

12. Family Assistance

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Summary

12.1 Chapter 11 and, to a lesser extent Chapter 9, examine family assistance laws largely in their interaction with child support laws. 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 (FTB) and Child Care Benefit (CCB).

12.2 The safety of family violence victims who are family assistance applicants or recipients should be improved by the reforms targeted at legal frameworks—primarily family assistance, social security and child support—that are proposed in Chapter 4. The proposed reforms regarding family violence screening, information provision and referrals largely address the family violence issues that were raised in *Family Violence and Commonwealth Laws—Child Support and Family Assistance*, ALRC IP 38 (2010) (the Family Assistance Issues Paper).

12.3 This chapter proposes further reforms specifically targeted at family assistance law and policy, where needed, particularly in relation to CCB. Family assistance legislation provides for increased CCB in certain circumstances. The proposed reforms seek to improve accessibility to increased CCB 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 CCB, and by amending family assistance legislation to lower the eligibility threshold for increased rates of CCB where children are at risk of abuse or neglect.

Background

12.4 The Commonwealth has provided family allowances since 1941.¹ The current framework for family assistance comprises a range of payments and is primarily governed by two statutes: *A New Tax System (Family Assistance) Act 1999* (Cth) and *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth). In this Discussion Paper, these are referred to as the *Family Assistance Act* and the *Family Assistance (Administration) Act* respectively.

12.5 Family assistance legislation was introduced to ‘simplify the structure and delivery of assistance for families’² by establishing one body to administer a consolidated set of payments, which all have ‘similar eligibility rules’.³ This body is the Family Assistance Office (FAO)—the ‘delivery point’ for family assistance payments.⁴

12.6 Family assistance payments play a significant role in supporting low-income families,⁵ and comprise a range of types, including: FTB;⁶ baby bonus;⁷ maternity immunisation allowance;⁸ CCB;⁹ child care rebate;¹⁰ and FTB advance.¹¹ As of 1 January 2011, paid parental leave is available. In addition to these payments, the FAO offers other types of support, such as rent assistance.¹² FTB is the ‘centrepiece’ of family assistance.¹³

12.7 The FAO operates under governance of the Department of Human Services (DHS).¹⁴ The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) ‘develops policy and implements and monitors the performance of a range of budget measures’ including family assistance.¹⁵ While Centrelink

1 P Whiteford and G Angenent, *The Australian System of Social Protection: An Overview* (2001), 12.

2 Commonwealth, *Parliamentary Debates*, Senate, 24 May 1999, 5170 (I Campbell).

3 Commonwealth, *Parliamentary Debates*, House of Representatives, 9 June 1999, 6417 (W Truss—Minister of Agriculture, Fisheries and Forestry).

4 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [1.3].

5 See Australian Institute of Health and Welfare, *Australia's Welfare 2005* (2005), 75.

6 *A New Tax System (Family Assistance) Act 1999* (Cth) pt 3 div 1.

7 *Ibid* pt 3 div 2.

8 *Ibid* pt 3 div 3.

9 *Ibid* pt 3 div 4.

10 *Ibid* pt 3 div 5.

11 *Ibid* s 3(1), definition of ‘family assistance’.

12 Family Assistance Office, *What Payments We Offer* <<http://www.familyassist.gov.au/payments>> at 16 February 2011.

13 Ministerial Taskforce on Child Support, *In the Best Interests of Children—Reforming the Child Support Scheme* (2005), [4.1].

14 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [1.3].

15 FaHCSIA, *Annual Report 2009–10* (2010), Ch 3.

administers family assistance payments on behalf of the FAO,¹⁶ the FAO provides a range of ‘first-point-of-contact services’, including:

- operating an FAO call centre;
- assisting with family assistance enquiries;
- providing information about payment options;
- receiving claim forms; and
- making appointments with other FAO staff for complex enquiries and interviews.¹⁷

12.8 The *Family Assistance Guide* is available online at the FaHCSIA website.¹⁸ As noted in Chapters 5 and 9, guides, as articulations of policy, are not binding in law, but nonetheless are a relevant consideration for the decision maker. Centrelink also uses electronic guidelines, referred to as the e-Reference, as a further procedural resource. The e-Reference is not generally publicly available.¹⁹

12.9 Family assistance legislation does not include objects. However, the *Family Assistance Guide* sets out the key administrative principles in the administration of the *Family Assistance Act*. One of these principles is that the *Family Assistance Act* is beneficial legislation, which means that ‘where legislative ambiguities arise in the Act, the legislation should be interpreted in a way that is most beneficial to applicants/recipients as a whole’.²⁰

Common interpretative framework

12.10 As discussed in Chapter 3, neither the *Family Assistance Act* nor the *Family Assistance (Administration) Act* provides a definition of ‘family violence’. The *Family Assistance Guide* also leaves the term undefined, although as noted in Chapter 5, the *Guide to Social Security Law*, which is also hosted on the FaHCSIA website, contains a definition of family violence.²¹

12.11 Proposals 3–3 and 3–4 state that family assistance legislation should provide a definition of family violence, and set out the proposed definition. The ALRC also considers that the *Family Assistance Guide* should include:

- the definition of family violence provided in Proposal 3–1; and

16 Child Support Agency, *Website* <<http://www.csa.gov.au>> at 7 March 2011.

17 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [1.3].

18 *Ibid.*

19 In writing this Discussion Paper, the ALRC was provided with an extract from the e-Reference, which is discussed in Ch 11.

20 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [1.4].

21 Department of Families, Housing, Community Services and Indigenous Affairs, *Guide to Social Security Law* <www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [1.1.D.235].

- a description of the nature, feature 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.

12.12 These additions to the *Family Assistance Guide* are desirable for the reasons set out in relation to the *Child Support Guide* in Chapter 9. These measures are complemented by the proposal in Chapter 4 regarding the development of a protocol, applicable to the Family Assistance Office, to ensure an appropriate response to the disclosure of family violence.²²

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.

Family Tax Benefit

Background

12.13 FTB is an income-tested payment for eligible parents and carers. FTB includes two parts: FTB Part A and FTB Part B.

12.14 Family Tax Benefit Part A (FTB Part A) is the ‘primary payment designed to help with the cost of raising children’.²³ It is paid to eligible parents and carers for each dependent child or, in some circumstances, each dependent full-time student. The amount of FTB Part A payable to a family is assessed according to the number of children, the age of children, and the family’s income.

²² Proposal 4–9.

²³ Family Assistance Office, *Website* <<http://www.familyassist.gov.au>> at 16 February 2011.

12.15 FTB Part B is a benefit for eligible single parent families and families with one primary income earner. The rate of FTB Part B depends on the age of the youngest child and, in families with two working parents, the income of the parent who is the secondary income earner.²⁴

12.16 FTB is paid for dependent children under the age of 16 and, in certain circumstances, for dependent children over the age of 16.²⁵ Parents and carers must provide at least 35% of a child's care to receive FTB.²⁶ When more than one person provides care for a child, and they are not members of the same couple, FTB payments can be shared.²⁷

12.17 The ALRC has identified several ways that FTB-related legislation and policy may affect victims of family violence, namely:

- policies regarding the payment of FTB in cases of informal care, when a child has experienced family violence;
- exemptions from tax file number requirements;
- determinations of percentage of care, discussed in Chapter 11; and
- the requirement for recipients of more than base rate FTB to obtain child support where eligible (take reasonable maintenance action), discussed in Chapters 9 and 11.

Children in formal and informal care

Formal and informal care

12.18 The *Family Assistance Guide* distinguishes between formal and informal care. Formal care occurs where there is a change in legal responsibility for the child, usually under state and territory care and protection legislation. People who provide formal care are generally foster carers. Other formal carers may have parenting orders under the *Family Law Act 1975* (Cth).²⁸

12.19 Informal care is 'a private agreement between the parent and another party, where there is no change to any form of legal responsibility'.²⁹ The *Family Assistance Guide* also provides that where a child protection agency 'facilitates the placement of a

24 *A New Tax System (Family Assistance) Act 1999* (Cth) sch 1 pt 4; Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [1.1.2]. The secondary income earner is the member of the couple with a lower income.

25 FTB Part A may be paid for dependent children up to the age of 24 years old, and FTB Part B may be paid for dependent children up to the age of 18 years old. Generally, they must be in full time study. *A New Tax System (Family Assistance) Act 1999* (Cth) ss 17B, 22, sch 1 cl 29(3). Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.1.1.10].

26 *A New Tax System (Family Assistance) Act 1999* (Cth) s 22(7).

27 *Ibid* s 59, sch 1 cl 11.

28 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.1.1.85].

29 *Ibid*.

child but does not gain legal responsibility it is considered informal care'.³⁰ Grandparents, relatives and family friends are identified in the *Family Assistance Guide* as persons who usually provide informal care.³¹

Informal carers

12.20 Chapter 10 discusses evidence in relation to informal carers. In brief, informal carers are most commonly grandparents. There are many reasons for informal care arrangements, including, for example, family violence, child abuse, neglect, drug or alcohol misuse, parental death or incarceration, and problems arising from mental or physical illness or intellectual disability. In some cases, children in informal care may be traumatised or otherwise vulnerable. Children may benefit from being cared for by relatives when parental care has broken down. However, caring for children may impose a considerable financial burden on informal carers, and having access to FTB or child support may go some way to meeting it.

12.21 Informal carers face a number of barriers in relation to entitlements such as FTB and child support. In a 2010 report prepared for FaHCSIA, the Social Policy Research Centre reported that grandparents often do not receive the payments they are eligible for, such as FTB,

either because they cannot prove their eligibility, or because they are reluctant to claim these benefits for fear that the biological parents will reclaim the children if family payments are at stake. In some cases grandparents may also fear 'retribution, i.e. increased family violence or conflict'.³²

12.22 As discussed in Chapter 10, a further barrier to entitlements such as FTB is that grandparents may be wary of drawing attention to or attract oversight of their care arrangements, and may be concerned that children will be removed from their care as a result of the involvement of state and territory child protection agencies.³³

12.23 Lack of information for informal carers may also constitute a barrier. The Social Policy Research Unit identified a possible 'information gap about income support entitlements', stating that some grandparents find it difficult to obtain information about entitlements and support services.³⁴

30 Ibid.

31 Ibid.

32 Social Policy Research Centre, *Financial and Non-Financial Support to Formal and Informal Out of Home Carers—Final Report (revised 30 November)* (2010), prepared for FaHCSIA, [5.2].

33 FaHCSIA Non-Parent Carers Group, *Consultation*, By telephone, 19 April 2011.

34 Social Policy Research Centre, *Financial and Non-Financial Support to Formal and Informal Out of Home Carers—Final Report (revised 30 November)* (2010), prepared for FaHCSIA, [5.2].

Changes to care

12.24 Family assistance legislation and the *Family Assistance Guide* set out the effect on FTB payments when there is a change in care, and a child is no longer cared for by their original carer.³⁵ The original carer is likely to be the child's parent or parents.

12.25 Where possible, FTB is paid to the person providing actual care for the child.³⁶ When a person no longer has care of a child, he or she is required to notify the FAO.³⁷

12.26 In some cases, the original carer may continue to receive FTB where the child is not in his or her care. Generally the original carer should not receive FTB for more than a four-week period in these circumstances.³⁸ However, if the original carer has legal responsibility for the child, but the child is removed without his or her consent or legal authority, and he or she is taking reasonable steps to regain care of the child, the original carer may receive FTB for up to 14 weeks.³⁹

12.27 Informal carers can obtain FTB when their care of a child is ongoing:

When it is clear from the outset that a child will be in ongoing care, then the carer will be eligible for FTB from the date the child enters their care. When care has been on a temporary and short-term basis and it subsequently becomes ongoing, a change of care applies at the point it becomes ongoing and FTB may be payable.⁴⁰

Informal care not in child's best interests

12.28 The *Family Assistance Guide* provides principles for dealing with cases when informal care arrangements may not be in the best interests of a child.⁴¹ It states that a case should be referred to a social worker where:

- the child is not a family member of the person claiming FTB or a social security payment that is dependent on the provision of care for a child, and
- the person has not supplied documentation to support that the child is legally in his or her care, or
- the person has previously lost care of children.⁴²

35 *A New Tax System (Family Assistance) Act 1999* (Cth) s 22; Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.1.60], [2.1.1.85].

36 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.1.1.85].

37 *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) s 25; Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.1.1.60].

38 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.1.1.85].

39 *A New Tax System (Family Assistance) Act 1999* (Cth) s23; Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.1.1.85].

40 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.1.1.85].

41 *Ibid.*, [2.1.1.100].

42 *Ibid.*, [2.1.1.100].

12.29 Examples are provided of care arrangements that may not be in the child's best interests—such as those in which the child's well-being or daily needs are disregarded, the child is exposed to drugs or alcohol, or there is a 'lack of guidance and oversight'.⁴³ Family violence is not specifically mentioned in the *Family Assistance Guide*.

12.30 The *Family Assistance Guide* prescribes a broad role for Centrelink social workers in cases where a child is at risk. It includes obtaining information about the reason for the change in care and how long the arrangement is likely to last, contacting the original carer, and making a recommendation to the FAO about FTB and other payments. Social workers may also seek approval to disclose information to a state welfare authority.⁴⁴ The ALRC understands that Centrelink social workers may also provide support services to carers and children in these circumstances. Where the child is Indigenous or a refugee child, social workers are required to consult with Indigenous Service Officers (ISOs) and Multicultural Service Officers (MSOs).⁴⁵

12.31 The *Family Assistance Guide* provides that where FTB to the original carer is cancelled due to a change to informal care, it should be cancelled only after the social worker has made a recommendation. The social worker's recommendations must be given 'due weight'.⁴⁶

Submissions and consultations

12.32 In the Family Assistance Issues Paper, the ALRC asked whether reforms are needed to:

- ensure that the Family Assistance Office identifies, and refers to social workers, cases in which children living in informal care may be at risk of harm because of family violence;⁴⁷ and
- improve the safety of children considered at risk of family violence, when the Family Assistance Office, due to a change in care, cancels a former carer's Family Tax Benefit, or starts paying Family Tax Benefit to a new carer.⁴⁸

12.33 Stakeholder comment regarding these questions was limited. For example, the Australian Domestic and Family Violence Clearinghouse (ADFVC) considered that family violence should be included as an example of where care arrangements are not in a child's best interest.⁴⁹ Another stakeholder stated that, where family violence is

43 Ibid, [2.1.1.100].

44 Ibid, [2.1.1.100]. *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) s 168 allows for the disclosure of information about a person in certain circumstances, including where the Secretary certifies it 'necessary in the public interest' in that case or class of cases; or where the person to whom the information relates authorises the information being communicated to another person.

45 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.1.1.100].

46 Ibid, [2.1.1.100].

47 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance* ALRC Issues Paper 38 (2011), Question 33.

48 Ibid, Question 34.

49 ADFVC, *Submission CFV 53*, 27 April 2011.

identified, cases should be referred to a social worker.⁵⁰ National Legal Aid suggested specific referencing of family violence in the *Family Assistance Guide*, and appropriate education and training about family violence including screening and risk assessment processes.⁵¹

ALRC's views

12.34 The ALRC considers it unnecessary for the *Family Assistance Guide* to include family violence as a specific example of where informal care arrangements are not likely to be in a child's best interests. In such circumstances, children may be more likely to be at risk of family violence in the home of their parents—indeed, this may be the underlying reason for a change to informal care arrangements. Consequently, the ALRC does not propose change to the *Family Assistance Guide*, particularly given that the list of examples it provides is not exhaustive, and family violence may be considered where necessary.

12.35 Informal carers of children who have experienced family violence may choose not to obtain entitlements for reasons discussed above and in Chapter 10. However, when they choose to obtain entitlements, they should be supported in accessing FTB. The ALRC considers that the accessibility of FTB should be improved for informal carers of children who have experienced family violence, including measures to address the 'information gap' about the availability of FTB.

12.36 The proposals for reform in Chapter 4 may improve FTB accessibility for informal carers of children who have experienced family violence, and also assist them to access support services. The proposed reforms would operate so that, where informal carers apply for FTB, Centrelink will screen for family violence.⁵² When carers disclose family violence—through the screening process or otherwise—they will be referred to a Centrelink social worker.⁵³

12.37 The screening and referral proposals apply not only to informal carers who apply for FTB, but to all Centrelink, CSA and FAO customers. This means that even when an informal carer is not an FTB applicant or recipient, she or he may be referred to a Centrelink social worker. The Centrelink social worker should provide referrals, and inform him or her of support services and FTB entitlements—as well as any other relevant entitlement, such as Grandparent Child Care Benefit.

12.38 Further, the proposed reforms would also ensure that all informal carers who are customers of Centrelink, the Child Support Agency or the FAO—including those who are not referred to social workers—are provided with the information and referrals described above.⁵⁴

50 Confidential, *Confidential CFV 49*, 21 April 2011.

51 National Legal Aid, *Submission CFV 81*, 24 June 2011.

52 Proposal 4-2.

53 Proposal 4-10.

54 Proposal 4-8.

12.39 These reforms are complemented by proposals about training for agency staff. The ALRC has suggested multifaceted training that should improve staff skills and knowledge base, including:

- family violence screening;
- making appropriate referrals to other services;
- the services that may be provided by the agency; and
- the nature, features and dynamics of family violence, and its impact on victims, in particular those from high risk and vulnerable groups.⁵⁵

12.40 The ALRC considers that this package of reforms should improve FTB accessibility for informal carers of children who have suffered family violence. It should also improve accessibility to entitlements generally across family assistance, child support and social security frameworks. These reforms should also improve the safety of informal carers and the children they care for, by facilitating referrals to appropriate supports—for example, legal referrals where state and territory family violence protection orders are required.

Exemptions from tax file number requirements

Background

12.41 The *Family Assistance (Administration) Act* provides that an individual applying for FTB must provide both a tax file number (TFN)⁵⁶ and a TFN for his or her partner during the relevant payment period.⁵⁷ If an applicant either does not know his or her TFN or is currently applying for one, then the person may authorise the Commissioner of Taxation to share his or her TFN with the FAO and file a statement to that effect.⁵⁸ The Act provides for an exemption from the requirement for applicants to provide their partners' TFN, or partners' authorisation for the ATO to provide the TFN, where applicants cannot obtain these from their partners.⁵⁹

12.42 The *Family Assistance Guide* describes the limited circumstances in which an individual may qualify for an exemption, including where a partner is violent, imprisoned for life, or seriously ill or disabled.⁶⁰ In particular, an indefinite exemption may be granted when the applicant has a

well based reason to believe that as a result of their request to the partner for TFN information:

55 Proposal 4–5, 4–6.

56 *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) s 7.

57 *Ibid* s 3(1), definition of 'TFN claim person'.

58 *Ibid* s 8(4)–(5).

59 *A New Tax System (Family Assistance) Act 1999* (Cth) s 8(7). Tax file number exemptions are also provided for in the social security framework. See Ch 7.

60 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [4.1.1.20].

- the partner could become violent to the applicant or a child, or
- there would be other concerns for the safety or the health of the applicant or a child.⁶¹

12.43 The *Family Assistance Guide* provides that these cases are determined on request. Requests are referred to a social worker or an ISO for advice and assistance.⁶²

Submissions and consultations

12.44 In the Family Assistance Issues Paper, the ALRC asked whether

- improvements are needed to ensure that applicants for family assistance are aware of, and using, the exemption from providing their partners' tax file numbers in cases of family violence; and
- the *Family Assistance (Administration) Act* should expressly refer to family violence as an example for an indefinite exemption.⁶³

12.45 Stakeholders who responded to these questions commented that persons who use family violence may withhold necessary information as a means of control,⁶⁴ and that victims may be unaware of the exemption.⁶⁵ The Office of the Commonwealth Ombudsman similarly stated that customers do not realise that family violence may be a relevant factor in determining entitlements and exemptions in relation to family assistance, such as the exemption from providing a partner's TFN.⁶⁶

12.46 The ADFVC referred to its suggestions about providing information to victims of family violence—discussed in Chapter 4—in order to increase awareness of the exemption. It considers that this information should be provided to customers when they first disclose family violence to Centrelink, the Child Support Agency (CSA) and the FAO.⁶⁷ The Ombudsman suggested an active screening process, combined with general information to customers in claim forms, payment information booklets and letters may assist to better educate customers.⁶⁸

12.47 Additionally, three stakeholders stated that an indefinite family violence exemption should be provided for in the legislation.⁶⁹

61 Ibid.

62 Ibid.

63 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance* ALRC Issues Paper 38 (2011), Question 35.

64 Australian Association of Social Workers (Qld), *Submission CFV 46*, 21 April 2011; Welfare Rights Centre Inc Queensland, *Submission CFV 43*, 21 April 2011.

65 Australian Association of Social Workers (Qld), *Submission CFV 46*, 21 April 2011; Welfare Rights Centre Inc Queensland, *Submission CFV 43*, 21 April 2011. See also ADFVC, *Submission CFV 53*, 27 April 2011.

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

67 ADFVC, *Submission CFV 53*, 27 April 2011.

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

69 National Legal Aid, *Submission CFV 81*, 24 June 2011; Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011, Australian Association of Social Workers (Qld), *Submission CFV 46*, 21 April 2011.

ALRC's views

12.48 The reforms in Chapter 4 should increase awareness about, and therefore the accessibility of, the exemption to tax file number requirements. In particular, Proposal 4–8 provides that all customers should be informed of how family violence is relevant to family assistance, and should be given information about exemptions.

12.49 The ALRC considers that details about the indefinite family violence exemption are suitably placed in the *Family Assistance Guide*, and therefore it is unnecessary to amend the *Family Assistance (Administration) Act*. However, the exemption in the *Family Assistance Guide* is somewhat narrow, insofar as it refers to ‘violence’, rather than ‘family violence’.

12.50 The ALRC considers that the *Family Assistance Guide* should explicitly refer to family violence. This captures a broader range of conduct than ‘violence’, insofar as that conduct is violent, threatening, controlling, coercive or engenders fear. This proposed reform is complemented by Proposals 3–3, 3–4 and 12–1(a), which would set out a definition of family violence in family assistance legislation and the *Family Assistance Guide*. It is further complemented by Proposals 12–1(b) and 4–6, which state that the *Family Assistance Guide* should include a description of, and staff should receive training about, the nature, features, and dynamics of family violence.

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.

Child Care Benefit**Background**

12.51 Child Care Benefit (CCB) is an income-tested payment that assists eligible parents and carers with the cost of child care. In addition to assisting parents and carers with child care costs, CCB aims to provide incentives for parents and carers with low and middle incomes to participate in the workforce and community, and to support parents and carers to ‘balance work and family commitments’.⁷⁰

12.52 CCB is available to parents or carers responsible for child care costs where their children attend ‘approved child care services’⁷¹—that is, services approved for the purposes of family assistance law.⁷² The FAO website states that approved child care services meet certain standards and requirements:

70 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [1.2.4].

71 This term is used in both the *A New Tax System (Family Assistance) Act 1999* (Cth) and the *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth).

72 *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) s 195(1). The *A New Tax System (Family Assistance) Act 1999* (Cth) addresses eligibility for CCB at pt 3 div 4.

This includes having a licence to operate, qualified and trained staff, being open certain hours, and meeting health, safety and other quality standards.⁷³

12.53 The following services may provide approved care:

- long day care services;
- family day care services;
- in-home care services;
- occasional care services; and
- outside school hours care services.⁷⁴

12.54 CCB may be paid to the approved child care service and passed on to the person as a fee reduction; or the person may pay child care fees and claim CCB as a lump sum at the end of the financial year.⁷⁵ All eligible parents and carers may receive up to 24 hours CCB per week for care provided by an approved child care service.⁷⁶ Parents and carers may receive up to 50 hours per week where they meet a 'work/training/study test',⁷⁷ or other conditions provided for in the legislation.⁷⁸

12.55 CCB is also available for up to 50 hours per week where child care is provided by a person who has been approved as a registered carer by the FAO, and parents or carers meet a work/training/study test.⁷⁹ Registered carers may include, for example, grandparents, friends, relatives or nannies. CCB for registered care is only available in a lump sum for child care for which parents or carers have already paid.⁸⁰

12.56 The work/training/study tests differ depending on whether care is provided by an approved child care service or a registered carer. To satisfy the work/training/study test, applicants using approved child care services must undertake 30 hours per fortnight of work, training or study. Applicants using registered care are not required to meet a minimum amount of work, training or study hours.⁸¹

73 Family Assistance Office, *Website* <<http://www.familyassist.gov.au>> at 16 February 2011.

74 *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) s 194.

75 *A New Tax System (Family Assistance) Act 1999* (Cth) ss 41(2), 43, 44; *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) ss 219B, 219BA; Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [1.2.4].

76 *A New Tax System (Family Assistance) Act 1999* (Cth) s 53(3).

77 *Ibid* s 54(2), (3).

78 *Ibid* s 54.

79 *Ibid*; *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) s 45; Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.6.3.10].

80 *A New Tax System (Family Assistance) Act 1999* (Cth) ss 41(2), 45; Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [1.2.4].

81 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.6.3.10].

12.57 Parents or carers generally lodge a claim for CCB with the FAO,⁸² although in certain circumstances described below, the approved child care service may lodge the claim. The CCB rate when approved child care services provide care is substantially higher than the CCB rate when registered carers provide care. For example, the 2011–12 maximum CCB rate for non school-age children for 50 hours is \$189 for approved child care and \$31.60 for registered care.⁸³

Exceptional circumstances

More than 24 hours CCB

12.58 As noted above, to obtain more than 24 hours CCB, and up to 50 hours CCB, eligible parents and carers using approved child care services must meet a work/training/study test. Both the applicants and their partners must satisfy the test, unless applicants, their partners or their families are ‘exceptions’ from the test.⁸⁴

12.59 The exceptions to the work/training/study test are provided for in the family assistance legislation and the *Family Assistance Guide*.⁸⁵ The exceptions may apply where an applicant or his or her partner is incarcerated, is with disability, cares for a child or adult with disability, or lives overseas. Further exceptions are available for families using approved care child care services: for example, where a grandparent or great-grandparent is the applicant; a child is at risk of serious abuse or neglect (discussed below); or there are ‘exceptional circumstances’.⁸⁶

12.60 The *Family Assistance Guide* defines ‘exceptional circumstances’ as ‘short-term family crises that result in the parent, and their partner, if they have one, being unable to care for their child for a period longer than 24 hours per week’.⁸⁷ A non-exhaustive list of exceptional circumstances is set out:

- hospitalisation;
- short term physical incapacity;
- short term episodes of psychological or psychiatric illness;
- short term carer responsibilities for other family members;
- serious illness of a sibling;
- intensive medical treatment;

82 Family Assistance Office, *Information Booklet About Your Claim for Family Assistance*.

83 Centrelink, *Child Care Benefit* <www.centrelink.gov.au> at 21 July 2011.

84 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.6.3.10].

85 *A New Tax System (Family Assistance) Act 1999* (Cth) ss 15, 54, 55. Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.6.3.10]. This Discussion Paper uses the *Family Assistance Guide* terminology of ‘exceptions’.

86 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.6.3.10].

87 *Ibid.*, [1.1.E.50].

- voluntary work in an emergency or disaster, such as bush fires, storms or floods;
- travel to attend a funeral or bereavement;
- travel for resolution of a family member's estate; and
- jury duty or appearance as a witness.⁸⁸

12.61 The list does not specifically include family violence. The *Child Care Service Handbook 2010–2011* provides that it is not possible to list all exceptional circumstances, and that each case is to be ‘considered on its merits’.⁸⁹

12.62 To apply for increased hours of CCB for approved care on the basis of exceptional circumstances, the parent or carer must complete the ‘Claim for Special Child Care Benefit and/or increased weekly limit of hours’ form with the approved child care service, and include supporting documents. The service sends the form to the FAO for determination. The FAO may grant the claim for the period of time considered necessary, up to a maximum of 13 weeks. Parents or carers may re-apply for further periods where the exceptional circumstances continue.⁹⁰ In these circumstances, payment delivery of CCB is only available in the form of reduced child care fees.⁹¹

More than 50 hours weekly child care benefit

12.63 More than 50 hours of CCB per week may be available to families where both parents, or the sole parent, have work, study or training commitments which make them unavailable to care for the child for more than 50 hours per week. Other circumstances where more than 50 hours of CCB is available are where a child is at risk of serious abuse or neglect—discussed below—or where the family is experiencing exceptional circumstances.⁹²

12.64 The exceptional circumstances criteria, described above in relation to exceptions from the work/training/study test, apply.⁹³ The procedures described above in relation to applications, approvals, and payment delivery also apply.⁹⁴

88 Ibid.

89 Department of Education, Employment and Workplace Relations, *Child Care Service Handbook, 2010–2011* (2010), 158.

90 Ibid, 159.

91 Ibid, 160.

92 *A New Tax System (Family Assistance) Act 1999* (Cth) s 55; Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.6.3.20].

93 *A New Tax System (Family Assistance) Act 1999* (Cth) s 55(4); Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.6.3.20], [1.1.E.50].

94 *A New Tax System (Family Assistance) Act 1999* (Cth) s54(8)(9); Department of Education, Employment and Workplace Relations, *Child Care Service Handbook, 2010–2011* (2010), 162–63.

Child at risk of serious abuse or neglect

Increased weekly hours and higher rates of Child Care Benefit

12.65 Where an approved child care service considers a child is at risk of ‘serious abuse or neglect’, the FAO may grant more than 50 hours per week of approved child care,⁹⁵ or, where a 24 hour limit would have applied, raise the limit to 50 hours.⁹⁶ The FAO may also pay CCB at a higher rate.⁹⁷ The higher rate of CCB is described in the *Family Assistance Guide* and elsewhere—although not in the family assistance legislation—as the Special Child Care Benefit (SCCB). SCCB may be approved for up to the total amount of weekly child care fees.⁹⁸

12.66 Increased weekly hour limits for CCB due to risk are sometimes also called SCCB, as on the ‘Claim for Special Child Care Benefit and/or increased weekly limit of hours’ form.⁹⁹ However, the *Family Assistance Guide* provides that CCB for more than 50 hours of approved care due to risk is not the same as SCCB.¹⁰⁰

12.67 If an approved service believes a child is at risk of serious abuse or neglect, it may approve SCCB or increase weekly hour limits for a maximum of 13 weeks.¹⁰¹ The service may apply to the FAO for approval of further periods of SCCB or increased weekly hour limits.¹⁰² The additional weekly hours can be paid at the SCCB rate.¹⁰³

12.68 SCCB and increased weekly hour limits are available only in the form of reduced child care fees.¹⁰⁴ Lump sums at the end of the financial year are not available for these benefits.

12.69 Neither family assistance legislation nor the *Family Assistance Guide* defines the terms ‘abuse’ or ‘serious abuse’. The *Child Care Handbook* directs child care services to a ‘commonly accepted definition of abuse and neglect’ in the National Child Protection Clearinghouse’s resource sheet, ‘What is Child Abuse and Neglect?’.¹⁰⁵ This resource sheet provides a broad definition of child abuse and neglect (or child maltreatment):

any non-accidental behaviour by parents, caregivers, other adults or older adolescents that is outside the norms of conduct and entails a substantial risk of causing physical

95 *A New Tax System (Family Assistance) Act 1999* (Cth) s 55.

96 *Ibid* s 54.

97 *Ibid* s 76(1). SCCB may also be available to families experiencing hardship. SCCB will only be considered in this Issues Paper in relation to children at risk of abuse.

98 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.6.7].

99 This form is available at Centrelink, *Website* <<http://www.centrelink.gov.au>> at 7 March 2011.

100 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.6.3.20].

101 *A New Tax System (Family Assistance) Act 1999* (Cth) ss 54, 55, 77.

102 *Ibid* ss 54, 55, 81; Department of Education, Employment and Workplace Relations, *Child Care Service Handbook, 2010–2011* (2010), 162, 208.

103 Department of Education, Employment and Workplace Relations, *Child Care Service Handbook, 2010–2011* (2010), 194, 196.

104 *A New Tax System (Family Assistance) Act 1999* (Cth) ss 54(10), 55(6), 73.

105 Department of Education, Employment and Workplace Relations, *Child Care Service Handbook, 2010–2011* (2010), 197.

or emotional harm to a child or young person. Such behaviours may be intentional or unintentional and can include acts of omission (i.e., neglect) and commission (i.e., abuse).¹⁰⁶

12.70 The resource sheet describes five main types of child abuse and neglect:

- physical abuse;
- emotional maltreatment;
- neglect;
- sexual abuse; and
- witnessing family violence.¹⁰⁷

Protective function

12.71 SCCB and increased weekly hours of child care have a protective function. The Department of Education, Employment and Workplace Relations and the Office of Early Childhood Education and Childcare state that the SCCB—including additional hours of CCB—is designed to support attendance at child care, where costs are a barrier,¹⁰⁸ so that:

- the amount of time the child spends in the risk environment is reduced
- the amount of time the child spends in a stable and developmentally beneficial environment is maintained or increased
- the child remains ‘visible’ in the community and opportunities to link the family with other appropriate services are increased
- the parent/carer has an opportunity for respite or to seek assistance from other agencies such as health and family support services.¹⁰⁹

Submissions and consultations

12.72 The Family Assistance Issues Paper did not raise the issue of exceptional circumstances in relation to obtaining more than 24 or 50 hours of CCB, and the ALRC has not received stakeholder input or feedback on these issues. The Family Assistance Issues Paper did address increased CCB where children are at ‘risk or serious abuse or neglect’, and in this context the ALRC asked whether:

- increases in weekly CCB hours and higher rates of CCB are sufficiently accessible in cases of family violence, and whether reforms are needed to improve accessibility;¹¹⁰

106 R Price-Robertson and L Bromfield, *National Child Protection Clearinghouse Resource Sheet No 6: What is Child Abuse and Neglect?* (2009), prepared for the Australian Institute of Family Studies.

107 Ibid.

108 Department of Education, Employment and Workplace Relations, *Child Care Service Handbook, 2010–2011* (2010), 194, 196; Department of Education, Employment and Workplace Relations, *Special Child Care Benefit for Children at Risk: Fact Sheet for Approved Child Care Services*.

109 Department of Education, Employment and Workplace Relations, *Special Child Care Benefit for Children at Risk: Fact Sheet for Approved Child Care Services*.

110 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance* ALRC Issues Paper 38 (2011), Question 38.

- the legislative requirement that the child be at ‘risk of serious abuse’ serves as an unreasonable barrier to eligibility for higher rates of CCB and increased weekly hours of CCB;¹¹¹
- family assistance legislation should be amended to include definitions of ‘abuse’ or ‘serious abuse’, and whether the *Family Assistance Guide* should provide definitions of ‘abuse’ or ‘serious abuse’.¹¹²

Accessibility

12.73 In relation to accessibility, the Ombudsman reported that, while it does not have complaint data in relation to this issue, it is possible that the FAO may be missing opportunities

to identify customers who are eligible for increased hours and rates of CCB. We are aware that many customers receiving family assistance payments are encouraged to claim and manage their entitlements via online self-service arrangements. While these arrangements are convenient and preferred by many customers, they also minimise the opportunities for direct contact with FAO staff and, in turn, minimise opportunities for an assessment of any increased assistance needs.¹¹³

12.74 The Welfare Rights Centre NSW stated increased CCB should be available not only when a child care service considers a child at risk of serious abuse or neglect, but also where

Centrelink forms the opinion (e.g. during an assessment with a social worker) that a child is at risk of abuse and/or that granting the special rate may reduce the risk to the child.¹¹⁴

Serious abuse

12.75 Generally stakeholders criticised the legislative requirement of serious abuse or neglect. Stakeholders submitted that the ‘serious abuse’ requirement is flawed,¹¹⁵ and that the word ‘serious’ should be removed.¹¹⁶ The ADFVC commented that

Research has shown that all children exposed to domestic violence are at risk of serious harm and, therefore, all children in these situations should be entitled to additional Child Care Benefit and increased weekly hours of Child Care Benefit.¹¹⁷

12.76 The Welfare Rights Centre NSW suggested that if there must be a qualifying mechanism, it should apply to the level of risk rather than the nature of the abuse—for example, a ‘not insignificant’ risk.¹¹⁸

111 Ibid, Question 39.

112 Ibid, Question 40.

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

114 Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011.

115 Ibid.

116 Welfare Rights Centre Inc Queensland, *Submission CFV 43*, 21 April 2011.

117 ADFVC, *Submission CFV 53*, 27 April 2011.

118 Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011.

Definitions

12.77 Stakeholders generally supported the definitions being included in legislation or policy. Several stakeholders considered that abuse and serious abuse should be defined in both the *Family Assistance Guide* and family assistance legislation.¹¹⁹ The Ombudsman commented that there would be value in defining ‘serious abuse’ in either legislation or the *Family Assistance Guide*, given ‘the potential for varying applications of the term’.¹²⁰ The Australian Association of Social Workers (AASW) stated that it would support legislative definitions of abuse or serious abuse

if it were going to enhance procedural certainty for victims of violence. If it were not going to enhance procedural certainty for victims then this may be better placed in policy supporting the legislation.¹²¹

12.78 National Legal Aid submitted that definitions of abuse should be consistent across jurisdictions. It noted that the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 is before Parliament.¹²² The Bill contains a revised definition of child abuse.

12.79 The Welfare Rights Centre NSW considered that abuse ‘should be given its ordinary meaning’. As noted above it considered that the word ‘serious’ should be removed from the provision, and so did not comment on the definition of serious abuse.¹²³

ALRC’s views

Exceptional circumstances

12.80 The ALRC considers that there is merit in the *Family Assistance Guide* specifically listing family violence as a type of exceptional circumstance, for the purposes of obtaining CCB for more than 24 hours—as an exception from the work/training/study test—or for more than 50 hours, when care is provided by approved child care services. These short term additional benefits may improve the accessibility of child care, which may assist victims when they and their families are escaping a person who has used family violence. Increased weekly payments of CCB may also be useful for victims during periods in which they are obtaining services or attending court for the purpose of improving their safety.

Child at risk of serious abuse or neglect

Accessibility

12.81 The proposed package of reforms to increase customer awareness of how family violence affects entitlements, and to improve identification of family violence by the CSA and FAO, should improve accessibility to increased CCB where children are at

119 ADFVC, *Submission CFV 53*, 27 April 2011; 04, 13, 49.

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

121 Australian Association of Social Workers (Qld), *Submission CFV 46*, 21 April 2011.

122 National Legal Aid, *Submission CFV 81*, 24 June 2011.

123 Welfare Rights Centre NSW, *Submission CFV 70*, 9 May 2011.

risk of abuse. These proposed reforms are discussed above in relation to the baby bonus, FTB for informal carers, and exemptions from tax file number requirements.

12.82 The ALRC notes stakeholder suggestions that Centrelink social workers should be able to approve increased CCB on the basis of risk of abuse or neglect. In the ALRC's preliminary consideration, such a reform is unnecessary. Rather, when Centrelink social workers become aware that increased CCB may be available—whether due to risk of abuse or neglect or exceptional circumstances—they should inform the customer, and refer the person to the approved child care service.

Serious abuse

12.83 The ALRC considers that risk of serious abuse and neglect is an inappropriately high threshold for CCB. It requires approved child care services to make judgments about the severity of abuse, and to exclude cases of abuse that are not deemed to meet the threshold. The ALRC considers that children at risk of abuse should generally benefit from the protective function of increased CCB.

12.84 In the ALRC's preliminary view, the *Family Assistance Act* should therefore be amended to provide that increases in weekly CCB hours and higher rates of CCB are available when children are at risk of abuse and neglect. An amendment to the *Family Assistance Act* will require a consequential amendment to s 71E(5) of the *Family Assistance (Administration) Act*.

Definitions

12.85 The ALRC considers that the *Family Assistance Guide* should be amended to define abuse and neglect. This may increase visibility of the definition and increase transparency around the administration of increased CCB for children at risk of abuse or neglect. This may assist parents and carers, child care services, and the FAO in considering eligibility and determining claims for SCCB and increases in weekly hours of CCB. If the definition is provided for in the *Family Assistance Guide*, it is the ALRC's preliminary view that it is not necessary to insert the definition into family assistance legislation.

12.86 The ALRC does not propose that serious abuse be defined, given the proposal that the word serious should be removed from family assistance legislation in relation to increased CCB.

12.87 The *Family Assistance Guide* definition of abuse or neglect may be based on the comprehensive definition provided by the National Child Protection Clearinghouse, to which approved child care services are currently referred. Alternatively, if the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 is passed, and the definition of child abuse in the *Family Law Act* is revised, the *Family Assistance Guide* could reflect the *Family Law Act* definition of child abuse (which includes neglect). This would provide the advantages of consistency and shared understanding of abuse across legal frameworks.

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.

Baby bonus

12.88 The baby bonus is a flat rate payment—\$5,437 in 2011–12—to assist with the costs of a newborn or adopted child.¹²⁴ It is generally paid in 13 fortnightly instalments¹²⁵ to a parent of a child or a person who cares for or adopts the child.¹²⁶

12.89 The *Family Assistance Guide* discusses the payment of the baby bonus by instalments and referrals to a social worker, ISO or MSO. The *Family Assistance Guide* states that young people, especially those 17 years or younger, are ‘generally inexperienced in handling large sums of money and/or may be subject to pressure to use the payment unwisely’.¹²⁷ These applicants must be referred to a social worker or specialist officer to discuss available services such as financial planning and support groups.¹²⁸

12.90 Some applicants who are older than 17 are also referred to social workers or specialist workers. This includes applicants who have experienced family violence, have had a child subject to child protection, are considered ‘vulnerable to exploitation’, or may be ‘subject to pressure to use the payment unwisely’.¹²⁹ The social worker or specialist officer will assess the applicant’s needs, and the support he or she requires,

124 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [1.2.2], [3.3].

125 *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) s 47(1).

126 *A New Tax System (Family Assistance) Act 1999* (Cth) s 36. A person is not eligible for the baby bonus where he or she, or his or her partner, receives parental leave.

127 Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [2.4.3].

128 *Ibid.*

129 *Ibid.*

and will provide information and referrals regarding appropriate services to the applicant.¹³⁰

Submissions and consultations

12.91 In the Family Assistance Issues Paper, the ALRC asked whether reforms are needed to ensure that

- baby bonus applicants who have experienced family violence are referred to Centrelink social workers and specialist officers;¹³¹ and
- social workers and specialist officers are able to access information about whether a baby bonus applicant has a protection order or a child subject to child protection.¹³²

12.92 The ADFVC commented that victims of family violence may be particularly vulnerable during pregnancy and after childbirth. It suggested a number of reforms to facilitate heightened awareness of this risk by CSA and Centrelink staff, as follows:

- amending family assistance legislation to include a definition of family violence;
- establishing a family violence policy;
- screening for family violence;
- assigning dedicated caseworkers to baby bonus applicants who disclose family violence.¹³³

12.93 The Welfare Rights Centre Inc Queensland stated that this is a matter about the training and resources required to ensure Centrelink staff identify and understand family violence, and are ‘aware of the signs and issues involved to detect the possibility and have access to resources and referral systems to aid the potential victims’.¹³⁴

12.94 To ensure that social workers and specialist officers have access to relevant orders, several stakeholders supported access to the national register for social workers and specialist officers,¹³⁵ as recommended in *Family Violence—A National Legal Response*. The AASW and the ADFVC qualified this support by stating that the national register should be accessed only with the consent of the applicant.¹³⁶

12.95 The Welfare Rights Centre Inc Queensland did not support access to the national register by Centrelink social workers and specialist officers. Instead it suggested that

130 Ibid.

131 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance* ALRC Issues Paper 38 (2011), Question 36.

132 Ibid, Question 37.

133 ADFVC, *Submission CFV 53*, 27 April 2011.

134 Welfare Rights Centre Inc Queensland, *Submission CFV 43*, 21 April 2011. See also Australian Association of Social Workers (Qld), *Submission CFV 46*, 21 April 2011.

135 Sole Parents’ Union, *Submission CFV 52*, 27 April 2011; Confidential, *Confidential CFV 49*, 21 April 2011; Australian Association of Social Workers (Qld), *Submission CFV 46*, 21 April 2011.

136 Australian Association of Social Workers (Qld), *Submission CFV 46*, 21 April 2011.

applicants should be ‘encouraged to present documents such as protection orders and evidence of formal proceedings in matters relevant to family violence or abuse’.¹³⁷ It suggested this may be achieved through training for Centrelink staff, and readily available referrals and brochures at Centrelink and other agencies.¹³⁸

ALRC’s views

12.96 Reforms proposed in this Discussion Paper should facilitate the FAO’s objective to refer baby bonus applicants who have experienced family violence to social workers and specialist officers. The proposed reforms may also assist social workers and specialist officers to assess the needs of victims, and to provide appropriate referrals, information, and support.

12.97 In the ALRC’s preliminary consideration, Centrelink or the Family Assistance Office should screen baby bonus applicants for family violence.¹³⁹ Additionally, customers who have previously disclosed family violence to Centrelink, the FAO or the CSA, should be identified by a ‘safety concerns flag’.¹⁴⁰ These measures, captured in the broader proposals of Chapter 4, should improve the identification of victims of family violence, facilitating their referral to a social worker or specialist officer.

12.98 A legislative definition of family violence that is consistent across family assistance, social security and child support legislation should assist social workers and specialist officers in providing necessary supports to baby bonus applicants who have experienced family violence.¹⁴¹ In particular, the proposed definition’s treatment of economic abuse may assist in determining when an individual may be subject to coercion or exploitation in relation to baby bonus payments. Replicating the definition in policy guides—including the *Family Assistance Guide*—along with descriptions of the nature, features and dynamics of family violence may also assist social workers and specialist officers.¹⁴²

12.99 Proposals regarding training of Centrelink and FAO staff—including social workers and specialist officers—complement these suggested reforms. Proposed training components are set out above.

12.100 In the ALRC’s preliminary view, the proposed reforms regarding screening, interagency information sharing about safety concerns, a consistent legislative and policy definition of family violence, and training, should improve service responses to baby bonus applicants who have experienced family violence. Such a response supports victims experiencing financial exploitation and coercion, and assists them to take other protective measures where required.

137 Welfare Rights Centre Inc Queensland, *Submission CFV 43*, 21 April 2011.

138 Ibid.

139 Proposal 4–2.

140 Proposal 4–11 and 4–12.

141 See Ch 3.

142 Proposal 12–1.

