

14. Family Assistance

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Summary

14.1 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 Report, these are referred to as the *Family Assistance Act* and the *Family Assistance (Administration) Act* respectively.

14.2 Chapter 13 and, to a lesser extent Chapter 11, examine family assistance laws largely in their interaction with child support laws. This chapter discusses the family assistance framework and the ways that it addresses family violence, focusing on the two primary family assistance payments—Family Tax Benefit (FTB) and Child Care Benefit (CCB).

14.3 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 recommended reforms in that chapter regarding identifying family violence-related safety concerns (through screening, ‘risk identification’ and other measures),

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

information provision and referrals address, to a large extent, many of the family violence issues that were raised in this Inquiry.²

14.4 This chapter recommends further reforms specifically targeted at family assistance law and policy, particularly in relation to CCB. Family assistance legislation provides for increased CCB in certain circumstances. The recommended reforms seek to improve accessibility to increased CCB in cases of family violence (including child abuse). The ALRC recommends that this be achieved by amending family assistance legislation to lower the eligibility threshold for increased rates of CCB where children are at risk of abuse.

Family assistance framework

Purpose

14.5 Family assistance legislation was introduced to ‘simplify the structure and delivery of assistance for families’³ by establishing one body to administer a consolidated set of payments, which all have ‘similar eligibility rules’.⁴ This body is the Family Assistance Office (FAO)—the ‘delivery point’ for family assistance payments.⁵

14.6 Family assistance payments play a significant role in supporting low-income families,⁶ and comprise a range of types, including: FTB;⁷ baby bonus;⁸ maternity immunisation allowance;⁹ CCB;¹⁰ child care rebate;¹¹ and FTB advance.¹² 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.¹³ FTB is the ‘centrepiece’ of family assistance.¹⁴

14.7 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,

2 See, in particular, Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance*, Issues Paper 38 (2011).

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

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

5 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [1.3].

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

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

8 *Ibid* pt 3 div 2.

9 *Ibid* pt 3 div 3.

10 *Ibid* pt 3 div 4.

11 *Ibid* pt 3 div 5.

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

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

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

the legislation should be interpreted in a way that is most beneficial to applicants/recipients as a whole'.¹⁵

Administration

14.8 The FAO operates within Centrelink and Medicare Australia, and Centrelink administers family assistance payments on behalf of the FAO.¹⁶ The FAO is under the governance of the Department of Human Services (DHS).¹⁷ 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.¹⁸ Although Centrelink administers family assistance payments, 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.¹⁹

14.9 The *Family Assistance Guide* is available online at the FaHCSIA website.²⁰ As noted in Chapters 5 and 12, 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.

Introducing a common interpretative framework

14.10 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

14.11 Recommendation 3–1 states that family assistance legislation should provide a definition of family violence consistent with other specified Commonwealth laws. The ALRC also considers that the *Family Assistance Guide* should include:

- a definition of family violence as discussed in Chapter 3; and

15 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [1.4].

16 Ibid, [1.3]; Child Support Agency website <www.csa.gov.au> at 7 March 2011.

17 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [1.3].

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

19 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [1.3].

20 Ibid.

21 FaHCSIA, *Guide to Social Security Law* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [1.1.D.235].

- a description of the nature, features and dynamics of family violence, also as discussed in Chapter 3.²²

14.12 Such an amendment to the *Family Assistance Guide* was supported by major stakeholders—including FaHCSIA, which is the department responsible for the *Family Assistance Guide*, as noted above.²³ The National Welfare Rights Network (NWRN) stated that it is ‘highly desirable to achieve a common interpretative framework across different legislative schemes’.²⁴

14.13 The ALRC considers that these additions to the *Family Assistance Guide* are desirable for the reasons set out in relation to *The Guide: CSA’s Online Guide to the Administration of the New Child Support Scheme (Child Support Guide)* in Chapter 11. The illustrative categories of family violence in the definition, and the statement regarding the nature, features and dynamics of family violence, should be tailored to each legal framework to reflect the presentations of family violence, and the particular risks victims may face, in that context.

Recommendation 14–1 The *Family Assistance Guide* should include:

- the definition of family violence in Recommendation 3–2; and
- 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.

Family Tax Benefit

What is Family Tax Benefit?

14.14 FTB is an income-tested payment for eligible parents and carers. 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

22 This amendment to the *Family Assistance Guide* was proposed in Australian Law Reform Commission, *Family Violence and Commonwealth Laws*, Discussion Paper 76 (2011) (Discussion Paper): Proposal 12–1.

23 FaHCSIA, *Submission CFV 162*.

24 National Welfare Rights Network, *Submission CFV 150*. See also: AASW (Qld) and WRC Inc (Qld), *Submission CFV 137*; ADFVC, *Submission CFV 104* and WEAVE, *Submission CFV 85*. The Lone Fathers Association Australia opposed such an amendment, for reasons discussed in Ch 3: Lone Fathers Association Australia, *Submission CFV 109*.

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 (FTB Parts A and B are described below). Generally, the dependent children must be in full-time study. *A New Tax System (Family Assistance) Act 1999* (Cth) ss 17B, 22, sch 1 cl 29(3). FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [2.1.1.10].

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

14.15 FTB includes two parts: FTB Part A and FTB Part B. FTB Part A is the ‘primary payment designed to help with the cost of raising children’.²⁸ 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.

14.16 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.²⁹

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

- 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 take reasonable maintenance action (that is, to apply for child support, and collect—or elect that the CSA collect—child support payments), discussed in Chapters 11 and 13.³⁰

Issues management

14.18 Chapter 4 discusses appropriate issues management of family violence cases by agencies. This is applicable in a family assistance context, and the ALRC considers that the package of reforms proposed in Chapter 4 should improve the safety of family violence victims who are FTB recipients or applicants. In particular, the ALRC has recommended that relevant agencies should:

- identify customers’ family violence-related safety concerns, through screening, ‘risk identification’ or other methods;
- provide information to customers about how family violence is relevant to their family assistance matters; and
- refer customers to Centrelink social workers or other expert service providers when safety concerns are identified.³¹

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

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

28 Family Assistance Office website <www.familyassist.gov.au> at 16 February 2011.

29 *A New Tax System (Family Assistance) Act 1999* (Cth) sch 1 pt 4; FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [1.1.2]. The secondary income earner is the member of the couple with a lower income.

30 Ch 12 of the Discussion Paper explored the further issue of FTB payment to informal carers—that is, carers who are neither parents nor legal guardians—of children who have experienced family violence. The reforms recommended in Ch 4 should improve safety, and enhance the accessibility of FTB, for this group.

31 Recs 4–1, 4–2, 4–3.

14.19 In Chapter 4, the ALRC also recommended multifaceted training that should improve staff skills and their knowledge base, including about:

- advising customers on the impact of family violence on their case or claim;
- responding to disclosures of family violence, including by providing appropriate referrals;
- the nature, features and dynamics of family violence, and its impact on victims, in particular those from high risk and vulnerable groups.³²

14.20 Consistent legislative and policy-based definitions of family violence, recommended in Chapter 3 and throughout this Report, complement and facilitate the above training-related recommendations.

14.21 Although the focus here is on FTB—as the primary family assistance payment³³—this package of reforms should improve safety for family assistance-recipients generally.³⁴

Exemptions from tax file number requirements

14.22 Persons at risk of violence may be exempt from requirements about providing their partners' tax file numbers (TFNs). The ALRC considers that this exemption, contained in the *Family Assistance Guide*, should explicitly refer to 'family violence'. The reforms contained in Ch 4 should also increase awareness about—and therefore accessibility of—the exemption.

14.23 The *Family Assistance (Administration) Act* provides that an individual applying for FTB must provide both a TFN and a TFN for his or her partner during the relevant payment period.³⁵ 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.³⁶ 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.³⁷

14.24 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.³⁸ In particular, an indefinite exemption may be granted when the applicant has a

32 Recs 4–5, 4–6.

33 Family Assistance Office website <www.familyassist.gov.au> at 16 February 2011.

34 The Discussion Paper provides an illustration of how this package of reforms should improve the safety of victims eligible for the baby bonus: Ch 12.

35 *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) ss 3(1), 7.

36 *Ibid* s 8(4)–(5).

37 *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.

38 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [4.1.1.20].

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

- 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.³⁹

14.25 The *Family Assistance Guide* provides that these cases are determined on request. Requests are referred to a social worker or an Indigenous Service Officer (ISO) for advice and assistance.⁴⁰

14.26 The ALRC considers that the exemption in the *Family Assistance Guide* is too narrow, insofar as it refers to ‘violence’, rather than ‘family violence’. Most stakeholders who commented on this issue considered that family violence should be explicitly included as a reason for an indefinite exemption from the requirement to provide a partner’s tax file number.⁴¹ For example, NWRN submitted that ‘it is appropriate that the *Guide* refer expressly to family violence in order to adequately capture the forms that family violence may take beyond physical violence’.⁴² FaHCSIA also supported this amendment, and stated that it will consider it as part of the review process of the *Family Assistance Guide*.⁴³

14.27 The ALRC therefore recommends that the *Family Assistance Guide* should expand the term ‘violence’ to explicitly refer to ‘family violence’. This would capture a broader range of conduct, insofar as that conduct is violent, threatening, controlling, coercive or intending to cause fear. This proposed 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 further complemented by Recommendations 14–1(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.

14.28 Stakeholders also commented that victims of family violence may be unaware of the exemption.⁴⁴ 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.⁴⁵

14.29 The ALRC considers that the reforms in Chapter 4 should increase awareness about, and therefore the accessibility of, the exemption to TFN requirements. In

39 Ibid.

40 Ibid.

41 This was proposed in the Discussion Paper: Proposal 12–2.

42 National Welfare Rights Network, *Submission CFV 150*. The following stakeholders also supported this reform: AASW (Qld) and WRC Inc (Qld), *Submission CFV 137*; ADFVC, *Submission CFV 104*; Women’s Information and Referral Exchange, *Submission CFV 94*; Confidential, *Submission CFV 89*; WEAVE, *Submission CFV 85*.

43 FaHCSIA, *Submission CFV 162*.

44 AASW (Qld), *Submission CFV 46*; WRC Inc (Qld), *Submission CFV 43*. See also ADFVC, *Submission CFV 53*.

45 Commonwealth Ombudsman, *Submission CFV 54*.

particular, Recommendation 4–2 provides that all customers should be informed of how family violence is relevant to family assistance, and should be given information about exemptions.

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.

Child Care Benefit

What is Child Care Benefit?

14.30 CCB is an income-tested payment that assists eligible parents and carers with the cost of child care. Other CCB objectives are 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’.⁴⁶ CCB is particularly relevant in the family violence context as increased amounts of CCB are available when children are at risk of ‘serious abuse or neglect’.⁴⁷

14.31 CCB is available to parents or carers responsible for child care costs where their children attend ‘approved child care services’⁴⁸—that is, services approved for the purposes of family assistance law.⁴⁹ The FAO website states that approved child care services meet certain standards and requirements, including ‘having a licence to operate, qualified and trained staff, being open certain hours, and meeting health, safety and other quality standards’.⁵⁰

14.32 Approved care may be provided by: long day care services; family day care services; in-home care services; occasional care services; and outside school hours care services.⁵¹

14.33 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.⁵² All eligible parents and carers may receive up to 24 hours CCB per week for care provided by an approved child care service.⁵³ Parents

46 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [1.2.4].

47 *A New Tax System (Family Assistance) Act 1999* (Cth) pts 3–4.

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

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

50 Family Assistance Office website <www.familyassist.gov.au> at 16 February 2011.

51 *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) s 194. CCB is also available in certain circumstances when child care is provided by a person approved as a ‘registered carer’ by the FAO, for example, a grandparent, friend, relative or nanny: see Discussion Paper, Ch 12.

52 *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; FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [1.2.4].

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

and carers may receive up to 50 hours per week where they meet a ‘work/training/study test’,⁵⁴ or other conditions provided for in the legislation.⁵⁵ Parents or carers generally lodge a claim for CCB with the FAO,⁵⁶ although in certain circumstances the approved child care service may lodge the claim, as described below.

14.34 The FAO is responsible for determining eligibility for, and calculating, CCB. The Department of Education, Employment and Workplace Relations (DEEWR) administers CCB to families through the FAO, and administers payment of CCB to approved child care services.⁵⁷

Child at risk of serious abuse or neglect

14.35 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 CCB,⁵⁸ or, where a 24-hour limit would have applied, raise the limit to 50 hours.⁵⁹ The FAO may also pay CCB at a higher rate.⁶⁰

14.36 The higher rate of CCB is described in the *Family Assistance Guide* and elsewhere—although not in family assistance legislation—as the Special Child Care Benefit (SCCB).⁶¹ Increased weekly hour limits for CCB due to risk are sometimes also called SCCB, in particular by DEEWR, both in its submission and correspondence regarding this Inquiry, and in its publication *Special Child Care Benefit for Children at Risk: Fact Sheet for Approved Child Care Services*.⁶²

14.37 The higher rate and increased weekly hours of CCB are available only in the form of reduced child care fees.⁶³ Lump sums at the end of the financial year are not available for these benefits. An approved child care service may approve the higher rate of CCB or increase weekly hour limits for a maximum of 13 weeks.⁶⁴ The service may apply to the FAO for approval of further periods of the higher rate or increased weekly hour limits of CCB.⁶⁵ The additional weekly hours can be paid at the higher rate.⁶⁶

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

55 Ibid s 54.

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

57 DEEWR, *Child Care Service Handbook, 2010–2011* (2010), 3–4.

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

59 Ibid s 54.

60 Ibid s 76(1). The higher rate of CCB may also be available to families experiencing hardship. This Report considers the higher rate of CCB only in relation to children at risk of abuse.

61 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [2.6.3.20].

62 DEEWR, ‘Special Child Care Benefit for Children at Risk: Fact Sheet for Approved Child Care Services’ (2011). However, the *Family Assistance Guide* provides that increased weekly limits of CCB due to risk is not the same as SCCB. This indicates that there may be differences in the use of terminology across departments: FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [2.6.3.10], [2.6.3.20].

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

64 Ibid ss 54, 55, 77.

65 Ibid ss 54, 55, 81; DEEWR, *Child Care Service Handbook, 2010–2011* (2010), 162, 208.

66 DEEWR, *Child Care Service Handbook, 2010–2011* (2010), 194, 196.

14.38 The higher rate and increased weekly hours of CCB have a protective function. DEEWR 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,⁶⁷ 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.⁶⁸

14.39 The protective function is also explained in the Explanatory Memorandum, which states that, even though a child may be at risk, a decision may not necessarily be made to increase the weekly hours of CCB, unless increased weekly hours help the ‘risk situation’. It provides the following example:

a child may be at risk only on Mondays because of the particular drinking habits of one member of the family. If the child already attends care on Mondays, there is no purpose served in approving additional hours of care for the child.⁶⁹

14.40 In relation to the higher rate of CCB, the Explanatory Memorandum states that this is ‘an important element in persuading the child’s carer to place the child into care and therefore away from the at risk situation’, and that ‘[t]he idea is that the service would exercise the discretion if satisfied that the availability of a higher rate would assist the ... at risk situation’.⁷⁰

14.41 The ALRC considers that the eligibility threshold of ‘serious abuse’ appears at odds with the protective function described above. In accordance with the *Family Assistance Act*, even if a higher rate, or an increased weekly limit, of CCB, may address a risk of abuse to a child, such increased amounts of CCB will not be available unless the risk faced by the child is one of ‘serious abuse’. This 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. Further, it implies that some forms of abuse of a child are not ‘serious’.

14.42 Most stakeholders commenting on this issue generally considered that the word ‘serious’ should be removed from the legislative eligibility requirement of ‘serious

67 Ibid, 194, 196; Department of Education, Employment and Workplace Relations, *Special Child Care Benefit for Children at Risk: Fact Sheet for Approved Child Care Services*.

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

69 Explanatory Memorandum, A New Tax System (Family Assistance and Related Measures) Bill 2000 (Cth), 29.

70 Ibid, 24, 38. See also DEEWR, *Submission CFV 118*.

abuse or neglect'.⁷¹ For example, Welfare Rights Centre NSW (WRC NSW) submitted that the 'serious abuse' requirement is flawed.⁷²

14.43 The DEEWR submission presented a different position, and stated that 'serious' should be retained in the legislation:

'Serious' as a descriptor, assists decision makers to further understand and apply SCCB policy. It is not a barrier to access SCCB but ensures that approval is evidence based, appropriate and funding is delivered to those truly in need.⁷³

14.44 DEEWR also noted that removing the term serious 'would have significant fiscal implications to Child Care Benefit appropriations and would require additional modelling and funds to support it'.⁷⁴

14.45 The ALRC agrees that there may be a need for a qualifying mechanism in the *Family Assistance Act* or the *Family Assistance Guide* to ensure that approved service providers' decisions are thoroughly considered and evidence based, CCB is delivered to those most in need, and the provisions operate within fiscal boundaries. However, for the reasons outlined above, the ALRC does not consider that the qualifying mechanism constituted by the 'serious abuse' threshold is appropriate. If the Australian Government and relevant departments consider that a qualifying mechanism is required, a different formulation should be inserted into the legislation or the *Family Assistance Guide*.

14.46 The WRC NSW and the NWRN have suggested that such a qualifying mechanism may instead apply to the level of the risk of abuse, rather than the nature of the abuse.⁷⁵ Another option may be for legislation to require that the approved service provider has 'reasonable grounds' to consider that a child is at risk of abuse or neglect. An advantage of the latter approach is that it reflects, to some extent, the mandatory reporting provisions of many states and territories.⁷⁶

Definition of abuse

14.47 Neither family assistance legislation nor the *Family Assistance Guide* defines the terms 'abuse' or 'serious abuse'. The *Child Care Service Handbook 2010–2011* 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

71 The ALRC proposed this approach in the Discussion Paper: Proposal 12–4. 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 137*; ADFVC, *Submission CFV 104*; Women's Information and Referral Exchange, *Submission CFV 94*; Confidential, *Submission CFV 89*; WEAVE, *Submission CFV 85*.

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

73 DEEWR, *Submission CFV 118*.

74 Ibid.

75 National Welfare Rights Network, *Submission CFV 150*; WRC (NSW), *Submission CFV 70*.

76 See D Higgins and others, *Mandatory reporting of child abuse* (2010), prepared for the Australian Institute of Family Studies.

and Neglect?'.⁷⁷ 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 or emotional harm to a child or young person. Such behaviours may be intentional or unintentional and can include acts of omission (ie, neglect) and commission (i.e., abuse).⁷⁸

14.48 The resource sheet also describes five main types of child abuse and neglect: physical abuse; emotional maltreatment; neglect; sexual abuse; and witnessing family violence.⁷⁹

14.49 While this is a comprehensive definition, the ALRC considers that the applicable definition of abuse should be given greater visibility, as understandings of what constitutes abuse informs decision making regarding increased amounts of CCB. The ALRC therefore considers that the *Family Assistance Guide* should provide a definition of abuse.⁸⁰ Stakeholders generally agreed that the *Family Assistance Guide* should provide such a definition.⁸¹

14.50 The definition of abuse provided in the *Family Assistance Guide* may be based on the definition provided by the National Child Protection Clearinghouse, to which approved child care services are currently referred. This would not change existing practice, but should increase the visibility of the definition, and consequently transparency around the administration of increased CCB for children at risk of abuse. It should also improve consistency in decision making in this area, by addressing 'the potential for varying application' of this term.⁸²

14.51 Including a definition in the *Family Assistance Guide* may also assist parents and carers, child care services, and the FAO in considering eligibility and determining claims for increased rates and weekly hour limits of CCB—particularly if the definition is reflected in the CCB-related resources produced by DEEWR.

14.52 As an alternative to the above definition, if the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 is passed, and the

77 DEEWR, *Child Care Service Handbook, 2010–2011* (2010), 197. The *Child Care Service Handbook 2010–2011* provides 'guidance and assistance to approved child care services': Ibid, iii.

78 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.

79 Ibid.

80 The ALRC proposed this in the Discussion Paper: Proposal 12–5. This also proposed that neglect should be defined. Although the ALRC considers that neglect should be defined in the *Family Assistance Guide*, such a recommendation is outside the scope of this Inquiry.

81 National Legal Aid, *Submission CFV 164*; AASW (Qld) and WRC Inc (Qld), *Submission CFV 137*; ADFVC, *Submission CFV 104*; Women's Information and Referral Exchange, *Submission CFV 94*; Confidential, *Submission CFV 89*; WEAVE, *Submission CFV 85*. However, the NWRN considered that the term should be given its ordinary meaning, 'informed by guidance which should be set out in the *Family Assistance Guide*': National Welfare Rights Network, *Submission CFV 150*.

82 The Commonwealth Ombudsman considered that the term 'serious abuse' had such potential, and considered it should be defined in policy or law: Commonwealth Ombudsman, *Submission CFV 54*. It did not comment on the term 'abuse', but in the ALRC's consideration, the point is also applicable in this context.

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). In National Legal Aid's comments on this issue, it referred to the Bill and submitted that the 'definition of abuse should be common across Commonwealth jurisdictions'.⁸³ This would provide the advantages of consistency and shared understanding of abuse across Commonwealth legal frameworks. At the time of writing, the Bill is before the Senate.

14.53 The ALRC has not recommended that 'serious abuse' be defined, given its recommendation that the word serious should be removed from family assistance legislation in relation to increased CCB.

Exceptional circumstances

14.54 The *Family Assistance Act* provides that increased weekly limits in relation to CCB are available in certain circumstances, including where a child is at risk of serious abuse or neglect—as discussed above, and in 'exceptional circumstances'. In summary, a person may obtain CCB for more than 24 hours as an exception from the 'work/training/study test', or for more than 50 hours, due to 'exceptional circumstances'.⁸⁴

14.55 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'.⁸⁵ It sets out a non-exhaustive list of exceptional circumstances, including circumstances such as hospitalisation, jury duty or volunteer work in an emergency or disaster.⁸⁶ The list does not specifically include family violence. However, 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'.⁸⁷

14.56 In *Family Violence and Commonwealth Laws Discussion Paper 76* (2011), the ALRC considered that there may be merit in the *Family Assistance Guide* specifically listing family violence in its list of exceptional circumstances for eligibility for increased weekly limits of CCB. The ALRC considered that this may assist victims of family violence during periods when accessing higher levels of child care may assist them to improve their safety, for example, when victims need to attend court.⁸⁸

14.57 However, DEEWR has advised that approved services can apply the SCCB provisions for families in these circumstances (as noted above, DEEWR's use of the term SCCB captures increased weekly limits of CCB hours as well as the higher SCCB rate). DEEWR stated that a purpose of SCCB is to act as an 'early intervention service

83 National Legal Aid, *Submission CFV 164*. See discussion in Ch 3.

84 This is explained in detail in Ch 12 of the Discussion Paper.

85 FaHCSIA, *Family Assistance Guide* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [1.1.E.50].

86 *Ibid.*

87 DEEWR, *Child Care Service Handbook, 2010–2011* (2010), 158.

88 Discussion Paper Ch 12.

to support vulnerable families and children’, and this accommodates family violence situations. It also stated that it is

happy to expand upon SCCB policy information in the Child Care Services Handbook and the SCCB factsheet to ensure that services understand and are aware that domestic violence fall[s] into SCCB criteria.⁸⁹

14.58 The ALRC therefore considers that, as victims of family violence may already access higher weekly limits of CCB, and also the higher CCB rate, it is unnecessary to make a recommendation in this regard. The ALRC further considers that the expansion of policy information, in addition to the recommendations in Chapter 4, may increase awareness regarding the availability of increased amounts of CCB in family violence cases.

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’.

89 DEEWR, *Correspondence*, 24 October 2011.