

28<sup>th</sup> April 2011

The Executive Director  
Australian Law Reform Commission  
GPO Box 3708  
SYDNEY NSW 2001  
[cwlth\\_family\\_violence@alrc.gov.au](mailto:cwlth_family_violence@alrc.gov.au)

Dear Executive Director,

**The Australian Law Reform Commission - Family Violence and Commonwealth Laws  
Issues Paper: Family Violence and Social Security**

The National Council of Single Mothers and Their Children Inc (NCSMC) are proud to present our submission and welcome this review.

**About us**

The National Council of Single Mothers and their Children has played a pivotal role since its conception in the early 1970`s. The council has become a platform whereby both community and government can communicate; it has lead the way in obtaining a range of beneficial outcomes for families; has actively sought to reduce systemic prejudice; continually challenges existing norms, and over many years has achieved improved opportunities and outcomes for single mothers and their children.

One of our greatest strengths is our expertise and commitment in working with and for the advancement of women and children due to poverty, violence, exclusion and gender inequality. NCSMC has advocated for equality of opportunity, financial security and access to justice, legal and human rights.

NCSMC would be available to provide oral evidence or offer any other information as requested.

Kind Regards,

*Terese Edwards*  
**Chief Executive Officer**

## Submission

### **Background**

The Australian Social Security system is a significant part in ensuring that Australia has a social justice approach and that there is safety net. This is of particular importance for victims and survivors of domestic violence and their children. To this end, the Social Security Act 1991 (Cth) and the Social Security (Administration) Act 1999) are important legislation and NCSMC welcomes improvements that will enrich and strengthen the legislation.

The financial circumstances of single mother led households and the increased risk of poverty and deprivation is well documented. The Social Policy Research Centre identified certain population groups that consistently face higher than average risk of poverty and stated that among family types, single people and lone parents were at the highest risk. ACOSS who completed research into deprivation and multiple deprivation stated that whilst 19% of the Australian population experienced multiple deprivation, sole parents face a much higher risk of multiple deprivation with 49% of all sole parents experiencing multiple deprivation. This level of deprivation was significantly higher for sole parents than any other family type.<sup>1</sup>

McInnes in her research found that single mothers' access to non-market income and assets after separation was extremely limited, however survivors of violence were likely to experience deeper, longer-term economic disadvantage than other single mothers and that the income support system was single mothers' primary source of non-market income. This in itself produces poverty and deprivation, and that single mother families face higher than average risks and contend with multiply deprivation. Furthermore, children residing in a households headed up by a mother are 25% to 30% more at risk of child poverty<sup>2</sup>. This paints a concerning picture as it is predicted that these figures will rise due as more single parent families are transitioned from Parent Payment Single (PPS) to Newstart allowance. It is estimated that 20,000 to 30,000 Australian families are now claimants of Newstart allowance which is the equivalent to \$34 per day.

---

<sup>1</sup> The Australian Council of Social Services, 8<sup>th</sup> December 2008, *Who is missing out? - Hardship among low income Australians*

<sup>2</sup> The Australian Council of social Services, December 2008. *Who is missing out? Hardship among low income Australians.*

McInnes also noted that child support; assets from the partnership and repartnering were the other non-market avenues for single mothers to gain access to financial resources. However, the data indicates that survivors of violence were less likely than other single mothers to access each of these avenues, thereby increasing their risks of financial disadvantage and that violent men were reluctant to divide assets and survivors were threatened out of making any claims. A perverse policy outcome is that the use of violence is an effective approach to avoid child support obligations and property division. Given that violence was the most common reason for separation amongst mothers in the sample (McInnes), single mothers' poverty after separation, can be attributed in part to the widespread successful use of violence by men to maintain ownership of property and income assets.

Violence was an effective strategy for men to gain economic advantages after separation by:

- Dissuading women from making claims for Child Support or seeking increased amounts;
- Dissuading women from making claims on property or to accept a reduced amount;
- Forcing women to accept debts in their name<sup>3</sup>.

It is within the context of gendered inequality that this submission contains one key recommendation for consideration along with responses to the stated questions.

### **Recommendation**

NCSMC believes that there is merit in the government investing in a specialist Domestic Violence Team. This team would respond and interact with a range of government services including the Child Support Agency the Family Assistance Office and possibly the government agencies which are soon to form one major Human Service organisation. This team would be the first point of contact for victims and or survivors of domestic violence. This team would assume a range of responsibilities that could include, but are not limited to, the following:

---

<sup>3</sup> McInnes, E., (2001), *'Public Policy and Private Lives: Single Mothers, Social Policy and Gendered Violence'*, Thesis Collection, Flinders University of SA.

- 
- Provide information regarding the support and services that are available within the nominated government agency and how to obtain them.
  - Act as a conduit between the victim / survivor and the government agency.
  
  - Organise exemptions and reviews.
  - Provide information regarding other support services such as legal and non-government organisations.
  - Be the contact and referral service for the government agencies.
  - Oversee information that is provided to the women from and to all government agencies.

This team would be specialist team with best practice screening tools and a professional ground and expertise in domestic violence. The team would have complaint mechanism and processes of review which are consistent with current government agencies.

## Response to Questions

**Question 1** Should the *Social Security Act 1991* (Cth) and/or the *Social Security (Administration) Act 1999* (Cth) be amended to insert a definition of ‘family violence’ consistent with that recommended by the ALRC/NSWLRC in *Family Violence—A National Legal Response* (ALRC Report 114)?

It is imperative that information and definitions of family violence are clearly articulated in legislation which would provide clarity and transparency. Furthermore, legislation is a foundation from which policy, practices, processes and culture are formed and implemented. NCMSC supports the definition as recommended by the *the Australian Law Reform Commission and NSW Law Reform Commission in Family Violence—A National Legal Response*

**Question 2** In what circumstances should Centrelink staff be required to inquire about the existence of family violence when dealing with Centrelink customers?

**Question 3** Should Centrelink application forms (including electronic forms), correspondence and telephone prompts directly seek information about family violence? For example, should a question about family violence be included on all forms?

**Question 4** Where family violence is disclosed or identified, do Centrelink staff notify victims effectively about eligibility criteria for payments and exemptions, including any corresponding exemptions and requirements for child support?

There should be

- (a) clear legible information provided to all Centrelink clients about domestic and family violence relating to (1) exemption from income support activity requirements arising from family and domestic violence (Section 502 C of the Social Security Act 1991) (2) Crisis payment eligibility (3) exemption from Maintenance Action Test arising from family and domestic violence.

The information needs to be easily located on the website, documents and is provided in a face-to-face meeting and

- (b) Information relating to domestic and family violence should also clearly describe any adverse consequences of disclosure of family violence such as becoming subject to involuntary income management. NCSMC is concerned that the application of involuntary income management to people who disclose domestic and family violence will deter many victims from disclosing, however victims must be given clear information of the consequences of disclosing before they disclose.
- (c) All interaction with Centrelink should include a routinized question about whether the person has any current concerns for their own safety or the safety of members of their household. If a person expresses a concern the Centrelink staff person should (1) ask if they would like them to notify any agency such as Police that they need help (2) offer to provide specific information about how family and domestic violence circumstances potentially affects their interaction with Centrelink and the Child Support Agency (3) offer to arrange appointments with a Centrelink social worker to arrange exemptions and other needs.

- (d) Along with periodic reviews, questions regarding domestic violence should be raised as violence can commence post-separation.

**Question 5** In what circumstances, if any, should information about family violence be shared between Centrelink and other government agencies, such as the Child Support Agency?

Information should only be shared between government agencies with the informed consent of the victim. It would be appropriate to determine whether child support is relevant and to offer to provide the information to the Child Support Agency on the client's behalf. A domestic violence team that works across both agencies as per our recommendation would address this matter

Government agencies need to ensure that forms that go between parents ie the perpetrator and victim, that they do not contain personal or indentifying information.

**Question 6** How does Centrelink collect information about family violence when it is identified?

The experiences of women who contact NCSMC confirm that agency staff displays a high level of scepticism and discounting of family violence. Best practice responses to domestic and family violence are to accept the disclosure of the victim as the primary record of what is occurring. The standard agency response is to demand 'proof' otherwise they would not be believed. Disbelief of victim disclosure prohibits access to the support that they would be eligible to have received.

**Question 7** Are Centrelink staff and social workers able to access information about persons who have identified themselves as a victim of family violence as to whether they have obtained a protection order or similar? Should Centrelink staff and social workers be able to access the national register recommended in *Family Violence—A National Legal Response*, Report 114 (2010)?

Where a person has obtained a protection order, and it is recorded on a national register, Centrelink staff should be able to access those details with the informed consent of the victim.

**Question 8** In practice, is the possibility of family violence considered by Centrelink staff before deciding to interview a partner or a parent?

Absolutely not.

**Question 9** When contact with a partner or a parent is not appropriate due to the possibility of family violence, on what information should family violence be assessed?

Given the *private* and *secret* nature of domestic the best source of information about family and domestic violence is from the victim. Additionally, there is no evidence to

suggest that family and domestic violence fraud is a widespread and therefore Centrelink should accept the victim's account of violence against them.

**Question 10** Are Centrelink customers aware that Centrelink may decide not to contact partners or parents if the customer is a victim of family violence?

Centrelink customers are routinely given no, limited or differing information about domestic and family violence or what may occur if there is disclosure and subsequent exemption

**Question 11** In practice, do decision makers adequately consider the existence of family violence when making determinations about eligibility criteria or exemptions for certain social security payments?

No. There is no evidence of any routinized attention to domestic or family violence and that pertinent information is accessible

**Question 12** Should the criteria in s 4 of *Social Security Act 1991* (Cth) for determining whether a person is a 'member of a couple' be amended clearly to take into account the existence and effect of family violence?

Yes.

**Question 13** Should further guidance be provided in the *Guide to Social Security Law* about the implications of family violence under the criteria in s 4 of the *Social Security Act 1991* (Cth)?

Yes.

**Question 14** In practice, is family violence adequately considered in determining separation under one roof? If not, how should family violence be taken into consideration?

If violence is considered at all, wrong assumptions may be applied as per question 11. The clearest guide to the existence and scope of violence is the victim. The victim's account should be accepted in the absence of contradiction. It is important to note that violence can commence post separation. Therefore, not having previously identified violence should not be met with suspicion or disbelief when it is disclosed at a later time.

**Question 15** When contact with a partner is not appropriate due to family violence, how should family violence be assessed?

The victim's account is the best guide to what has been occurring. Family violence should be assessed on the victim's disclosures and on the accounts of service providers or witnesses nominated by the victim.

**Question 16** In practice, is family violence adequately taken into consideration in the exercise of the discretion under s 24 of the *Social Security Act* not to treat a person as a member of a couple?

No. This should be made explicit.

**Question 17** Should the 'special reason' discretion in s 24 of the *Social Security Act* be amended expressly to require the existence and effects of family violence to be taken into account? Would this amendment be required if s 4 is amended in this way?

Yes. Make it explicit in both sections.

**Question 18** What, if any, further guidance should be provided in the *Guide to Social Security Law* in relation to exercising the discretion under s 24 to take into account the existence and effect of family violence?

The decision-maker should have direction to give safety the highest value in competing considerations and to directly take account of the victim's specific circumstances and expressed needs.

**Question 19** In what ways might access to Youth Allowance, Disability Support Pension and Pensioner Education Supplement be improved for victims who have left their home because of family violence? For example, does the criterion for a person to be considered 'independent' adequately take into account the existence of family violence? Should family violence be expressly referred to in this context?

Yes family violence and child abuse should both be specifically named in the context of family breakdown.

**Question 20** In practice, is the possibility of family violence considered by Centrelink staff before deciding to contact a parent?

The Centrelink staff response is highly variable depending on whether the staff member carries a belief that young people make up family conflict to rot the system. There is no systemic approach which adds merit to the NCSMC proposal of a specialist domestic violence team.

**Question 21** When contact with a young person's parent is not appropriate, due to the possibility of family violence, how should claims about family violence be assessed?

The victim's account always provides the best guide to what has occurred. The victim may be able to nominate witnesses or corroborating records, however their statements and disclosures about their circumstances need to be accepted at face value.

**Question 22** In what ways, if any, should the *Guide to Social Security Law* be amended in relation to the 'continuous support' criteria to improve the safety of victims of family violence? For example, should specific provisions be made for victims of family violence who need to supply asset and income details from a parent?

It is unreasonable and unfair for young people to provide details of their parents' asset and income details as these can only be accessed with the consent of the parent. The young person cannot independently verify their parents' information and yet they will be financially responsible for any discrepancy. The system should ordinarily inform the parents that a claim has been made and that they will need to provide income and assets information to support that claim. Young people subject to parental violence or abuse should be deemed independent. The term 'continuous

support' should be qualified as 'continuous financial support exceeding the weekly payment rate'.

**Question 23** Should the requirement of parental consent for a person under 18 years of age to be paid directly be waived for victims who have left home because of family violence?

Yes.

**Question 24** Do the provisions regarding the requirement for original proof of identity documents and tax file numbers create barriers for victims of family violence? Should further measures be put in place to ensure that victims of family violence who have had to leave their homes because of family violence are not required to return to the home or have contact with an abusive family member?

Yes they do create barriers where people have had to abandon possessions or their possession are withheld or destroyed. Access to duplicate copies of documents should be available for family violence victims to enable them to replace their documentation more easily. Where a person may experience difficulties due to language, culture, health, literacy, income, location, computer access to replace proof of identity documents, Centrelink should be required to actively facilitate that process.

**Question 25** What reforms, if any, should be considered in relation to the qualifying residence periods or newly arrived residents' waiting period, for victims of family violence? For example:

(a) is the 10 year waiting period for the Age Pension and the Disability Support Pension unreasonable or impractical for victims of family violence; and

(b) should the *Social Security Act 1991* (Cth) be amended so that there is an exemption from waiting periods for newly arrived residents for victims of family violence?

Family violence isolates victims from their networks and community. Where the victim is an immigrant she has often left her own country of origin. Where the perpetrator is also an immigrant, he is also isolated from familial constraints and supports in his country of origin. This can intensify family violence in the new country. In a minority immigrant community there are also consequences for disclosing violence. Male violence towards women may be culturally expected or tolerated (much as it is in Australia), so disclosing violence and separation can mean cultural isolation and community exclusion for the victim. Where the woman victim is an immigrant and her partner is an Australian resident who uses violence, disclosure of violence and loss of relationship can also result in loss of residency. NCSMC also questions the impact of services provided through a faith based agency when the victim may not identify or strongly oppose that faith.

Waiting periods for social security payments should be waived for newly arrived residents who are victims of family violence.

**Question 26** What measures, if any, might be taken to address any difficulties faced by victims of family violence when they must comply with activity and participation tests,

Employment Pathway Plans and/or administrative requirements? For example, are the current exemption periods reasonable for victims of family violence?

Training of Centrelink staff is imperative along with a cultural shift in attitudes towards victims of domestic and family violence. NCSMC supports the statement presented in the WEAVE submission... as below

Compliance with Centrelink activity tests can be onerous for victims who are trying to find housing, shift their children's schooling and care, liaise with family lawyers, criminal lawyers and DV proceedings, manage ongoing violence and abuse, cope with health impacts on themselves and their children and friends and family.

The protective provisions which currently exist are often ignored by Centrelink staff. Section 502c of the Social Security Act is rarely applied with most Centrelink responses opting to refer victims for Job Capacity Assessments. Sometimes victims are given a 'special circumstances' exemption of a couple of weeks and told to see a doctor and get anti-depressants – not the 16 week exemption available under 502C.

**Question 27** In practice, are Centrelink customers aware of the exemptions—including 'reasonable excuse'—available in circumstances of family violence? If so, are victims of family violence likely to use the exemptions?

Centrelink clients do make informed choices about provisions to help them in circumstances of domestic violence. The government's Participation Review Taskforce report of August 2008 recommended that clients be given more information about their rights and protections in circumstances of violence. However, this is still to occur.

**Question 28** Should the *Social Security Act 1991* (Cth) be amended expressly to provide for waiver of debt in situations where a person is subject to duress, undue influence or economic abuse? What processes should be in place to determine whether such circumstances exist?

Yes. If a person claims they were a victim of violence in circumstances giving rise to a debt there should be a waiver. Furthermore, if the continued actions of an ex-partner results in a non-lodgement debt this should also be waiver

**Question 29** Should social security law or practice be amended in relation to nominee arrangements to minimise the potential for financial abuse by people holding nominee authority? For example, should the *Social Security Act 1991* (Cth) be amended to recognise other legal authorities of a person nominated by the social security recipient, such as under powers of attorney or enduring guardianship?

The process for granting nominee authority needs to verify the informed consent of the payee where possible. Where another person has power of attorney or enduring guardianship they should be informed of the nominee arrangement. NCSMC suggest that the inquiry seek the view of Women with Disability Australia given an increased risk of financial exploitation.

**Question 30** In what ways, if any, can information about and access to Crisis Payment be improved for victims of family violence? For example, should Crisis Payment be 'wrapped up' with Special Benefit?

Information is not provided to victims of violence about the types of assistance available to them, the eligibility criteria and how to access these. This signals the

need for training and a change in culture. Crisis Payment should not be wrapped up in Special Benefit and it should be widely promulgated and accessible to victims. The coexistence of poverty and violence is a matter that we need to overcome and it would be assisted if the current options are known and accessed.

**Question 31** Should Crisis Payment be available to those who are otherwise ineligible for a social security pension or benefit but due to extreme circumstances of family violence are placed in financial hardship?

Yes.

**Question 32** Do claim periods and eligibility criteria for Crisis Payments adequately reflect the breadth and nature of family violence?

No. The impacts of domestic violence can be long term as identified by Ilsa Evans in her research 'Battlescars' (2007). Residence requirements, periods since the violence occurred and limits on the number of claims can work to exclude victims from getting help. NCSMC would like the payment to better reflect the economic cost of domestic violence

**Question 33** What evidence is, or should, be necessary to determine whether family violence amounts to an extreme circumstance for the purpose of Crisis Payment?

Family violence should be accepted as an extreme circumstance. The victim's statements and disclosures of violence should be the face value account on which to base assessment.

**Question 34** Do the provisions for Rent Assistance in the *Social Security Act 1991* (Cth) adequately address the situation where a person using family violence defaults on mortgage repayments on the house in which the victim is living? Should the definition of 'rent' in s 13(2) of the *Social Security Act 1991* (Cth) expressly include mortgage repayments where family violence is an issue?

Yes. Victims should be able to receive rent assistance when the perpetrator defaults on mortgage payments on the house in which the victim is living and this needs to be legally documented to reduce the perpetrator's equity in the home. Another problem for victims arises when they are excluded from the home they jointly own with the perpetrator and are deemed ineligible therefore for rent assistance (and legal aid).

Formal policies and strategies that reduce the prospect of homeless should be explored as part, or in addition to this iniquity.

**Question 35** In practice, are Centrelink customers aware of, and do Centrelink customers make use of, the option to have their payments made weekly? In practice, if requested, are victims of family violence provided with weekly payments?

Information about weekly payments is not widely publicized and few victims report using this option. Key is the victims knowledge that it exists that it is of a level that provides financial relief

**Question 36** Should victims of family violence who are receiving weekly payments be eligible to receive Crisis Payment?

Yes. There is an absence of understanding the economic cost of violence upon a dictum but the coexistence of violence and poverty is well documented.

**Question 37** Should family violence be an example of 'exceptional and unforeseen circumstances' in the *Guide to Social Security Law* when considering whether to make an urgent payment? Are the current payment arrangements—such as weekly payments—available to victims of family violence sufficient?

Yes, family violence should be an example of exceptional and unforeseen circumstances. Urgent payments should be disbursed as needed.

**Question 38** Should family violence be included as an indicator of vulnerability for the purposes of administering the 'vulnerable welfare payment recipients' income management provisions?

Family violence should not be a trigger for compulsory income management. It would inhibit victims' disclosures of violence and constrain them taking action to protect themselves. Income Management should only ever be a financial management tool and accessed on a voluntary basis.

**Question 39** If so, what definition of family violence should apply? What additional decision-making principles or guidelines may be desirable—in particular, taking into account that a person may be a victim or person using family violence (or both)?

Income management should be a voluntary to assist people to manage their income when it is found useful and it should not be difficult to discontinue

**Question 40** Should the income management regime include provision for people experiencing family violence to be exempted from income management in specified circumstances, where to do so would assist them to take steps to prevent or reduce violence?

People experiencing family violence should not be subjected to involuntary income management.

**Question 41** What changes could be made to law or practice relating to the administration of income management accounts to assist welfare recipients who are victims of



family violence? For example, are there alternatives to stored value cards that might provide additional flexibility or portability, such as food stamps or a streamlined access to cash in periods of crisis?

Compulsory Income management is not evidenced base and quarantining amounts of an insufficient income does not respond to structural and systemic issues. NCSMC contends that the amount that it cost to administer income management would be better served by 'gifting' the amount to victims of domestic violence.

**Question 41** Should travel or other crisis needs, where a person needs to escape family violence, be included in the definition of 'priority needs' for the purposes of the income management regime?

Yes, Australians should be able to move where ever they need to be without having to ask the government for permission or find that they are in a state that does not recognise a 'basic card'

**Question 43** Should voluntary income management of people experiencing family violence be adopted more broadly and, if so, how should this done? For example, what amendments to the compulsory income management provisions would be required?

Voluntary income management is an acceptable tool and one that arrives with dignity and choice.

**Question 44** Is there any evidence that income management has improved the safety of people experiencing family violence?

There are some women who have been subject to income management and have complained that it reduces their choices about spending, forces them to spend money in particular shops which are expensive and far away, prevents them travelling as needed, stigmatizes them and makes them feel ashamed. Victims have also stated that they are scared to disclose violence in case it affects their payments.

Conversely, NCSMC respects the views of women who have found benefit in income management but would like to explore what were the alternative options and support services available to them. It is highly possible that they were limited or non-existent.

**Question 45** Are there any other ways in which Commonwealth social security law and practice could be improved to better protect the safety of people experiencing family violence?

- A specialist domestic violence team which works across government agencies
- An ongoing process of review to identify unintended outcomes and or areas where the Commonwealth social security law fails to protect the safety of people experiencing family violence.



▪ A greater awareness and training of the gendered nature of family violence