

9. Child Support—Frameworks, Assessment and Collection

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Summary

9.1 This chapter provides an overview of the child support frameworks relevant to this Inquiry: the legal framework and the agencies that administer it, and the policy framework—including the objectives that underpin the child support scheme. The chapter then outlines the relevance of family violence in the child support system, and proposes reforms to the key areas of interpretative frameworks around family violence, child support assessment, and the collection and enforcement of child support.

9.2 The reforms proposed in this chapter would facilitate appropriate management of child support cases by the Child Support Agency, where a customer is at risk of family violence. The proposed reforms complement the proposals in Chapter 4, and relate primarily to screening and referrals at certain key points in a child support case. In particular, the ALRC proposes that the Child Support Agency should screen for family violence, and consult with customers who have disclosed family violence, prior to initiating significant action against the other party.

Overview

9.3 The child support scheme was established in 1988 to enforce children's rights to be supported by both their parents.¹ Before this, parents could obtain child support only through agreements or court orders. The legislative basis of the scheme is the *Child Support (Registration and Collection) Act 1988* (Cth) and the *Child Support (Assessment) Act 1989* (Cth). The CSA administers these Acts.

9.4 Both parents of a child may apply for child support, and in certain circumstances non-parent carers may also be eligible for child support.² The CSA uses a legislative formula to assess how much child support a parent should pay.³ The assessment takes into account both parents' income, the care arrangements, and the number of dependent children, including children from other relationships. Payees may choose to collect child support privately, or for the CSA to collect and transfer child support payments.

9.5 The child support scheme interacts with the family law system. Parenting arrangements are the basis of a party's child support eligibility or liability, and also affect the amount of the child support assessment. In this way, child support law governs the child support consequences of decisions made in the family law context. It is the family law system—not the child support system—which is set up to address family violence issues in the resolution of disputes between parents about parenting arrangements.

9.6 The child support scheme also interacts with family assistance system—in particular, through the requirement on Family Tax Benefit (FTB) recipients to obtain child support. The interaction between child support and family assistance is discussed below, and is the primary theme of Chapter 11.

9.7 The CSA is part of the Department of Human Services (DHS). The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) is responsible for 'the development, implementation and monitoring of child support policy'.⁴

1 Commonwealth, *Parliamentary Debates*, Senate, 17 February 1988, 165 (P Walsh—Minister for Finance).

2 The child support eligibility of non-parent carers is discussed in Ch 10.

3 See *Child Support (Assessment) Act 1989* (Cth) pt 5.

4 Department of Families, Housing, Community Services and Indigenous Affairs, *Overview* <www.fahcsia.gov.au> at 21 July 2011.

Scope of the Inquiry

Terms of Reference

9.8 The scope of this Inquiry is limited by the Terms of Reference, which direct the ALRC to consider improvements to legal frameworks to protect the safety of victims of family violence.⁵ Chapters 9–11 consider how the safety of victims of family violence may be improved by reforms in the area of child support.

9.9 Consequently, the ALRC will not examine a range of issues which—while they may affect victims of family violence—have relevance to a range of CSA customers and the operation of the child support scheme. Reforms to address these issues would be systemic, and beyond the Terms of Reference. Alternatively, recommending narrower reforms that address the effect of these issues solely on victims of family violence would introduce a two-tiered operation to aspects of the child support scheme.

9.10 The ALRC rejects as inappropriate a two-tiered system that would subject victims of family violence to substantially different practices and procedures than other CSA customers. It would compromise the integrity of the child support scheme, and may disadvantage the general CSA customer base.⁶

9.11 Systemic issues that are beyond the Terms of Reference are identified below. Stakeholders also raised numerous compelling issues of a systemic nature in their responses to the *Family Violence and Commonwealth Laws—Child Support and Family Assistance*, ALRC IP 38 (2010) (the Child Support Issues Paper)—some of which are mentioned in this chapter and Chapters 10 and 11.

Matters outside the Inquiry

Avoidance of child support obligations

9.12 Some payers may avoid their child support obligations by minimising the income that is factored into the child support assessment. Participants in one study identified a range of tactics used by payers to minimise child support assessments, including: listing income under a business name, not declaring entire incomes, and working cash-in-hand.⁷

9.13 Payers may also avoid child support by paying child support late or irregularly, paying less child support than the assessment, or not paying at all. These issues may be particularly prevalent where payees collect privately. Where the CSA collects child support, it has a range of coercive powers to effect payment, as discussed below.

5 The full Terms of Reference are set out at the front of this Discussion Paper and are available on the ALRC's website at <www.alrc.gov.au>.

6 See discussion of 'system integrity' in Ch 2.

7 H Mckenzie and K Cook, 'The Influence of Child Support and Welfare on Single Parent Families' (2007) 45 *Just Policy* 13, 15.

9.14 Avoiding child support obligations may be linked with family violence. It has been identified as ‘part of an ongoing attempt to maintain power and control’,⁸ and an extension of other forms of family violence.⁹ It may also, in itself, constitute economic abuse.

9.15 Avoidance of child support by payers is an issue that affects a broad range of payees, including those who may not be victims of family violence. Addressing this issue may require systemic reforms to the child support scheme that are beyond this Inquiry’s Terms of Reference.¹⁰

9.16 The ALRC will, however, consider reforms to protect victims of family violence who, due to fear of or coercion by the person who has used family violence, opt for private collection of child support—and are, therefore, more vulnerable to non-payment or underpayment of child support.

Investigatory powers of CSA

9.17 Child support legislation empowers the CSA to conduct investigations, however the CSA is not required to conduct any inquiries or investigations in making administrative assessments.¹¹ The *Child Support (Assessment) Act 1989* (Cth) also provides that the CSA may—but is not required to—conduct inquiries and investigations in making determinations about changes to child support assessments (also referred to as ‘departure’ determinations).¹²

9.18 The ALRC understands that the CSA does not, in practice, actively investigate cases. Consequently parents and carers may need to investigate the other parties’ financial circumstances themselves—for example, to support a change of assessment application. Where parents are unable to do this, they may be financially disadvantaged.¹³

9.19 This issue is relevant to victims of family violence, who may be ill-equipped to investigate the assets and income of persons who have used violence against them. However, the adequacy of CSA investigatory powers, and the degree to which CSA uses its existing powers, is a broad issue in relation to the child support scheme, and will not be explored at large by the ALRC in this Inquiry.

8 R Patrick, K Cook and A Taket, ‘Multiple Barriers to Obtaining Child Support: Experiences of Women Leaving Violent Partners’ (2007) 45 *Just Policy* 21, 23.

9 R Patrick, K Cook and A Taket, ‘Multiple Barriers to Obtaining Child Support: Experiences of Women Leaving Violent Partners’ (2007) 45 *Just Policy* 21, 26.

10 The full Terms of Reference are set out at the front of this Discussion Paper and are available on the ALRC’s website at <www.alrc.gov.au>.

11 *Child Support (Assessment) Act 1989* (Cth) ss 29, 66D, 160, 161, 162A; *Child Support (Registration and Collection) Act 1988* (Cth) ss 120, 121A.

12 *Child Support (Assessment) Act 1989* (Cth) ss 98H(1)(b), 98Q(1)(b); Child Support Agency, *The Guide: CSA’s Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011.

13 See H Mckenzie and K Cook, ‘The Influence of Child Support and Welfare on Single Parent Families’ (2007) 45 *Just Policy* 13, 15; R Patrick, K Cook and A Taket, ‘Multiple Barriers to Obtaining Child Support: Experiences of Women Leaving Violent Partners’ (2007) 45 *Just Policy* 21, 24.

Percentage of care

9.20 The ‘percentage of care’ is the amount of time a parent or carer provides care for a child. A person must provide at least 35% of a child’s care to be eligible for both child support payments and FTB.¹⁴ The percentage of care also affects the amount of child support and family assistance entitlements. This is an area where child support and family assistance laws intersect with family law.

9.21 It is possible that parents may seek parenting orders or agreements under the *Family Law Act 1975* (Cth) that will affect the child support assessment under the *Child Support (Assessment) Act*, or FTB under *A New Tax System (Family Assistance) Act 1999* (Cth).

9.22 The *Evaluation of the 2006 Family Law Reforms* by the Australian Institute of Family Studies (AIFS), released in December 2009, considered whether child support is relevant to positions adopted by parents in relation to parenting arrangements under the *Family Law Act*. Parents may wish to increase their care percentage to reduce their child support liability or, conversely, resist a reduction in their care percentage to maintain their child support entitlements.¹⁵ Maintaining or increasing family assistance may also provide such motivation.

9.23 Manipulation of care arrangements to alter the child support assessment may affect victims of family violence, potentially motivating persons who use violence to seek more time with their children to minimise their child support assessment. However, this issue is not limited to cases of family violence. Reforms to child support and family assistance legislation to address the issue would be systemic in nature, affecting the child support formula and the rules for determining FTB. As discussed below, reforms to ensure family violence is suitably considered in determining parenting arrangements should be—and have been—aimed at the family law system.

9.24 While the legislative use of percentage of care for child support and family assistance is beyond the reference scope, in the Child Support Issues Paper, the ALRC raised for consideration the rules to determine the percentage of care—particularly in those cases when parents dispute the facts in relation to care provided. This is discussed in Chapter 11.

14 *Child Support (Assessment) Act 1989* (Cth) ss 5(3), 7B(1). *A New Tax System (Family Assistance) Act 1999* (Cth) s 25. FTB is described in Ch 12.

15 Australian Institute of Family Studies, *Evaluation of the 2006 Family Law Reforms* (2009), 222. The Summary Report notes, of this type of bargaining, that ‘further work is needed to determine whether the prevalence has actually increased and if so to what extent’. Australian Institute of Family Studies, *Evaluation of the 2006 Family Law Reforms: Summary Report* (2009), 13.

Legal and policy framework

Objectives of the child support scheme

9.25 Associate Professor Bruce Smyth has described the policy ‘backbone’ of the child support scheme:

The Scheme was designed to ensure that: (a) children of separated or divorced parents receive adequate financial support; (b) both parents contribute to the cost of supporting their children according to their respective capacities to do so; and (c) government expenditure is restricted to the minimum necessary to attain these objectives. The design of the Scheme also seeks to avoid work disincentives for parents, and to be ‘simple, flexible, efficient’ and non-intrusive in its operation.¹⁶

9.26 Some of these design aims are reflected in the child support legislation. The object provisions in the two Acts differ. The *Child Support (Assessment) Act* identifies its principal object as ensuring ‘that children receive a proper level of financial support from their parents’.¹⁷ The Act also lists particular objects non-exhaustively, including that:

- the amount of child support provided by parents is determined
 - ‘according to their capacity’, and
 - ‘in accordance with the costs of children’;
- carers are able to have the amount of child support ‘readily determined without the need to resort to court proceedings’; and
- children ‘share in changes in the standard of living of both their parents, whether or not they are living with both or either of them’.¹⁸

9.27 The *Child Support (Registration and Collection) Act* identifies two ‘principal objects’, which are that:

- ‘children receive from their parents the financial support that the parents are liable to provide’, and
- periodic amounts of child support are paid on ‘a regular and timely basis’.¹⁹

9.28 Both Acts state that Australia should be positioned to give effect to its international obligations.²⁰ The objects of the Acts do not refer to family violence. However, the *Child Support Guide* states that the

CSA operates in a sensitive environment and must avoid, as far as possible, actions which could contribute to family violence.²¹

16 B Smyth, ‘Child Support Policy in Australia—Back to Basics?’ (2004) (67) *Family Matters* 42, 43.

17 *Child Support (Assessment) Act 1989* (Cth) s 4(1).

18 *Ibid* s 4(2)

19 *Child Support (Registration and Collection) Act 1988* (Cth) s 3(1).

20 *Child Support (Assessment) Act 1989* (Cth) s 4(e); *Child Support (Registration and Collection) Act 1988* (Cth) s 3(c).

21 Child Support Agency, *The Guide: CSA’s Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011, [6.10.1].

9.29 Mr David Richmond, in the report *Delivering Quality Outcomes: Report of the Review of Decision Making and Quality Assurance Processes of the Child Support Program* (the Richmond Review), noted that the philosophy of the CSA has changed, in particular over the period 2006–2009:

The Program has shifted from one focused primarily on collection and transfer of child support for the benefit of children, to a more holistic approach aimed at not only ensuring the financial support for children in separated families but to supporting separated parents to receive emotional, financial and legal assistance to enable them to meet the emotional and financial needs of their children.²²

Child support interactions

Family assistance

9.30 Child support cannot be discussed in isolation from family assistance. As the Ministerial Taskforce on Child Support (Ministerial Taskforce) remarked, the

operation of the Child Support Scheme cannot be fully understood without understanding its interaction with the income support system and payments to help families with the costs of children.²³

9.31 The key components of this relationship between child support legislation and family assistance legislation are necessary background for this chapter.²⁴

9.32 Persons eligible for child support who receive more than the base rate of the family assistance payment, FTB Part A, are generally required to apply for a child support assessment and to collect—or opt for CSA to collect—the full assessed amount of child support. This is known as the ‘reasonable maintenance action’ requirement. Exemptions are available, including in cases of family violence. Family violence exemptions are discussed in more detail in Chapter 11.

9.33 Another connection between child support and family assistance is the Maintenance Income test, which reflects that an individual’s FTB Part A calculation takes into account estimated child support income. Under this test, a person’s FTB Part A is reduced by fifty cents for every dollar of child support, above an exempted amount, until the base rate of FTB Part A is reached.²⁵

9.34 The Ministerial Taskforce noted that the reasonable maintenance action requirement and the maintenance income test

22 D Richmond, *Delivering Quality Outcomes—Report of the Review of Decision Making and Quality Assurance Processes of the Child Support Program* (2010), [4.1.6].

23 Ministerial Taskforce on Child Support, *In the Best Interests of Children—Reforming the Child Support Scheme* (2005), [4].

24 The interaction of the two regimes is discussed in more detail in Ch 11, and family assistance legislation is discussed more generally in Ch 12.

25 See Centrelink, *Maintenance Income Test* <www.centrelink.gov.au> at 22 July 2011.

are central to the objective of limiting Commonwealth expenditure to the minimum necessary for ensuring that children's needs are met, and shifting the primary responsibility of supporting children back to separated parents.²⁶

9.35 Centrelink administers family assistance payments on behalf of the Family Assistance Office (FAO). In this role, it ensures that persons eligible for more than the base rate of FTB Part A 'take reasonable action to obtain child support', and it adjusts the FTB payments of people receiving child support payments.²⁷

Family law

9.36 As noted above, the family law system, rather than the child support system, is set up to address family violence issues in regulating disputes about parenting arrangements. Child support legislation governs the child support consequences of arrangements made in the family law context.

9.37 Family violence is a significant factor in determining post-separation parenting arrangements under the *Family Law Act*. Parenting orders are based on the 'best interests of the child' above all other considerations.²⁸ In determining a child's best interests, the court must consider two 'primary' and 13 'additional' considerations.²⁹ The primary considerations are:

- (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and
- (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.³⁰

9.38 Family violence is also addressed in the additional considerations: the court must consider any family violence involving the child or a member of his or her family, as well as relevant family violence protection orders.³¹ Further, when making a parenting order, a court must ensure that it does not expose a person to an unacceptable risk of family violence and is consistent with any protection order made under state and territory family violence legislation.³²

9.39 The consideration of family violence and parenting proceedings has been subject to active contemporary review: it has been considered in two 2009 reports and, to a more limited extent, in ALRC Report 114, *Family Violence—A National Legal Response*.³³ At the time of writing this Discussion Paper, the Senate Legal and

26 Ministerial Taskforce on Child Support, *In the Best Interests of Children—Reforming the Child Support Scheme* (2005), [4.2.2].

27 Child Support Agency, *Facts and Figures 08–09* (2009), [1.5.3].

28 *Family Law Act 1975* (Cth) s 60CA.

29 *Ibid* s 60CC.

30 *Ibid* s 60CC(2).

31 *Ibid* s 60CC(2)(j) and (k).

32 *Ibid* s 60CG.

33 R Chisholm, *Family Courts Violence Review* (2009); Family Law Council, *Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues* (2009); Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010).

Constitutional Affairs Committee was considering the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.

Policy and procedural resources

9.40 The CSA's policy resource is *The Guide: CSA's Online Guide to the Administration of the New Child Support Scheme*—referred to in this Discussion Paper as the *Child Support Guide*. CSA staff are expected to follow the *Child Support Guide*;³⁴ and it is accessible to the public online. Policies and guides are not legally binding, but they are a relevant consideration for decision makers and may be taken into account in reviews of CSA decisions.³⁵

9.41 Procedural Instructions are step-by-step guides for CSA staff. They are internal, electronically controlled, and subject to ongoing updates.³⁶ The following Procedural Instructions and CSA electronic resources have been provided to the ALRC: *Update Customer and Assessment Information*; *Opting out and/or discharge arrears*; *Ending assessments*; *Change of Assessment*; *SSAT* [Social Security Appeals Tribunal]; *Security Incident Management*; *Capacity to Pay*; and *Common Module—Family Violence*.³⁷

Other reviews

9.42 This Inquiry is one of a number of contemporary initiatives regarding child support and family violence. The CSA Family Project has been working on a family violence response since 2008, including:

- a consistent approach to family violence that is aligned with other agencies in the Human Services Portfolio
- consistent application of process and support for customers across all areas of Service Delivery
- improved support for customers through clear options and informed choice consistent with the Customer Service Principles
- improved education for staff including training to better understand family violence
- integration of processes to support customers into Procedural Instructions, the Guide and the development of a common module

34 Child Support Agency, *The Guide: CSA's Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011, [Home].

35 See *Re Confidential and Social Security Appeals Tribunal* (2010) 118 ALD 620, [6]–[7].

36 A number of other internal 'staff support tools' are listed in D Richmond, *Delivering Quality Outcomes—Report of the Review of Decision Making and Quality Assurance Processes of the Child Support Program* (2010), [7.14].

37 Department of Human Services, *PI—Update Customer and Assessment Information*, 5 July 2011; Department of Human Services, *PI—Opting Out and/or Discharge Arrears*, 5 July 2011; Department of Human Services, *PI—Ending Assessments*, 5 July 2011; Department of Human Services, *PI—Change of Assessment*, 5 July 2011; Department of Human Services, *PI—SSAT*, 5 July 2011; Department of Human Services, *Security Incident Management*, 5 July 2011; Department of Human Services, *PI—Capacity to Pay*, 7 June 2011; Department of Human Services, *Common Module—Family Violence*, 7 June 2011.

- system support to identify customers where there are orders in relation to family violence, and
- improved referrals to services that can provide support - building on existing processes and enhanced web support for customers.³⁸

9.43 A report on family violence and the CSA was delivered by MyriaD Consulting in 2010: *Final Evaluation Report in the CSA Family Violence Project*. This report is not publicly available.

9.44 Other reports on the child support scheme mentioned in the Discussion Paper are the 2010 Richmond Review on CSA decision-making and quality-assurance processes, and the Ministerial Taskforce's 2005 report, *In the Best Interests of Children—Reforming the Child Support Scheme*, which prompted fundamental reforms to the child support scheme.

Child support and family violence

Conceptual framework

9.45 In the child support context, family violence may have an impact in a number of ways. A parent who has experienced family violence may fear continued interaction with the other parent and avoid all occasions of contact or opportunity for continuing control. This may influence their participation in the child support scheme—prompting decisions to, for example, not seek child support, end child support, change collection methods, or accept insufficient child support. Further, CSA-initiated actions may endanger victims by inflaming conflicts and opening possibilities for pressure and coercion.

9.46 As noted in Chapter 2, this Inquiry's overarching objective is to increase safety by improving legal frameworks. This goal complements the CSA's existing aim of 'avoid[ing] actions which could contribute to family violence', as set out in the *Child Support Guide*.³⁹ The ALRC's proposed reforms aim to increase the CSA's ability to fulfil its current policy goal.

9.47 The primary way in which the current system accounts for family violence is by exempting individuals from the reasonable maintenance action requirement (that is, allowing them to receive the full amount of FTB Part A, even though they have not applied for child support). This ensures that a victim of family violence does not have to interact with the person who has used violence regarding child support issues, which can be critical in ensuring the victim's safety. The ALRC's proposed reforms should make exemptions more accessible, by ensuring that CSA customers are aware of them, and increasing the likelihood that the CSA or Centrelink will identify persons eligible for them.

38 D Richmond, *Delivering Quality Outcomes—Report of the Review of Decision Making and Quality Assurance Processes of the Child Support Program* (2010), [4.8.6].

39 Child Support Agency, *The Guide: CSA's Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011, [6.10.1].

9.48 Alongside measures to improve the accessibility of exemptions, the ALRC seeks to enhance the overall accessibility of the child support scheme for victims of family violence. Even though victims may be safer when they obtain an exemption, they may still receive less overall income than if they received child support payments. Generally, family violence contributes to ongoing poverty for victims, and the lack of child support may compound this financial disadvantage.⁴⁰ As noted in relation to social security in Chapter 5, safety refers not only to physical safety from harm, but also to financial security and independence.

9.49 Consequently, the ALRC considers that, along with improved access to exemptions, there must also be efforts to increase the ability of family violence victims to obtain child support if they choose to do so. The ALRC's proposals aim, therefore, to ensure appropriate agency involvement to improve the safety of victims who participate in the child support scheme. This approach also serves the underpinning policy of the child support scheme, by facilitating the principal object that children receive proper financial support from both parents.

9.50 An important aspect of this goal is appropriate case-management of child support cases involving family violence. Many proposals regarding case-management are set out in Chapter 4, including a key proposal to give customers full and accurate information about how family violence affects the administration of child support cases. This should enable customers to make informed decisions about whether it is safe to apply for child support, and increase awareness of resources that can improve their safety should they do so, such as, for example, CSA collection of child support. Other key proposals in improving case-management are those regarding screening, staff training and interagency information-sharing.

9.51 Equally important are this chapter's proposed reforms about consulting victims prior to CSA-initiated actions. Victims of family violence are likely best able to understand whether certain actions will place them at risk. The ALRC considers that the CSA should seek input from those experiencing family violence or who have safety concerns arising from family violence—and consider their concerns—prior to initiating such actions.

9.52 The overall effect of these proposed reforms should also minimise opportunities for coercion and other forms of family violence in the child support context—including as a result of minimising CSA-initiated actions which may ignite conflict and trigger coercion.

9.53 These proposals also contribute to self-agency—a theme of this Inquiry—by empowering and enabling victims of family violence to make informed choices about participation in the child support scheme, and to contribute to decisions that affect their safety. The proposals also promote a seamless and effective approach by the CSA,

40 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. See also discussion in Ch 11.

Centrelink and the FAO, in particular, through responsive case-management and interagency information-sharing.

Case-management approach

9.54 The child support scheme primarily adopts a case-management approach to family violence, rather than an outcome-based approach, as in the family law system. In other words, family violence in the child support context generally affects the administration of cases, rather than decisions about parties' rights and entitlements.

9.55 A case-management approach to family violence should not affect the rights of the party who is alleged to have used family violence, as the context is not a forensic one. Where family violence is disclosed, cases should be managed to address potential safety risks—a response that should not affect the rights and entitlements of the person alleged to have used family violence.

9.56 The case-management response to family violence in the child support scheme has notable consequences. In the routine administration of child support cases, CSA staff should not be required to make judgements about whether family violence disclosures are true. The non-judgemental approach to family violence reflects existing policy, as described in the *Common Module—Family Violence*, which provides that staff dealing with customers experiencing family violence should:

- Adopt a non judgemental approach and actively listen to the customer.
- Respect the customer's perception of their situation, without asking probing questions on their specific involvement in family violence.
- Prioritise the customer's child support issues and offer appropriate referral services to assist them with matters that cannot be resolved by the [CSA].⁴¹

9.57 Where the rights of the person alleged to have used family violence are not affected by family violence disclosures in the child support context, verification requirements should not be onerous. A case-management response that minimises risk should be accessible to victims and should not require high levels of proof, such as findings or orders in state and territory family violence jurisdictions.

9.58 The ALRC considers that this approach provides administrative answers to family violence. Such an approach should minimise opportunities for coercion, or other forms of family violence, in the child support context—including by minimising CSA-initiated actions which may ignite conflict and trigger coercion.

Targeting proposals: legislation, policy and procedure

9.59 The ALRC considers that there is a need for transparency, consistency and accountability in the way the CSA administers cases involving family violence. Consequently, where changes to CSA procedures are considered, proposed reforms are aimed at the *Child Support Guide* rather than the CSA's electronic *Procedural Instructions*, because they are not publicly available. Similarly, proposed reforms to

41 Department of Human Services, *Common Module—Family Violence*, 7 June 2011.

family assistance procedure are aimed at the *Family Assistance Guide*, rather than the Centrelink e-Reference.

9.60 The ALRC considers that including procedural information in the guides may promote awareness regarding the ways family violence is relevant to the management of child support cases, and the purpose for family violence screening and CSA identification of customers who may be at risk.

Common interpretative framework

Definition of family violence

9.61 As discussed in Chapter 3, the child support legislation does not include a definition of family violence. A broad definition is, however, contained in the *Child Support Guide*:

Family violence covers a broad range of controlling behaviours. They are commonly of a physical, sexual, and/or psychological nature, and typically involve fear, harm, intimidation and emotional deprivation. It occurs within a variety of close interpersonal relationships, such as between spouses, partners, parents and children, siblings, and in other relationships where significant others are not part of the physical household but are part of the family and/or are fulfilling the function of family.⁴²

9.62 The *Child Support Guide* also provides definitions for the following non-exhaustive list of behaviours that may be involved in family violence: physical abuse; sexual abuse; emotional abuse; verbal abuse; social abuse; economic abuse; and spiritual abuse.⁴³

9.63 In Chapter 3, the ALRC has proposed that the following definition of family violence be included in the *Child Support Assessment Act* and the *Child Support (Registration and Collection) Act*, in addition to other Commonwealth legislation:

Family violence is violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. Such behaviour may include but is not limited to:

- physical violence;
- sexual assault and other sexually abusive behaviour;
- economic abuse;
- emotional or psychological abuse;
- stalking;
- kidnapping or deprivation of liberty;
- damage to property, irrespective of whether the victim owns the property;
- causing injury or death to an animal irrespective of whether the victim owns the animal; and

42 Child Support Agency, *The Guide: CSA's Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011, [6.10.1].

43 *Ibid.*, [6.10.1].

- behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(h) above.⁴⁴

9.64 In the ALRC’s preliminary consideration, the definition of family violence in the *Child Support Guide* should be amended to reflect this definition. This enhances consistency across the policy and legislative basis of the scheme. It provides victims with clarity and the certainty that family violence will be recognised and treated similarly across Commonwealth laws. It also provides increased certainty and a consistent training-basis for staff—particularly those who work across legislative regimes, such as Centrelink social workers. Further, a consistent definition across legislation and guidelines may foster a shared understanding across agencies, jurisdictions, courts and tribunals.

Nature, features and dynamics

9.65 In *Family Violence—A National Legal Response*, ALRC Report 114 (2010), the ALRC and the New South Wales Law Reform Commission (the Commissions) recommended that provisions regarding the nature, features and dynamics of family violence should be contained in state and territory family violence legislation. The recommended provision was:

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, family violence legislation should refer to the particular impact of family violence on: Indigenous persons; those from a culturally and linguistically diverse background; those from the gay, lesbian, bisexual, transgender and intersex communities; older persons; and people with disabilities.⁴⁵

9.66 The Commissions also recommended that the *Family Law Act* should be amended to include a similar provision.⁴⁶

9.67 The ALRC does not consider that such a provision is necessary in the child support legislation—as discussed above, prevention of family violence is not the primary purpose of child support legislation. However, there may be merit in including such a statement in the *Child Support Guide*. This would serve an important educative function—complementing proposals in relation to training in Chapter 4—and provide a contextual basis for case-management and screening. Such a measure also complements proposals regarding definitions in Chapter 3, by establishing a common interpretative framework around family violence across agencies and legal frameworks.

Proposal 9–1 The *Child Support Guide* should be amended to include:

- (a) the definition of family violence in Proposal 3–1;

⁴⁴ Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence: A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), Recs 5–1, 6–1, 6–4.

⁴⁵ *Ibid*, Rec 7–2.

⁴⁶ *Ibid*, Rec 7–3.

- (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 *Child Support 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.

Assessment and collection of child support

Ending a child support assessment

9.68 The CSA identifies family violence as a common reason for a payee to end an assessment—that is, ending a child support case.⁴⁷ A payee may end a child support assessment pursuant to the *Child Support (Assessment) Act*.⁴⁸ However, where a payee receives more than the base rate of FTB Part A, the CSA cannot accept a payee's election to end the assessment without Centrelink approval, unless the payee is no longer eligible for child support.⁴⁹

9.69 Centrelink does not generally approve an election to end an assessment where the payee receives more than the base rate of FTB Part A, except where it grants the payee an exemption from the requirement to take reasonable maintenance action. The *Child Support Guide* provides that when an election to end an assessment is made by a payee who receives more than base rate FTB Part A, and who is 'considered to be at risk of family violence', the CSA will refer him or her to a Centrelink social worker for a risk assessment.⁵⁰

9.70 The Procedural Instruction, *Ending Assessments*, provides that CSA staff should discuss a number of issues with a payee seeking to end an assessment, including the reason for the election, and how it will affect him or her.⁵¹ Under the heading of 'family violence', *Ending Assessments* provides:

If a payee elects to end their case because of family violence, check if they are in receipt of more than the base rate FTB Part A. If the payee is not in receipt of more than the base rate of FTB, proceed to [the next step:] Discuss the effect of the election to end.

47 Department of Human Services, *PI—Ending Assessments*, 5 July 2011, [2.1]

48 *Child Support (Assessment) Act 1989* (Cth) s 151(1).

49 Ibid ss 151(4), 151A, Child Support Agency, *The Guide: CSA's Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011, [2.10.2], [6.10.1], Department of Families, Housing, Community Services and Indigenous Affairs, *Family Assistance Guide* <http://www.fahcsia.gov.au/guides_acts/> at 22 July 2011, [3.1.6.40].

50 Child Support Agency, *The Guide: CSA's Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011 [6.10.1].

51 Department of Human Services, *PI—Ending Assessments*, 5 July 2011, [2].

If the payee receives more than the base rate of FTB, advise them to contact a Centrelink social worker to discuss options, which may include an exemption. ... Warm transfer the payee to Centrelink to make an appointment with a social worker.⁵²

9.71 Both the Procedural Instruction and the *Child Support Guide* appear to indicate that a payee will not be referred to a Centrelink social worker when that payee elects to end an assessment, has disclosed family violence, and does *not* receive more than the base rate of FTB Part A. However, the *Child Support Guide* provides that when the CSA

accepts a payee's election to end a child support assessment due to the threat of family violence, it will record details of why the case was ended on the customer's case records.⁵³

9.72 Generally, a payee's election to end an assessment cannot be reversed, but he or she may make a new application for an assessment of child support.⁵⁴

9.73 As this issue was not raised in the Child Support Issues Paper, the ALRC has not provided an outline of stakeholder comments.

ALRC's views

9.74 Victims of family violence may be pressured or coerced to end a child support assessment by the other parent. Under current policy, payees receiving more than the base rate of FTB Part A, who elect to end an assessment, will be referred to Centrelink, and, where they disclose family violence, actively referred for an appointment with a Centrelink social worker.

9.75 However, in the ALRC's preliminary view, the *Child Support Guide* should provide that all payees who have disclosed family violence—including payees who receive not more than the base rate of FTB Part A—should be referred to a Centrelink social worker upon a request or election to end an assessment.

9.76 The payee's election—when he or she receives not more than the base rate of FTB Part A—will not affect government expenditure in the form of increased family assistance. However this proposed reform has other significant benefits. Social workers may provide support and referrals to assist payees to:

- improve their safety; or
- where appropriate, to remain within the child support scheme—improving the financial position of the payee and his or her children.

9.77 The ALRC considers that this reform may improve the accessibility of the child support scheme for victims of family violence and protect their safety.

52 Ibid, [2.1.1]. A warm transfer or referral generally involves a service contacting another service on a customer's behalf.

53 Child Support Agency, *The Guide: CSA's Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011, [6.10.1].

54 Ibid, [2.10.2].

9.78 The ALRC further considers that a request or election to end a child support assessment should be a trigger for family violence screening for all payees. Screening should facilitate referrals to Centrelink social workers, where family violence is disclosed.

Departure from administrative assessment

9.79 A parent or carer may apply to the CSA for a change of assessment, also known as a ‘departure’ from the administrative assessment, due to ‘special circumstances’.⁵⁵ The *Child Support (Assessment) Act* specifies a number of grounds for a departure from administrative assessment of child support by the CSA or a court.⁵⁶

9.80 The CSA or a court may make a departure from the assessment if satisfied that: one or more of the grounds specified in the Act exist; it is ‘just and equitable’ for the child, the payer and the payee; and it is ‘otherwise proper’.⁵⁷ Family violence is not referred to in the grounds for departure. However, to a limited extent, violence is one of a number of factors which may be taken into account in determining whether a departure is just, equitable and otherwise proper. Violence may be relevant insofar as determining the period to which the decision applies, as a ‘longer term decision may prevent unnecessary tension’.⁵⁸

9.81 A person may lodge an objection to the initial CSA decision with the CSA. If this is disallowed, a person may appeal to the Social Security Appeals Tribunal (SSAT). Prior to 2007, persons could appeal to a court with jurisdiction under the *Family Law Act*. In certain circumstances, a person may apply directly to a court with *Family Law Act* jurisdiction for a departure determination.

The Richmond Review

9.82 The Richmond Review reported that CSA staff and stakeholders consider the departure determination procedure ‘overly complex, time consuming, adversarial’ and that it ‘does not deliver quality outcomes to customers’.⁵⁹ It noted that the CSA has a reform program in train addressing legislative and non-legislative issues regarding departure. Relevantly to this Inquiry, the objectives for this reform program include:

- to make the process ‘less adversarial’;
- to ‘streamline the process reducing timeframes and the effort required by both the parties and the [CSA]’; and
- to ‘improve the exchange of information between the parties to only that of relevance to the decision (including removal of inflammatory information)’.⁶⁰

55 *Child Support (Assessment) Act 1989* (Cth) s 98B.

56 *Ibid* s 117(2).

57 *Ibid* ss 98C(1), 117(1).

58 Department of Human Services, *PI—Change of Assessment*, 5 July 2011, [5.1].

59 D Richmond, *Delivering Quality Outcomes—Report of the Review of Decision Making and Quality Assurance Processes of the Child Support Program* (2010), [4.8.12].

60 *Ibid*, [4.8.12].

9.83 The Richmond Review also recommended certain administrative improvements, such as progression on ‘case management methodology to provide quicker decisions (where appropriate)’ and simplified forms.⁶¹ The ALRC understands that reforms to the departure determination procedure in response to the Richmond Review—by FaHCSIA, DHS and the CSA—are in the process of development and implementation.

Submissions and consultations

9.84 In the Child Support Issues Paper, the ALRC asked whether:

- family violence is adequately taken into account in the grounds for a departure determination;⁶² and
- reforms are needed to ensure that victims of family violence obtain a departure determination where appropriate.⁶³

Departure determinations and family violence

9.85 The ALRC received divergent responses about the departure process and family violence. The Law Council of Australia Family Law Section (the Law Council) considered that the CSA’s ‘current practices in supporting victims of family violence, in relation to their applications for assessment or departure, appear to work well.’⁶⁴ Other stakeholders noted shortcomings in relation to the treatment of family violence in the departure process—the National Council of Single Mothers and their Children (NCSMC) arguing that departure is ‘a mechanism that provides control and abuse’.⁶⁵

9.86 The Non-Custodial Parent (Shared Parenting) Party did not support potential reforms to this area, nor any of the other potential reforms foreshadowed in the Child Support and Family Violence Issues Paper.⁶⁶

9.87 The Office of the Commonwealth Ombudsman (the Ombudsman) noted that the CSA’s Change of Assessment forms ask whether the person has a protection order against the other party—the only CSA form they are aware of that collects this information. The Ombudsman understands that the CSA requests this information ‘to assist it with deciding how best to arrange the parents’ separate conferences with the decision maker, rather than for any broader purpose’.⁶⁷

Grounds for departure

9.88 In relation to the grounds for departure, the Australian Domestic and Family Violence Clearinghouse (ADFVC) stated that, as family violence is not named as a ground, it is unlikely to be adequately taken into account in departure determinations. It

61 Ibid, [3.2.50], [3.2.51].

62 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance* ALRC Issues Paper 38 (2011), Question 17.

63 Ibid, Question 18.

64 Law Council of Australia Family Law Section, *Submission CFV 67*, 5 May 2011.

65 ADFVC, *Submission CFV 53*, 27 April 2011; National Council of Single Mothers and their Children, *Submission CFV 45*, 21 April 2011.

66 Non-Custodial Parents Party (Equal Parenting), *Submission CFV 50*, 25 April 2011.

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

recommended amendment to the *Child Support (Assessment) Act* to include reference to family violence as grounds for departure by the CSA or court'.⁶⁸

9.89 National Legal Aid presented a different view, arguing that:

the effects of family violence should be capable of consideration without it being necessary to specify it as a separate ground, for example reduced capacity for self support as a direct result of family violence, extra expenses incurred by victims such as the need to relocate, or replace damaged property.⁶⁹

9.90 It suggested that education, training and publications 'should address the capacity to take the effects of family violence into account when considering an application for a departure order'.⁷⁰

Other measures to ensure victims obtain departure determinations where appropriate

9.91 Other suggested improvements to departure procedures for victims of family violence included greater use of CSA-initiated departure determinations in family violence cases, and limiting the transfer of information between parties. These stakeholder comments and the ALRC preliminary views on these issues are discussed below and in Chapter 10.

Investigatory role of CSA

9.92 Stakeholders raised the issue of CSA investigations. The Australian Association of Social Workers (AASW) noted that:

while the CSA does have investigative powers they do not appear to be utilised to reduce the payee's burden of providing the level [of] proof needed to establish the true income levels of payer. If the income of the payer is disputed then the investigative powers of the agency should be enacted and the payer compelled to comply.⁷¹

9.93 National Legal Aid made a similar point in arguing for greater use of CSA-initiated departure (discussed below):

The [Change of Assessment] team should be well resourced to thoroughly investigate decisions based on capacity or financial resources (Reason 8), which clients, in their own right, might not have the resources to do, and should also be encouraged to exercise the powers that they have at their disposal to obtain enough information to make a just and equitable decision.⁷²

9.94 In a related point, the NCSMC commented that the forms require a 'contemporary and comprehensive financial knowledge of an ex-partner'.⁷³

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

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

70 Ibid.

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

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

73 National Council of Single Mothers and their Children, *Submission CFV 45*, 21 April 2011.

ALRC's views

Grounds for departure

9.95 The ALRC does not propose that family violence should be included as a specific legislative ground for departure. The ALRC considers that the existing legislative grounds for departure accommodate consideration of family violence where it is relevant to the application. As discussed above, National Legal Aid has provided examples of where the effects of family violence may be relevant to, and considered in, departure determinations.

9.96 Further, amending the grounds to allow consideration of family violence when it is not otherwise relevant to the assessment would introduce an inappropriate punitive or redistributive element to departure determinations. Such a reform would be contrary to the objectives of the child support scheme as expressed in the *Child Support (Assessment) Act*.

Investigatory role of CSA

9.97 The CSA does not actively investigate departure cases, which may disadvantage parents who are unable to investigate the financial circumstances of the other parent themselves. This may include victims of family violence. As noted above, the degree to which CSA uses its investigatory powers is a wide-ranging issue in relation to the child support scheme, and is beyond the Terms of Reference for this Inquiry.⁷⁴ However, the ALRC considers that a broader review of the CSA's investigatory role may be timely, particularly given recent changes to percentage of care, discussed in Chapter 11.

CSA-initiated departure determinations

9.98 The CSA may initiate a departure from the child support assessment due to 'special circumstances'.⁷⁵ There is only one ground on which the CSA may make a determination in these circumstances, namely where the assessment results in

an unjust and inequitable determination of the level of financial support to be provided by the liable parent for the child because of the income, earning capacity, property and financial resources of either parent.⁷⁶

9.99 The CSA must be satisfied that it is 'just and equitable' and 'otherwise proper' to make the determination.⁷⁷ The CSA refers to this process as 'Capacity to Pay' (CTP).

9.100 The *Child Support (Assessment) Act* provides that the CSA must notify the parties in writing that it is considering making the determination, and must serve on the parties a summary of the information relevant to its view that a determination should be made to change the assessment.⁷⁸ It must also inform the parties that they may reply

74 The full Terms of Reference are set out at the front of this Discussion Paper and are available on the ALRC's website at <www.alrc.gov.au>.

75 *Child Support (Assessment) Act 1989* (Cth) s 98K.

76 *Ibid* s 98L.

77 *Ibid* s 98L(1).

78 *Ibid* s 98M.

to the summary and, if they do so, must serve a copy of such a reply on the other party.⁷⁹

9.101 The parties may jointly elect that the CSA discontinue proceedings, but only where the payee does not receive an income-tested benefit, pension, or allowance.⁸⁰

9.102 Neither the legislation nor the *Child Support Guide* requires the CSA to consult with either party prior to providing written notification of CSA-initiated departure determination proceedings. However the Procedural Instruction, *Capacity to Pay*, provides that the customer should be contacted by telephone in the initial stages of CSA-initiated assessment, and this contact should be followed up in writing as soon as possible.⁸¹ It also provides that:

During initial case scrutiny or discussions with the customer [the financial investigator] may become aware of a potential family violence issue. It is important that we consider the possible implications a CTP investigation may have on customers.⁸²

9.103 *Capacity to Pay* further states that the financial investigator should refer to the following resources on family violence: the CSA's common module and the *Child Support Guide*. The financial investigator should also seek the Team Leader's assistance 'on how to manage the case and the best options for the customer', and thoroughly document his or her contact with the customer, including access to services, and information about the process and the customer's options.⁸³

Submissions and consultations

9.104 In the Child Support Issues Paper, the ALRC asked whether there should be a requirement in the legislation or the *Child Support Guide* for the CSA to ask payees if they have concerns about family violence before initiating change of assessment determinations.⁸⁴

79 Ibid ss 98M, 98N.

80 Ibid s 98P.

81 Department of Human Services, *PI—Capacity to Pay*, 7 June 2011, [1.2.1], [1.2.1.1].

82 Ibid, [1.2].

83 Ibid, [1.2].

84 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance* ALRC Issues Paper 38 (2011), Question 19.

Screening

9.105 Most stakeholders commented that the CSA should be required to ask payees about family violence concerns before initiating departure determinations.⁸⁵ Maria Vnuk noted that such a practice should not be limited to payees—a payer should be consulted ‘if it is the payee who is subject to the CSA departure process’.⁸⁶

9.106 National Legal Aid identified the reasons that victims of family violence do not wish to pursue a departure determination, including fear of the following consequences:

- immediate/threats to personal safety, their own and that of the children;
- an increase in the level of conflict that they and the children have to endure at handover and/or during the period of contact;
- an application by the perpetrator for a greater level of care of the children, including with consequences of increasing the exposure of the children to family violence behaviour;
- an interruption to any payment arrangement (in cases where payments are actually being made).⁸⁷

9.107 It considers that, ‘given the nature of these fears’, CSA should always consult customers before initiating a departure determination.⁸⁸

9.108 The Ombudsman stated that the CSA should

check its computer records to find out whether a person has previously disclosed the existence of family violence before it contacts their former partner to discuss the latter’s financial situation. This preliminary contact with both parents would be an opportunity for the CSA to specifically check whether a parent has a fear that initiating [departure] could place that person at further risk of family violence.⁸⁹

More CSA-initiated departure determinations in family violence cases

9.109 A couple of stakeholders argued for greater use of CSA-initiated departure determinations in family violence cases, to ensure that victims of family violence obtain a departure determination where appropriate.⁹⁰

85 National Legal Aid, *Submission CFV 81*, 24 June 2011; Commonwealth Ombudsman, *Submission CFV 54*, 21 April 2011; ADFVC, *Submission CFV 53*, 27 April 2011; Sole Parents’ Union, *Submission CFV 52*, 27 April 2011; Confidential, *Confidential CFV 49*, 21 April 2011; M Vnuk, *Submission CFV 47*, 21 April 2011; National Council of Single Mothers and their Children, *Submission CFV 45*, 21 April 2011; Council of Single Mothers and their Children, *Submission CFV 44*, 21 April 2011; Bundaberg Family Relationship Centre, *Submission CFV 04*, 16 March 2011.

86 M Vnuk, *Submission CFV 47*, 21 April 2011.

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

88 Ibid.

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

90 National Legal Aid, *Submission CFV 81*, 24 June 2011; National Council of Single Mothers and their Children, *Submission CFV 45*, 21 April 2011.

9.110 National Legal Aid stated that victims may be reluctant to apply for departure themselves, but may wish for the CSA to initiate a departure. It argued that there should be

a mechanism for clients who are too fearful to exercise their right to lodge an application themselves, to be able to request that CSA undertake the application. Such a request could still be subject to the CSA determining whether there was merit in making the application.⁹¹

ALRC's views

9.111 Beginning CSA-initiated departure determinations against a parent without consulting the other party may compromise safety, where the other party is a victim of family violence. CSA-initiated departure determinations have the potential to re-ignite conflicts between parties, or trigger coercion and threats in relation to proceedings.

9.112 As noted above, the requirement for consultation or telephone contact with the customers prior to the commencement of CSA-initiated departure is not provided for in the *Child Support Guide*, but is provided for in the CSA's internal Procedural Instruction, *Capacity to Pay*. The ALRC considers that family violence screening should occur at this point, so that cases inappropriate for CSA-initiated departure determinations—such as those that may compromise a victim's safety—may be more readily identified.

9.113 The ALRC further considers that where family violence has been disclosed—whether in screening triggered by anticipated CSA-initiated departure procedures or at another time—the CSA should consult with the victim of family violence before initiating a departure procedure against the other party. The CSA should consider any concerns raised by the victim, to ensure that its actions do not contribute to family violence.

9.114 The ALRC considers that these procedures should be contained in the *Child Support Guide* rather than in Procedural Instructions, for reasons of accessibility to the information, discussed above.

9.115 The ALRC acknowledges that victims of family violence, as well as other disadvantaged and vulnerable CSA customers, may benefit from a mechanism to request CSA-initiated departure determinations. The ALRC has concern, however, that this may dilute the efficacy of the procedure, which is currently based solely on the merits of the case.

Collection of child support payments

Background

9.116 Payees may choose to collect child support payments privately from the payer, or to have the CSA collect and transfer payments. Child support legislation provides that the CSA must initially register a child support assessment for collection by the

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

CSA, unless the payee elects that the CSA not collect child support.⁹² The *Application for Child Support Assessment* form presents applicants with the option to collect privately at the point they enter the child support system.

9.117 The methods of collection used by CSA can minimise payers' ability to avoid child support obligations. The CSA uses a range of methods to collect payments, including deductions from:

- salary and wages;⁹³
- tax refunds;⁹⁴
- social security pensions or benefits;⁹⁵
- family tax benefits;⁹⁶
- payments under the *Veterans' Entitlements Act 1986 (Cth)*;⁹⁷ and
- parental leave payments.⁹⁸

Promotion of private collection

9.118 In its 2007–2008 annual report, DHS notes that the 'CSA is committed to encouraging and supporting parents to manage their child support responsibilities independently through private collection arrangements'.⁹⁹ The Procedural Instruction, *Opting out and / or discharge arrears*, states that the CSA

encourages private collection arrangements between parents where possible. The benefits of private collection are:

- greater customer control and responsibility over their child support
- greater flexibility in payment type, method and frequency
- less cost to the community
- encouraging greater co-operation and communication between parents.¹⁰⁰

9.119 Private collection appears to suit families in which there are low levels of conflict. DHS reports that:

CSA research undertaken in 2007–08 clearly indicates that parents using private collection arrangements are more satisfied with the child support system. For parents who are able to cooperate on parental decisions, private collection provides the most flexibility and satisfaction.¹⁰¹

92 *Child Support (Registration and Collection) Act 1988 (Cth)* s 24A. If the applicant is the payer, the CSA will not register the assessment for collection by the CSA.

93 *Ibid* s 43.

94 *Ibid* s 72.

95 *Ibid* s 72AA.

96 *Ibid* s 72AB.

97 *Ibid* s 72AC.

98 *Ibid* s 72AD.

99 Department of Human Services, *Annual Report 2008–2009*, pt 3.

100 Department of Human Services, *PI—Opting Out and/or Discharge Arrears*, 5 July 2011, [Overview].

101 Department of Human Services, *Annual Report 2008–2009*, pt 3.

Changing method of collection

CSA collection to private collection

9.120 Where the CSA is collecting child support, a payee (or payer and payee together) may elect to end collection by the CSA. Once the election is made, child support is payable directly to the payee. The CSA must accept the payee's decision to end CSA collection of child support.¹⁰² However, the Procedural Instruction, *Opting out and/or discharge arrears*, provides that where family violence is identified, staff should 'consider if it is appropriate to proceed with the private collect application'.¹⁰³

9.121 *Opting out and/or discharge arrears* states that the CSA must discuss the election to opt out of CSA collection with the payee.¹⁰⁴ The CSA must also provide information to FTB-receiving payees, and encourage further discussions with Centrelink about the effects of the election, to support them in making an 'informed choice'.¹⁰⁵ In this context, *Opting out and/or discharge arrears* identifies family violence as a risk point, and provides that where staff determine that

Family Violence is an issue and/or the payee is being coerced into making an election for private collection, ask if they would like to discuss their options of gaining an exemption from taking the reasonable maintenance action with a Centrelink Social Worker.¹⁰⁶

Private collection to CSA collection

9.122 A payee who has previously chosen to collect payments privately may apply to have the CSA start collecting them. The CSA must accept the payee's application.¹⁰⁷ In these circumstances, the payee may also apply for the CSA to collect unpaid amounts of child support (arrears). The CSA must grant the payee's application to collect any arrears that accumulated in the three-month period before the CSA started enforcing child support payments.¹⁰⁸

9.123 Where the CSA is satisfied that there are 'exceptional circumstances', it may grant a payee's application to collect arrears accumulated over a period of up to nine months.¹⁰⁹ The *Child Support Guide* provides that exceptional circumstances include where a payer has 'threatened or pressured the payee not to apply for registration for CSA collection'.¹¹⁰ The payee must provide evidence to show exceptional circumstances.¹¹¹

102 *Child Support (Registration and Collection) Act 1988* (Cth) ss 38, 38A; Child Support Agency, *The Guide: CSA's Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011, [5.6.1].

103 Department of Human Services, *PI—Opting Out and/or Discharge Arrears*, 5 July 2011, [1].

104 *Ibid.*, [3.1].

105 *Ibid.*, [3.2].

106 *Ibid.*, [3.2].

107 *Child Support (Registration and Collection) Act 1988* (Cth) s 25.

108 *Ibid.* s 28A.

109 *Ibid.* s 28A.

110 Child Support Agency, *The Guide: CSA's Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011, [5.1.4].

111 *Ibid.*, [5.1.4].

Family violence

9.124 CSA collection of child support may improve the safety of victims of family violence. Where the CSA collects child support, victims avoid direct contact about child support payments with persons who have used family violence. Participants in one study reported that they were able to ‘reduce contact and increase safety’ once the CSA collected child support.¹¹²

9.125 Victims of family violence may elect to collect privately, or to end collection by the CSA, as a result of fear of, or coercion by, a person who has used violence. The ALRC understands that, due to fear and coercion, victims may also collect less child support than they are entitled to—or no child support at all. Statistics of such cases may be ‘hidden’ as the CSA will consider them to be successful private collection cases, in the absence of any information to the contrary.¹¹³ The availability of partial exemptions, where victims privately collect less than the assessed amount of child support, is discussed in Chapter 11.

Submissions and consultations

9.126 In the Child Support Issues Paper, the ALRC asked whether reforms are needed to protect victims of family violence who, due to fear of persons who have used violence:

- elect to collect child support privately, or elect to end collection by the CSA; and
- privately collect less than the assessed amount of child support, or no child support.¹¹⁴

Victims may collect child support privately due to safety reasons

9.127 The ADFVC identified the issue of victims collecting privately—and not collecting the full assessed amount—as an issue of concern, and one that emerged in an ADFVC study. One participant stated:

I’m actually thinking of ringing [the CSA] and saying we’ve got a verbal agreement and losing money because I can’t handle him being on my back and abusing me.¹¹⁵

9.128 The AASW stated that these choices may be made by payees as a result of ‘defensive acquiescence’—that is, a payee acquiesces to demands made by the person who uses violence ‘as an act of protection for herself and her children in order to contain the violence’.¹¹⁶

112 I Evans, *Battle-Scars: Long-Term Effects of Prior Domestic Violence* (2007), 34.

113 Ibid, 33.

114 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance* ALRC Issues Paper 38 (2011), Question 21.

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

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

CSA collection and family violence

9.129 A number of stakeholders considered CSA collection the appropriate collection method in cases involving family violence.¹¹⁷ National Legal Aid stated that clients report that CSA actively encourages them to privately collect, and that

an appropriate systems response to the issue of family violence would require a cultural shift in relation to ‘private collect’. Collection of child support by the CSA should be encouraged with CSA collect to be the default wherever family violence is identified. All communications by the CSA with the payer should emphasise that decisions are the responsibility of the CSA and not the victim.¹¹⁸

9.130 Similarly, the Ombudsman stated that having collection and enforcement decisions taken out of the hands of some payees, ‘including those who fear a violent reaction’, may be appropriate.¹¹⁹

9.131 Some stakeholders argued that the CSA should always collect in cases involving family violence. The CSMC argued that when family violence has been disclosed, the CSA ‘should not allow an election for private collection’.¹²⁰ A confidential submission argued that in cases of substantiated family violence, ‘the CSA should act on behalf of the victim in all situations’.¹²¹ The AASW suggested a mechanism whereby, in family violence cases,

CSA collects automatically with the victim being fully informed of the option to make an application for an exemption. This then shifts the responsibility from the individual victim to the ‘system’ potentially removing one area where the perpetrator can exercise control.¹²²

9.132 National Legal Aid also suggested a ‘default provision of CSA collection in family violence cases’, as well as a

framework for all correspondence and interactions with the liable parent that suggests that CSA is the payee/debtor. Every effort should be made to distance the payee from the debt and the process to actively counter pressure on the payee.¹²³

9.133 National Legal Aid further suggested that an election to collect privately, or end collection by the CSA, should, of itself, prompt family violence screening. It added that appropriate referrals should be made when screening leads to concern regarding the appropriateness of private collection.¹²⁴

9.134 National Legal Aid suggested other reforms complementary to CSA collection in family violence cases.¹²⁵ A number of these suggested reforms are addressed in

117 National Legal Aid, *Submission CFV 81*, 24 June 2011; Confidential, *Confidential CFV 49*, 21 April 2011; Australian Association of Social Workers (Qld), *Submission CFV 46*, 21 April 2011; Council of Single Mothers and their Children, *Submission CFV 44*, 21 April 2011.

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

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

120 Council of Single Mothers and their Children, *Submission CFV 44*, 21 April 2011.

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

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

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

124 Ibid.

125 Ibid.

Chapter 4, and relate to screening and risk assessment, training, and improved referrals. National Legal Aid also suggested:

- improved education and training regarding a payee’s option, in family violence cases, to collect arrears accumulated over a period of up to nine months, as ‘people are generally not aware of the capacity to collect beyond 3 months’, and
- community legal education promoting CSA collection.¹²⁶

Private collection may suit parents

9.135 The Non-Custodial Parents Party (Equal Parenting) opposed the suggested reforms to this area, stating that:

most people (both payers and payees) prefer to have private collections made only because they do not want to deal with the Child Support Agency, in the first instance.¹²⁷

ALRC’s views

Victims may collect child support privately due to safety concerns

9.136 As noted above, family violence victims may end CSA collection, resulting in less child support or none at all, due to fears for their safety or in response to threats or pressure by the other party. This may lead to financial disadvantage for both payees and their children.

9.137 The ALRC considers that, where a payee who has disclosed family violence elects to end CSA collection, he or she should be referred to a Centrelink social worker—whether or not he or she receives more than the base rate of FTB Part A. The ALRC further considers that the CSA should also screen for family violence in all cases when a payee elects to end CSA collection.

9.138 In the ALRC’s preliminary consideration, screening and referral in these circumstances is not solely meant to ensure an appropriate case-management response. Rather, its primary purpose is to support the payee in taking steps to ensure his or her safety—for example, with appropriate referrals—and to enhance a seamless response to safety concerns across agencies. It may also allow the payee to remain within the child support scheme and continue receiving payments. Alternatively, the payee may be explicitly advised that, where the risk is addressed or diminishes over time, he or she may again elect for CSA to collect child support.

9.139 Family violence, where identified, is also relevant to the management of private collect cases, particularly regarding protection and disclosure of information, discussed below. As ending CSA collection is a family violence ‘risk point’, this may be an appropriate trigger for screening.

126 Ibid.

127 Non-Custodial Parents Party (Equal Parenting), *Submission CFV 50*, 25 April 2011.

CSA collection and family violence

9.140 The ALRC's preliminary view is that CSA collection is generally the most appropriate response to cases involving family violence concerns. CSA collection minimises both the need for direct inter-party contact about child support, and payers' opportunities for non-compliance with their child support obligations. The ALRC recognises that private collection may be suitable for many parents, particularly those in low-conflict cases.

9.141 The ALRC does not consider that payees who have experienced family violence should be denied the option to collect privately. Further, a victim may be best placed to make decisions that will minimise risk and improve his or her safety. Compulsory CSA collection in all cases in which payees have disclosed family violence may deter some victims from disclosure and operates against the individual's capacity to make judgments about appropriate responses.

9.142 In Chapter 4, the ALRC proposes screening for family violence upon application for child support, referrals to Centrelink social workers where family violence is disclosed, and giving customers information about the relevance of family violence to child support. The ALRC considers that CSA collection of child support, and its suitability for family violence cases for the reasons discussed above, should be addressed with the payee at this initial stage, as well as upon disclosure of family violence or safety concerns by a payee.

Collection and enforcement of arrears and Departure Prohibition Orders**CSA action to enforce arrears**

9.143 When child support cases are registered for CSA collection, child support payments are 'debts due to the Commonwealth'¹²⁸ and are recoverable by the CSA.¹²⁹ The CSA may take action to enforce child support arrears in a number of courts, including state and territory magistrates courts, the Family Court or the Federal Magistrates Court.¹³⁰ Parents may also take court action to enforce child support.¹³¹

9.144 Although the CSA takes these actions in its own right,¹³² section 113(2) of the *Child Support (Registration and Collection) Act* provides that the CSA may take such steps it considers appropriate to keep a payee informed of CSA action to recover child support debts.

9.145 Pursuant to s 47 of the *Financial Management and Accountability Act 1997* (Cth), the CSA must pursue recovery of all registered child support child support debts unless the debt is 'not legally recoverable', or it is uneconomical to pursue its recovery. The *Child Support Guide* provides that a debt may be legally irrecoverable if the CSA

128 *Child Support (Registration and Collection) Act 1988* (Cth) s 30(1).

129 *Ibid* s 113(1).

130 *Ibid* ss 113(1), 104.

131 *Ibid* ss 113(1)(b)(ii), 113A.

132 *Ibid* s 117(1).

has ‘taken all reasonable action to recover the debt, but has not been able to collect it’, or ‘if a court is likely to rule in favour of the debtor’.¹³³ A debt may be uneconomical to pursue if ‘it would cost the Commonwealth more than the amount of the debt to recover it’, or the CSA has been unable to trace the whereabouts of a debtor and has not identified any of the debtor’s income or assets.¹³⁴

9.146 The CSA can also make a Departure Prohibition Order (DPO) preventing a person with a child support debt from leaving Australia.¹³⁵ Such orders may be issued when a person owes child support, has not made arrangements for it to be paid, and has ‘persistently and without reasonable grounds’¹³⁶ failed to make payments. A person may apply for a ‘Departure Authorisation Certificate’, which authorises a person to leave the country.¹³⁷ There is no apparent mechanism for a payee to elect that a DPO be revoked.

Election to end CSA collection of arrears

9.147 The *Child Support (Registration and Collection) Act* provides that payees may elect for the CSA not to collect unpaid amounts of child support when he or she elects to end collection by the CSA.¹³⁸ This election may affect his or her FTB because Centrelink generally calculates FTB ‘on the assumption that the payee has received all privately collectable child support’.¹³⁹ This includes any amounts that were unpaid when the payee elected for CSA to end collection.

9.148 The *Child Support Guide* and the procedural instruction, *Opting out and/or discharge arrears*, both emphasise the importance of referring payees to Centrelink for advice regarding the consequences of ending CSA collection of arrears on FTB payments.¹⁴⁰

Submissions and consultations

9.149 In the Child Support Issues Paper, the ALRC asked if reforms are needed to protect victims of family violence who, due to fear of persons who have used violence, elect to end CSA collection of child support debt, or request that the CSA revoke a DPO.¹⁴¹

133 Child Support Agency, *The Guide: CSA’s Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011, [5.7.1].

134 *Ibid.*, [5.7.1].

135 *Child Support (Registration and Collection) Act 1988* (Cth) s 72D.

136 *Ibid.* s 72D(c).

137 *Ibid.* s 72K.

138 *Ibid.* ss 38A.

139 Child Support Agency, *The Guide: CSA’s Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011, [5.6.1].

140 *Ibid.* [5.6.1], Department of Human Services, *PI—Opting Out and/or Discharge Arrears*, 5 July 2011, [3.2], [4].

141 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance* ALRC Issues Paper 38 (2011), Question 24.

CSA enforcement, safety and accessibility

9.150 Several stakeholders made the link between CSA debt enforcement and risks to safety.¹⁴² The ADFVC noted that:

some women in our study felt that any attempt to compel their ex-partner to pay child support would expose them to further abuse or give rise to increased claims for shared care parenting arrangements, accentuating their risk of harm.¹⁴³

9.151 The CSMC and the NCSMC both argued that safety must be prioritised, and the payee is best placed to judge this. ‘Her wishes must [be or form] the basis on which decisions are made, even if this means the non collection of debt’.¹⁴⁴

9.152 Similarly, the Ombudsman commented that legal action, such as seizing and selling assets, ‘may only inflame the situation and place the payee in danger’. The Ombudsman’s submission also illustrated a link between CSA enforcement measures and the accessibility of the child support scheme:

if the payee believes the CSA’s collection activity goes ‘too far’, he or she may be forced to consider leaving the child support system, either by moving to private collect, or even by ending the child support case altogether.¹⁴⁵

9.153 The Law Council considered that CSA staff should screen for family violence ‘before initiating action for enforcement or [debt] recovery’.¹⁴⁶ A reform suggested by National Legal Aid was the introduction of ‘safety net provisions to allow customers to reinstate debt where decisions have been made in circumstances of coercion and duress’.¹⁴⁷

Departure Prohibition Orders

9.154 The Ombudsman commented that it had not identified any complaints regarding a payee request to the CSA to revoke a DPO against the payer. Rather, complaints ‘reveal a pattern of the CSA providing very little information to the payee about the steps taken to collect child support, for fear of breaching the payer’s privacy’.¹⁴⁸ The Ombudsman states that they have received

at least one complaint about the CSA’s refusal to inform a payee whether it has issued a DPO. We consider that it is important for payees to be aware if a DPO has been issued so that, in cases of family violence, they can take measures to protect themselves.¹⁴⁹

142 Commonwealth Ombudsman, *Submission CFV 54*, 21 April 2011; ADFVC, *Submission CFV 53*, 27 April 2011; National Council of Single Mothers and their Children, *Submission CFV 45*, 21 April 2011; Council of Single Mothers and their Children, *Submission CFV 44*, 21 April 2011.

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

144 National Council of Single Mothers and their Children, *Submission CFV 45*, 21 April 2011; Council of Single Mothers and their Children, *Submission CFV 44*, 21 April 2011.

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

146 Law Council of Australia Family Law Section, *Submission CFV 67*, 5 May 2011.

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

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

149 Ibid.

Informing payees of CSA action

9.155 In relation to both enforcement action and departure prohibition orders, the Ombudsman stated that the CSA should utilise s 113(2) of the *Child Support (Registration and Collection) Act* to inform a payee of enforcement action, including DPOs. This would ‘enable the payee to comment on the appropriateness of such action given any experience of family violence’.¹⁵⁰ The Ombudsman commented that this would benefit payees generally, allowing them to consider whether they should pursue private legal action to enforce child support debt.¹⁵¹

ALRC’s views**Payee elections and requests for non-pursuit of debt**

9.156 A form of family violence may be to pressure victims to request the CSA to end enforcement of arrears. While there is no mechanism for payees to elect revocation of a DPO, payers who have used violence may coerce or threaten a victim to make a request of the CSA to revoke the DPO. In the ALRC’s preliminary view, referrals to a Centrelink social worker should be made when a payee who has disclosed family violence:

- elects to end CSA collection of child support arrears; or
- requests that the CSA terminate, or not begin, enforcement action or DPOs.

9.157 This may assist in ensuring that necessary supports and referrals are provided to the victim, and facilitate a seamless response across agencies, as discussed above. Social workers may also discuss various options in relation to the debt—for example, the deferral of collection or enforcement until the payee has taken steps to protective steps to ensure safety, or otherwise considers that he or she is not at risk of violence.

9.158 This may also increase the accessibility of the child support scheme by preventing victims from opting out of the system where they consider that CSA collection activity ‘goes too far’.

9.159 The ALRC notes that the CSA may be unable to delay, terminate, or decide not to initiate recovery of debts in response to safety concerns due to the application of the *Financial Management and Accountability Act*. To enable CSA to meet its policy aim of ‘avoid[ing], as far as possible, actions which could contribute to family violence’, an additional ground may need to be inserted into s 47 of this Act, providing that debts may not be pursued where doing so may cause risk of harm. The *Financial Management and Accountability Act* is not within the Terms of Reference,¹⁵² and so no proposal is made in relation to such an amendment, however, the ALRC considers that the Australian government should give this consideration.

150 Ibid.

151 Ibid.

152 The full Terms of Reference are set out at the front of this Discussion Paper and are available on the ALRC’s website at <www.alrc.gov.au>.

9.160 The ALRC also considers that the CSA should screen for family violence when a payee makes the above election or requests. Where family violence is disclosed, this should trigger a case-management response, and payees may also be provided with information regarding the relevance of family violence to their child support case, in accordance with Proposal 4–8.

9.161 While the ALRC notes the suggestion of National Legal Aid regarding reinstating debts, its preliminary view is that this may create the opportunity, after the event, to raise family violence thereby possibly amounting to an incentive to assert family violence. The issue of re-instating debts is a large one and the ALRC considers that it sits outside the Terms of Reference for this Inquiry.

Actions to be taken prior to court enforcement action or DPOs

9.162 The ALRC notes the comments of the Ombudsman that the CSA should utilise s 113(2) of the *Child Support (Registration and Collection) Act* to inform a payee of enforcement action. While the ALRC considers that there is merit to the adoption of this approach, as it may enable a broad range of payees to give informed consideration to private enforcement, no proposal is made in this Discussion Paper as it is beyond the Terms of Reference for this Inquiry.

9.163 It is the ALRC’s preliminary view that, prior to initiating court enforcement actions or making DPOs, the CSA should contact and consult payees who have disclosed family violence. This gives the payee the opportunity to raise safety concerns, which allows the CSA to act in accordance with its policy of avoiding actions that contribute to family violence.

9.164 To complement this measure, the ALRC considers that the CSA should contact the payee to screen for family violence before initiating court enforcement actions or making DPOs against the payer. Screening at this point, as well as upon entry to the child support scheme, may increase the likelihood that customers who may be put at risk by these actions are identified by the CSA.

CSA-initiated private collection

9.165 Section 38B of the *Child Support (Registration and Collection) Act* provides that the CSA may require parents to collect privately where the payer has a ‘satisfactory payment record’ which is ‘likely to continue’. The CSA must also be satisfied that a decision to end collection by the CSA is ‘appropriate in relation to the liability’.¹⁵³ The *Child Support Guide* provides that it is inappropriate to require private collection where there has been a ‘history of family violence’,¹⁵⁴ and where a person has ‘previously been exempted from having to take reasonable maintenance action’.¹⁵⁵ It is unclear how victims of family violence are identified where they have not previously obtained an exemption.

153 *Child Support (Registration and Collection) Act 1988* (Cth) s 38B(1).

154 Child Support Agency, *The Guide: CSA’s Online Guide to the Administration of the New Child Support Scheme* <<http://www.csa.gov.au/guidev2>> at 22 July 2011, [5.6.2].

155 *Ibid.*, [5.6.2].

Submissions and consultations

9.166 In the Child Support Issues Paper, the ALRC asked whether reforms are needed to ensure that victims of family violence are not required by the CSA to privately collect child support.¹⁵⁶

9.167 Several stakeholders reiterated that CSA should always collect child support in cases where family violence is disclosed.¹⁵⁷ Maria Vnuk commented that victims of family violence should not be required to collect privately by the CSA, and noted that:

If CSA routinely flags cases where family violence issues have been raised or where there has been a previous exemption then these cases should be excluded from any requirement to collect child support privately.¹⁵⁸

9.168 The Ombudsman stated that it had been unable to identify any complaints about CSA-initiated private collection, and noted their understanding that this has been ‘used sparingly’ by the CSA since its 1999 introduction. However, the Ombudsman stated that:

If the provision is currently being used, or if the CSA intends to use it in the future, we recommend that it only be considered after detailed discussion with the payee to identify any possible concerns about family violence and the practicality of a private collect arrangement.¹⁵⁹

ALRC’s views

9.169 The CSA-initiated private collection provision may be rarely used by the CSA. However, while this provision is in place, the ALRC considers that the *Child Support Guide* should provide further guidelines for identifying those with a history of family violence who will be exempt from the operation of this provision.

9.170 As noted above, the *Child Support Guide* acknowledges that CSA-initiated private collection is inappropriate—and will not be required—in family violence cases. In the ALRC’s preliminary consideration, further measures are required to ensure that the CSA identifies payees who have experienced violence or have safety concerns. Payees should also be granted the opportunity to raise ‘a history of family violence’ with the CSA, prior to CSA-initiated private collection.

9.171 The ALRC considers that the proposals related to family violence screening by the CSA and other agencies partially address this issue, as payees who have disclosed family violence will be identifiable via a ‘safety concerns flag’. The CSA could check this status before initiating private collection.

9.172 The ALRC further considers that payees should have an opportunity to raise family violence concerns before private collection is initiated by the CSA. The ALRC

156 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance* ALRC Issues Paper 38 (2011), Question 23.

157 Australian Association of Social Workers (Qld), *Submission CFV 46*, 21 April 2011; National Council of Single Mothers and their Children, *Submission CFV 45*, 21 April 2011; Council of Single Mothers and their Children, *Submission CFV 44*, 21 April 2011.

158 M Vnuk, *Submission CFV 47*, 21 April 2011.

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

therefore considers that the CSA should screen for family violence prior to requiring a payee to collect child support privately pursuant to s 38B(1) of the *Child Support (Registration and Collection) Act*.

Other CSA-initiated actions

Submissions and consultations

9.173 In the Child Support Issues Paper, the ALRC asked if the CSA should be required to ask customers about family violence prior to initiating other proceedings or actions and, if so, which proceedings or actions this requirement should apply to.¹⁶⁰

9.174 Stakeholders considered that family violence screening should be: continual;¹⁶¹ ‘at all stages of CSA involvement’;¹⁶² or before all CSA actions.¹⁶³

9.175 For example, National Legal Aid considered that, where a person has been identified as having experienced, or being at risk of, family violence, he or she should be contacted ‘before a significant action is taken on the case. For example, in circumstances where a collection opportunity arises, a [CSA initiated departure], a Prescribed [non-agency payment] recorded, a Departure Prohibition Order (DPO) executed, and proceedings for enforcement’.¹⁶⁴

9.176 It commented this would better inform CSA staff deciding whether to proceed with the intended action. It further commented that Legal Aid staff

have experience of clients becoming anxious because they have become aware that some action is occurring but they are not sure of the nature of that action. If victims are notified sufficiently in advance of any intended action, then it might allay any concerns, and also provide an opportunity for them to take any extra precautions in relation to the safety of themselves and their children.¹⁶⁵

9.177 Similarly, the Ombudsman considered that

A number of CSA decisions and actions have the potential to place a victim of family violence at greater risk of further violence. ... Further, we consider that any sudden or significant change to the child support assessment has the potential to disturb what may previously have been a reasonably smooth and trouble-free child support case.¹⁶⁶

ALRC’s views

9.178 As discussed elsewhere, the ALRC has made a number of proposals regarding screening for family violence and sharing ‘safety concern flags’ between agencies. The ALRC considers that this flag provides an opportunity for CSA to consult with victims

160 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance* ALRC Issues Paper 38 (2011), Question 20.

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

162 National Council of Single Mothers and their Children, *Submission CFV 45*, 21 April 2011; Council of Single Mothers and their Children, *Submission CFV 44*, 21 April 2011.

163 Sole Parents’ Union, *Submission CFV 52*, 27 April 2011; Bundaberg Family Relationship Centre, *Submission CFV 04*, 16 March 2011, 52.

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

165 Ibid.

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

of family violence when it makes a change to the child support case. In particular, the ALRC has identified several CSA actions that may increase risk to victims of family violence:

- CSA-initiated departure procedures,
- court actions to recover child support debt, and
- making DPOs.

9.179 This list is non-exhaustive regarding the actions that may be taken by the CSA against the other party to a family violence victim in a child support case.

Proposal 9–2 The *Child Support Guide* should provide that the Child Support Agency should screen for family violence when a payee:

- (a) requests or elects to end a child support assessment;
- (b) elects to end Child Support Agency collection of child support and arrears; or
- (c) requests that the Child Support Agency not commence, or terminate, enforcement action or departure prohibition orders.

Proposal 9–3 The *Child Support Guide* should provide that Child Support Agency staff refer to Centrelink social workers payees who have disclosed family violence, when the payee:

- (a) requests or elects to end a child support assessment;
- (b) elects to end Child Support Agency collection of child support and arrears; or
- (c) requests that the Child Support Agency terminate, or not commence, enforcement action or departure prohibition orders.

Proposal 9–4 The *Child Support Guide* should provide that the Child Support Agency should contact a customer to screen for family violence prior to initiating significant action against the other party, including:

- (a) departure determinations;
- (b) court actions to recover child support debt; and
- (c) departure prohibition orders.

Proposal 9–5 The *Child Support Guide* should provide that, when a customer has disclosed family violence, the Child Support Agency should consult with the customer and consider concerns regarding the risk of family violence, prior to initiating significant action against the other party, including:

- (a) departure determinations;

- (b) court actions to recover child support debt; and
- (c) departure prohibition orders.

Proposal 9–6 The *Child Support Guide* should provide that the Child Support Agency should screen for family violence prior to requiring a payee to collect privately pursuant to s 38B of the *Child Support (Registration and Collection) Act 1988* (Cth).

