



Australian Government

Australian Law Reform Commission

Family Violence— Commonwealth Laws

DISCUSSION PAPER
SUMMARY

This Discussion Paper reflects the law as at 22nd July 2011

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Making a submission

Making a Submission to the Inquiry

Any public contribution to an inquiry is called a submission. The Australian Law Reform Commission seeks submissions from a broad cross-section of the community, as well as from those with a special interest in a particular inquiry.

The closing date for submissions to this Discussion Paper is 30 September 2011.

There are a range of ways to make a submission or comment on the proposals and questions posed in the Discussion Paper.

Online submission tool

The ALRC strongly encourages online submissions directly through the ALRC's website <<http://www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws/respond-discussion-paper>>, where an online submission form will allow you to respond to individual questions. Once you have logged into the site, you will be able to save your work, edit your responses, and leave and re-enter the site as many times as you need to before lodging your final submission. You may respond to as many or as few questions and proposals as you wish.

Further instructions are available on the site. If you have any difficulties using the online submission form, please email web@alrc.gov.au, or phone +61 2 8238 6333.

Alternatively, written submissions may be mailed, faxed or emailed to:

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Open inquiry policy

As submissions provide important evidence to each inquiry, it is common for the Commissions to draw upon the contents of submissions and quote from them or refer to them in publications. Non-confidential submissions are made available on the ALRC's website.

The Commission also accepts submissions made in confidence. Confidential submission will not be made public. Any request for access to a confidential submission is determined in accordance with the *Freedom of Information Act 1982* (Cth), which has provisions designed to protect sensitive information given in confidence.

In the absence of a clear indication that a submission is intended to be confidential, the Commission will treat the submission as non-confidential.

Discussion Paper Summary

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Introduction

Overview

This Discussion Paper Summary provides an overview of the policy framework and the proposals and questions contained in the full Discussion Paper—available online. The full Discussion Paper sets out in detail the issues raised by the Terms of Reference, the research behind the proposals and questions and a thorough analysis and discussion of stakeholder views and the ALRC’s views to date.

This document is designed specifically with stakeholders in mind, acknowledging the substantial involvement of many in the Inquiry to date, and the familiarity with the issues as set out in the four Issues Papers released in February and March 2011 and subsequent round of consultations. It provides the essential minimum for easy access to the ALRC’s thinking at this critical stage in the Inquiry produced for stakeholders with considerable understanding of the various issues in focus in the particular areas under review.

The Summary begins with the conceptual framework that underpins the development of the proposals. This is followed by an outline of the structure of the Discussion Paper—its 22 chapters divided into seven parts—including the proposals and questions for response. The full Discussion Paper can be read online or downloaded in this structured way, so that stakeholders interested in understanding the full thinking behind

the proposals in the particular areas reflected in the discrete parts may choose the part or parts they would like to explore further. The parts and their chapters provide a manageable format in which to navigate the complex details of each area and the evidence base that supports the ideas.

How to make a submission

With the release of this Discussion Paper, the ALRC invites individuals and organisations to make submissions in response to the specific proposals and questions, or to any of the background material and analysis provided, to help advance the reform process in this Inquiry.

There is no specified format for submissions and they may be marked confidential if preferred. The ALRC prefers electronic communications and submissions, and strongly encourages stakeholders to make use of the online submission form available on the ALRC website. However, the ALRC will gratefully accept anything from handwritten notes to detailed commentary and scholarly analyses on relevant laws and practices. Even simple dot-points are welcome. Submissions will be published on the ALRC website, unless they are marked confidential.¹

The ALRC appreciates that tight deadlines for making submissions place considerable pressure upon those who wish to participate in ALRC inquiries. Given the deadline for delivering the final report to the Attorney-General at the end of November 2011, and the need to consider fully the submissions received in response to this Discussion Paper, all submissions must be submitted on time—by **Friday 30 September 2011**.

It is the invaluable work of participants that enriches the whole consultative process of ALRC inquiries. The quality of the outcomes is assisted greatly by the understanding of contributors in needing to meet the deadline imposed by the reporting process itself. This Inquiry is no exception.

In order to ensure consideration for use in the final report, submissions addressing the questions and proposals in this Discussion Paper must reach the ALRC by **Friday 30 September 2011**.

The ALRC encourages stakeholders to use the online submission form available at <http://www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws/respond-discussion-paper>.

Submissions not marked confidential will be published on the ALRC website.

¹ Submissions provided only in hard copy may not be published on the website.

Conceptual framework

Overarching objective

The Australian Government has identified a clear goal ‘to reduce all violence in our communities’, recognising that ‘whatever the form violence takes, it has serious and often devastating consequences for victims, their extended families and the community’.² The overarching objective of this Inquiry therefore reflects the Government’s objective—through proposals for reform of legal frameworks to protect the safety of those experiencing family/domestic violence. In this context, the idea of ‘legal frameworks’ extends beyond law in the form of legislative instruments and includes education, information sharing and other related matters. The overall touchstone throughout the chapters and proposals, however, is one of improving safety.

Inquiry themes

The following section provides a brief snapshot of some of the key themes and policy tensions that have emerged so far, leaving a fuller consideration to the chapters on each particular legislative area including an analysis of the rationale or purposes of the relevant Commonwealth laws under review. The objectives of such laws are commonly signalled either expressly in objects clauses or, for example, in Explanatory Memorandums, which can provide the basis for the assessment of the application of the Inquiry themes in each case.

In *Family Violence—A National Legal Response*, four specific principles were singled out as those that should be expressed by relevant legal frameworks in that inquiry: seamlessness, accessibility, fairness and effectiveness. These have also been evident as distinct themes in this Inquiry, to which have been added the themes of: self-agency/autonomy, privacy and system integrity.

Principles from Family Violence—A National Legal Response

Seamlessness

In *Family Violence—A National Legal Response*, ‘seamlessness’ was identified as a foundational policy principle driving the recommendations for reform contained in the Report.

Seamlessness—to ensure that the legal framework is as seamless as possible from the point of view of those who engage with it.³

Seamlessness was expressed as a goal of ensuring that, from the point of view of those engaging with the legal frameworks in which issues of family violence and child abuse arise, the key focus must be upon the experience of those participants—to see the system through their eyes. In the context of the Terms of Reference for that inquiry,

2 Department of Families, Housing, Community Services and Indigenous Affairs, *National Plan to Reduce Violence Against Women and Their Children—Including the First Three-year Action Plan* (2011), 2.

3 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), [3.10]. See also [3.11]–[3.14].

which required the Commissions to look at a wide range of laws and their interactions across the Commonwealth and state and territory spheres, the idea of seamlessness was a particularly potent one.

In the context of the current Inquiry, seamlessness remains an important theme, particularly in relation to matters such as the consistency of definitions across the various Commonwealth laws under review. Consistency then informs training and awareness in service delivery areas; and facilitates better coordination of responses to family violence, through appropriate information sharing and the improvement of pathways between agencies.⁴ For example, as remarked by the Commonwealth Ombudsman, in the context of child support:

Having a single consistently applied definition would potentially minimise the need for a person to retell their story and obtain different types of evidence for agencies they will commonly need to approach when experiencing or fleeing family violence, such as Centrelink and the [Child Support Agency]. Hopefully, it would lead to alignment of policies across relevant agencies, and reduce the likelihood of an anomalous situation where the same set of factual circumstances leads to recognition of violence by one agency, but not another.⁵

Fairness

In *Family Violence—A National Legal Response*, fairness was a key framing principle:

Fairness—to ensure that legal responses to family violence are fair and just, holding those who use family violence accountable for their actions and providing protection to victims.⁶

Time for Action identified as one key ‘outcome’ area, that ‘responses are just’.⁷ Fairness also reflects human rights principles—in particular, Australia’s obligations under international instruments considered in Chapter 2.

In this Inquiry, fairness can be expressed in a number of distinct aims: to ensure that:

- concerns about safety are properly heard, understood and responded to;
- issues of family violence or safety concerns do not give rise to inappropriate advantages or disadvantages in the context of the particular legislative regimes under consideration—what may be called ‘system perversities’;⁸
- safety concerns are not exacerbated by the applicable system requirements in relevant contexts;⁹ and

⁴ See, eg. ADFVC, *Submission CFV 71*, 11 May 2011.

⁵ Commonwealth Ombudsman, *Submission CFV 54*, 21 April 2011.

⁶ Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), [3.10]. See also [3.16]–[3.17].

⁷ National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children, 2009–2021* (2009), Outcome 4.

⁸ See, eg. concern about the ‘financial incentive for perpetrators’ was expressed in National Council of Single Mothers and their Children, *Submission CFV 45*, 21 April 2011.

- procedural fairness is accorded where issues of allegations of family violence *by* someone are relevant, as distinct from an individual's expression of fears for safety.¹⁰

Fairness is also considered in relation to one of the additional themes in this Inquiry—system integrity, considered below.

A further aspect of fairness may be expressed as a need to ensure that Australia's resources are fairly distributed, including, for example, a fair distribution of social security benefits, and eligibility for citizenship via immigration. In the context of employment, fairness also requires consideration of what are appropriately considered to be 'workplace' issues and the responsibility of employers, rather than private matters for employees. As remarked by the Australian Chamber of Commerce and Industry:

All too often policy makers do not sufficiently take into account these issues when they make wide sweeping recommendations which would either create new obligations, increase red-tape on a business and/or introduce new costs (most times, achieving a triple whammy). This is despite other arms of government extolling their policy objectives in reducing the administrative burden on business.¹¹

Accessibility

Given that the driving focus of this Inquiry is on improving safety responses for those experiencing family violence, a key aim is clearly to ensure that appropriate recognition is given of the experience and the connection of sufferers to appropriate services.

In *Family Violence—A National Legal Response*, accessibility was identified as one of the framing principles for reform: 'to facilitate access to legal and other responses to family violence'.¹² Using 'accessibility' as a principle in this way built upon the report of the Access to Justice Taskforce of the Australian Government Attorney-General's Department, which included accessibility as a key principle: 'Justice initiatives should reduce the net complexity of the justice system'.¹³

Systems that are complicated, in which definitions are inconsistent, where concerns of form over substance impede a response to safety concerns, and where there are complex pathways to obtain answers, work against the principle of accessibility. This theme has been expressed strongly in this Inquiry—particularly in the context of immigration law.¹⁴

9 See, eg, in the context of child support: ADFVC, *Submission CFV 53*, 27 April 2011; Sole Parents' Union, *Submission CFV 52*, 27 April 2011.

10 Concern about the role of allegations of family violence was noted, eg, in Commonwealth Ombudsman, *Submission CFV 54*, 21 April 2011; Non-Custodial Parents Party (Equal Parenting), *Submission CFV 50*, 25 April 2011; Welfare Rights Centre Inc Queensland, *Submission CFV 43*, 21 April 2011.

11 ACCL, *Submission CFV 19*, 8 April 2011.

12 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), [3.10], [3.15].

13 Australian Government Attorney-General's Department Access to Justice Taskforce, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (2009), 8.

14 See, eg, Visa Lawyers Australia, *Submission CFV 76*, 23 May 2010. In the context of social security, see, eg, Council of Single Mothers and their Children (Vic), *Submission CFV 55*, 27 April 2011.

An aim of accessibility that complements the other principles is the avoidance of victims having to retell the circumstances of the violence, thereby ‘re-traumatising’ victims of family violence. This was a persistent theme in the earlier family violence inquiry and repeated in this Inquiry.¹⁵ The consequential under-reporting of family violence and fears for safety for this and other reasons were also identified.¹⁶

Effectiveness

The principle of ‘effectiveness’—to facilitate effective interventions and support in circumstances of family violence—also builds on the Access to Justice Taskforce’s work, referred to in *Family Violence—A National Legal Response*.¹⁷ Similarly, the *National Plan* stressed that ‘[a]ll systems need to work together to make a major difference to the prevalence and impact of violence against women’.¹⁸ This theme is also reflected in the idea of ‘seamlessness’, above.

With respect to improving legal frameworks to protect safety, a key issue is to ensure that concerns about safety are properly heard, understood and responded to¹⁹—also an aspect of fairness as expressed above.

A particular challenge in the context of family violence is the issue of disclosure of safety concerns, as the ability to provide effective responses may depend on if, how and when such disclosures are made. A continuing theme is that many people do not wish to disclose concerns about safety in the context of family violence. Difficulties in disclosing family violence were remarked upon in submissions to this Inquiry.²⁰ The

15 See, eg, Australian Association of Social Workers (Qld), *Submission CFV 38*, 12 April 2011; ADFVC, *Submission CFV 26*, 11 April 2011.

16 See, eg, Law Institute of Victoria, *Submission CFV 74*, 17 May 2010; Sole Parents’ Union, *Submission CFV 63*, 27 April 2011; Council of Single Mothers and their Children (Vic), *Submission CFV 55*, 27 April 2011; WEAVE, *Submission CFV 31*, 12 April 2011; Joint submission from Domestic Violence Victoria and others, *Submission CFV 22*, 6 April 2011; Queensland Law Society, *Submission CFV 21*, 6 April 2011; National Network of Working Women’s Centres, *Submission CFV 20*, 6 April 2011; Redfern Legal Centre, *Submission CFV 15*, 5 April 2011; Women’s Health Victoria, *Submission CFV 11*, 5 April 2011; Australian Services Union Victorian Authorities and Service Branch, *Submission CFV 10*, 4 April 2011.

17 Australian Government Attorney-General’s Department Access to Justice Taskforce, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (2009), referred to in Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), [318].

18 Department of Families, Housing, Community Services and Indigenous Affairs, *National Plan to Reduce Violence Against Women and Their Children—Including the First Three-year Action Plan* (2011), 14, 32 (Strategy 5.3).

19 This reflects a theme that recurred throughout the review conducted by Professor Richard Chisholm in relation to family violence in family courts: ‘that family violence must be disclosed, understood, and acted upon’: R Chisholm, *Family Courts Violence Review* (2009), 5. As Chisholm commented, each component of the family law system ‘needs to encourage and facilitate the disclosure of family violence, ensure that it is understood, and act effectively upon that understanding’: 5.

20 See, eg, Public Interest Advocacy Centre, *Submission CFV 40*, 15 April 2011; Australian Council of Trade Unions, *Submission CFV 39*, 13 April 2011.

limited extent to which information about safety concerns was sought, or information provided, in some situations, was also noted.²¹

Additional themes in this Inquiry

Self-agency/autonomy

In the course of this Inquiry, one theme that has emerged can be described as one of ‘self-agency’ or ‘autonomy’, concerning an individual’s right to make decisions about matters affecting him or her. Respect for autonomy is ‘the idea that every rational person should be able to decide matters for him or herself’.²² An example in the context of this Inquiry may be called the ‘right to choose’ to disclose safety concerns,²³ or not, and the consequences that might flow from such choice, within each particular legislative regime under consideration.

The role of agency is a significant theme in broader jurisprudential analysis and is often seen in debates in the health law context, particularly in relation to questions of competency and principles of informed consent.²⁴ As Professor Terry Carney has pointed out,

an influential school of jurisprudence conceives the legitimate role (and limits) of law to be that of protecting people against unwarranted interference with their freedom of choice/action and in providing the resources (or the ‘level playing field’) to enable people to enjoy and obtain personal fulfilment from the exercise of those rights.²⁵

Autonomy can be juxtaposed against ‘paternalism’, which ‘provides a justification for interference with a person’s own conception of their interests in order to secure their welfare’.²⁶

Autonomy is the aspect of persons that undue paternalism offends against. Paternalistic interventions can be both interpersonal (informal) and legal. Such interventions are identified not by the kind of acts they involve but by the justification given for them, so that paternalism involves interference with a person’s actions or knowledge against that person’s will for the purpose of advancing that person’s good. Respect for autonomy is meant to prohibit such interventions because they involve a judgment that the person is not able to decide for herself how best to pursue her own

21 See, eg, WEAVE, *Submission CFV 58*, 27 April 2011; National Council of Single Mothers and their Children, *Submission CFV 57*, 28 April 2011; Commonwealth Ombudsman, *Submission CFV 54*, 21 April 2011.

22 J Devereux and M Parker, ‘Competency Issues for Young Persons and Older Persons’ in I Freckelton and K Petersen (eds), *Disputes and Dilemmas in Health Law* (2006) 54, 54. The idea of autonomy is a predominant one in liberal political philosophy, developing from Enlightenment thinking and expressed, for example, in the writing of John Stuart Mill in his classical treatise ‘On Liberty’ (1859), especially ch 3: ‘Of individuality, as one of the elements of well-being’. For a discussion of the development of autonomy, see, eg, J Christman, ‘Autonomy in Moral and Political Philosophy’ in E Zalta (ed), *The Stanford Encyclopedia of Philosophy* (2011).

23 See, eg, ADFVC, *Submission CFV 26*, 11 April 2011.

24 See, eg, J Devereux and M Parker, ‘Competency Issues for Young Persons and Older Persons’ in I Freckelton and K Petersen (eds), *Disputes and Dilemmas in Health Law* (2006) 54.

25 T Carney, ‘The Limits and the Social Legacy of Guardianship in Australia’ (1989) 18 *Federal Law Review* 231, 237.

26 *Ibid.*, 238.

good. Autonomy is the ability to so decide, so paternalism involves a lack of respect for autonomy.²⁷

There is a clear tension in some areas about wanting to ensure that safety concerns are identified through appropriate screening and to respond accordingly, and an individual's wish for certain matters to remain 'private' and the consequences therefore within their own control or self-agency.

One particular legislative area that illustrates a response that is driven by policy concerns as to the safety of children, but operates with a constrained place for an idea of individual agency, is that of the compulsory income management regime discussed in Chapter 13, overriding autonomy by a concern to protect vulnerable people. Such areas reveal a tension between ideas of individual freedom, and self-agency, and what may be described as protective paternalism. For example, the Australian Domestic and Family Violence Clearinghouse considers compulsory income management:

to be a disempowering approach to people who have already been significantly disempowered by the abuse (e.g. having no involvement with household finances, having to give over their money to abusive partners, experiencing emotional and psychological abuse). It is effectively blaming victims of violence for their financial situation rather than acknowledging that their hardship is more likely to be a product of the abuse.²⁸

Another area where the issue of agency is of particular concern is in relation to child support and family assistance, considered in Chapters 9–11, where law reform proposals are discussed that contribute to self-agency, by empowering and enabling victims of family violence to make informed choices about participation in the child support scheme, and to contribute to decisions that affect their safety.

Privacy

A theme related to autonomy is privacy, that sensitive information concerning fears for safety is obtained and handled in an appropriate way. For example, the Office of the Australian Information Commissioner recognised

the sensitivity of personal information related to family violence matters and the potential for an individual to be stigmatised, embarrassed or discriminated against as a result of the disclosure or inappropriate sharing of this information. The challenge is to ensure that initiatives contain appropriate privacy safeguards regarding the handling of an individual's personal information, while providing strong protection against harm from family violence.²⁹

The theme of privacy is particularly relevant in terms of the linking of service responses, an aspect of accessibility. What information is obtained and how it is used is also relevant in terms of concerns about allegations of violence, an aspect of fairness,

27 J Christman, 'Autonomy in Moral and Political Philosophy' in E Zalta (ed), *The Stanford Encyclopedia of Philosophy* (2011), [2.2].

28 ADFVC, *Submission CFV 71*, 11 May 2011. See also, eg, Erskine Rodan and Associates, *Submission CFV 80*, 17 June 2011; Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011.

29 Office of the Australian Information Commissioner, *Submission CFV 68*, 6 May 2011; Office of the Australian Information Commissioner, *Submission CFV 61*, 4 May 2011; Office of the Australian Information Commissioner, *Submission CFV 30*, 12 April 2011.

as noted above. The extent to which privacy is accorded when a person chooses to disclose safety concerns may affect the decision to disclose.³⁰

System integrity

A number of the legislative regimes under consideration provide pathways to particular results of a broadly ‘beneficial’ kind. For example, to immigration, social security entitlements, the receipt of child support, family assistance and fair workplace conditions. Issues of family violence may be a relevant factor that leads to a modification of the particular pathway or to a different mode of calculation of benefit. A main issue in such contexts is the kind and standard of verification required where an issue of family violence is raised.

The ALRC has identified a policy tension between ensuring that appropriate acknowledgment is given to the safety concerns of a person who is experiencing family violence and what may be broadly described as ‘system integrity’ issues, where appropriate checks and balances are included so as not to ‘incentivise’ the raising of family violence simply to achieve a benefit of some kind—or ‘playing the family violence card’ as it has been crudely described. Another kind of system integrity issue is to ensure that a person who causes another to fear for their safety in a family context is not advantaged in some way by that action.

Overview of Discussion Paper

This Discussion Paper comprises 22 chapters divided into seven parts. Part A—Common Threads contains common ideas and themes relevant to the whole Discussion Paper. Subsequent parts are collated by subject area, namely, Social Security, Child Support and Family Assistance, Income Management, Employment, Superannuation and Migration law.

Part A—Common Threads

Part A contains four chapters that cover common ideas and themes relevant to the whole Discussion Paper. The first two chapters contain no Proposals or Questions.

Chapter 1: Introduction

This chapter provides an outline of the background to the Inquiry and an analysis of the scope of the Inquiry as defined by the Terms of Reference. It also describes the development of the evidence base to support the law reform response as reflected in the proposals and questions included throughout the Discussion Paper.

Chapter 2: Conceptual Framework

This chapter considers the backdrop of international instruments that affect the range of issues in focus in this Inquiry, followed by an analysis of the broad policy themes

30 See, eg, Australian Services Union Victorian Authorities and Service Branch, *Submission CFV 10*, 4 April 2011.

relevant to the objective, as set out in the Terms of Reference, of increasing the safety of those experience family violence. These themes are also set out above.

Chapter 3: Common Interpretative Framework

This chapter focuses on the definition of family violence in the legislative areas identified in the Terms of Reference: social security, child support, family assistance, employment, superannuation and migration. As a key aspect of establishing a common interpretative framework, the ALRC proposes including in those laws the same core definition of family violence that describes the context in which behaviour takes place, as well as a shared common understanding of the types of conduct—both physical and non-physical—that may fall within the definition of family violence.

The ALRC considers that systemic benefits would flow from the adoption of a common interpretative framework across different legislative schemes, promoting seamlessness and effectiveness in proceedings involving family violence for both victims and decision makers.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Chapter 4: Screening, Information Sharing and Privacy

Chapter 4 examines how family violence is disclosed to Commonwealth agencies—namely Centrelink, the Child Support Agency (CSA) and the Family Assistance Office (FAO)—and how that information is treated by those agencies. As these issues primarily concern service provision by agencies within the Human Services portfolio, this chapter also provides an overview of the structure of, and recent changes to, the portfolio.

The chapter explores ways in which barriers can be minimised to encourage disclosure of family violence in a safe environment, and to ensure that upon disclosure, an appropriate case management and privacy response is triggered. This chapter focuses on screening and risk assessment processes, information sharing and privacy, and

family violence policies, to ensure that victims of family violence are appropriately identified, and their needs are responded to accordingly.

The ALRC identifies a number of personal and institutional barriers to the disclosure of family violence and proposes a multifaceted approach of screening and risk assessment processes, information sharing and privacy, and family violence policies, to ensure that victims of family violence are appropriately identified, and their needs are responded to accordingly. In particular, the ALRC proposes that Centrelink, the CSA and the FAO should ‘screen’ all customers for family violence, not through direct questions, but by giving them a short statement and other information about family violence and its relevance to a person’s social security, child support and family assistance case.

However, the ALRC recognises that screening alone is not sufficient and considers that an appropriate case-management and privacy response should be triggered, including referral to a Centrelink social worker. To assist with this, and to ensure consistency across the relevant departments and agencies, the ALRC proposes that a ‘safety concern’ flag should be placed on a customer’s file where family violence and fears for safety have been disclosed. This flag should be subject to information-sharing protocols between relevant departments and agencies, subject to informed consent and privacy safeguards. Finally, to enhance consistency across the different departments and agencies, the ALRC proposes that a family violence and child protection policy be developed for each department or agency.

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*.

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).

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*.

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.

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?

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.

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 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Part B—Social Security

Part B contains four chapters, Chapters 5–8. Chapter 5 provides an overview of social security law and practice and considers overarching issues relating to the safety of victims of family violence in the social security context. Chapters 6–8 consider specific areas of social security law. Chapter 6 considers the definition of relationships—including the terms 'member of a couple' and 'independent'—Chapter 7 focuses on how family violence is relevant to proof of identity, residence and activity tests, and Chapter 8 considers ways in which payment types, payment methods and debt repayment methods may be improved to enhance the safety of victims of family violence.

Chapter 5: Social Security—Overview and Overarching Issues

Chapter 5 examines the social security frameworks relevant to this Inquiry—the legal framework and the agencies that administer it; the policy framework, including underlying principles; and the relevance of family violence in the social security system. The chapter proposes reforms in the key areas of interpretative frameworks around family violence, screening, and collecting information about family violence.

In order to enhance the common interpretative framework, the ALRC proposes that the definition of family violence, and its natures, features and dynamics, be included in the *Guide to Social Security Law*, supported by training for relevant Centrelink staff. The ALRC also considers that, to ensure fairness in the administration of the social security system and to provide a level of self-agency, greater transparency and consistency is required in relation to the information a person can rely on to support a claim of family violence. The ALRC therefore makes proposals as to the types of information a person may use to support the claim and proposes that guidance as to the weight placed on each type of information should be included in the *Guide to Social Security Law*. The ALRC also makes proposals to ensure the safety of victims of family violence is protected when Centrelink is seeking information to support a claim of family violence and that this information is protected through Centrelink's Deny Access Facility.

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.

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.

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.

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.

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.

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.

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.

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.

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?

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.

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?

Chapter 6: Social Security—Relationships

This chapter considers how family violence may have implications in relation to how relationships are defined in the social security context—for example, whether a person is considered to be a 'member of a couple' or 'independent'. The way in which a decision about a person's relationship status is made in the social security context, and the relevance of family violence in making that decision, is considered. The ALRC considers that relationships are inherently difficult to define, but recognises that the effect of family violence is not always considered in relationship decisions in the social security context. The ALRC therefore makes a number of proposals to ensure that the impacts of family violence are expressly considered in relationship decisions in social security law through amendment to the *Guide to Social Security Law*.

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).

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).

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.

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).

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?

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).

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’?

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’?

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.

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

This chapter discusses the relevance of family violence to various qualification and payability requirements—such as proof of identity, residence, and activity and participation requirements attached to certain social security payments. This chapter considers how these qualification and payability requirements could be improved to protect the safety of victims of family violence while also maintaining the integrity of the social security system.

The ALRC makes proposals in relation to residence requirements—ensuring that where appropriate, certain subclasses of visas are able to access Special Benefit. The ALRC seeks guidance from stakeholders as to what other reforms may be necessary to residence requirements to maintain this balance. The ALRC also makes proposals to ensure that a person’s experience of family violence is adequately considered in the negotiation and revision of a person’s requirements for activity-tested social security payments, and the granting of exemptions from such requirements.

Question 7–1 In practice, is the form, ‘Questions for Persons with Insufficient Proof of Identity’, sufficient to enable victims of family violence to provide an alternate means of proving identity?

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.

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?

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

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.

Question 7–4 Should the Minister of FaHCSIA make a Determination including certain temporary visa holders—such as student, tourist and secondary holders of Subclass 457 visas—as a ‘specified subclass of visa’ that:

- meets the residence requirements for Special Benefit?
- is exempted from the Newly Arrived Resident’s Waiting Period for Special Benefit?

Question 7–5 What alternatives to exemption from the requirement to be an Australian resident could be made to ensure that victims of family violence, who are not Australian residents, have access to income support to protect their safety?

Question 7–6 In what way, if any, should the *Social Security Act 1991* (Cth) or the *Guide to Social Security Law* be amended to ensure that newly arrived residents with disability, who are victims of family violence, are able to access the Disability Support Pension? For example, should the qualifying residence period for Disability Support Pension be reduced to 104 weeks where a person is a victim of family violence?

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.

Question 7–7 What changes, if any, are needed to improve the safety of victims of family violence who do not meet the Newly Arrived Resident’s Waiting Period for payments other than Special Benefit?

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.

Question 7–8 In practice, to what extent can, or do, recommendations made by ESA or JCA assessors in relation to activity tests, participation requirements, Employment Pathway Plans and exemptions account for the needs and experiences of job seekers experiencing family violence?

Question 7–9 In practice, is family violence adequately taken into account by a Centrelink specialist officer in conducting a Comprehensive Compliance Assessment?

Question 7–10 What changes, if any, to the Employment Pathway Plan and exemption processes could ensure that Centrelink captures and assesses the circumstances of job seekers experiencing family violence?

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.

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.

Question 7–11 In practice, what degree of flexibility does Centrelink have in its procedures for customers experiencing family violence:

- (a) to engage with Centrelink in negotiating or revising an Employment Pathway Plan; or
- (b) apply for or extending an exemption.

Are these procedures sufficient to ensure the safety of victims of family violence is protected?

Question 7–12 A 26 week exclusion period applies to a person who moves to an area of lower employment prospects. An exemption applies where the reason for moving is due to an ‘extreme circumstance’ such as family violence in the ‘original place of residence’. What changes, if any, are necessary to ensure that victims of family violence are aware of, and are making use of, the exemption available from the 26 week exclusion period? For example, is the term ‘original place of residence’ interpreted in a sufficiently broad manner to encapsulate all forms of family violence whether or not they occur within the ‘home’?

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.

Question 7–13 Centrelink can end a person’s ‘Unemployment Non-Payment Period’ in defined circumstances. In practice, are these sufficiently accessible to victims of family violence?

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

Chapter 8 considers mechanisms that are built into social security law and practice to assist victims of family violence, and others, including: special or supplementary payments; the way in which a person receives their regular social security payment, such as weekly or urgent payments; and nominee arrangements.

Chapter 8 discusses ways in which these payments and payment arrangements may be able to better protect the safety of victims of family violence. In particular, the ALRC considers a number of barriers for victims of family violence in accessing Crisis Payment, weekly and urgent payments and makes proposals to overcome these barriers. The ALRC also considers ways to ensure that family violence can be taken into consideration in decisions to waive the repayment of a social security debt—for example, where the debt was incurred due to economic abuse or duress.

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.

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?

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.

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.

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.

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.

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?

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’.

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 s 1237AAD of the *Social Security Act 1991* (Cth).

Part C—Child Support and Family Assistance

Part C contains four chapters, Chapters 9–12. Chapter 9 provides an overview of the child support framework and focuses specifically on the assessment and collection of child support. Chapter 10 discusses CSA procedures regarding the treatment of personal information, including information protection and dealing with threats of

family violence. It also addresses the child support eligibility of carers who are neither parents nor legal guardians. Chapter 11 focuses on the points of intersection and alignment between child support and family assistance frameworks—in particular, Family Tax Benefit and the ‘reasonable maintenance action’ requirement. Chapter 12 considers how family violence is relevant to family assistance.

Chapter 9: Child Support—Frameworks, Assessment and Collection

Chapter 9 provides an overview of the child support frameworks relevant to this Inquiry: the legal framework and the agencies that administer it; and the policy framework—including the objectives that underpin the child support scheme. The chapter then outlines the relevance of family violence in the child support system, and proposes reforms to the key areas of interpretative frameworks around family violence, child support assessment, and the collection and enforcement of child support.

The reforms proposed in Chapter 9 would facilitate appropriate management of child support cases by the CSA, where a customer is at risk of family violence. The proposed reforms complement the proposals in Chapter 4, and relate primarily to screening and referrals at certain key points in a child support case. In particular, the ALRC proposes that the CSA should screen for family violence, and consult with customers who have disclosed family violence, prior to initiating significant action against the other party.

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.

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.

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.

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.

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.

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).

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

This chapter includes discussion of two alternatives to CSA assessments: child support agreements; and self-administration of child support. The chapter then addresses the treatment of personal information, including protection and exchange of information, and reporting threats of family violence. Finally, the chapter discusses the child support eligibility of carers who are neither parents nor legal guardians ('informal carers').

The proposed reforms in Chapter 10 are in two main sets. The first set focuses on information management by the CSA. It includes proposed processes for dealing with offensive material on CSA forms, and providing higher levels of protection for the personal information of victims of family violence. The second set of proposed reforms aims to remove barriers to child support faced by informal carers. The ALRC has proposed these reforms as children may be in informal care—often provided by grandparents—as a result of family violence.

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?

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.

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.

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?

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.

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

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.

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:

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

Proposal 10–6 The *Child Support Guide* should provide that:

- where a person who is not a parent or legal guardian carer applies for child support; and
- a parent or legal guardian advises the Child Support Agency that he or she does not consent to the care arrangement; and
- 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.

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.

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:

- only one of the child’s parents consents to the care arrangements; or
- 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?

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

Chapter 11 focuses on the points of intersection and alignment between child support and family assistance frameworks—in particular, Family Tax Benefit. The first point of intersection is the ‘reasonable maintenance action’ requirement in family assistance legislation. In accordance with this requirement, eligible parents must take action to obtain child support to receive more than the minimum rate of Family Tax Benefit. Family assistance policy recognises that this requirement may affect victims of family violence, and provides for exemptions from the requirement to take ‘reasonable maintenance action’. The second intersection point is an alignment in family assistance and child support legislation and policy in relation to determinations of percentages of care. This is a component of both child support and family assistance calculations, and affects the amount or distribution of entitlements.

Chapter 11 focuses on exemptions from the ‘reasonable maintenance action’ requirement, as family violence exemptions are the key protective strategy for victims in both child support and family assistance contexts. A strong focus is the accessibility of exemptions for victims who require them. The proposed reforms seek to achieve this by providing information in the *Family Assistance Guide*—in particular, information about the availability of partial exemptions, the duration of exemptions, and the review process. The ALRC also proposes that exemption policy should be included in family assistance legislation. The chapter concludes with an examination of the legislative and policy bases of percentage determinations, and how the rules underpinning such determinations affect victims of family violence.

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.

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.

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.

Chapter 12: Family Assistance

This chapter discusses the family assistance framework and the ways in which it addresses, and in some instances fails to address, family violence. This discussion focuses on the two primary family assistance payments—Family Tax Benefit and Child Care Benefit. This chapter proposes reforms specifically targeted at family assistance law and policy, where needed, particularly in relation to Child Care Benefit. Family assistance legislation provides for increased Child Care Benefit in certain circumstances. The proposed reforms seek to improve accessibility to increased Child Care Benefit in cases of family violence. The ALRC proposes that this be achieved by amending the *Family Assistance Guide* to explicitly recognise family violence as exceptional circumstances that may qualify for increased Child Care Benefit, and by amending family assistance legislation to lower the eligibility threshold for increased rates of Child Care Benefit where children are at risk of abuse or neglect.

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.

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.

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.

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.

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

Part D—Income Management

Part D comprises one chapter, Chapter 13 which discusses how family violence is relevant to, and treated under, the voluntary and compulsory measures of the income management regime.

Chapter 13: Income Management—Social Security Law

‘Income Management’ is an arrangement under the *Social Security (Administration) Act 1999* (Cth) by which a proportion of a person’s social security and family payments is quarantined to be spent only on particular goods and services, such as food, housing, clothing, education and health care. Chapter 13 discusses the relevance of family violence to income management measures and the treatment of family violence in the income management of welfare payments under the *Social Security (Administration) Act*. The chapter briefly explains the nature and the history of the income management regime and how income management may be improved to work to protect the safety of people experiencing family violence. By way of comparison, the income management model in the *Family Responsibilities Commission Act 2008* (Qld) is discussed.

In particular, Chapter 13 examines the implications of family violence for how individuals may become subject to, or obtain exemptions from, the application of income management; and the consequences of income management for people experiencing family violence. The ALRC concludes that the complexity of family violence, and the intertwining of family violence in a number of the ‘vulnerability indicators’ that trigger the imposition of compulsory income management, leads to serious questions about whether it is an appropriate response. The ALRC proposes that there should be a flexible and voluntary form of income management offered to people experiencing family violence to ensure that the complex needs of the victims are provided for and their safety protected.

In Chapter 13 the ALRC proposes a review of the voluntary income management measures and streams to provide welfare recipients experiencing family violence with a flexible ‘opt-in and opt-out’ measure.

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.

Question 13–1 Are there particular needs of people experiencing family violence, who receive income management, that have not been identified?

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.

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.

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?

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.

Part E—Employment

This Part comprises five chapters, Chapters 14–18. Chapter 14 considers overarching issues with respect to the relevance of family violence to the employment law system. Chapter 15 focuses on the pre-employment stage; Chapters 16 and 17, the *Fair Work Act 2009* (Cth); and Chapter 18, occupational health and safety law.

Chapter 14: Employment Law—Overarching Issues and a National Approach

Chapter 14, together with Chapters 15–17, examines possible options for reform to employment-related legislative, regulatory and administrative frameworks to improve the safety of people experiencing family violence. The chapter examines the relevance of family violence to the employment law system; issues associated with disclosure of family violence—including verification of family violence and privacy issues; the need for national initiatives which address family violence in the context of employment; and associated reforms to data collection.

The ALRC’s key proposal in Chapter 14 is that the Australian Government should initiate a national education and awareness campaign around family violence in the employment context. The ALRC also proposes that the Office of the Australian Information Commissioner should develop a model privacy policy and guidance material in relation to family violence-related personal information. With respect to data collection, the ALRC considers the possible roles Fair Work Australia should play in considering the effect of family violence on the employment of those experiencing family violence in relation to the National Employment Standards, enterprise agreements and individual flexibility arrangements.

Question 14–1 In addition to removal of the employee records exemption in the *Privacy Act 1988* (Cth), what reforms, if any, are needed to protect the personal information of employees who disclose family violence for the

purposes of accessing new entitlements such as those proposed in Chapters 16 and 17?

Proposal 14–1 There is a need to safeguard the personal information of employees who have disclosed family violence in the employment context. The Office of the Australian Information Commissioner and the Fair Work Ombudsman should, in consultation with unions and employer organisations:

- (a) develop a model privacy policy which incorporates consideration of family violence-related personal information; and
- (b) develop or revise guidance for employers in relation to their privacy obligations where an employee discloses, or they are aware of, family violence.

Proposal 14–2 The Australian Government should initiate a national education and awareness campaign about family violence in the employment context.

Proposal 14–3 Section 653 of the *Fair Work Act 2009* (Cth) should be amended to provide that Fair Work Australia must, in conducting the review and research required under that section, consider family violence-related developments and the effect of family violence on the employment of those experiencing it, in relation to:

- (a) enterprise agreements;
- (b) individual flexibility arrangements; and
- (c) the National Employment Standards.

Question 14–2 In addition to review and research by Fair Work Australia, what is the most appropriate mechanism to capture and make publicly available information about the inclusion of family violence clauses in enterprise agreements?

Question 14–3 How should Fair Work Australia collect data in relation to the incidence and frequency with which family violence is raised in unfair dismissal and general protections matters?

Proposal 14–4 In the course of its 2012 and 2014 reviews of modern awards, Fair Work Australia should consider issues relating to data collection.

Chapter 15: The Pre-Employment Stage

This chapter deals with ways in which the framework underpinning the pre-employment stage of the employment law spectrum, with a particular focus on employment services provided by contractors to the Australian Government, could be improved to protect the safety of victims of family violence. The chapter examines ways in which Job Services Australia (JSA)—the national employment services system—Disability Employment Services (DES) and Indigenous Employment Program

(IEP) systems do, or could, respond to the needs of job seekers experiencing family violence.

In particular, the chapter addresses:

- JSA—including tender arrangements, information-sharing processes and protocols and screening for family violence;
- JSA and DES provider responses to disclosure of family violence by job seekers;
- the Job Seeker Classification Instrument (JSCI)—conduct and content of JSCIs;
- Employment Services Assessment (ESAt) and Job Capacity Assessment (JCA)—referral to, and conduct of, ESAts and JCAs and the impact of family violence;
- education and training; and
- employment services for specific groups of job seekers, including Indigenous peoples, job seekers from culturally and linguistically diverse (CALD) backgrounds, job seekers with disability and those in rural and remote areas.

In particular, the ALRC proposes in Chapter 15 that those who wish to tender to become job service providers must demonstrate an understanding of family violence and its impact on job seekers. The ALRC also proposes that the JSCI should include a new category of information in relation to family violence. With the enhanced disclosure of family violence that might result, the ALRC also considers what information-sharing processes and protocols, as well as privacy safeguards, are appropriate. Other proposals in this chapter concern JSA and DES provider responses to the disclosure of family violence, the conduct of ESAts and JCAs, and education and training for a range of people involved in the pre-employment stage.

Question 15–1 In what ways, if any, should the Australian Government include a requirement in requests for tender and contracts for employment services that JSA and DES providers demonstrate an understanding of, and systems and policies to address, the needs of job seekers experiencing family violence?

Question 15–2 How is personal information about individual job seekers shared between Centrelink, DEEWR, the Department of Human Services, and JSA, DES and IEP providers?

Question 15–3 How does, or would, the existence of a Centrelink ‘Deny Access Facility’, or other similar safety measures, such as a ‘safety concern flag’, affect what information about job seekers DEEWR and JSA and DES providers can access?

Proposal 15–1 Centrelink, DEEWR, JSA, DES and IEP providers, and ESAt and JCA assessors (through the Department of Human Services) should consider issues, including appropriate privacy safeguards, with respect to the personal

information of individual job seekers who have disclosed family violence in the context of their information-sharing arrangements.

Proposal 15–2 The current circumstances in which a job seeker can change JSA or DES providers should be extended to circumstances where a job seeker who is experiencing family violence is registered with the same JSA or DES provider as the person using family violence.

Question 15–4 Should JSA and DES providers routinely screen for family violence? If so:

- what should the focus of screening be;
- how, and in what manner and environment, should such screening be conducted; and
- when should such screening be conducted?

Question 15–5 Under the *Job Seeker Classification Instrument Guidelines* if a job seeker discloses family violence, the job seeker should immediately be referred to a Centrelink social worker. What reforms, if any, are necessary to ensure this occurs in practice?

Proposal 15–3 JSA and DES providers should introduce specialist systems and programs for job seekers experiencing family violence—for example, a targeted job placement program.

Proposal 15–4 As far as possible, or at the request of the job seeker, all Job Seeker Classification Instrument interviews should be conducted in:

- (a) person;
- (b) private; and
- (c) the presence of only the interviewer and the job seeker.

Question 15–6 The Job Seeker Classification Instrument includes a number of factors, or categories, including ‘living circumstances’ and ‘personal characteristics’. Should DEEWR amend those categories to ensure the Job Seeker Classification Instrument incorporates consideration of safety or other concerns arising from the job seeker’s experience of family violence?

Proposal 15–5 DEEWR should amend the Job Seeker Classification Instrument to include ‘family violence’ as a new and separate category of information.

Question 15–7 A job seeker is referred to an ESAt or JCA where the results of the Job Seeker Classification Instrument indicate ‘significant barriers to work’. Should the disclosure of family violence by a job seeker automatically constitute a ‘significant barrier to work’ and lead to referral for an ESAt or JCA?

Question 15–8 Where a job seeker has disclosed family violence, should there be streaming of job seekers to ESAAt and JCA assessors with specific qualifications or expertise with respect to family violence, where possible?

Question 15–9 When conducting an ESAAt or JCA, how do assessors consider the impact of family violence on a job seeker’s readiness to work? What changes, if any, could ensure that ESAAts and JCAs capture and assess the circumstances of job seekers experiencing family violence?

Question 15–10 In practice, to what extent can, or do, recommendations made by ESAAt or JCA assessors in relation to stream placement or referral to DES account for the needs and experiences of job seekers experiencing family violence?

Proposal 15–6 DEEWR and the Department of Human Services should require that all JSA, DES and IEP provider staff and ESAAt and JCA assessors receive regular and consistent training in relation to:

- (a) 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;
- (b) recognition of the impact of family violence on particular job seekers such as:
 - Indigenous people;
 - 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;
- (c) the potential impact of family violence on a job seeker’s capacity to work and barriers to employment;
- (d) appropriate referral processes; and
- (e) the availability of support services.

Question 15–11 In what ways, if any, should the Australian Government include a requirement in requests for tender and contracts for employment services that IEP projects and services, or panel providers, demonstrate an understanding of, and systems and policies to address, the needs of Indigenous job seekers experiencing family violence?

Question 15–12 In what ways, if any, should the JSA, DES, IEP or CDEP systems be reformed to assist Indigenous job seekers who are experiencing family violence?

Question 15–13 In what ways, if any, should the JSA or DES systems be reformed to assist job seekers from culturally and linguistically diverse communities who are experiencing family violence?

Question 15–14 In what ways, if any, should the JSA or DES systems be reformed to assist job seekers with disability who are experiencing family violence?

Question 15–15 In the context of the Australian Government review of new approaches for the delivery of rural and remote employment services, in what ways, if any, could any new approach incorporate measures to protect the safety of job seekers experiencing family violence?

Chapter 16: Employment—The Fair Work Act 2009 (Cth)

Chapters 16 and 17 focus on the *Fair Work Act 2009* (Cth). Chapter 16 provides an overview of the *Fair Work Act* and examines possible options for reform to the Act, and the institutions created under the Act, to address the needs—and ultimately the safety—of employees experiencing family violence. The chapter examines the background, constitutional basis, coverage and objects of the *Fair Work Act*, as well as the role and processes of Fair Work Australia (FWA) and the Fair Work Ombudsman (FWO). The ALRC suggests ways in which those institutions or their processes do, or could, function to protect the safety of those experiencing family violence.

The key focus of Chapter 16 is on the National Employment Standards. The ALRC makes two key proposals—first, that family violence be included as a circumstance in which an employee should have a right to request flexible working arrangements and, secondly, that family violence-related leave be included as a minimum statutory entitlement under the National Employment Standards.

Question 16–1 How do, or how could, Fair Work Australia’s role, functions or processes protect the safety of applicants experiencing family violence?

Question 16–2 In making an application to Fair Work Australia, applicants are required to pay an application fee. Under the *Fair Work Regulations 2009* (Cth) an exception applies if an applicant can establish that he or she would suffer ‘serious hardship’ if required to pay the relevant fee. In practice, do people experiencing family violence face difficulty in establishing that they would suffer ‘serious hardship’? If so, how could this be addressed?

Question 16–3 In applying for waiver of an application fee, referred to in Question 16–2, applicants must complete a ‘Waiver of Application Fee’ form. How could the form be amended to ensure issues of family violence affecting the ability to pay are brought to the attention of Fair Work Australia?

Question 16–4 In Proposals 14–1, 17–1 and 17–3 the role of the Fair Work Ombudsman is discussed. In what other ways, if any, could the Fair Work

Ombudsman's role, function or processes protect employees experiencing family violence?

Proposal 16–1 Section 65 of the *Fair Work Act 2009* (Cth) should be amended to provide that an employee who is experiencing family violence, or who is providing care or support to a member of the employee's immediate family or household who is experiencing family violence, may request the employer for a change in working arrangements to assist the employee to deal with circumstances arising from the family violence.

This additional ground should:

- (a) remove the requirement that an employee be employed for 12 months, or be a long-term casual and have a reasonable expectation of continuing employment on a regular and systemic basis, prior to making a request for flexible working arrangements; and
- (b) provide that the employer must give the employee a written response to the request within seven days, stating whether the employer grants or refuses the request.

The next proposals are presented as alternate options: Proposal 16–2 OR Proposals 16–3 and 16–4

OPTION ONE: Proposal 16–2

Proposal 16–2 The Australian Government should amend the National Employment Standards under the *Fair Work Act 2009* (Cth) to provide for a new minimum statutory entitlement to 10 days paid family violence leave. An employee should be entitled to access such leave for purposes arising from the employee's experience of family violence, or to provide care or support to a member of the employee's immediate family or household who is experiencing family violence.

OPTION TWO: Proposals 16–3 and 16–4

Proposal 16–3 The Australian Government should amend the National Employment Standards under the *Fair Work Act 2009* (Cth) to provide for a minimum statutory entitlement to an additional 10 days paid personal/carer's leave. An employee should be entitled to access the additional leave solely for purposes arising from the employee's experience of family violence, or to provide care or support to a member of the employee's immediate family or household who is experiencing family violence.

Proposal 16–4 The Australian Government should amend the National Employment Standards under the *Fair Work Act 2009* (Cth) to provide that an employee may access the additional personal/carer's leave referred to in Proposal 16–3:

- (a) because the employee is not fit for work because of a circumstance arising from the employee's experience of family violence; or

- (b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support as a result of their experience of family violence.

Chapter 17: Employment—The Fair Work Act 2009 (Cth) Continued

Chapter 17 complements Chapter 16 and considers enterprise agreements—specifically the inclusion of family violence clauses and the role of individual flexibility arrangements; modern awards; unfair dismissal; and the general protections provisions under the *Fair Work Act*. The ALRC concludes that the Australian Government should encourage the inclusion of family violence clauses, that such clauses should include a range of minimum requirements and proposes that the Fair Work Ombudsman should develop a guide to negotiating such clauses in agreements. The ALRC also considers the appropriateness of individual flexibility arrangements (IFAs) in circumstances where an employee is experiencing family violence and proposes that the Fair Work Ombudsman should develop a guide to negotiating IFAs in such circumstances.

With respect to modern awards, the ALRC considers ways in which modern awards might incorporate family violence-related provisions and suggests this should be considered in the course of Fair Work Australia's reviews in 2012 and 2014. In relation to unfair dismissal, the ALRC acknowledges the sufficiently broad formulation of 'harsh, unjust and unreasonable' and suggests consideration of family violence in determining whether 'exceptional circumstances exist' for the purposes of granting an extension of time in which to make an application. Finally the ALRC considers the general protections provisions under the *Fair Work Act* and suggests that discrimination on family-violence related grounds under those provisions could be considered in the context of the post-implementation review of the *Fair Work Act* and by the Australian Human Rights Commission.

Proposal 17–1 The Fair Work Ombudsman should develop a guide to negotiating individual flexibility arrangements to respond to the needs of employees experiencing family violence, in consultation with the Australian Council of Trade Unions and employer organisations.

Proposal 17–2 The Australian Government should encourage the inclusion of family violence clauses in enterprise agreements. Agreements should, at a minimum:

- (a) recognise that verification of family violence may be required;
- (b) ensure the confidentiality of any personal information disclosed;
- (c) establish lines of communication for employees;
- (d) set out relevant roles and responsibilities;
- (e) provide for flexible working arrangements; and
- (f) provide access to paid leave.

Proposal 17–3 The Fair Work Ombudsman should develop a guide to negotiating family violence clauses in enterprise agreements, in conjunction

with the Australian Domestic and Family Violence Clearinghouse, the Australian Council of Trade Unions and employer organisations.

Proposal 17–4 In the course of its 2012 review of modern awards, Fair Work Australia should consider the ways in which family violence may be incorporated into awards in keeping with the modern award objectives.

Proposal 17–5 In the course of its first four-yearly review of modern awards, beginning in 2014, Fair Work Australia should consider the inclusion of a model family violence clause.

Proposal 17–6 Fair Work Australia members should be provided with training to ensure that the existence of family violence is adequately considered in deciding whether there are ‘exceptional circumstances’ under s 394(3) of the *Fair Work Act 2009* (Cth) that would warrant the granting of a further period within which to make an application for unfair dismissal.

Question 17–1 Section 352 of the *Fair Work Act 2009* (Cth) prohibits employers from dismissing an employee because they are temporarily absent from work due to illness or injury. Regulation 3.01 of the *Fair Work Regulations 2009* (Cth) prescribes kinds of illness or injury and outlines a range of other requirements. In what ways, if any, could the temporary absence provisions be amended to protect employees experiencing family violence?

Chapter 18: Occupational Health and Safety Law

This chapter examines ways in which the Commonwealth occupational health and safety (OHS) system, in the context of moves to harmonise OHS law across Australia, might be improved to protect employees experiencing family violence. In particular it examines: legislative duties—specifically, duties of care and the duty to report notifiable incidents; the nature and role of regulatory guidance; the importance of education, training and measures to raise awareness about family violence as a work health and safety issue; and issues associated with data collection.

The central premise underlying Chapter 18 is that, where family violence becomes an OHS issue for employees, they should be given the highest level of protection reasonably practicable, and employers should introduce measures to address family violence in such circumstances. This reflects one of the principles underlying the Model Work Health and Safety Bill developed by Safe Work Australia.

The ALRC concludes that legislative or regulatory obligations may not be the most appropriate means by which to address family violence in the OHS context. The ALRC considers that significant amendments to the OHS system, due to come into effect on 1 January 2012, existing legislative and regulatory duties appear to be sufficiently broad to encompass family violence. Rather, it is lack of awareness or consideration of family violence as an OHS issue that should be the focus of reforms. Accordingly, the ALRC makes a range of proposals in Chapter 18 focused on: increasing awareness of family violence as a work health and safety issue; the incorporation of systems and policies into normal business practice to develop the capacity of employers and employees to effectively manage family violence as an OHS risk; and data collection

mechanisms to establish an evidence base upon which to plan future policy directions in this area.

Proposal 18–1 Safe Work Australia should include information on family violence as a work health and safety issue in relevant Model Codes of Practice, for example:

- (a) ‘How to Manage Work Health and Safety Risks’;
- (b) ‘Managing the Work Environment and Facilities’; and
- (c) any other code that Safe Work Australia may develop in relation to other topics, such as bullying and harassment or family violence.

Proposal 18–2 Safe Work Australia should develop model safety plans which include measures to minimise the risk posed by family violence in the work context for use by all Australian employers, in consultation with unions, employer organisations, and bodies such as the Australian Domestic and Family Violence Clearinghouse.

Proposal 18–3 Safe Work Australia should develop and provide education and training in relation to family violence as a work health and safety issue in consultation with unions, employer organisations and state and territory OHS regulators.

Proposal 18–4 Safe Work Australia should, in developing its Research and Data Strategy:

- (a) identify family violence and work health and safety as a research priority; and
- (b) consider ways to extend and improve data coverage, collection and analysis in relation to family violence as a work health and safety issue.

Question 18–1 What reforms, if any, are needed to occupational health and safety law to provide better protection for those experiencing family violence? For example, should family violence be included in the National Work Health and Safety Strategy?

Part F—Superannuation

Part F comprises one chapter, Chapter 19, which examines ways in which the Australian superannuation system does, or could, respond to protect those people experiencing family violence. While the intersection between family violence and superannuation is not one that has received much attention in the past, other than to a limited extent within the family law arena, there are a range of areas of superannuation in which family violence has a particular impact on, or consequence for, the economic security and independence of victims of family violence.

Chapter 19: Superannuation

This chapter consists of two main parts. The first part deals with circumstances in which a victim of family violence may have been coerced into taking action in respect of their superannuation. It considers superannuation agreements, spousal contributions and self-managed superannuation funds (SMSFs). The ALRC concludes that the treatment of superannuation should be considered in the context of an inquiry into how family violence should be dealt with in respect of property proceedings under the *Family Law Act 1975* (Cth) and considers changes to the regulation of, and guidance material with respect to, SMSFs.

The second part of Chapter 19 examines circumstances in which a victim of family violence may wish to seek early access to superannuation benefits for the purposes of, for example, leaving a violent relationship. In considering early release on the basis of severe financial hardship, the ALRC proposes amendments to the eligibility requirements for making an application and to guidance material for decision makers in granting early release. The ALRC also considers whether compassionate grounds could be amended to account for family violence, or whether a new ground of early release on the basis of family violence should be introduced. The ALRC also outlines a range of other issues relevant to early release, including in relation to application forms, training, applicant safety measures, time limits and data collection and systems integrity measures.

Question 19–1 The ALRC is not proposing that a trustee should have an express obligation to consider whether an application for superannuation splitting is being made as a result of coercion. Are there any other ways a trustee or another body could consider this issue? If so, what if any steps could they take to limit or ameliorate the effect of that on a victim of family violence?

Proposal 19–1 In *Family Violence—A National Legal Response* (ALRC Report 114) the Australian Law Reform Commission and NSW Law Reform Commission recommended that the Australian Government should initiate an inquiry into how family violence should be dealt with in respect of property proceedings under the *Family Law Act 1975* (Cth). Any such inquiry should include consideration of the treatment of superannuation in proceedings involving family violence.

Question 19–2 What changes, if any, are required to ensure that the Australian Tax Office considers family violence in determining appropriate compliance action in relation to trustees of SMSFs who fail to comply with superannuation or taxation law, where that action may affect a trustee who is:

- (a) a victim of family violence; and
- (b) not the subject of compliance action?

Question 19–3 What changes, if any, to guidance material produced by the Australian Tax Office may assist in protecting people experiencing family violence who are members or trustees of a SMSF?

Question 19–4 What approaches or mechanisms should be established to provide protection to people experiencing family violence in the context of SMSFs?

Proposal 19–2 Regulation 6.01(5)(a) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) should be amended to require that an applicant, as part of satisfying the ground of ‘severe financial hardship’, has been receiving a Commonwealth income support payment for 26 out of a possible 40 weeks.

Question 19–5 Are there any difficulties for a person experiencing family violence in meeting the requirements under reg 6.01(5)(b) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) as part of satisfying the ground of ‘severe financial hardship’? If so, what changes are necessary to respond to such difficulties?

Question 19–6 Should the *Superannuation Industry (Supervision) Regulations 1994* (Cth) be amended to allow recipients of Austudy, Youth Allowance and CDEP Scheme payments to access early release of superannuation on the basis of ‘severe financial hardship’?

Question 19–7 Should reg 6.01(5)(a) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) be amended to provide that applicants must either be in receipt of Commonwealth income support payments or some other forms of payment—for example, workers’ compensation, transport accident or personal income protection payments because of disabilities?

Question 19–8 Should APRA Superannuation Circular No I.C.2, *Payment Standards for Regulated Superannuation*, be amended to provide guidance for trustees in relation to:

- (a) what constitutes a ‘reasonable and immediate family living expense’ in circumstances involving family violence; and
- (b) the effect family violence may have on determining whether an applicant is unable to meet reasonable and immediate family living expenses?

Question 19–9 As an alternative to Question 19–8 above, should APRA work with the Australian Institute of Superannuation Trustees, the Association of Superannuation Funds of Australia and other relevant bodies to develop guidance for trustees in relation to early release of superannuation on the basis of ‘severe financial hardship’, including information in relation to:

- (a) what constitutes a ‘reasonable and immediate family living expense’ in circumstances involving family violence; and
- (b) the effect family violence may have on determining whether an applicant is unable to meet reasonable and immediate family living expenses?

Question 19–10 In practice, how long do superannuation funds take to process applications for early release of superannuation on the basis of ‘severe financial

hardship'? What procedural steps may be taken to facilitate the prompt processing of applications in circumstances involving family violence?

Question 19–11 In practice, how long does APRA take to process applications for early release of superannuation on compassionate grounds? What procedural steps may be taken to facilitate the prompt processing of applications in circumstances involving family violence?

Proposal 19–3 APRA should amend the *Guidelines for Early Release of Superannuation Benefits on Compassionate Grounds* to include information about family violence, including that family violence may affect the test of whether an applicant lacks the financial capacity to meet the relevant expenses without a release of benefits.

Question 19–12 Should reg 6.19A of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) be amended to provide that a person may apply for early release of superannuation on compassionate grounds where the release is required to pay for expenses associated with the person's experience of family violence?

Question 19–13 Should the *Superannuation Industry (Supervision) Regulations 1994* (Cth) be amended to provide for a new ground for early release of superannuation for victims of family violence? If so, how should it operate? For example:

- (a) which body should be responsible for administering the new ground;
- (b) what criteria should apply;
- (c) what evidence should be required;
- (d) if individual funds administer the new ground, should there be common rules for granting early release on the new ground; and
- (e) what appeal mechanisms should be established?

Question 19–14 What amendments, if any, should be made to application forms for early release of superannuation to provide for disclosure of family violence where it is relevant to the application?

Question 19–15 What training is provided to superannuation fund staff and APRA staff who are assessing applications for early release of superannuation? Should family violence and its impact on the circumstances of an applicant be included as a specific component of any training?

Question 19–16 In practice, how do superannuation funds and APRA contact members or those who have made an application for early release of superannuation? Is there, or should there be, some mechanism or process in place in relation to applications involving family violence to deal with safety concerns associated with:

- (a) contacting the member or applicant; or

- (b) the disclosure of information about the application?

Question 19–17 Should the 90 day period for a superannuation fund to respond to a complaint by a member be reduced to 30 days?

Question 19–18 Should there be central data collection in relation to applications for early release of superannuation in order to identify:

- (a) the extent to which funds are being accessed early on the basis of any new family violence ground, including numbers of applications and success rates; and
- (b) whether there are multiple claims on the same or different funds?

If so, which body should collect that information, and how?

Question 19–19 Are there any other ways in which superannuation law could be improved to protect those experiencing family violence?

Part G—Migration

This part comprises three chapters, Chapters 20–22. Chapter 20 provides an overview of migration law and considers a number of overarching issues in relation to the family violence exception. Chapter 21 focuses on the evidentiary requirements for making a claim under the family violence exception. Finally, Chapter 22 considers how family violence is relevant to refugee law.

Chapter 20: Migration Law—Overarching Issues

This chapter considers a number of broad issues surrounding the family violence exception contained in the *Migration Regulations 1994* (Cth). The exception—which is invoked mainly in partner visa cases—provides for the grant of permanent residence to victims of family violence, notwithstanding the breakdown of the spousal or de facto relationship on which their migration status depends. A major focus of this chapter concerns whether the family violence exception should be expanded to apply to a broader range of onshore permanent and temporary visa categories, including the Prospective Marriage (Subclass 300) visa.

The ALRC considers that the family violence exception should be made available to all *secondary visa applicants* for onshore permanent visas. Similarly, the ALRC proposes in Chapter 20 that the family violence exception should be made available to holders of a Prospective Marriage (Subclass 300) visa who have experienced family violence, but who have not married their Australian sponsor. Beyond these cases, the ALRC acknowledges that those on other temporary visas may also experience family violence. However, in light of the need to ensure the integrity of the visa system the ALRC does not propose that the family violence exception be extended to apply to temporary visa holders.

The ALRC considers that the proposals in Chapter 20 need to be complemented by adequate education, training and information dissemination to all those within the system. Accordingly, the ALRC proposes that 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. The ALRC also proposes that information about legal rights, family violence support services, and the family violence exception should be provided to visa applicants prior to and upon arrival in Australia, and that such information should be provided in a culturally appropriate and sensitive manner.

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?

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.

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?

Question 20–3 Section 351 of the *Migration Act 1958* (Cth) allows the Minister for Immigration and Citizenship to substitute a decision for the decision of the Migration Review Tribunal if the Minister thinks that it is in the public interest to do so:

- (a) Should s 351 of the *Migration Act 1958* (Cth) be amended to allow victims of family violence who hold temporary visas to apply for ministerial intervention in circumstances where a decision to refuse a visa application has not been made by the Migration Review Tribunal?
- (b) If temporary visa holders can apply for ministerial intervention under s 351 of the *Migration Act 1958* (Cth), what factors should influence whether or not a victim of family violence should be granted permanent residence?

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.

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.

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?

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?

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?

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.

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.

Chapter 21: The Family Violence Exception—Evidentiary Requirements

Chapter 21 builds on Chapter 20 and focuses on the evidentiary requirements for making a family violence exception claim under the *Migration Regulations 1994* (Cth). In order to meet the family violence exception, applicants must make a claim based on judicially or non-judicially determined evidence of family violence. The chapter begins by giving an overview of the evidentiary requirements in the Australian context,

including its legislative history. This is followed by an examination of stakeholder concerns in relation to judicially and non-judicially determined claims of family violence. Chapter 21 then considers equivalent family violence provisions in other jurisdictions including: the United States, Canada, New Zealand and the United Kingdom, before examining a number of options for reform.

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.

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?

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.

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?

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.

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.

Chapter 22: Refugee Law

Chapter 22 considers the position of asylum seekers who seek protection in Australia on the basis of having experienced family violence. The first part of the chapter includes an analysis of refugee case law in Australia in relation to family violence, and considers whether legislative changes to the *Migration Act 1958* (Cth) are necessary to improve the safety of victims of family violence. The ALRC concludes that family violence claims can fall under the definition of a refugee contained in the United Nations *Convention Relating to the Status of Refugees* (the Refugee Convention), as incorporated into Australian law by the *Migration Act*. However, the ALRC considers that this is a complex area of the law which is prone to inconsistent decision making. Assessments of family violence claims require a visa decision maker to have an in-depth understanding of the intersection between family violence and refugee law, and the relevant country information. Accordingly, in order to improve consistency in decision making, the ALRC proposes that the Minister for Immigration and Citizenship should issue a direction under s 499 of the *Migration Act* to require visa decision makers to have regard to the *Procedures Advice Manual 3 Gender Guidelines* when making refugee status assessments.

The second part of Chapter 22 considers whether other amendments, such as those proposed in the Complementary Protection Bill 2011 (Cth) are necessary to protect victims of family violence whose claims may fall outside the Refugee Convention, but who may need international protection. The ALRC considers that the measures proposed by the Bill provide limited scope for protection of victims of family violence. For the Bill to provide meaningful protection to victims of family violence, substantial amendments would need to be made to the exclusions criteria, which would significantly alter the nature of complementary protection affecting all persons who may need complementary protection, beyond those who are victims of family violence.

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.

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?

Terms of Reference

Terms of Reference—Impact of Commonwealth Laws on those Experiencing Family Violence

The 2010 inquiry into family violence by the Australian Law Reform Commission and New South Wales Law Reform Commission (the Commissions) has identified issues beyond its scope relating to the impact of Commonwealth laws (other than the *Family Law Act 1975*) on those experiencing family/domestic violence. In addition, the 2009 report of the National Council to Reduce Violence against Women and their Children, *Time for Action*, acknowledges the importance of examining Commonwealth laws that have an impact upon the safety of women and children.

Reference

I refer to the Australian Law Reform Commission for inquiry and report, pursuant to subsection 20(1) of the *Australian Law Reform Commission Act 1996* (Cth), the issue of the treatment of family/domestic violence in Commonwealth laws, including child support and family assistance law, immigration law, employment law, social security law and superannuation law and privacy provisions in relation to those experiencing family/domestic violence.

I request that the Commission consider what, if any, improvements could be made to relevant legal frameworks to protect the safety of those experiencing family/domestic violence.

Scope of the reference

In undertaking this reference, the ALRC should consider legislative arrangements across the Commonwealth that impact on those experiencing family/domestic violence and sexual assault and whether those arrangements impose barriers to effectively supporting those adversely affected by these types of violence. The ALRC should also consider whether the extent of sharing of information across the Commonwealth and with State and Territory agencies is appropriate to protect the safety of those experiencing family/domestic violence.

In undertaking this reference, the ALRC should be careful not to duplicate:

- (a) the work undertaken in the Commissions' 2010 family violence inquiry;
- (b) the other actions being progressed as part of the *National Plan to Reduce Violence against Women and their Children* Immediate Government Actions announced by the former Prime Minister on receiving the National Council's report in April 2009; and
- (c) the work being undertaken through SCAG on the harmonisation of uniform evidence laws, in particular the development of vulnerable witness protections and recently endorsed principles for the protection of communications between victims of sexual assault and their counsellors.

Collaboration and consultation

In undertaking this reference, the ALRC should:

- (a) have regard to the Commissions' 2010 family violence inquiry, the National Council's report and any supporting material in relation to family violence and sexual assault laws;
- (b) work closely with the relevant Australian Government departments to ensure the solutions identified are practically achievable and consistent with other reforms and initiatives being considered in relation to the development of a *National Plan to Reduce Violence against Women and their Children* or the National Framework for Protecting Australia's Children.

Timeframe for reporting

The Commission will report no later than 30 November 2011.

Dated: 9 July 2010



Robert McClelland

Attorney-General