

29 September 2011

The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

By email: cwlth_family_violence@alrc.gov.au

Dear Sir or Madam

**RE: THE AUSTRALIAN LAW REFORM COMMISSION DISCUSSION PAPER:
FAMILY VIOLENCE- COMMONWEALTH LAWS**

Thank you for the opportunity to provide feedback on the Family Violence Commonwealth Laws Discussion Paper ("the Discussion Paper"). The Aboriginal and Torres Strait Islander Women's Legal and Advocacy Service Incorporated ("ATSIWLAS") welcomes action by the Australian Government to protect people that are impacted by family violence.

ATSIWLAS is a community legal centre that provides free legal advice, information, assistance, referrals and support to Aboriginal and Torres Strait Islander women in Queensland.

Our submission is based on our work with Aboriginal and Torres Strait Islander women and is informed by our observations of the impact that family violence has on our clients. Our submission is limited to the aspects of the Discussion Paper that are relevant to our clients.

1. Conceptual framework

ATSIWLAS supports the introduction of a consistent definition of family violence within Commonwealth employment, social security, child support and family assistance legislation to prevent violence.

The proposed use of the term family violence rather than domestic violence acknowledges that violence is perpetrated by family and community members, including kinship relationships in Aboriginal and Torres Strait Islander communities.

The Discussion Paper acknowledges that there are many obstacles in increasing disclosure of family violence. Studies have shown that 90 percent of violence against Indigenous women is not disclosed.¹ In order to increase disclosure among Aboriginal and Torres Strait Islander women, in addition to a 'seamless' definition of family violence, a more culturally aware approach should be taken by service providers.

¹ Willis Matthew 'Non disclosure of violence in Australian Indigenous Communities' *Trends and issues in criminal and criminal justice* Australian Government Australian Institute of Criminology no 405 January 2011 page 1.

2. Screening Centrelink, Child Support Agency (“CSA”) and the Family Assistance Office (“FOA”) customers and disclosure of violence

The proposal to screen Centrelink, CSA and FOA customers by providing them with short statements about family violence and avenues for financial assistance may not be an effective way to screen Indigenous women for family violence.

Screening Aboriginal or Torres Strait Islander women for family violence should always be performed in private by an Indigenous woman.

Most Indigenous women who access our services are aware that Indigenous officers are employed by our organisation. Our clients often ask to speak with these officers and are more likely to trust, confide in and respect the advice of these workers.

It is our experience that some Aboriginal and Torres Strait Islander women are unaware of social security, child support or family assistance entitlements available to them when they are impacted by family violence. It is important to educate the Aboriginal and Torres Strait Islander communities and Indigenous service providers about the different types of payments that are available. This education should be provided in a culturally appropriate way that is developed in consultation with Aboriginal and Torres Strait Islander women.

(a) Specialist Family Violence Team

The proposal by stakeholders to create a specialist family violence team within the Department of Human Services is a good way to deliver information and services to Aboriginal and Torres Strait Islander women. We hope that this would ensure that staff members are skilled in dealing with people that are impacted by family violence.

A caseworker employed by the family violence team could potentially provide referrals to other support services such as crisis accommodation, counselling and legal services – this would minimise the need for people to retell their story.

Identified positions for the employment of Aboriginal and Torres Strait Islander women within the family violence team would provide a culturally inclusive environment for Indigenous women. This measure may assist in increasing the number of disclosures of violence as Indigenous people are more likely to disclose violence and sexual abuse to mainstream services where Indigenous people are employed.²

(b) Family violence and cultural awareness training

ATSIWLAS supports the recommendation that Centrelink, CSA and FOA employees receive training about the dynamics of family violence. We submit that government employees should also receive cultural awareness training to help them to identify behaviours that are described by Aboriginal and Torres Strait Islander women that may indicate that they have been impacted by family violence.

² Willis Matthew ‘Non disclosure of violence in Australian Indigenous Communities’ *Trends and issues in criminal and criminal justice* Australian Government Australian Institute of Criminology no 405 January 2011 page 7.

If violence is disclosed it is important to recognise that Indigenous women may communicate their experiences of violence differently compared to other women.³ Some Indigenous women do not identify behaviours as family violence until they are told about what constitutes an act of violence. Other Indigenous women may use simple phrases to describe violence that may sound like an every day event if described to a person who has not worked with Indigenous women before.⁴

To encourage disclosure by Indigenous women there is a need for government employees to receive cultural awareness training from an Indigenous-based organisation to gain an understanding of the different cultures within Aboriginal and Torres Strait Islander communities and the reasons why some women may choose not to disclose family violence.

3. Income management

ATSIWLAS does not support the mandatory income management scheme, which is to be applied to welfare recipients in five trial areas, including Logan and Rockhampton from 1 July 2012. The announcement of the commencement of income management trials in Logan and Rockhampton was without community consultation.

As our service predominately assists women in Queensland, including women who reside in Logan and Rockhampton, it is likely that the trial income management scheme will affect some of our clients. These clients may also be experiencing family violence.

A report issued by the Equality Rights Alliance in July this year highlights the impact of income management on Aboriginal women. 96 percent of the participants in the study identified as Aboriginal.⁵ The report found that income management has a negative effect on self-esteem.⁶ A majority of participants felt that they could not be trusted with money and indicated that they did not feel safer since the introduction of the scheme.⁷

The majority of the women who are currently subject to income management in the Northern Territory said that they could not discuss their personal problems with Centrelink.⁸ We are concerned that Aboriginal and Torres Strait Islander women who live in declared areas such as Logan and Rockhampton may want to leave a violent relationship but may not seek assistance from Centrelink, CSA or FAO due to the fear that they will be subject to income management.

(a) Child protection Income measures and indicators of vulnerability

In our experience child safety intervention and family violence often occur simultaneously. If there is family violence in a household this may trigger a child

³ Cripps Kylie (2004). Enough family fight: Indigenous community responses to addressing family violence in Australia & United States, Monash University Melbourne page 71. .

⁴ Cripps Kylie (2004). Enough family fight: Indigenous community responses to addressing family violence in Australia & United States, Monash University Melbourne page 146.

⁵ Equity Rights Alliance 'Women's experience of income managements in the Northern Territory' July 2011 page 14.

⁶ Equity Rights Alliance 'Women's experience of income managements in the Northern Territory' July 2011 page 6.

⁷ Equity Rights Alliance 'Women's experience of income managements in the Northern Territory' July 2011 page 6.

⁸ Equity Rights Alliance 'Women's experience of income managements in the Northern Territory' July 2011 page 40.

safety investigation and a finding that due to exposure to violence the child is at risk of harm.

It is our position that the Vulnerable Welfare Recipient criteria should be repealed. Under no circumstance should family violence be included as an indicator of vulnerability.

(b) Voluntary income management and Centrepay

Voluntary income management should only be applied in limited circumstances where there has been meaningful consultation with service providers, communities and individuals who are affected by the system.

Any type of voluntary income management arrangement should be flexible. The social security recipient should have the capacity to make an informed decision. They should also be informed about alternatives to income management such as Centrepay.

4. Employment

ATSIWLAS supports a minimum statutory entitlement of 10 days paid family violence leave. The right to request flexible work arrangements will benefit our clients who are escaping violence or seeking to pursue legal avenues such as protection orders or family court orders to protect themselves and their children from violence.

Clients who approach our service for assistance in escaping violence often have difficulties juggling work commitments with finding alternative accommodation and attending appointments for legal advice and support.

5. Information sharing protocols

Many Indigenous women feel uncomfortable disclosing family violence to government agencies due to past discriminatory government policies and negative experiences with authority figures. One of the main fears for our clients is that the family violence will be reported to the child protection agency and their children may be removed from their care.

A safety concern flag notifying other government agencies that the victim is at risk of or has experienced family violence should only be placed on a customer's file with fully informed consent. Such information should only be shared with other government organisations once consent is obtained and if the use of such information is to prevent the victim from being re-traumatised.

Conclusion

ATSIWLAS supports the introduction of a more consistent approach by government to family violence. In order to benefit Aboriginal and Torres Strait Islander women this approach should be informed by thorough and ongoing consultation with Aboriginal and Torres Strait Islander women, should involve Aboriginal and Torres Strait Islander women and should be implemented in a culturally appropriate and culturally informed way. All measures, such as income management, should be examined to ensure that they will not have a disproportionate adverse impact on Aboriginal and Torres Strait Islander communities.

Once more, thank you for providing us with the opportunity to provide feedback on the Discussion Paper.

Yours faithfully

Aimee McVeigh
Solicitor

A handwritten signature in black ink, appearing to read 'Aimee McVeigh', with a long horizontal flourish extending to the right.A handwritten signature in blue ink, appearing to read 'Colleen Wall', with a long horizontal flourish extending to the right.

Colleen Wall
Executive Officer