Submission

to the
Australian Law Reform Commission

Family Violence and ‘Social Security’– Issues Paper 39

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1. **National Children’s and Youth Law Centre**

1.1. The National Children’s and Youth Law Centre (“NCYLC” or “Centre”) is the only Australian national community legal centre for children and young people. NCYLC promotes the rights and interests of Australian children and young people through advocacy, information and education. Since its inception in 1993, NCYLC has made over 180 public submissions on law and policy affecting children and young people and handled over 150,000 inquiries. NCYLC seeks to increase access by children and young people to legal assistance and to improve the legal status of children and young people in Australia.

1.2. NCYLC provides information and advice to children and young people through the following services:

   a) *Lawstuff* ([www.lawstuff.org.au](http://www.lawstuff.org.au)) - a website that provides general legal information and referral options on a wide range of issues relevant to children and young people;

   b) *LawMail* ([www.lawstuff.org.au/lawstuff/lawmail](http://www.lawstuff.org.au/lawstuff/lawmail)) – a confidential legal advice and information service that allows children under the age of 18 years from all over Australia to seek legal advice, referrals and information via email; and


2. **Executive Summary**

2.1. NCYLC welcomes the opportunity to comment on the Australian Law Reform Commission’s review of Family Violence and Commonwealth Laws, specifically on Issues Paper 39 ‘Social Security’ (the *Issues Paper*).

2.2. In providing our comments, we take a child rights-based approach. This reflects the understanding that children are the holders of human rights – including not only basic survival and development rights and the special rights associated with protection from
harm, but also rights of participation including the right to be consulted and heard on issues affecting them.\(^1\)

2.3. Every child has a right to benefit from social security,\(^2\) the right to an adequate standard of living\(^3\) and importantly the right to freedom from all forms of violence.\(^4\) There are currently barriers in Australia’s social security framework that hinder children and young people from realising these rights, especially those who are experiencing family violence.

2.4.NCYLC is concerned that the current social security system does not adequately ensure that young people who are victims of family violence are able to financially support themselves, allowing them to leave the violent home.

2.5.NCYLC strongly submits that the Australian social security laws need to be amended to ensure young people who are experiencing family violence are able to adequately financially support themselves so they do not need to return to the violent environment. This requires the removal of barriers in legislation, policy and in practice, along with improved training of frontline Centrelink staff to ensure that children and young people experiencing family violence are aware of the social security payments available and are able to access them.

2.6.NCYLC invites the Australian Law Reform Commission to consider the recommendations made by it in the “Seen and Heard” Report.\(^5\)

2.7.NCYLC refers the Australian Law Reform Commission to the recommendations made by the United Nations Committee on the Rights of the Child in its ‘Concluding Observations’ and submits that the recommendations made in regard to data collection and working in collaboration with other government agencies be reviewed and implemented into the Australian social security system.\(^6\)

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\(^1\) CROC, Articles 6 and 12. This Convention has been almost universally ratified. The Australian Law Reform Commission notes: “Given the diversity of its States Parties and breadth of coverage, CROC is clear evidence of customary international norms regarding the rights and responsibilities of children. While CROC is not incorporated in its entirety into the domestic law of Australia, it is a strong statement of Australia’s commitment to children’s rights and their participation in the legal process.” Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, Report No 84, *Seen and Heard: Priority for Children in the Legal Process*, Sydney, 1997, at [1.29].

\(^2\) CROC, Article 26.

\(^3\) CROC, Article 27.

\(^4\) CROC, Article 19.


2.8. **Recommendation**: The Social Security Act is reviewed and amended in respect of the test to establish independence in situations of family violence and that Centrelink officers are comprehensively trained in how to interview children and young people who are from situations of family violence.


2.10. **Recommendation**: Legislation, policy and Centrelink procedures are amended to adequately screen for family violence and not rely on young people to self-disclose family violence.

2.11. **Recommendation**: Centrelink should seek independent verification of the family violence instead of contacting the young persons’ parents/family.

2.12. **Recommendation**: The onus is not placed on a young person to obtain details of a parent’s income or assets if they are not residing with that parent.

2.13. **Recommendation**: The requirement of parental consent for a person under the age of 18 years to be paid their allowance directly is waived for victims of family violence.

2.14. **Recommendation**: Centrelink staff should ensure that victims of family violence are aware that there are alternative means available to prove their identity.

2.15. **Recommendation**: The social security system is amended to improve the application process for young people, especially those experiencing family violence, by simplification of the process, improved training of frontline Centrelink staff and increased support.

3. **Child rights-based approach**

3.1. NCYLC believes that universally accepted human rights standards provide a clear normative framework to assess laws and policies with respect to children and young people. The Convention provides a universally accepted rights-based framework for addressing the treatment of children. The Convention has been adopted and ratified

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by Australia⁸ and is now the most widely ratified international instrument. Rights contained in the Convention are interdependent and indivisible.⁹

3.2. The rights enshrined in the Convention should be used as the foundation and benchmark for considering issues raised by the Issues Paper and improving the current social security system. The relevant rights and provisions in the Convention include:

a) all policies and law are made with the best interests of the child being the primary consideration in all actions concerning the child (Article 3);

b) the right of every child to benefit from social security and for Australia to take the necessary measures to achieve the full realisation of this right (Article 26);

c) the right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development (Article 27);

d) the right to freedom from all forms of violence (Article 19);

e) the right to information and education (Article 17, 28 and 29);

f) the right to be heard and to express views in decisions (Article 12); and

g) the right not to be discriminated against (Article 2).

3.3. Assessing proposed policies and law that affect children from a rights-based perspective is not a novel idea.¹⁰ Involving human rights considerations in legislative and policy evaluation processes is increasingly common since the former UN Secretary General Kofi Annan’s directive in 1997,¹¹ which called for governments to uphold human rights regardless of their political, economic, social or cultural systems and notwithstanding their economic and social situation.¹²

3.4. Recognising and providing effective support for the rights of children and young people in dealing with the issues of family violence and social security will assist the Australian Government in meeting its obligations under the Convention.

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⁸ 17 December 1990.
¹⁰ See e.g. J Tobin, above n 5.
4. What children tell us

4.1. Through the Centre’s LawMail service (see para 1.2), we have observed that children are concerned about the issues surrounding family violence and youth allowance. The following are examples of queries received by the Centre:

“I am currently living at my nan’s house because I hate living at home. My parents and brother and sister mentally and emotionally abuse me and I can’t stand it. I have been living at my nana’s house since November last year. I would like to know where I stand legally and am I eligible to be paid a student allowance or something like that?” – 15 year old female, QLD.

“Hi, I need some advice, my parents split up when I was 5 yrs old which for me was hard. From about the age of 15 I have been getting abused from both parents and I guess I am sick of it. I want to know when can I leave home? My father is one of those people that has a very bad temper if I was to leave he would find out then try and find me and physical force me into the car and drive me home where I would get screamed at and no doubt things thrown at me. So I need all the information you can give me to ensure I do not have to get into that car and so that I can have the right facts.” 16 year old female, WA.

“If a child my age (fourteen) is getting abused by family (parents, siblings) is it legal to get a separation from them? Everyday I deal with swearing, hitting, ignoring, and my mother neglects me to go to the club almost everyday (Monday, Wednesday, Friday, Saturday, Sunday) and I even get stuff thrown at me, and I get threatened to be killed by knife, my mother and sister have tried to several times and I am really scared of them, what can I do?” 15 year old male, VIC.

“I’m 16 years old, and my mum used to ‘smack me’, and sometimes threw things. She hasn’t done this for close to a year, but I’m always really scared she will if I do something wrong. She’s always yelling at me, and it makes me feel terrible. I’m also struggling with depression and my mum just makes it worse. I want to move in with my close friend, whose 18 and has a job. Am I allowed to? I’m currently getting youth allowance and have heard of other benefits such as living away from home allowance, but my youth allowance goes into my mums bank, and she gives it to me whenever I want it, so how do I transfer it to my bank account? I really want to move out because I’m struggling with school because I’m always either too stressed or depressed. Please help.” 17 year old male, NSW.
5. **Family Violence and Independence**

5.1. As outlined at paragraph 60 of the Issues Paper, whether a person is ‘independent’ affects his or her eligibility for Youth Allowance and the rate of payment. It also determines whether the young person is paid the social security payment directly to their own bank account, rather than it being paid to a parent.

5.2. One determinant of independence is when it is unreasonable for the person to live at home because of extreme family breakdown or other similar exceptional circumstances or because it would be unreasonable to expect the person to do so as there would be a serious risk to his or her physical or mental well-being due to violence, sexual abuse or other similar [exceptional or unreasonable] circumstances.\(^{13}\)

5.3. NCYLC submits that the test of independence in extreme family breakdowns should be reviewed to accommodate situations where the child’s parents refuse to allow the child to live at home. Currently, the *Guide to Social Security* states that “if parents refuse to allow the young person to live at home, this does not constitute ‘extreme family breakdown’ unless there is evidence of extreme and enduring family conflict.”\(^{14}\) It is submitted that the test in relation to ‘extreme family breakdown’ should not be of such a high threshold.

5.4. **Recommendation:** *The Social Security Act is reviewed and amended in respect of the test to establish independence in situations of family violence and that Centrelink officers are comprehensively trained in how to interview children and young people who are from situations of family violence.*

6. **Definition of Family violence (Question 1)**

6.1. For the reasons outlined in paragraphs 20 and 21 of the Issues Paper, NCYLC is in support of amending the *Social Security Act* and the *Social Security (Administration) Act* to insert a definition of Family Violence that is consistent with the definition recommended by the Australian Law Reform Commission and NSW Law Reform Commission in *Family Violence – A National Legal Response* (ALRC Report 114).\(^{15}\)

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\(^{13}\) *Social Security Act 1991* (Cth) ss 1067A(9), 1061PL; Issues Paper 39 at paragraph 60.


\(^{15}\) As outlined at paragraph 19 of the Issues Paper.
6.2. NCYLC agrees that the definition of family violence should be consistent across all Commonwealth laws. This would ensure victims of family violence are recognised and treated consistently across the Commonwealth jurisdiction.

6.3. **Recommendation:** *The Social Security Act and the Social Security (Administration) Act be amended to include a definition of Family Violence consistent with the definition recommended by the Australian Law Reform Commission and NSW Law Reform Commission in Family Violence – A National Legal Response (ALRC Report 114).*

7. **Need to screen for Family Violence (Question 2 and 3)**

7.1. Young people experiencing family violence need to be made aware of the social security payments for which they are eligible. If they are not aware that they are able to financially support themselves then young people may be forced to stay in the violent home, or become homeless.

7.2. The Issues Paper indicates that Centrelink currently fails to screen for family violence, requiring young people to self-disclose.

7.3. From NCYLC's experience with young people we know they may not be confident to classify what they are experiencing as ‘family violence’ and therefore they may not self-disclose. The processes Centrelink uses should be improved to allow young people to detail their circumstances when commencing the application process to allow for screening of family violence. This could include application form, correspondence and telephone prompts to encourage disclosure of family violence.

7.4. NCYLC agrees that 'it is important that Centrelink staff be trained to identify people who are experiencing family violence so that they can inform them about payments available to them.'

7.5. **Recommendation:** *Legislation, policy and Centrelink procedures are amended to adequately screen for family violence and not rely on young people to self-disclose family violence.*

8. **Family Violence, Parents and Youth Allowance – Contacting parents (Question 21)**

8.1. In practice, it can be very difficult to definitively establish that there was violence in the home. The test of independence subjects the family situation to an assessment based

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16 Issues Paper 39 at paragraph 25.
on a list of criteria which Centrelink needs to verify to determine the merits of the case. This generally involves some contact with the parents to substantiate a claim for eligibility by the young person. This is an unfortunate obstacle faced by young people experiencing family violence. For instance, homeless young people often wish to have no contact with their family and will often forego the allowance rather than risk having their family contacted.

8.2. In light of the nature of family violence, NCYLC submits it is inappropriate for Centrelink to approach parents/families to verify family violence claims. This may inflame the situation and place the young person at greater risk or alternatively may prevent the young person from seeking help. Further, NCYLC submits that verification of family violence by a perpetrator of the violence is not an accurate means of satisfying the test. Independent verification should instead be sought from teachers, counsellors, or from an interview conducted with the applicant and a relevantly trained professional.

8.3. NCYLC strongly submits that Centrelink should review and revise its protocols in relation to contacting parents of children who disclose family violence. Reference should be made to the ‘best-interests’ of the child. This principle should be adopted in policy review as well as in the practical application by Centrelink staff.\(^1\)

8.4. **Recommendation:** Centrelink should seek independent verification of the family violence instead of contacting the young persons’ parents/family.

9. **Family Violence, Parents and Youth Allowance - Continuous Support Criteria (Question 22)**

9.1. As outlined at paragraph 34 of the Issues Paper, to be considered ‘independent’, the young person must not be in receipt of ‘continuous support’ from a parent, guardian or income support (other than a social security benefit) from the Commonwealth or a State or Territory.

9.2. NCYLC agrees with the finding of the Commonwealth Ombudsman (as outlined at paragraph 67 of the Issues Paper) and encourages Centrelink to implement a new procedure so that the onus is not placed on a young person to obtain details of a parent’s income or assets if they are not residing with that parent.

\(^{17}\) *Committee on the Rights of the Child, Concluding Observations: Australia, Convention on the Rights of the Child, CRC/C/15/Add.268 (20 October 2005) at [27].*
9.3. In the consideration of a ‘best-interests’ approach, it may not be in the best interests of a young person to seek this information from parents when the nature of the domestic environment is openly hostile or violent.

9.4. **Recommendation**: *The onus is not placed on a young person to obtain details of a parent’s income or assets if they are not residing with that parent.*

10. **Family Violence, Parents and Youth Allowance - Parental consent required to pay the young person directly (Question 23)**

10.1. Parental consent is required for a person under the age of 18 years to be paid their allowance directly.NCYLC is in support of waiving this requirement for victims of family violence.

10.2. NCYLC strongly submits that no provision in legislation, policy or in practice should have the effect of requiring a young person to return to a violent home due to lack of financial support. If the young person experiencing family violence is unable to be paid their allowance directly they may be forced to return to the violent home or become homeless as they will not have the financial means to support themselves.

10.3. It is inappropriate to require the victim of family violence to have to ask the perpetrator of the violence for permission to be paid their payment directly. This may have the effect of inflaming the situation and placing the young person at greater risk.

10.4. **Recommendation**: *The requirement of parental consent for a person under the age of 18 years to be paid their allowance directly is waived for victims of family violence.*

11. **Family Violence, Parents and Youth Allowance - Requirement to provide original proof of identity documents (Question 24)**

11.1. NCYLC agrees that the requirement to provide original proof of identity documents and tax file numbers creates a barrier for young people experiencing family violence for several reasons. For instance, a young person who has already left home may not have access to these documents and may not wish to re-enter the violent home to locate the documents, or a parent may withhold these documents from the young person to stop them from leaving home.

11.2. Practices should be improved to ensure that victims of family violence are aware that there are alternative means available to prove their identity.
11.3. **Recommendation:** Centrelink staff should ensure that victims of family violence are aware that there are alternative means available to prove their identity.

12. **Family Violence and Youth Allowance – Improvements (Question 19)**

12.1. As outlined above there are various barriers for victims of family violence which prohibit them from accessing the relevant Centrelink payments. NCYLC would like to see these barriers removed to allow young people experiencing family violence the ability and the means to leave the violent situation and be financially supported.

12.2. It is extremely important that the process for young people applying for Youth Allowance is simplified and the young person is well supported throughout the application process. From our experience with young people we are aware that they see the process as complex, inconsistent and difficult to navigate. Young people, especially those experiencing family violence, need support and assistance in applying for their relevant payments.

12.3. NCLYC recommends that Centrelink conduct a review of their webpage and accommodate for a more child and youth friendly navigation. In particular, it is noted that the section for individuals does not include the sub-option of ‘child or young person’. Given the accessibility of the internet to children and youth, it is strongly advised that Centrelink provide information in relation to youth allowance in child appropriate language and links to other youth services on their webpage.

12.4. **Recommendation:** The social security system is amended to improve the application process for young people, especially those experiencing family violence, by simplification of the process, improved training of frontline Centrelink staff and increased support.