5. Social Security—Overview and Overarching Issues

Contents

Summary 131
Australia’s social security framework 132
Law and policy 132
Administrative arrangements 133
Underlying principles of social security law 133
Qualification and payability 134
Social security and family violence 135
How does social security help protect safety? 135
Barriers to accessing social security for victims of family violence 136
Interpretative framework 136
Consistent definition in Commonwealth law 136
Training 137
Verifying family violence 138
The need for transparency 139
Forms of information 140
Assessing the weight of information 141
Collecting information from parents, partners and family members 142
Promoting the disclosure of family violence 144
Intervention points 146
Deny Access Facility 146

Summary

5.1 This chapter 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 ALRC makes recommendations in the key areas of interpretative frameworks around family violence, screening, and collecting information about family violence.

5.2 In considering safety, in the context of social security, the ALRC refers both to actual safety from harm but also to financial security and independence through social security payments and entitlements.
5.3 In order to enhance the common interpretative framework, the ALRC recommends that the definition of family violence, and its nature, features and dynamics, be included in the Guide to Social Security Law, supported by training for relevant Centrelink staff.

5.4 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 a recommendation that a broad range of types of information should be available to be relied on to support a claim of family violence. Finally, the ALRC recommends defined ‘intervention points’ at which Centrelink should promote the disclosure of family violence.¹

Australia’s social security framework

Law and policy

5.5 The legislative, policy and administrative framework of social security in Australia comprises the Social Security Act 1991 (Cth), the Social Security (Administration) Act 1999 (Cth) and the Social Security (International Agreements) Act 1999 (Cth).

5.6 In some circumstances, the Ministers responsible for the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Department of Education, Employment and Workplace Relations (DEEWR) have the power to make determinations—either in writing or by legislative instrument—which, in effect, have the same legal force as if they were in social security legislation itself.² The head of FaHCSIA and DEEWR—the Secretary, in each case—is occasionally given similar powers to make directions under social security legislation.³

5.7 The Guide to Social Security Law provides the lens through which the legislation is to be implemented, by providing guidance to decision makers. Although not binding in law, it is a relevant consideration for the decision maker⁴ and, as such, is a significant aspect of the ‘legal frameworks’ considered in this Inquiry.

5.8 A further element of the policy framework is the electronic guidelines referred to as the ‘e-reference’ used by Centrelink. These are not publicly available.

5.9 The ALRC considers that there is a need for greater transparency, consistency and accountability in the way Centrelink deals with cases involving family violence. Consequently, where changes to Centrelink procedures are considered, recommendations are aimed at either social security legislation or the Guide to Social Security Law, rather than Centrelink’s e-reference, which is not publicly available.

¹ See Rec 4–1.
² See, eg, Social Security Act 1991 (Cth) s 25.
³ Ibid s 3A.
⁴ Stevens and Secretary, Department of Family and Community Services [2004] AATA 1137.
5.10 In addition, the ALRC considers that including procedural information in the Guide to Social Security Law may promote awareness regarding the ways that family violence is relevant to the management of social security, and the purpose for family violence screening and Centrelink identification of customers who may be at risk.

**Administrative arrangements**

5.11 Social security law is administered by the Department of Human Services (DHS), through Centrelink. Policy responsibility is spread between DEEWR—which carries responsibility for work age payments, such as Newstart Allowance and Youth Allowance; and FaHCSIA—which carries responsibility for all other payments, such as Disability Support Pension and Age Pension.

5.12 Centrelink customer service advisers are usually the first point of contact for people visiting a Centrelink office. Certain customers are referred to a Centrelink social worker in specific situations.\(^5\) Centrelink social workers can make an assessment about a person’s personal circumstances to assist with determinations for qualification and payability of social security payments. Centrelink social workers also exercise delegations for the ‘Youth Allowance—Unreasonable to Live At Home’ payment\(^6\) and have specific requirements for Parenting Payment, Carer Payment and Special Benefit.\(^7\)

**Underlying principles of social security law**

5.13 Australia’s social security system forms part of a wider structure that presumes a strong commitment by government to high levels of employment and includes social protections provided outside the social security system—such as a mandatory system of private superannuation, workers’ compensation, a national health care system, paid sick leave and other cash and in-kind welfare benefits and services such as personal tax concessions.\(^8\) Several principles underpin the social security framework in Australia: the responsibility to assist those in need; the concept of ‘mutual obligations’; and a person’s relationship status and residence.

5.14 First, the Australian social security system is based on the recognition of government and community responsibility to assist those in need—measured by reference to the income and assets of the applicant. Accordingly, an entitlement to social security is viewed as a right based on need, rather than as something to be ‘bought’ by paying a financial contribution akin to social insurance (which is the model in many other countries).\(^9\)

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6 Ibid.

7 Ibid, [8.1.7.20].


5.15 Secondly, the concept of ‘mutual obligations’ refers to the general principle that it is fair and reasonable to expect unemployed people receiving income support to do their best to find work, undertake activities that will improve their skills and increase their employment prospects and, in some circumstances, contribute something to their community in return for receiving social security payments and entitlements. 10 This concept builds upon the notion that unemployed people have an obligation to seek work in return for social security payments—an enduring aspect of the Australian social security system.11

5.16 Thirdly, despite welfare reform that has focused on ‘mutual obligations’ of the individual, ‘it remains the bedrock of Australian social security law that a client’s relationship status determines eligibility and rates of payment’. 12 This is reflected, for example, in the relevance of the concept of ‘member of a couple’—and that a person who is a member of a couple receives a lower social security payment than one who is single. The rationale behind this principle was provided by the Minister of Social Security in 1974:

The reason for granting a higher rate of pension to a single person is that a married couple can share the costs of day-to-day living whereas a single person needs a relatively higher rate in order to enjoy the same living standard.13

5.17 Finally, because payments are not contributory, coverage of the system is universal, subject to a range of residence requirements. Some scholars have suggested that these requirements are considered necessary to preserve scarce social security resources for those ‘settled’ within the Australian community,14 reflecting the theme of ‘fairness’ identified in Chapter 2.

Qualification and payability

5.18 Section 37 of the Social Security (Administration) Act provides that a claim for a social security payment must be granted if the person is qualified and the payment is payable, creating a two stage process—qualification and payability. A person is qualified to receive a payment when all the qualification criteria set out in the Social Security Act are met.15 Qualification criteria may include age and residence requirements as well as practical issues such as whether a person has made a claim.

5.19 Once a decision is made that a person qualifies for a payment, then there is the separate issue of whether it is payable and, if so, the rate at which it is payable. Payability may be affected by a number of factors including income and assets tests, waiting periods, or whether a person is receiving another social security payment.

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Social security and family violence

5.20 This Inquiry is limited by its Terms of Reference to consider whether the social security legislative framework imposes barriers to effectively supporting those adversely affected by family violence and to consider what, if any, improvements could be made to protect the safety of those experiencing family violence. To the extent that such need also reflects a certain disadvantage, this aligns with the administrative principles of social security that include having regard to ‘the special needs of disadvantaged groups in the community’. The ALRC’s recommendations are directed towards enhancing the capacity of social security law and policy to achieve this aim for victims of family violence.

How does social security help protect safety?

5.21 The importance of financial security and independence for the safety of victims of family violence was noted by participants in a study conducted by the Australian Domestic and Family Violence Clearinghouse (ADFVC), which culminated in a report entitled Seeking Security: Promoting Women’s Economic Wellbeing Following Domestic Violence (Seeking Security):

Having my own financial independence and complete decision making over what I do and what I spend and how I support my children is at the forefront of any decision I make. That’s what financial security is to me.

5.22 Family violence can affect a person’s financial security both directly and indirectly, contributing to ‘poverty, financial risk and financial insecurity ... sometimes long after they have left the relationship’. A lack of independent financial resources for victims of family violence can mean ‘feeling imprisoned by financial need’, keeping many victims trapped in an abusive relationship. This can also have compounding impacts, including homelessness. In particular, economic abuse erodes financial resources and undermines employment and education, resulting in longer term financial insecurity and thereby increases the risk of returning to abusive partners and to a cycle of violence.

5.24 Social security payments and entitlements can be a source of financial security and thereby facilitate the safety of those experiencing family violence. This is recognised in the existing responses to family violence in the social security system—

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16 The Terms of Reference are set out at the front of this Report and can be found on the ALRC website <www.alrc.gov.au>.
17 Social Security (Administration) Act 1999 (Cth) s 8.
19 Ibid, 5.
20 Ibid; ADFVC, Submission CFV 71.
22 Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, Submission CFV 65.
such as exemptions from activity tests and participation requirements; the availability of special payments such as Crisis Payment; and the option of different payment arrangements, such as urgent or weekly payments. Having independent financial resources can enable victims of family violence to leave a violent relationship \(^{23}\) and seek alternate accommodation.

**Barriers to accessing social security for victims of family violence**

5.25 Acknowledging the importance of social security payments and entitlements to enhance the financial independence of victims of family violence, there are a number of ‘barriers’ within the social security system that may prevent victims accessing the financial assistance they may need to be safe. Consequently, the ALRC makes a number of recommendations to enhance the accessibility of the social security system.

5.26 A number of these barriers are noted in Chapter 1. Other barriers particular to social security include knowledge on the part of the customer as to how family violence is relevant to a social security payment and knowledge as to the type of information required by Centrelink to verify a claim of family violence.

**Interpretative framework**

**Consistent definition in Commonwealth law**

5.27 Chapter 3 considers placing a consistent definition of family violence in the *Social Security Act* in addition to other Commonwealth legislation.\(^{24}\) In the ALRC’s view, the definition of family violence in the *Guide to Social Security Law* should also be amended to reflect this definition, to enhance consistency across the policy and legislative base of the social security system.

5.28 Such a reform would also provide victims with clarity and the certainty that family violence will be recognised and treated similarly across Commonwealth laws. It would provide increased certainty for staff—particularly those who work across legislative regimes, such as Centrelink social workers—and provide a consistent basis for training. Further, a consistent definition across legislation and guidelines may foster a shared understanding across agencies, jurisdictions, courts and tribunals, reflecting the theme of ‘seamlessness’ referred to in Chapter 2.

5.29 In addition, the ALRC recommends that the nature, features and dynamics and the particular impact of family violence on different sectors of society be included in the *Guide to Social Security Law*. This was supported by most stakeholders.\(^{25}\) Including a statement of the nature, features and dynamics of family violence in the *Guide to Social Security Law* would serve an important educative function and provide

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\(^{24}\) Rec 3–1.

\(^{25}\) National Legal Aid, Submission CFV 164; National Welfare Rights Network, Submission CFV 150; AASW (Qld) and WRC Inc (Qld), Submission CFV 136; ADFVC, Submission CFV 105; M Winter, Submission CFV 97; Homeless Persons’ Legal Service, Submission CFV 95; Confidential, Submission CFV 90; WEAVE, Submission CFV 85.
a contextual basis for screening. Such a measure also complements the recommendations regarding definitions in Chapter 3, by developing a common interpretative framework around family violence across agencies and legal frameworks. As discussed in Chapter 3, the form of the statement should be altered to best suit the presentations of family violence, and the particular risks victims may face, in each particular legal framework.

**Recommendation 5–1** The *Guide to Social Security Law* should include:

(a) the definition of family violence in Recommendation 3–2; and

(b) information on the nature, features and dynamics of family violence including 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.

**Training**

5.30 The ALRC recommends that any legislative or policy change should be accompanied with consistent, regular and targeted training for relevant staff. This view was strongly supported by stakeholders who agreed that consistent and regular training on the definition of family violence, including its nature, features and dynamics, should be provided to decision makers.\(^{26}\) Stakeholders made suggestions as to the manner in which training should be conducted, including:

- drawing on ‘the perspectives, experience and expertise of external stakeholders and client representatives, in addition to direct testing with clients themselves’;\(^{27}\)
- being informed by feminist principles;\(^{28}\) and
- employing a principle of trauma-informed care, ‘which takes as its starting point the likely presence and long-term effects of family violence’.\(^{29}\)

5.31 The NWRN expanded on what should be defined as regular training—‘to occur when policies are changed, for new staff, to accommodate regular internal movement and to refresh skills of existing staff’.\(^{30}\)

5.32 Beyond the definition and nature, features and dynamics of family violence, family violence affects social security payments and processes in a number of ways. In

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\(^{27}\) National Welfare Rights Network, *Submission CFV 150*.

\(^{28}\) WEAVE, *Submission CFV 85*.

\(^{29}\) Homeless Persons’ Legal Service, *Submission CFV 95*.

some circumstances additional training for relevant staff is required to ensure that staff are aware of the ways in which family violence may be relevant to a customer’s social security case. In response to concerns about the resource-intensiveness of providing training to all Centrelink customer service advisers, the ALRC recommends targeted training, including for Centrelink customer service advisers, social workers and specialist officers.

5.33 One stakeholder questioned whether training should be extended to SSAT members as training in relation to legislative amendments is already provided to members. However, the ALRC considers that SSAT and AAT members, as decision makers, should receive such training.

**Recommendation 5–2** Centrelink customer service advisers and social workers should receive consistent, regular and targeted training to ensure that the existence of family violence is appropriately and adequately considered at relevant times.

**Recommendation 5–3** Social Security Appeals Tribunal and Administrative Appeals Tribunal members should receive consistent, regular and targeted training to ensure that the existence of family violence is appropriately and adequately considered at relevant times.

### Verifying family violence

5.34 Circumstances of family violence may be relevant to a number of social security outcomes—for example, a breakdown of the relationship between a couple so that they may no longer be assessed, in social security terms, on the basis of that status. Family violence may also lead to safety concerns so that a person can no longer live at home or cause distress that may have other social security consequences.

5.35 While ensuring that the claims of people who are experiencing family violence are genuinely met, there is also a need to ensure that unintended outcomes or ‘system perversities’ are not created. Likewise, there is a need for checks and balances to ensure that genuine claims are met and that a claim of family violence is not seen as an easy way to gain a social security entitlement or benefit, thereby creating an incentive for a false or possibly manipulated claim of family violence.

5.36 To ensure the integrity of the social security system, it is necessary, in certain circumstances, for Centrelink to verify claims of family violence where it is relevant to a person’s social security payments and entitlements. Consequently, it is necessary for Centrelink to collect information about family violence when it has been disclosed and it is relevant to a person’s social security payments and entitlements.

31 DHS, *Consultation*, by telephone, 30 September 2011.
32 Confidential, *Submission CFV 122*. 
5. Social Security—Overview and Overarching Issues

5.37 Guidance is provided in the Guide to Social Security Law as to the types of information relevant to different qualification and payability criteria and how it is collected. However, often little or no guidance is provided in relation to the actual collection of information about family violence or safety concerns in different contexts. For example, in relation to exemptions from activity tests and participation requirements on the basis of special family circumstances, the only guidance provided is that exemptions are to be based on a Centrelink social worker’s report. In other areas, more specific guidance is provided.

The need for transparency

5.38 The ALRC considers that there is a need for increased transparency in the type of information Centrelink relies on in determining claims of family violence, to ensure fairness in the administration of the social security system.

5.39 In light of the theme of ‘autonomy’ discussed in Chapter 2, it is important that the social security system does not presume a ‘one-size-fits-all’ response. Recognising the individual circumstances of the customer, not every customer will be able to rely on the same type of information. A person who is experiencing family violence should be able to provide a range of information, to be given different weighting. However, it is also important that such an approach does not lead to a ‘tick the box’ approach, nor create administrative barriers to providing information about family violence.

5.40 The Commonwealth Ombudsman highlighted the need for autonomy, recommending that persons experiencing family violence ‘should be able to choose how they want to declare themselves to others’. Likewise, the Welfare Rights Centre Inc Queensland (WRC Inc (Qld)) submitted that there needed to be ‘a choice of assessment methods, to enable the victim to provide the information’. Similarly, the ADFVC supported the use of a ‘wide range of evidence to support a claim of experiencing family violence’.

5.41 The ALRC recommends that any amendments to the type of information relied on by Centrelink to support a claim of family violence should be included in the Guide to Social Security Law as the publicly accessible policy guide. This would ensure that victims of family violence and their advocates know what types of information they need to provide to Centrelink for different payments and claims. The ALRC also recommends that this information be included in the recommendations in Chapter 4 regarding information provision to customers to increase accessibility and transparency—and therefore fairness—of the decision-making process. Including information about the type of information Centrelink relies upon in verifying a claim of family violence may also reduce the need for a victim of family violence to visit a

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34 See, for eg, ibid in relation to ‘member of a couple’ [2.2.5.10]; separation under one roof [2.2.5.30]; unreasonable to live at home [3.2.5.40], [3.2.5.70]; and Crisis Payment [3.7.4.25].
35 Commonwealth Ombudsman, Submission CFV 62.
36 WRC Inc (Qld), Submission CFV 66.
37 ADFVC, Submission CFV 71.
Centrelink office repeatedly and enable him or her to bring all the required information on the first visit.

**Forms of information**

5.42 In particular, the ALRC considers that the following types of information may be appropriate:

- statements, including statutory declarations;
- third party statements such as statutory declarations by witnesses, employers or family violence services;
- social workers’ 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.

5.43 This was supported by stakeholders. However, a number of stakeholders emphasised that the word of the victim should suffice in most cases—in particular, where no independent verification is available—and that the victim should be given the benefit of the doubt, as ‘the nature of family and relationship violence is that it is generally hidden from view’.

5.44 The NWRN considered further that, if additional verification is required, the onus should be on Centrelink to collect that information with the person’s consent—for example, through the use of information-gathering powers under s 192 of the Social Security Act.

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38 National Legal Aid, Submission CFV 164; National Welfare Rights Network, Submission CFV 150; DEEWR, Submission CFV 130; ADFVC, Submission CFV 105; Homeless Persons’ Legal Service, Submission CFV 95; Confidential, Submission CFV 90; WAVE, Submission CFV 85.

39 National Welfare Rights Network, Submission CFV 150; AASW (Qld) and WRC Inc (Qld), Submission CFV 136; M Winter, Submission CFV 97; Confidential, Submission CFV 90; WAVE, Submission CFV 85; WAVE, Submission CFV 58; National Council of Single Mothers and their Children, Submission CFV 57.

40 WRC (NSW), Submission CFV 70; WAVE, Submission CFV 58.

41 WRC (NSW), Submission CFV 70; WRC Inc (Qld), Submission CFV 66; WAVE, Submission CFV 58.

42 National Welfare Rights Network, Submission CFV 150.

43 Ibid.
5.45 In addition to these concerns, the ALRC also notes stakeholders’ comments regarding Centrelink staff responses to information about family violence—that staff may be dismissive\(^{44}\) or sceptical to claims.\(^{45}\) It is important that a person who is experiencing family violence is able to access the services and support needed to ensure his or her safety. The ALRC therefore recommends that Centrelink customer service advisers and social workers receive training on the types of information that a customer can rely on for claims of family violence as part of Recommendation 5–2.

**Assessing the weight of information**

5.46 The ALRC recognises that verification of family violence is needed in order to maintain the integrity of the system and to ensure a fair distribution of social security according to genuine need. However, not all circumstances should require the same level of verification.

5.47 In this respect, the ALRC considers that the level of verification of family violence should be proportionate to the ‘entitlement’ gained. This was supported by a number of stakeholders.\(^{46}\) For example, for Crisis Payment, due to the nature of the payment, the victim’s account should be sufficient, whereas for ‘member of a couple’ determinations and exercise of the ‘special reason’ discretion, the level of verification should be higher. This is because a decision that a person is or is not a ‘member of a couple’ has broader and ongoing consequences than a decision that a person should receive a one-off Crisis Payment.

5.48 For example, the Commonwealth Ombudsman submitted that, in obtaining information about family violence from third parties, ‘emphasis should be placed on obtaining information from independent and/or professional people or organisations who may have observed the violence or its effects’ and to

> provide guidance to staff that this sort of evidence should generally be preferred over other types of evidence, including statements from people who have a personal relationship with either the victim or the perpetrator.\(^{47}\)

5.49 The NWRN was however concerned that a ‘high’ threshold will unduly constrain the ability of a person experiencing family violence to satisfy a decision maker of that fact. In addition, concerns were raised that a hierarchy of forms of information could result in unfair outcomes for the victim—that if a person has no third party corroboration, their story would be taken less seriously.\(^{48}\)

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44 M Winter, *Submission CFV 51*.  
48 AASW (Qld) and WRC Inc (Qld), *Submission CFV 136*. 
5.50 Some stakeholders supported the use of third party verification, but with the qualification that ‘[i]f no independent expert is available or in situations of urgency, a Centrelink social worker professional assessment should be regarded as sufficient to verify the circumstances’. However, stakeholders also raised concerns about the reliance on certain third party statements, such as:

- engaging with a third party may serve only to provide another source to repeat what the victim has said and disempowering the victim as a potential liar and an inadequate source of information;
- due to secrecy, non-physical forms of violence and difficulties in expressing what has happened to them, there may be no ‘independent third party’;
- overreliance on police reports may lead to an assumption that if there is no report, there is no violence; and
- accessing information from a former employer to establish that a person has not voluntarily left his or her job or caused their dismissal.

5.51 Concerns such as these should be reflected in the Guide to Social Security Law to ensure that information that a person experiencing family violence is able to provide is considered sufficient.

Collecting information from parents, partners and family members

5.52 A parent, partner or other family member may be one of the best sources to verify certain information relevant to a person’s social security payment or entitlement. However, in circumstances involving family violence, contact with a parent or partner, or indeed another family member, may not be appropriate. Contacting a family member may, in some circumstances, jeopardise the safety of a victim of family violence. In such circumstances, other sources of verification should be used.

5.53 Several references in the Guide to Social Security Law are made to collecting information from a person’s parent or partner for the purposes of social security payments or entitlements. In some circumstances, the Guide to Social Security Law states that it may not be appropriate to contact a person’s parent or partner in circumstances of family violence—for example, in relation to ‘Independent—

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49 WRC (NSW), Submission CFV 70; Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, Submission CFV 65.
50 Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, Submission CFV 65.
51 WEAVE, Submission CFV 58.
52 University of Queensland Union, Submission to the Senate Employment, Workplace Relations and Education References Committee Inquiry into Student Income Support (2004).
53 Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, Submission CFV 65.
54 WEAVE, Submission CFV 14.
5. Social Security—Overview and Overarching Issues

Unreasonable To Live At Home’, where contact with the parent presents a ‘severe risk’ to the young person or others.56

5.54 Despite these provisions in the Guide to Social Security Law, some stakeholders found that family violence was not consistently considered by Centrelink before a parent or partner was interviewed57 indicating that improvement is needed to ensure that Centrelink customers are aware that Centrelink has discretion not to contact parents or partners if the customer is a victim of family violence.58 Specifically, the Welfare Rights Centre NSW (WRC (NSW)) stated that, if customers are not aware of such discretion, it could ‘act to deter people who have experienced violence from raising the issue with authorities because they fear retribution’.59

5.55 Victims of family violence also need to be aware that a parent, partner or other family member may not be contacted in circumstances of family violence; otherwise the person experiencing family violence may be deterred from disclosing family violence for fear of retribution. For example, in a submission to the 2005 Senate Employment, Workplace Relations and Education References Committee Inquiry into Student Income Support, the University of Queensland Union submitted that

young people often decide to give permission [to contact a parent] despite the fact that it doesn’t feel appropriate or safe to do so. The requirement that a perpetrator of abuse not be contacted is not helpful here if the definition of abuse is not fully in line with sector standards.60

5.56 In this regard, the ALRC makes recommendations in relation to:

• ensuring consistency throughout the Guide to Social Security Law in relation to when it is not appropriate to contact a family member (including a parent or partner) in circumstances of family violence;

• consistent, regular and targeted training of Centrelink customer service advisers and social workers about the discretion not to contact a parent or partner where family violence has been raised as a concern as part of Recommendation 5–2; and

• information provided to Centrelink customers about the discretion of Centrelink staff not to contact a partner or parent in circumstances of family violence in accordance with Recommendation 4–2.

56 Ibid, [3.2.5.70].
57 WEAVE, Submission CFV 58; National Council of Single Mothers and their Children, Submission CFV 57; M Winter, Submission CFV 51; P Eastal and D Emerson-Elliott, Submission CFV 05.
58 WRC (NSW), Submission CFV 70; WRC Inc (Qld), Submission CFV 66; Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, Submission CFV 65; WEAVE, Submission CFV 58; National Council of Single Mothers and their Children, Submission CFV 57; M Winter, Submission CFV 51; Homeless Persons’ Legal Service, Submission CFV 40.
59 WRC (NSW), Submission CFV 70.
60 University of Queensland Union, Submission to the Senate Employment, Workplace Relations and Education References Committee Inquiry into Student Income Support (2004).
5.57 These recommendations were supported by stakeholders who considered that ‘safety considerations should always take precedence in any interaction with young people who are experiencing family violence’.62

5.58 In addition, the ALRC considers it inappropriate that information should only not be collected from a family member where that member presents a ‘severe risk’. The ALRC considers that any risk of family violence should be sufficient.

5.59 The NWRN noted that such a policy should not prevent a person experiencing family violence from seeking to adduce evidence from the person using family violence that would support their claim of family violence. The NWRN also suggested that such verification may be sought by Centrelink in reliance on the information-gathering powers in s 192 of the Social Security Act or by Tribunals through appropriate procedures.63 The use of s 192 for similar purposes is discussed in further detail in Chapter 7.

5.60 In implementing these recommendations, care will need to be taken to ensure procedural fairness is afforded to any person who is alleged to have used family violence.64 For example, to ensure that where the person alleged to have used family violence is also a recipient of social security payments or entitlements, this allegation does not adversely affect their entitlements without the opportunity to present their case.

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**Recommendation 5–4**

The Guide to Social Security Law should provide:

(a) that a range of forms of information may be used to support a claim of family violence;

(b) guidance as to assessing 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; and

(c) that, where a person claims that he or she is experiencing family violence, it is not appropriate to seek verification of that claim from the person alleged to be using family violence.

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**Promoting the disclosure of family violence**

5.61 Promoting the disclosure of family violence by Centrelink is discussed in detail in Chapter 4. As discussed in that chapter, Centrelink relies on self-disclosure of family violence and does not appear to promote disclosure of family violence.

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61 National Legal Aid, Submission CFV 164; National Welfare Rights Network, Submission CFV 150; AASW (Qld) and WRC Inc (Qld), Submission CFV 136; DEEWR, Submission CFV 130; M Winter, Submission CFV 97; Homeless Persons’ Legal Service, Submission CFV 95; Confidential, Submission CFV 90; WEAVE, Submission CFV 85; WRC Inc (Qld), Submission CFV 66.

62 AASW (Qld) and WRC Inc (Qld), Submission CFV 136.

63 National Welfare Rights Network, Submission CFV 150.

64 Commonwealth Ombudsman, Submission CFV 62.
5.62 Stakeholders considered a number of intervention points for promoting the disclosure of family violence and considered that there should not be a ‘wrong time’; and that ‘all Centrelink forms, correspondence and telephone prompts should directly seek information about family violence to facilitate victims of family violence overcoming their reluctance to disclose their experiences’. 65 DEEWR, however, considered that existing processes were sufficient to identify victims in circumstances where a victim chooses to disclose. 66 Community and Public Sector Union (CPSU) members submitted that

it is current practice for these questions to be asked, with all Centrelink staff are required to explore a customer’s current circumstances at all points of contact. This includes exploring relationship status and family violence incidents. 67

5.63 However, existing processes rely on self-disclosure of family violence. Stakeholders identified a number of barriers to self-disclosure of family violence to Centrelink including:

- lack of confidence to classify what they are experiencing as family violence, such as financial or economic abuse—in particular, those from non-English speaking background with disability ‘may not interpret threats of abandonment, withdrawal of services or tampering with aids as family violence, even though such acts are designed to threaten and control the person’; 68
- lack of knowledge—both of what constitutes family violence legally, and of the significance of family violence in obtaining entitlements; 69
- the person using family violence supervises all contact with the service agency; 70
- fear of adverse consequences such as being ‘punished’ by not receiving payments or more stringent work requirements; 71
- having to repeat an account of family violence multiple times; 72
- lack of privacy at Centrelink offices; 73 and
- concerns that disclosure of family violence will not be believed or their experiences trivialised. 74

65  Homeless Persons’ Legal Service, Submission CFV 95.
66  DEEWR, Submission CFV 130.
67  CPSU, Submission CFV 147.
68  National Children’s and Youth Law Centre, Submission CFV 64.
69  Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, Submission CFV 65.
70  Multicultural Disability Advocacy Association, Submission CFV 66.
71  Good Shepherd Youth & Family Service, McAuley Community Services for Women and Kildonan Uniting Care, Submission CFV 65; Commonwealth Ombudsman, Submission CFV 62; Council of Single Mothers and their Children (Vic), Submission CFV 55.
72  WRC Inc (Qld), Submission CFV 66.
73  Sole Parents’ Union, Submission CFV 63.
74  Council of Single Mothers and their Children, Submission CFV 44.
75  WRC Inc (Qld), Submission CFV 66.
76  National Council of Single Mothers and their Children, Submission CFV 45.
5.64 The ALRC therefore considers actively promoting the disclosure of family violence is necessary. This was supported by most stakeholders—while ensuring that autonomy is left with the victim as to whether to disclose or not.

**Intervention points**

5.65 Chapter 4 recommends that Centrelink promote the disclosure of family violence at defined ‘intervention points’. In addition to those identified in Chapter 4, the ALRC considers that there may be other ‘intervention points’ in the social security process for Centrelink to promote the disclosure of family violence. The negotiation and revision of a person’s Employment Pathway Plan, and the consideration of imposing a 26 week exclusion period when a person moves to an area of lower employment prospects, may be two such intervention points.

5.66 Other intervention points identified by stakeholders included:

- changes in the types of payment claims, address details, illness reports, non-compliance with requirements;
- at regular intervals or at points of change;
- where young people are identified as at risk and/or unable to live at home; and
- in cases where debts are sought to be or have been waived for recipients of Parenting Payment (Single).

**Deny Access Facility**

5.67 Centrelink has a ‘Deny Access Facility’ (DAF), which provides additional security to the records of customers who have genuine fears for their safety. Only designated Centrelink officers are able to access DAF records, which thereby limits the potential for the computer records of DAF clients to be accessed inappropriately by Centrelink staff, either inadvertently or by reason of a deliberate breach. Customers who may be eligible to have their personal information on the DAF include customers who are escaping domestic or physical violence.

5.68 In *Family Violence—Commonwealth Laws*, ALRC Discussion Paper 76 (2011), the ALRC asked whether a person should be placed on the DAF upon the request of a person who has disclosed safety concerns. The ALRC does not consider this appropriate. This reform may have resource implications, as the number of Centrelink staff with DAF access, while necessarily limited, may need to increase to deal with a

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77 National Legal Aid, Submission CFV 164; National Welfare Rights Network, Submission CFV 150; ADFVC, Submission CFV 105; M Winter, Submission CFV 97; Homeless Persons’ Legal Service, Submission CFV 95; Confidential, Submission CFV 90; WEAVE, Submission CFV 85.
78 AASW (Qld) and WRC Inc (Qld), Submission CFV 136.
79 Council of Single Mothers and their Children (Vic), Submission CFV 55.
80 National Welfare Rights Network, Submission CFV 150.
81 WEAVE, Submission CFV 85.
82 ADFVC, Submission CFV 105.
83 DEEWR, Submission CFV 130.
84 Ibid.
corresponding increase in people whose information is on the DAF. Further, if more people were placed on the DAF, the system would become unworkable, customers would encounter delays and the underlying purpose of the DAF would be defeated.