

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

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Summary

13.1 This chapter discusses the major point of intersection between the child support and family assistance legislative schemes: the ‘reasonable maintenance action’ requirement. In accordance with this requirement, eligible parents must be in receipt of child support to receive more than the minimum rate of Family Tax Benefit (FTB) Part A. Family assistance policy recognises that this requirement may affect victims of family violence, and the *Family Assistance Guide* provides for exemptions.

13.2 Family violence exemptions are a key protective strategy for victims of family violence in both child support and family assistance contexts. Exemptions enable victims to opt out of obtaining child support payments—where this would place them at risk—without a consequent reduction to their FTB Part A payments. Due to this significant protective role, the ALRC recommends that exemptions should be set out in family assistance legislation.

13.3 Another focus of this chapter is the accessibility of exemptions for victims who require them. This chapter recommends that further information about exemptions should be contained in the *Family Assistance Guide*. It is envisaged that the reforms contained in this chapter will operate in conjunction with those in Chapter 4—regarding identifying family violence-related safety concerns (for example, by screening), providing information, and training—to improve accessibility.

Reasonable maintenance action

13.4 *A New Tax System (Family Assistance) Act 1999* (Cth) (the *Family Assistance Act*) requires a person who receives more than the base rate of FTB Part A for a child

to take reasonable action to obtain maintenance, where it is reasonable to do so.¹ This is referred to as taking ‘reasonable maintenance action’ or the ‘maintenance action test’ (often abbreviated to ‘MAT’). To comply with this requirement, a person must apply for child support, where eligible. He or she must also opt for the Child Support Agency (CSA) to collect payments, or collect the full amount of child support payments.²

13.5 If a person does not take reasonable maintenance action, the Family Assistance Office (FAO) will reduce FTB Part A payments for the child to the base rate.³ There is therefore a financial consequence if such action is not pursued.⁴

13.6 As discussed in Chapter 12, the reasonable maintenance action requirement is a key strategy to the objective of limiting government expenditure to the minimum required to ensure that children of separated parents receive adequate financial support, and that parents have the primary responsibility of financial support for their children. To this end, the reasonable maintenance action requirement is complemented by the ‘maintenance income test’, which operates to reduce FTB Part A by 50 cents for every dollar of child support, above an exempted amount, until the base rate of FTB Part A is reached.

Exemptions from reasonable maintenance action

What are exemptions?

13.7 Exemptions are the key protective strategy for victims of family violence in both child support and family assistance contexts. They enable victims to opt out of the child support scheme where obtaining child support would compromise their safety. It is therefore important that exemptions are readily accessible to victims.

13.8 Victims of family violence may obtain an exemption from the requirement to take reasonable maintenance action. Exemptions are available to relieve a person from the requirement to apply for child support from the other parent, and to end an existing child support assessment (child support case).⁵ There are a number of grounds for exemptions. Grounds relevant for victims of family violence are: ‘violence or fear of violence’, and ‘harmful or disruptive effect’ on the payee or payer (including cases of

1 *A New Tax System (Family Assistance) Act 1999* (Cth) sch 1 cl 10. See also *Child Support (Assessment) Act 1989* (Cth) ss 151, 151A. FTB Part A is described in Ch 14.

2 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [3.1.5.30]. See also [3.1.6.70]: ‘Unless the applicant/recipient has been granted an exemption, they must privately collect 100% of the amount payable under the order/agreement or the formula assessment, otherwise CSA collection will be required. Failure will result in their FTB Part A being reduced to the base rate for the child’.

3 *A New Tax System (Family Assistance) Act 1999* (Cth) sch 1 cl 10; FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [3.1.5.30]. See also [3.1.5.50], [3.1.6.70]. The role of the FAO is described in Ch 14.

4 Parents eligible for child support have 13 weeks after separation to apply for child support or obtain an exemption to avoid a reduction in the FTB Part A rate.

5 When a payee is eligible for child support, the CSA cannot accept his or her election to end a child support assessment without Centrelink approval. See Ch 12.

rape or incest).⁶ Measures to improve the accessibility of exemptions are discussed below.

Exemptions and child support accessibility

13.9 While it is crucial that exemptions are accessible, agencies should not assume that all victims of family violence desire an exemption, nor that exemptions are the appropriate response to all family violence cases.⁷ This is particularly important as, when an exemption is granted, lack of child support payments may not be fully compensated by an increase in benefits—resulting in less overall income.⁸ Generally, family violence contributes to ongoing poverty for victims, and the lack of child support may compound this financial disadvantage.⁹

13.10 Measures to increase the accessibility of exemptions should therefore complement, rather than undermine, reforms to improve accessibility of the child support scheme for family violence victims. A major theme of this section of the Report is to improve the issues management of child support to better protect the safety of family violence victims. This approach should facilitate victims' participation in the child support scheme. It should also limit the uptake of exemptions on grounds of family violence to those cases where victims make an informed decision that exemptions are the best strategy to ensure their safety.

13.11 Existing policy in the *Family Assistance Guide* regarding the role of the social worker and Indigenous Service Officers (ISOs) complements this approach. The *Family Assistance Guide* provides that, where customers are reluctant or refuse to apply for child support, they should be referred to social workers or Indigenous Service Officers. Social workers and ISOs ensure that customers understand that:

- child support is for the financial benefit of the child and the parent caring for the child,
- child support improves the financial resources for children not living with both parents and can be received until the child turns 18 years,
- children are entitled to receive support from both parents, and
- child support does not have to involve contact between the parents.¹⁰

6 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [3.1.5.70].

7 This conflicts with the principle of self-agency discussed in Ch 2.

8 R Patrick, K Cook and H McKenzie, 'Domestic Violence and the Exemption from Seeking Child Support: Providing Safety or Legitimizing Ongoing Poverty and Fear' (2008) 42 *Social Policy and Administration* 749, 754; R Patrick, K Cook and A Taket, 'Multiple Barriers to Obtaining Child Support: Experiences of Women Leaving Violent Partners' (2007) 45 *Just Policy* 21, 25.

9 See R Braaf and I Meyering, *Seeking Security: Promoting Women's Economic Wellbeing Following Domestic Violence* (2011); R Patrick, K Cook and H McKenzie, 'Domestic Violence and the Exemption from Seeking Child Support: Providing Safety or Legitimizing Ongoing Poverty and Fear' (2008) 42 *Social Policy and Administration* 749. Also, see L Goodman and others, 'When Crises Collide: How Intimate Partner Violence and Poverty Intersect to Shape Women's Mental Health and Coping?' (2009) 10 *Trauma, Violence & Abuse* 306 for a discussion of the intersection of family violence and poverty, as well as mental health.

10 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [3.1.5.100].

13.12 The *Family Assistance Guide* also notes that social workers may alleviate customers' privacy fears, refer the customer for other assistance needed, and 'present the advantages of the [child support scheme] for children in a more positive light'.¹¹

13.13 Such consultations with social workers and ISOs also provide a platform to give victims of family violence information about other measures available that may improve their safety within the child support scheme, including those recommended in this Report.¹² This may assist victims to make informed choices in relation to their participation in the child support scheme.

Exemptions not in legislation

13.14 The requirement to take reasonable maintenance action is imposed by the *Family Assistance Act*. However, exemptions from this requirement are not set out in the Act. Exemption policy is instead contained in the *Family Assistance Guide* and, to a lesser extent, *The Guide: CSA's Online Guide to the Administration of the New Child Support Scheme (Child Support Guide)*.

13.15 The ALRC considers that exemptions from the reasonable maintenance action requirement are a significant matter of policy, and therefore should be included in the legislation itself, rather than only in the supporting policy guide. While the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) did not support this approach,¹³ it was generally supported by stakeholders.¹⁴ For example, Welfare Rights Centre NSW commented that 'a legislated exemption is preferred for reasons of clarity and certainty'.¹⁵

13.16 Including exemptions in legislation acknowledges their significant role in protecting victims by permitting them to opt out from the assessment and collection of child support, without a consequent reduction of their FTB Part A payments. Further advantages are that legislative provisions are more authoritative and transparent, and may provide victims of family violence with increased procedural certainty.

13.17 In *Family Violence and Commonwealth Laws*, Discussion Paper 76 (2011) (Discussion Paper), the ALRC proposed that specified grounds for exemptions, including family violence, should also be included in the *Family Assistance Act*. In its final consideration, the ALRC considers that it is unnecessary for the Act to include the grounds for exemptions—particularly as this may introduce inflexibility in the administration of the Act. However, the *Family Assistance Guide* should expressly

11 Ibid, [3.1.5.100].

12 For example, the recommended measure regarding CSA consultation with victims of family violence before taking significant action against the other party: Rec 12–4.

13 FaHCSIA, *Submission CFV 162*.

14 This reform was proposed in the Discussion Paper: Proposal 11–1. It was supported by: National Legal Aid, *Submission CFV 164*; National Welfare Rights Network, *Submission CFV 150*; AASW (Qld) and WRC Inc (Qld), *Submission CFV 139*; Lone Fathers Association Australia, *Submission CFV 109*; Aboriginal & Torres Strait Islander Women's Legal Service North Queensland, *Submission CFV 99*; Women's Information and Referral Exchange, *Submission CFV 94*; WEAVE, *Submission CFV 85*.

15 WRC (NSW), *Submission CFV 70*.

include family violence as grounds for an exemption from the reasonable maintenance action requirement, and this is discussed further below.

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’.

Accessibility of exemptions

13.18 The ALRC has considered a number of measures to improve the accessibility of exemptions for family violence victims, requests for which are determined by Centrelink.¹⁶ The CSA and Centrelink refer persons who may be eligible for exemptions to Centrelink social workers. ISOs may also grant exemptions.¹⁷ In some cases, family violence victims may contact Centrelink prior to contacting the CSA and receive an exemption at this stage, therefore having no contact with the CSA.

13.19 The evidence required to support an exemption from the reasonable maintenance action requirement, as provided for in the *Family Assistance Guide*, is of a relatively low threshold.¹⁸ Third party verification, where possible in letter form, may be provided by a variety of sources, such as: health professionals; community agencies; legal practitioners; police; relatives; or friends. Further, the *Family Assistance Guide* provides that social workers and ISOs should assist by fully exploring avenues for verification. It is also implied that exemptions may be available when verification is not possible.¹⁹

13.20 While the evidentiary requirements to support an application for an exemption do not appear onerous, exemptions may be inaccessible to victims of family violence for other reasons. Family violence victims may be ‘uninformed or not aware’ of the

16 Centrelink administers family assistance payments on behalf of the FAO, as discussed in Ch 14. In this role, it administers the reasonable maintenance action requirement.

17 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [3.1.5.70]. Multicultural Service Officers—who perform a role alongside social workers and ISOs—are not mentioned in this context.

18 In Ch 11 of the Discussion Paper, the ALRC outlined why this relatively low evidentiary threshold is appropriate.

19 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [3.1.5.100]. The *Family Assistance Guide* states that the social worker should complete an electronic document indicating, among other things, ‘why verification is not possible’.

availability of exemptions.²⁰ Reviews of exemptions have also been identified as a factor that potentially deters victims from seeking exemptions.²¹

13.21 The ALRC considers the reforms recommended in Chapter 4 should increase awareness about exemptions. In particular, agency identification of family violence-related safety concerns, and inter-agency information sharing about ‘safety concern flags’, should remove barriers to the accessibility of exemptions. These measures will increase the likelihood that those eligible for exemptions are identified and provided with targeted information. Other Chapter 4 recommendations that should improve the accessibility of exemptions are:

- provision of information by agencies to customers about how family violence is relevant to child support and family assistance—including information about exemptions;
- referral of all customers who disclose family violence to Centrelink social workers or other expert service providers; and
- training for agency customer service staff, Centrelink social workers and ISOs in relation to advising customers on the impact of family violence on their case.

13.22 The ALRC also considers that providing more publicly-accessible information about exemption reviews should go some way to addressing concerns that this procedure acts as a barrier to exemptions.²² Improving awareness about the nature and frequency of exemption reviews among customers and their advocates should improve the accessibility of exemptions.

13.23 A further measure that may improve the accessibility of exemptions is explicitly listing family violence as circumstances where a Centrelink social worker may grant an exemption. As mentioned above, the *Family Assistance Guide* provides that Centrelink social workers may grant exemptions on grounds of violence, or fear of violence. The ALRC considers that this ground should be supplemented, or replaced, by reference to family violence, including fear of family violence.

13.24 This measure may improve the accessibility of exemptions, as ‘family violence’ captures a broader range of conduct than ‘violence’—insofar as that conduct is violent, threatening, controlling, coercive or causes fear. This recommended reform is complemented by Recommendations 3–1, 3–2 and 14–1(a), which would set out a definition of family violence in family assistance legislation and the *Family Assistance Guide*. It is also complemented by Recommendations 14–1(b) and 4–6, which state that

20 R Patrick, K Cook and H McKenzie, ‘Domestic Violence and the Exemption from Seeking Child Support: Providing Safety or Legitimizing Ongoing Poverty and Fear’ (2008) 42 *Social Policy and Administration* 749, 759; R Patrick, K Cook and A Taket, ‘Multiple Barriers to Obtaining Child Support: Experiences of Women Leaving Violent Partners’ (2007) 45 *Just Policy* 21, 25.

21 See R Patrick, K Cook and H McKenzie, ‘Domestic Violence and the Exemption from Seeking Child Support: Providing Safety or Legitimizing Ongoing Poverty and Fear’ (2008) 42 *Social Policy and Administration* 749, 761; R Patrick, K Cook and A Taket, ‘Multiple Barriers to Obtaining Child Support: Experiences of Women Leaving Violent Partners’ (2007) 45 *Just Policy* 21, 25.

22 Permanent exemptions are not recommended, due to the financial and social benefits to victims that may flow from periodic review of exemptions. For an exploration of this issue, see Discussion Paper, Ch 11.

the *Family Assistance Guide* should include a description of, and staff should receive training about, the nature, features, and dynamics of family violence.

13.25 Another barrier to the accessibility of exemptions may be a lack of information about exemption-related procedures affecting victims of family violence. Information about the nature of exemption reviews in the *Family Assistance Guide* is limited, stating that the form of review depends on the circumstances, so that, for example, it may be conducted by telephone.²³ The *Child Support Guide* states that reviews determine ‘whether the parents’ circumstances have changed and, if so, whether the exemption is still appropriate’.²⁴

13.26 The *Family Assistance Guide* also contains only limited information regarding the duration of exemptions granted on grounds of violence or fear of violence, and the frequency of reviews. The *Family Assistance Guide* provides that Centrelink should generally review cases in which it has granted an exemption at least every 12 months, although the timeframe varies depending on the circumstances and the type of exemption. Further information is provided according to the type of exemption. Exemptions granted on grounds of violence or fear of violence are not specifically listed, and therefore fall under the category ‘other circumstances’, for which the time period provided is ‘as applicable’.²⁵

13.27 In the ALRC’s view, the *Family Assistance Guide* should provide more information about the review process, and the duration of exemptions granted on grounds of violence or fear of violence.²⁶ This approach was generally supported by stakeholders.²⁷ For example, the Australian Association of Social Workers Queensland (AASW (Qld)) and Welfare Rights Centre commented that ‘the clearer and simpler the process is and the extent to which this is then articulated to people will greatly benefit all concerned’.²⁸ The ALRC considers that this approach ensures consistency and transparency in the administration of exemptions, and should improve the accessibility of exemptions for victims of violence.

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.

23 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [3.1.5.70].

24 Child Support Agency, *The Guide: CSA’s Online Guide to the Administration of the New Child Support Scheme* <www.csa.gov.au/guidev2> at 1 November 2011, [6.10.1].

25 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [3.1.5.90].

26 This was proposed in the Discussion Paper: Proposal 11–2.

27 National Legal Aid, *Submission CFV 164*; National Welfare Rights Network, *Submission CFV 150*; Lone Fathers Association Australia, *Submission CFV 109*; ADFVC, *Submission CFV 104*; Aboriginal & Torres Strait Islander Women’s Legal Service North Queensland, *Submission CFV 99*; Women’s Information and Referral Exchange, *Submission CFV 94*; Confidential, *Submission CFV 89*; WEAVE, *Submission CFV 85*. FaHCSIA notes that the amendments have been already undertaken, however the relevant sections of the *Family Assistance Guide* do not appear to have been amended to provide this information at the time of writing: FaHCSIA, *Submission CFV 162*.

28 AASW (Qld) and WRC Inc (Qld), *Submission CFV 139*.

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.

Partial exemptions

13.28 Partial exemptions may be available to victims of family violence when they collect less than the full amount of child support. As discussed above, unless a payee collecting privately has been granted an exemption, he or she must collect the full amount of child support to fulfil the reasonable maintenance action requirement. If the payee does not collect the full amount, he or she may be required to change from private collection to CSA collection. If the payee does not comply, his or her FTB Part A is reduced to the base rate. The FAO assumes that the payee is collecting the full amount of child support, unless advised otherwise.²⁹

13.29 As stated in Chapter 12, victims may elect to collect privately, and collect less than the assessed amount, due to fear or coercion. Consequently, the application of the reasonable maintenance action test in these circumstances may particularly affect them. Where victims do not disclose that they are collecting less than the full assessed amount of child support, they may be otherwise disadvantaged by having their FTB calculated according to a higher child support income than they are actually receiving.

13.30 Partial exemptions should therefore be accessible to victims of family violence. However, a general lack of awareness about partial exemptions may affect their accessibility. In the Discussion Paper, the ALRC noted that stakeholders appeared unaware of partial exemptions. The ALRC stated that this was unsurprising, as partial exemptions were not explicitly or adequately provided for in the *Family Assistance Guide*.³⁰ While partial exemptions are provided for in the Centrelink e-Reference, this is not a publicly-available resource.³¹

13.31 The ALRC considers that the *Family Assistance Guide* should be amended to make clear the availability of partial exemptions. This proposal attracted support from the range of stakeholders who commented on this issue, including National Legal Aid, the Lone Fathers Association, and Women Everywhere Advocating Violence

29 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [3.1.6.70]. The Commonwealth Ombudsman has provided a useful summary of how this works in practice, quoted in Ch 11 of the Discussion Paper: Commonwealth Ombudsman, *Submission CFV 54*.

30 Discussion Paper, Ch 11.

31 FaHCSIA, *Correspondence*, 29 June 2011, provided the relevant extract from the E-Reference: 007.32510 *Customer not receiving full child support entitlement privately*.

Elimination Inc (WEAVE).³² Additionally, FaHCSIA, in correspondence with the ALRC, considered that the *Family Assistance Guide* could be clearer in outlining that payees with an exemption may privately collect less than the full amount of assessed child support, and stated that it would update the text.³³ On 20 September 2011, FaHCSIA amended the *Family Assistance Guide* to provide:

A partial exemption may be granted in cases where the individual has a fear of violence or there is risk of harmful or disruptive effects if they were to pursue the collection of the full entitlement or to transfer collection method to the CSA. The individual is not required to end the child support assessment; the partial exemption enables them to collect whatever they can privately without failing the maintenance action test. Individuals in this situation will be referred to a social worker for assessment who may grant the partial exemption.

This effectively means an individual with a partial exemption is able to collect less than 100% of their entitlement. In these circumstances, the individual's rate of FTB Part A will be based on the amount of child support received, not the amount of the child support assessment.³⁴

13.32 The ALRC strongly supports the inclusion of this information in the *Family Assistance Guide*. It should increase awareness about, and therefore improve the accessibility of, partial exemptions. As a result of this amendment to the Family Assistance Guide, a recommendation to this effect is unnecessary.

13.33 In conjunction with this amendment to the Family Assistance Guide, the ALRC considers that customers should generally be informed of partial exemptions, and that this should be a component of the exemption-related information to be provided to customers in accordance with Recommendation 4–2. Targeted information about partial exemptions should also be provided by Centrelink social workers to payees who have disclosed family violence, particularly when they end CSA collection. This provision of information is facilitated by Recommendation 12–2, which provides that payees who elect to end an assessment or CSA collection should be referred to Centrelink social workers, and also Recommendation 4–3, which provides that all customers who disclose family violence should be referred to Centrelink social workers.

13.34 Proposed reforms regarding identifying family violence-related concerns should also assist the provision of targeted information about partial exemptions, insofar as they would facilitate referrals to Centrelink social workers. In particular, the ALRC recommends in Chapter 12 that the CSA should identify family violence-related concerns when payees request to end a child support assessment, or elect to end CSA collection of child support.³⁵

32 National Legal Aid, *Submission CFV 164*; National Welfare Rights Network, *Submission CFV 150*; AASW (Qld) and WRC Inc (Qld), *Submission CFV 139*; Lone Fathers Association Australia, *Submission CFV 109*; ADFVC, *Submission CFV 104*; Aboriginal & Torres Strait Islander Women's Legal Service North Queensland, *Submission CFV 99*; Women's Information and Referral Exchange, *Submission CFV 94*; Confidential, *Submission CFV 89*; WEAVE, *Submission CFV 85*.

33 FaHCSIA, *Correspondence*, 29 June 2011.

34 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [3.1.5.50].

35 Rec 12–1.

