where more than 50 hours of weekly Child Care Benefit is available.

Supported

Proposal 12–4 *A New Tax System (Family Assistance) Act 1999* (Cth) provides that increases in weekly Child Care Benefit hours and higher rates of Child Care Benefit are payable when a child is at risk of 'serious abuse or neglect'. *A New Tax System (Family Assistance) Act 1999* (Cth) should be amended to omit the word 'serious', so that such increases to Child Care Benefit are payable when a child is at risk of abuse or neglect.

Supported.

Proposal 12–5 The *Family Assistance Guide* should be amended to provide definitions of abuse and neglect.

Supported. Please refer to our submission to the Inquiry by the Senate and Legal Constitutional Committee into the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. The definition of abuse should be common across Commonwealth jurisdictions.

Part D—Income Management

Chapter 13: Income Management—Social Security Law

Proposal 13–1 The *Social Security (Administration) Act 1999* (Cth) and the *Guide to Social Security Law* should be amended to ensure that a person or persons experiencing family violence are not subject to Compulsory Income Management.

Income management can add an extra layer of complexity for people who are already in very difficult circumstances by reason of experiencing family violence.

It appears that there is a lack of evidence based research as to the effectiveness of current income management schemes including their impact on people experiencing or attempting to escape/escaping from family violence. We therefore suggest that there is a need for independent evaluation of the impact of income management schemes including on people experiencing family violence, and in particular the consequences for their safety.

A Study by the Menzies School of Health Research found: "Income management independent of the government stimulus payment appears to have had no beneficial effect on tobacco and cigarette sales, soft drink or fruit and vegetable sales" [4.]

[4] Julie K Brimblecombe, Joseph McDonnell, Adam Barnes, Joanne Garnggulkpuy Dhurrkay, David P

This study raises questions that require independent analysis as to the benefits of all aspects of the income management scheme before further expansion, and to inform decision making as to its continuation in the locations in which it has already been implemented.

In the immediate short term it should be recognised that family violence alone and symptoms of that violence, should not warrant compulsory income management, including by way of the 'vulnerable welfare payment recipient' category being applied. Such recognition could facilitate some people who have experienced family violence to seek assistance and support from appropriate sources, such as Centrelink social workers, without the threat of being income managed by reason of vulnerability.

Exemption processes also need to be streamlined as a priority.

Where family violence exists in combination with factors which would might/do warrant income management, then the Cape York experience might be informative. The priority should be to identify all issues and the best response to those issues, which might then avert the need for income management. Whilst this approach would require front-end resourcing, it could also avert the need for resource intensive applications for exemption.

Some case studies follow:

Case Study 5

T is 33 years old. She lives in the suburbs of Darwin. She has four children under the age of 13, one of whom is still a baby. T is on parenting payment (at the partnered rate). T changed to the partnered rate of payments 14 months ago after she developed a relationship with M and he moved into her home. M also gets Newstart Allowance (partnered rate) after losing his job shortly before meeting T. He is the father of T's baby. He was not yet qualified for income management at the time of the events to be detailed. He is angry at T for making him lose half his Centrelink payments for being her 'de facto'. M has a short temper and had hit T on several occasions. Police had been involved with this couple due to DV related incidents on several occasions.

T was sent a letter by Centrelink in December 2010 informing her that she would soon be income managed because she was a 'Long Term Welfare Payment Recipient' (she had been receiving parenting payments for more than 12 months in the past 24 months) She was invited to apply for an exemption from the income management scheme in the letter. T became overwhelmed at the process associated with requesting an exemption. She was required to provide details of her financial circumstances and children's school attendance records. She became frightened and did not want to 'rock the boat' with Centrelink. T did not respond to

Thomas and Ross S Bailie, Impact of income management on store sales in the Northern Territory, MJA 2010; 192 (10): 549-554.

the letter and became auto-income managed 28 days later.

T went to the ATM one day to find that half her funds were missing. This caused her to panic and go to Centrelink. After a brief 10 minute interview at a Centrelink office, she was provided with a Basics Card with which she could buy groceries and petrol. She kept her Centapay deductions for her rent and recent fine repayments in place. This essentially meant that T had no access to any discretionary funds (cash). After the deductions there was only $2 going into her bank account each fortnight. She did not understand that she could organise her income managed funds in different ways.

T found life very difficult without any access to cash. She could not work to gain extra money because of the baby, who required constant care. M became increasingly angry at her requests for cash and refused them. One day T could not afford to provide $5 for her son's school excursion. She asked M for the money. He became very angry, assaulted and verbally abused her. He convinced her that she was 'quarantined' for being a bad mother. The fight was so bad that T had to call the police.

After this incident, M became increasingly violent towards T. He constantly belittled her for her lack of money and used the administration of small amounts of cash as a form of control over her. To try to break this cycle, T cancelled her Centapay deductions, leading her into rental arrears and jeopardising her housing.

It was not until T got legal advice about her rental arrears and potential eviction that she learned about the different options in place regarding her income managed funds. This did not occur until six months after she was placed on income management.

Case Study 6

R was a 24 year old woman born to an Aboriginal mother. R lived with her mum in a town camp in Central Australia. R had a three year old toddler (J) to N. R was on parenting payments and was compulsorily income managed under the 2007 Northern Territory Emergency Response measures. R and N had broken up when J was 11 months old.

N had become increasingly jealous of R and seriously physically assaulted her on several occasions. At one stage he hurt her so badly that she had to stay in hospital for three nights. He also stalked her and sent her extremely disturbing text messages from public payphones. Several complex court matters including breaches of Domestic Violence Orders, major indictable offences and Family Court matters resulted from N's actions. He was imprisoned as a result of the offences.

One day R's family members warned her that N was about to be released from prison. R decided that she needed leave the Northern Territory with J urgently as she was convinced that N would find her and kill her. A domestic violence support

agency worked to find R a place in a secure women's shelter in another State. So urgent was the matter that no consideration was given to the effect of moving interstate on her income managed social security benefits.

R arrived at her secure location and discovered that she could not use her Basics Card at the shops. It took several days of liaising with Centrelink to reverse her income management. R was frightened to tell Centrelink about her exact circumstances as she was still worried that N might find out what she had been saying.

The funds in her income management account were not automatically released, but paid out in instalments over several weeks. During that time R found it very difficult to buy her groceries and the other items needed to set up her new life. She felt significant shame when she tried to buy some new clothes from a shop and her Basics Card did not work. She couldn't buy phone credit to call her mother which was distressing for her. The workers at the shelter did not know anything about income management and couldn't assist her.

Proposal 13–2 In order to inform the development of a voluntary income management system, the Australian Government should commission an independent assessment of voluntary income management on people experiencing family violence, including the consideration of the Cape York Welfare Reform model of income management.

Supported.

Proposal 13–3 Based on the assessment of the Cape York Welfare Reform model of income management in Proposal 13–2, the Australian Government should amend the *Social Security (Administration) Act 1999* (Cth) and the *Guide to Social Security Law* to create a more flexible Voluntary Income Management model.

NLA would support a more flexible voluntary income management model.

Section 123UM(5)(b) of the Social Security Administration should be modified so as not to limit the number of occasions that a social security recipient can take up income management.

Question 13–2 In what other ways, if any, could Commonwealth social security law and practice be improved to better protect the safety of people experiencing family violence?

More community and service provider education, training and tools regarding family

violence and the operation of income management should be developed. Centrelink staff should be familiar with appropriate service providers to whom people can be referred to address the family violence and related issues.

Proposal 13–4 Priority needs, for the purposes of s 123TH of the *Social Security (Administration) Act 1999* (Cth) are goods and services that are not excluded for the welfare recipient to purchase. The definition of 'priority needs' in s 123TH and the *Guide to Social Security Law* should be amended to include travel or other crisis needs for people experiencing family violence.

Supported.

Part G—Migration

Chapter 20: Migration Law—Overarching Issues

Question 20–1 From 1 July 2011 the Migration Review Tribunal will lose the power to waive the review application fee in its totality for review applicants who are suffering severe financial hardship. In practice, will those experiencing family violence face difficulties in accessing merits review if they are required to pay a reduced application fee? If so, how could this be addressed?

The Commonwealth Attorney-General's Department is currently undertaking a review of changed fee arrangements. A copy of our submission to this review, which addresses the issue of the effect of the filing fee changes in relation to people experiencing family violence including in the migration context, is attached to this submission.

Proposal 20–1 The *Migration Regulations 1994* (Cth) should be amended to provide that the family violence exception applies to all secondary applicants for all onshore permanent visas. The family violence exception should apply:

(a) as a 'time of application' and a 'time of decision' criterion for visa subclasses where there is a pathway from temporary to permanent residence; and

(b) as a 'time of decision' criterion, in all other cases.

Supported.

Question 20–2 Given that a secondary visa applicant, who has applied for and been refused a protection visa, is barred by s 48A of the *Migration Act 1958* (Cth) from making a further protection visa application onshore:

(a) In practice, how is the ministerial discretion under s 48B—to waive the s

48A bar to making a further application for a protection visa onshore—working in relation to those who experience family violence?

(b) Should s 48A of the Migration Act 1958 (Cth) be amended to allow secondary visa applicants who are experiencing family violence, to make a further protection visa application onshore? If so, how?

Commission experience is that this situation arises very infrequently, however the amendment proposed in (b) is supported.

Case Study 7

A commission client from Afghanistan who was experiencing family violence relied on her husband's claim for a protection visa (as a dependant) in circumstances where she could have sought a protection visa in her own right as a refugee from Afghanistan. Her husband's application was refused which prevented her from being able to make a further application onshore in her own right without seeking the exercise of the Minister's discretion under s48A, such discretion being rarely exercised.

The next proposals are presented as alternate options: Proposal 20–2 OR Proposal 20–3

OPTION ONE: Proposal 20–2

Proposal 20–2 The *Migration Regulations 1994* (Cth) should be amended to allow a former or current Prospective Marriage (Subclass 300) visa holder to access the family violence exception when applying for a temporary partner visa in circumstances where he or she has not married the Australian sponsor.

Supported.

OPTION TWO: Proposal 20–3

Proposal 20–3 Holders of a Prospective Marriage (Subclass 300) visa who are victims of family violence but who have not married their Australian sponsor, should be allowed to apply for:

(a) a temporary visa, in order make arrangements to leave Australia; or

(b) a different class of visa.

NLA prefers Option One, because it appears to be a simpler response to the perceived problem.

Question 20–4 If Prospective Marriage (Subclass 300) visa holders are granted

access to the family violence exception, what amendments, if any, are necessary to the *Migration Regulations 1994* (Cth) to ensure the integrity of the visa system?

If Prospective Marriage visa holders are granted access to the family violence exception, then NLA suggests that the change be the subject of research to identify whether the integrity of the visa system has been adversely affected. Matters could be considered further at this point.

Question 20–5 Should the Prospective Marriage (Subclass 300) visa be abolished, and instead, allow persons who wish to enter Australia to marry an Australian sponsor to do so on a special class of visitor visa, similar to that in place in New Zealand?

See response to Proposal 20-2, and Question 20-4. An attractive feature of the NZ model might be considered to be the character requirement for the NZ partner, noting capacity for a "character waiver", and the concerns expressed by a number of organisations in relation to the usefulness of police records in relation to some individuals expressed in relation to the Australian system.

Question 20–6 Should the *Migration Act 1958* (Cth) and the *Migration Regulations 1994* (Cth) be amended to provide that sponsorship is a separate and reviewable criterion for the grant of partner visas?

In principle, yes. We refer to our submission to IP 37 and in particular the response to question 16.

Proposal 20–4 The Australian Government should ensure consistent and regular education and training in relation to the nature, features and dynamics of family violence, including its impact on victims, for visa decision makers, competent persons and independent experts, in the migration context.

Supported.

Proposal 20–5 The Australian Government should ensure that information about legal rights, family violence support services, and the family violence exception are provided to visa applicants prior to and upon arrival in Australia. Such information should be provided in a culturally appropriate and sensitive manner.

Supported.

Chapter 21: The Family Violence Exception—Evidentiary Requirements

Proposal 21–1 The Department of Immigration and Citizenship's *Procedures Advice Manual 3* should provide that, in considering judicially-determined claims, family violence orders made post-separation can be considered.

Supported.

Question 21–1 Where an application for a family violence protection order has been made, should the migration decision-making process be suspended until finalisation of the court process?

Yes, unless the delegate is satisfied that family violence has been established by way of non-judicially determined evidence.

Proposal 21–2 The requirement in reg 1.23 of the *Migration Regulations 1994* (Cth) that the violence or part of the violence must have occurred while the married or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator should be repealed.

Supported.

Question 21–2 If the requirement in reg 1.23 is not repealed, what other measures should be taken to improve the safety of victims of family violence, where the violence occurs after separation?

NLA supports the repeal of reg 1.23.

***The next proposals are presented as alternate options:* Proposal 21–3 OR Proposals 21–4 to 21–8**

OPTION ONE: Proposal 21–3

Proposal 21–3 The process for non-judicially determined claims of family violence in reg 1.25 the *Migration Regulations 1994* (Cth) should be replaced with an independent expert panel.

NLA supports Option Two.

OPTION TWO: Proposals 21–4 to 21–8

Proposal 21–4 The *Migration Regulations 1994* (Cth) should be amended to provide that competent persons should not be required to give an opinion as to who committed the family violence in their statutory declaration evidence.

Proposal 21–5 The *Migration Regulations 1994* (Cth) should be amended to provide that visa decision makers can seek further information from competent persons to correct minor errors or omissions in statutory declaration evidence.

Proposal 21–6 The *Migration Regulations 1994* (Cth) should be amended to provide that visa decision makers are required to provide reasons for referral to an independent expert.

Proposal 21–7 The *Migration Regulations 1994* (Cth) should be amended to require independent experts to give applicants statements of reasons for their decision.

Proposal 21–8 The *Migration Regulations 1994* (Cth) should be amended to provide for review of independent expert assessments.

Supported.

Chapter 22: Refugee Law

Proposal 22–1 The Minister for Immigration and Citizenship should issue a direction under s 499 of the *Migration Act 1958* (Cth) to visa decision makers to have regard to the Department of Immigration and Citizenship's *Procedures Advice Manual 3* Gender Guidelines when making refugee status assessments.

Supported.

Question 22–1 Under s 417 of the *Migration Act 1958* (Cth), the Minister for Immigration and Citizenship may substitute a decision for a decision of the Refugee Review Tribunal, if the Minister considers that it is in the public interest to do so. Does the ministerial intervention power under s 417 of the *Migration Act 1958* (Cth) provide sufficient protection for victims of family violence? If not, what improvements should be made?

Yes, NLA considers that the Ministerial guidelines are sufficiently flexible to take account of family violence. For example the guidelines refer to "*significant threat to your personal security, human rights or human dignity*" and "*Compassionate circumstances regarding your age and/or health and/or psychological state such that failure to recognise them would result in irreparable harm and continuing hardship to you*".

Conclusion

Thank you for the opportunity to comment on the Family Violence and Commonwealth Laws (DP 76 Summary).

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

Yours sincerely

Andrew Crockett
Chair