Recommendations

3. Common Interpretative Framework

**Recommendation 3—1** The Australian Government should amend the following legislation to include a consistent definition of family violence:

(a) *Social Security Act 1991* (Cth);
(b) *Social Security (Administration Act) 1999* (Cth);
(c) *Child Support (Assessment) Act 1989* (Cth);
(d) *Child Support (Registration and Collection) Act 1988* (Cth);
(e) *A New Tax System (Family Assistance) Act 1999* (Cth);
(f) *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth); and
(g) *Migration Regulations 1994* (Cth).

**Recommendation 3—2** For the purposes of Recommendation 3–1, ‘family violence’ should be defined by reference to:

(a) a core definition of conduct that is violent, threatening, coercive or controlling, or intended to cause the family member to be fearful; and
(b) a non-exhaustive list of examples of physical and non-physical conduct.

**Recommendation 3—3** The following guidelines and material should provide for a consistent definition of family violence as proposed in Recommendation 3–2:

(a) Department of Education, Employment and Workplace Relations and Job Services Australia Guidelines, Advices and Job Aids;
(b) Fair Work Australia material;
(c) Fair Work Ombudsman material;
(d) Safe Work Australia Codes of Practice and other material; and
(e) other similar material.

**Recommendation 3—4** Where relevant and appropriate, all Australian Prudential Regulation Authority, Department of Human Services, Australian Taxation Office and superannuation fund material, should provide for a consistent definition of family violence as set out in Recommendation 3–2.
4. Disclosure and Issues Management

**Recommendation 4—1** The Child Support Guide, Family Assistance Guide and the Guide to Social Security Law should indicate that staff providing customer services, including Centrelink social workers, Indigenous Service Officers, and Multicultural Service Officers should identify family violence-related safety concerns through screening, risk identification, or other methods. Identification of such concerns should occur at, or immediately following, the application process, and at defined intervention points (including as set out in Recommendations 12–1 and 12–3).

**Recommendation 4—2** The Department of Human Services should provide information to customers about how family violence may be relevant to their child support, family assistance and social security matters. This should be provided in a variety of formats and should include relevant information about:

- (a) exemptions;
- (b) entitlements;
- (c) privacy and information protection;
- (d) support and services provided by the Child Support Agency, the Family Assistance Office and Centrelink;
- (e) referrals to Centrelink social workers and expert service providers; and
- (f) income management.

**Recommendation 4—3** The Child Support Guide, the Family Assistance Guide, and the Guide to Social Security Law should provide that, when family violence-related safety concerns are identified, the Department of Human Services staff providing customer services must refer the customer to a Centrelink social worker or other expert service providers.

**Recommendation 4—4** The Department of Human Services should consider developing and implementing a ‘safety concern flag’:

- (a) to be placed on a customer’s file when family violence-related safety concerns are identified;
- (b) to be shared between relevant Department of Human Services programs and other relevant departments or agencies, with a customer’s informed consent; and
- (c) with privacy safeguards.

**Recommendation 4—5** The Department of Human Services should ensure that staff providing customer services, including Centrelink social workers, Indigenous Service Officers, and Multicultural Service Officers receive consistent, regular and targeted training about:

- (a) advising customers on the impact of family violence on their case or claim;
- (b) responding to disclosures of family violence-related safety concerns, including by referrals to Centrelink social workers and other expert service providers; and
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 lesbian, gay, bisexual, trans and intersex communities; older persons; and people with disability.

5. Social Security—Overview and Overarching Issues

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.

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.

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.

6. Social Security—Relationships

Recommendation 6—1  The Guide to Social Security Law should suggest the ways in which family violence may affect the interpretation and application of the criteria in s 4(3) of the Social Security Act 1991 (Cth).

Recommendation 6—2  The Guide to Social Security Law should include family violence as a circumstance where a person may be living separately and apart under one roof.

Recommendation 6—3  The Guide to Social Security Law should 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).
Recommendation 6—4  The Social Security Act 1991 (Cth) provides that, a person is independent if the person cannot live at the home of either or both of his or her parents:

(i) because of extreme family breakdown or other similar exceptional circumstances; or

(ii) because it would be unreasonable to expect the person to do so as there would be a serious risk to his or her physical or mental well-being due to violence, sexual abuse or other similar unreasonable circumstances.

The Australian Government should amend ss 1067A(9)(a)(ii) and 1061PL(7)(a)(ii) of the Social Security Act 1991 (Cth):

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

- to remove the requirement for the decision maker to be satisfied of ‘a serious risk to the person’s physical or mental well-being’.

Recommendation 6—5  The Guide to Social Security Law should 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).

Recommendation 6—6  The Department of Education, Employment and Workplace Relations and Centrelink should review their policies, practices and training, including consideration of the information gathering powers under s 192 of the Social Security Act 1991 (Cth) to ensure that, in cases of family violence, applicants for Youth Allowance, Disability Support Pension and Pensioner Education Supplement, do not have sole responsibility for providing specific information about the:

(a)  financial circumstances of their parent or guardian; and

(b)  level of ‘continuous support’ available to them.

7. Social Security—Proof of Identity and Residence Requirements

Recommendation 7—1  The Guide to Social Security Law should include family violence as a reason for an exemption—including the possibility of an indefinite exemption—from the requirement to provide a partner’s tax file number.

Recommendation 7—2  Recommendation 20–3 provides that the Australian Government should create a new temporary visa to allow victims of family violence who are secondary holders of a temporary visa to make arrangements to leave Australia or to apply for another visa.
If such an amendment is made, the Minister for Families, Housing, Community Services and Indigenous Affairs should make a determination under ss 729(2)(f)(v) and 739A(3)(b) of the *Social Security Act 1991* (Cth) including this visa as a ‘specified subclass of visa’ that:

(a) meets the residence requirements for Special Benefit; and

(b) is exempted from the Newly Arrived Resident’s Waiting Period for Special Benefit.

**Recommendation 7—3** Under s 729 of the *Social Security Act 1991* (Cth), Special Benefit is a discretionary benefit available to a person who is not able to obtain any other income support payment. The Australian Government should consider amending the *Social Security Act 1991* (Cth) to enable non-protected Special Category Visa holders to access Special Benefit.

**Recommendation 7—4** The *Social Security Act 1991* (Cth) provides that the Newly Arrived Resident’s Waiting Period does not apply to Special Benefit if the person has suffered a ‘substantial change in circumstances beyond his or her control’. The *Guide to Social Security Law* should include family violence as a specific 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.

8. Social Security—Determining Capacity to Work

**Recommendation 8—1** As far as possible, or at the request of the job seeker, all Job Seeker Classification Instrument interviews should be conducted:

(a) in person; 

(b) in private; and 

(c) in the presence of only the interviewer and the job seeker.

**Recommendation 8—2** Centrelink customer service advisers should receive consistent, regular and targeted training in the administration of the Job Seeker Classification Instrument, including training in relation to:

(a) 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 

(b) the availability of support services.

**Recommendation 8—3** The Department of Education, Employment and Workplace Relations should amend the Job Seeker Classification Instrument to include ‘family violence’ as a new and separate category of information.

**Recommendation 8—4** The Department of Human Services should conduct a review of the Employment Services Assessment with a particular focus on the impact of the assessment on job seekers experiencing family violence.
Recommendation 8—5  The Department of Human Services should provide Employment Services Assessment and Job Capacity Assessment assessors with consistent, regular and targeted training to ensure that the existence of family violence is appropriately and adequately considered.

Recommendation 8—6  Job Services Australia, Disability Employment Services and Indigenous Employment Program providers are currently contracted by the Department of Education, Employment and Workplace Relations under Employment Services Deeds and Indigenous Employment Program contracts, respectively. The Department of Education, Employment and Workplace Relations should include a requirement in such Deeds and contracts, that providers should appropriately and adequately consider the existence of family violence when tailoring service responses to individual job seeker needs.

Recommendation 8—7  The Department of Education, Employment and Workplace Relations should require that all Job Services Australia, Disability Employment Services and Indigenous Employment Program staff receive regular, consistent and targeted training in relation to:

(a) the nature, features and dynamics of family violence, including its impact on particular job seekers such as Indigenous peoples; those from culturally and linguistically diverse backgrounds; those from lesbian, gay, bisexual, trans and intersex communities; older persons and people with disability.

(b) the potential impact of family violence on a job seeker’s capacity to work and barriers to employment;

(c) appropriate referral processes; and

(d) the availability of support services.

Recommendation 8—8  The circumstances in which a job seeker can change Job Services Australia or Disability Employment Services providers should be extended to circumstances where a job seeker who is experiencing family violence is registered with the same Job Services Australia or Disability Employment Services provider as the person using family violence.

Recommendation 8—9  The Department of Education, Employment and Workplace Relations should ensure that Job Services Australia and Disability Employment Services staff identify family violence-related safety concerns through screening, risk identification or other methods at defined intervention points.

Recommendation 8—10  The Department Education, Employment and Workplace Relations, the Department of Human Services and Centrelink 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.

Recommendation 8—12  Exemptions from activity tests, participation requirements and Employment Pathway Plans are available for a maximum of 13 or 16 weeks. There are concerns that exemption periods granted to victims of family violence are not long enough. The Department of Education, Employment and Workplace Relations should review exemption periods to ensure a long enough time for victims of family violence.

Recommendation 8—13  The Department of Education, Employment and Workplace Relations should review the classes of persons who can have an Unemployment Non-Payment Period ended under the Social Security (Administration) (Ending Unemployment Non-payment Periods—Classes of Persons) (DEEWR) Specification 1990 (No 1) to ensure it is sufficiently broad to capture victims of family violence.

Recommendation 8—14  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.

9. Social Security—Crisis Payment, Methods of Payment and Overpayment

Recommendation 9—1  The Australian Government should consider amending the Social Security Act 1991 (Cth) to enable Crisis Payment to be available to those in financial hardship without the additional need to be on, or eligible for, income support.

Recommendation 9—2  Crisis Payment for family violence is only available where either the victim of family violence leaves the home or the person using family violence is removed from, or leaves, the home. The Australian Government should amend that Social Security Act 1991 (Cth) to provide Crisis Payment to any person suffering severe financial hardship who is ‘subject to’ or ‘experiencing’ family violence.

Recommendation 9—3  The Social Security Act 1991 (Cth) establishes a seven day claim period for Crisis Payment. There are concerns that the claim period is not long enough for victims of family violence. The Australian Government should review the claim period, and the point at which the claiming period begins, to ensure a long enough claim period for victims of family violence.

Recommendation 9—4  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. In some circumstances, urgent payments may not be made because the family violence was ‘foreseeable’. The Guide to Social Security Law should refer expressly to family violence as a circumstance when urgent payments may be sought.

Recommendation 9—5  The Guide to Social Security Law should clarify that urgent and advance payments may be made in circumstances of family violence in addition to Crisis Payment.
Recommendation 9—6  The *Guide to Social Security Law* should provide that, where a delegate is determining a person’s ‘capability to consent’ to a nominee arrangement, the effect of family violence is also considered in relation to the person’s capability.

Recommendation 9—7  Section 1237AAD of the *Social Security Act 1991* (Cth) provides that the Secretary of Families, Housing, Community Services and Indigenous Affairs may waive the right to recover all or part of a debt where:

(a) special circumstances exist; and

(b) the debtor or another person did not ‘knowingly’ make a false statement or ‘knowingly’ omit to comply with the *Social Security Act*.

The Australian Government should amend s 1237AAD to provide that the Secretary may waive the right to recover all or part of a debt, if satisfied that the debt did not result wholly or partly from the debtor, or another person acting as a nominee for the debtor, knowingly:

- making a false statement or a false representation; or

- failing or omitting to comply with a provision of the *Social Security Act*, the *Social Security (Administration) Act 1999* (Cth) or the *Social Security Act 1947* (Cth).

Recommendation 9—8  The *Guide to Social Security Law* should refer to examples of family violence through duress and coercion as not constituting knowledge on the part of the debtor.

Recommendation 9—9  The *Guide to Social Security Law* should refer to family violence as a ‘special circumstance’ for the purposes of s 1237AAD of the *Social Security Act 1991* (Cth).

10. Income Management—Social Security Law

Recommendation 10—1  The Australian Government should amend the *Social Security (Administration) Act 1999* (Cth) to ensure that a person or persons experiencing family violence are not subject to Compulsory Income Management. The *Guide to Social Security Law* should reflect this amendment.

Recommendation 10—2  The Australian Government should amend the *Social Security (Administration) Act 1999* (Cth) to create an ‘opt-in and opt-out’ income management model that is voluntary and flexible to meet the needs of people experiencing family violence. The *Guide to Social Security Law* should reflect this amendment.

Recommendation 10—3  ‘Priority needs’, for the purposes of s 123TH of the *Social Security (Administration) Act 1999* (Cth) are goods and services that a welfare recipient is not excluded from purchasing. The Australian Government should amend the definition of ‘priority needs’ in s 123TH to include travel or other crisis needs for people experiencing family violence. The *Guide to Social Security Law* should reflect this amendment.
11. Child Support Frameworks

**Recommendation 11—1** The *Child Support Guide* should include:

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

(b) information about 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.


**Recommendation 12—1** The *Child Support Guide* should provide that the Child Support Agency should identify family violence-related safety concerns through screening, ‘risk identification’ or other methods, when a payee:

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

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

**Recommendation 12—2** The *Child Support Guide* should provide that the Child Support Agency should refer a payee who has disclosed family violence, including a payee who receives no, or no more than, the base rate of Family Tax Benefit Part A, to a Centrelink social worker or expert service provider when he or she:

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

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

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

**Recommendation 12—3** The *Child Support Guide* should provide that the Child Support Agency should contact a customer to identify family violence-related safety concerns through screening, ‘risk identification’ or other methods, prior to initiating significant action against the other party, including:

(a) change of assessments (‘departure determinations’ under the *Child Support (Assessment) Act 1989* (Cth));

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

(c) departure prohibition orders.

**Recommendation 12—4** The *Child Support Guide* should provide that, where a customer has disclosed family violence, the Child Support Agency should consult with the customer regarding his or her safety concerns, prior to initiating significant action against the other party, including:

(a) change of assessments (‘departure determinations’ under the *Child Support (Assessment) Act 1989* (Cth));

(b) court actions to recover child support debt; and
Recommendation 12—5 The Child Support Guide should provide that the Child Support Agency should identify family violence-related safety concerns through screening, ‘risk identification’ or other methods, prior to requiring a payee to collect privately pursuant to s 38B of the Child Support (Registration and Collection) Act 1988 (Cth).


Recommendation 12—7 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)). The Australian Government should amend s 7B(3)(b) of the Child Support (Assessment) Act 1989 (Cth) to:

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

(b) remove the requirement for the Registrar to be satisfied of ‘a serious risk to the child’s physical or mental wellbeing’.

13. Child Support and Family Assistance—Reasonable Maintenance Action Exemptions

Recommendation 13—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. The Australian Government should amend A New Tax System (Family Assistance) Act 1999 (Cth) 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’.

Recommendation 13—2 The Family Assistance Guide should expressly include ‘family violence’ and ‘fear of family violence’ as grounds for an exemption from the ‘reasonable maintenance action’ requirement.

Recommendation 13—3 The Family Assistance Guide provides limited information about reviews of exemptions from the ‘reasonable maintenance action’ requirement, and about the duration of exemptions granted on grounds of violence or fear of violence. The Family Assistance Guide should provide additional information regarding the:

(a) the exemption review process; and

(b) the duration of exemptions granted on family violence grounds.
14. Family Assistance

Recommendation 14—1 The Family Assistance Guide should include:

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

(b) information about 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.

Recommendation 14—2 The Family Assistance Guide should expressly include ‘family violence’ as a reason for an indefinite exemption from the requirement to provide a partner’s tax file number.

Recommendation 14—3 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’. The Australian Government should amend A New Tax System (Family Assistance) Act 1999 (Cth) 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.

Recommendation 14—4 The Family Assistance Guide should provide a definition of ‘abuse’.

15. Employment Law—Overarching Issues and a National Approach

Recommendation 15—1 The Australian Government should initiate a coordinated and whole-of-government national education and awareness campaign about family violence and its impact in the employment context.

Recommendation 15—2 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, in consultation with unions and employer organisations, should develop or revise guidance materials with respect to privacy obligations arising in relation to the disclosure of family violence in an employment context.

Recommendation 15—3 The General Manager of Fair Work Australia, in conducting the review and research required under s 653 of the Fair Work Act 2009 (Cth), should consider family violence-related developments and the effect of family violence on the employment of those experiencing it, in relation to:

(a) enterprise agreements; and

(b) individual flexibility arrangements.
Recommendation 15—4 The Department of Education, Employment and Workplace Relations maintains the Workplace Agreements Database which contains information on federal enterprise agreements that have been lodged with, or approved by, Fair Work Australia. The Department of Education, Employment and Workplace Relations should collect data on the incidence of family violence-related clauses and references in enterprise agreements and include it as part of the Workplace Agreements Database.

Recommendation 15—5 The Australian Government should support research, monitoring and evaluation of family violence-related developments in the employment law sphere, for example by bodies such as the Australian Domestic and Family Violence Clearinghouse.

16. Fair Work Act 2009 (Cth)


Recommendation 16—2 Fair Work Australia should review its processes, and members and other relevant personnel should be provided with consistent, regular and targeted training to ensure that the existence of family violence is appropriately and adequately considered at relevant times.

Recommendation 16—3 The Fair Work Ombudsman, in consultation with unions and employer organisations, should include information in Best Practice Guides with respect to negotiating individual flexibility arrangements in circumstances where an employee is experiencing family violence.

Recommendation 16—4 The Australian Government should support the inclusion of family violence clauses in enterprise agreements. At a minimum, agreements should:

(a) include a statement outlining when and what type of verification of family violence may be required;

(b) ensure the confidentiality of personal information supplied;

(c) establish lines of communication for employees;

(d) set out relevant roles and responsibilities of employers and employees;

(e) provide for flexible working arrangements; and

(f) provide access to paid leave.

Recommendation 16—5 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, unions and employer organisations.
Recommendation 16—6 In the course of the 2012 review of modern awards by Fair Work Australia, the ways in which family violence terms may be incorporated into awards, consistent with the modern award objectives should be considered.

Recommendation 16—7 In the course of the first four-yearly review of modern awards by Fair Work Australia, beginning in 2014, the inclusion of a model family violence term should be considered.

Recommendation 16—8 The Australian Human Rights Commission, in the context of the consolidation of Commonwealth anti-discrimination laws, should examine the possible basis upon which status as an actual or perceived victim of family violence could be included as a protected attribute under Commonwealth anti-discrimination law.

17. The National Employment Standards

Recommendation 17—1 As part of Phase Five of the whole-of-government strategy for phased implementation of reforms contained in Part E of this Report, the Australian Government should consider amending s 65 of the Fair Work Act 2009 (Cth) to provide that an employee:

(a) who is experiencing family violence, or
(b) who is providing care or support to another person 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.

Recommendation 17—2 As part of Phase Five of the whole-of-government strategy for phased implementation of reforms contained in Part E of this Report, the Australian Government should consider amending the National Employment Standards with a view to including provision for additional paid family violence leave.

18. Occupational Health and Safety Law

Recommendation 18—1 Safe Work Australia should, in developing or reviewing its Research and Data Strategy or other relevant strategies:

(a) identify family violence and work health and safety as a research priority;
(b) examine the effect of the harmonised legislative and regulatory OHS scheme on duties and obligations owed in relation to family violence as a possible work health and safety issue; and
(c) consider ways to extend and improve data coverage, collection and analysis in relation to family violence and its impact as a work health and safety issue.
**Recommendation 18—2**  As part of the national education and awareness campaign in Recommendation 15–1, Safe Work Australia should work with the Australian Domestic and Family Violence Clearinghouse, unions, employer organisations, State and Territory OHS regulators and other relevant bodies to:

(a) raise awareness about family violence and its impact as a possible work health and safety issue; and

(b) develop and provide education and training in relation to family violence as a possible work health and safety issue.

**Recommendation 18—3**  Safe Work Australia should consider including information on family violence as a possible 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’;

(c) ‘How to Consult on Work Health and Safety’;

(d) ‘Preventing and Responding to Workplace Bullying’; and

(e) any other code that Safe Work Australia may develop in relation to other relevant topics, such as workplace violence and psychosocial hazards.

**19. Superannuation Law**

**Recommendation 19—1**  In Family Violence—A National Legal Response, ALRC Report 114 (2010) 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.

**Recommendation 19—2**  The Australian Taxation Office publishes a range of guidance material which is designed to assist SMSF trustees. The Australian Taxation Office should review and amend such guidance material to ensure that trustees experiencing family violence are provided with specific information about: their obligations; setting up and managing a SMSF; and winding up a SMSF in such circumstances.

**Recommendation 19—3**  The Australian Government should consider amending regulation 6.01(5)(a) of the Superannuation Industry (Supervision) Regulations 1994 (Cth) 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.
Recommendation 19—4 The Australian Prudential Regulation Authority, in conjunction with the Australian Institute of Superannuation Trustees, the Association of Superannuation Funds of Australia and other relevant bodies, should develop guidance for trustees in relation to early release of superannuation on the basis of ‘severe financial hardship’ under the Superannuation Act 1976 (Cth) and the Superannuation Industry (Supervision) Regulations 1994 (Cth). Guidance could include information in relation to:

(a) what may constitute 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.

Recommendation 19—5 In any guidelines for early release of superannuation benefits on compassionate grounds, the Department of Human Services should incorporate information about family violence. This should include 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.

Recommendation 19—6 Department of Human Services staff involved in assessing applications for early release of superannuation on compassionate grounds under the Superannuation Act 1976 (Cth) and the Superannuation Industry (Supervision) Regulations 1994 (Cth) should be provided with consistent, regular and targeted training in relation to family violence, including:

(a) the potential impact of family violence on applicants’ circumstances; and

(b) responding appropriately to applicants who disclose, or who are experiencing, family violence.

20. Migration Law—The Family Violence Exception

Recommendation 20—1 The Australian Government should amend the Migration Regulations 1994 (Cth) to allow Prospective Marriage (Subclass 300) visa holders to have access to the family violence exception.

Recommendation 20—2 The Australian Government should amend the Migration Regulations 1994 (Cth) to provide secondary applicants for onshore permanent visas with access to the family violence exception.

Recommendation 20—3 The Australian Government should create a new temporary visa to allow victims of family violence who are secondary holders of a temporary visa to:

(a) make arrangements to leave Australia; or

(b) apply for another visa.
Recommendation 20—4 The Australian Government should consider reviewing the Migration Review Tribunal’s application fee arrangements contained in reg 4.14 of the Migration Regulations 1994 (Cth), including its impact on the ability of victims of family violence to access merits review.

Recommendation 20—5 The Australian Government should collaborate with relevant migration service providers, community legal centres, and industry bodies to ensure targeted education and training on family violence issues for visa decision makers, competent persons, migration agents and independent experts.

Recommendation 20—6 The Australian Government should collaborate with migration service providers, community legal centres, and industry bodies to ensure that information about legal rights and the family violence exception are provided to visa applicants prior to and on arrival in Australia. Such information should be provided in a culturally appropriate and sensitive manner.

21. The Family Violence Exception—Evidentiary Requirements

Recommendation 21—1 The Australian Government should repeal relevant provisions contained in reg 1.23 of the Migration Regulations 1994 (Cth) requiring 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 alleged victim.

Recommendation 21—2 Until Recommendation 21–1 is implemented, the Department of Immigration and Citizenship should amend its Procedures Advice Manual 3 Guidelines to provide that:

(a) relationship break downs may occur over a period of time;

(b) the requirement in reg 1.23 of the Migration Regulations 1994 (Cth) should not be applied to refuse a family violence claim unless there has been a clear break in the relationship and the family violence occurs well after that event; and

(c) in considering judicially-determined claims, family violence orders made post-separation can be considered.

Recommendation 21—3 The Australian Government should amend the Migration Regulations 1994 (Cth) to provide that an applicant can submit any form of evidence to support a non-judicially determined claim of family violence.

Recommendation 21—4 The Australian Government should repeal reg 1.26 of the Migration Regulations 1994 (Cth) relating to the requirements for a valid statutory declaration from a competent person.

Recommendation 21—5 The Department of Immigration and Citizenship should amend its Procedures Advice Manual 3 Guidelines to provide that evidence other than from competent person:

(a) may be relevant to a non-judicially determined claim of family violence; and

(b) is entitled to weight as is appropriate in the circumstances of the individual concerned.
22. Refugee Law

Recommendation 22—1    The Minister for Immigration and Citizenship should issue a direction under s 499 of the Migration Act 1958 (Cth) in relation to family violence in refugee assessment determinations. Such a direction should refer to guidance material on family violence contained in the Department’s Gender Guidelines.

Recommendation 22—2    The Department of Immigration should ensure that the Gender Guidelines as they relate to family violence are subject to periodic and comprehensive review.

Recommendation 22—3    The Department of Immigration and Citizenship should amend its instruction Ministerial Powers—Minister’s Guidelines—s 48A cases and requests for intervention under s 48B in the Procedures Advice Manual 3 to refer to secondary visa applicants who are the victims of family violence.