

CFV 120 NSW Women's Refuge Movement

To whom it may concern

Please find attached the NSW Women's Refuge Movement submission to the ALRC Commonwealth Laws Family Violence Inquiry.

Kind regards

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Australian Law Reform Commission  
GPO Box 3708  
SYDNEY NSW 2001

September 30<sup>th</sup>, 2011

***RE: Australian Law Reform Commission - Family Violence and Commonwealth Laws Inquiry***

Thank you for the opportunity to respond to the Discussion Paper *Family Violence and Commonwealth Laws*. Unfortunately the NSW WRM does not have the resources available to be able to respond to all of the proposals and questions set out in the discussion paper. We have endeavoured however to respond to some specific proposals and questions, based on the experiences of our member refugees and the women and children they support.

**About the NSW Women's Refuge Movement Inc**

The NSW WRM has been operating for over 30 years. The organisation is a state-wide representative body of specialist domestic violence services. Member services aim to respond to community needs by providing a continuum of services to women and children who are homeless or at imminent risk of homelessness particularly when this is due to domestic and family violence.

The NSW Women's Refuge Movement:

- Provides a supportive network and forum for refuge workers to discuss and promote best practice and exchange skills and knowledge;
- Undertakes projects to facilitate the work and effective operation of member refuges;
- Develops and provides resources and information about women and children's homelessness, domestic violence and related matters for refuge workers, the sector and the community;
- Advises and informs Government about issues relating to domestic violence and sexual abuse, women and children's homelessness, and the needs of women and children as clients of SAAP and other services; and
- Works with government and community groups to improve responses to women and children escaping domestic violence, sexual assault and other forms of abuse.

### **Section 3 – A Common Interpretative Framework**

Developing a shared understanding of what constitutes domestic and family violence within and across jurisdictions is an important component for the development of integrated systems and responses. The WRM Inc supports the proposed definition of domestic and family violence by the ALRC and proposals 3-1 to 3-9.

### **Section 4 Screening, Information Sharing and Privacy**

The NSW WRM is concerned that there are not currently sufficient safeguards to prevent breaches in confidentiality, confidentiality breaches jeopardise the safety of victims of family violence. Furthermore the NSW WRM is not confident that appropriate support or responses to victims of family violence are provided when it is disclosed. The Discussion Paper provides a detailed analysis of these issues and the need to improve the identification of family violence and responses to this have been highlighted already by other stakeholders.

The NSW WRM supports the proposed recommendations for screening and information sharing protocols within Commonwealth Government agencies and affiliated service providers, and the creation of the Safety Concern Flag. However, we would recommend that the development of these protocols and processes include consultation with family violence practitioners.

The NSW WRM would also support further consideration of the establishment of Specialist Domestic Violence Teams as proposed by the Australian Domestic and Family Violence Clearinghouse and other stakeholders.

### **Section 13 – Income Management and Social Security law**

**ALRC Proposal 13–1 The *Social Security (Administration) Act 1999 (Cth)* and the *Guide to Social Security Law* should be amended to ensure that a person or persons experiencing family violence are not subject to Compulsory Income Management.**

The NSW WRM fully supports this proposal.

The Discussion paper provides a detailed examination and analysis of the flaws of compulsory income management and the impact of this on victims of family violence. Whilst we are supportive of much of the Commonwealth Governments efforts to reduce violence against women and children, the WRM believes that Compulsory Income management has unintended but very serious consequences. Compulsory Income Management does not accord with the four principles of Seamlessness, Fairness, Accessibility and Effectiveness that should be expressed within relevant legal frameworks as proposed by the ALRC.

Outlined below are our numerous and significant concerns relating to the use of Compulsory Income Management (CIM), many of which have been identified in the discussion paper

- Women who experience domestic and family violence are subjected to a range of controlling behaviours by perpetrators. The use of compulsory income management has the potential to further disempower women by removing any control they may have over their income. It is indeed secondary victimisation.
- CIM would lead to women becoming even more reluctant to disclose their experience of violence and seek support to live a life free from violence. Mainstream agencies such as Centrelink are often the first point of contact to the service system for women experiencing domestic and family violence. It is therefore critical that agencies such as Centrelink do not impose punitive measures, such as income management, on victims of violence that will either discourage women from reporting the violence in the first instance or discourage them from seeking further assistance from other agencies due to an increased level of distrust with the service system as a whole.

CIM is therefore inconsistent with many of principles and policy directions contained within many of the Governments other policy frameworks including the *National Plan to Reduce Violence Against Women and their Children* and the *Homelessness White paper: the Road Home*. Both policy frameworks emphasis the need to improve coordination between agencies and ensuring that victims of family violence or other people experiencing homelessness should be able to disclose their experiences and receive appropriate responses by any agency through direct support or referral pathways. The Road Home refers to this as having ‘no wrong door’, CIM effectively ‘closes the door’.

- Lack of economic independence is a “major factor influencing a woman’s decision to remain with a violent partner”<sup>1</sup>. CIM, whilst potentially restricting the ability of the perpetrator to misuse the income, also restricts the victim’s control over her income, does nothing to improve her financial independence and may further restrict her capacity to leave the violence.
- Additionally, the CIM of women who have left a relationship that is violent and abusive may well make it more difficult to achieve financial independence as their spending is restricted to certain shops and approved items. If 50% of a payment is withheld and a woman’s rent is 50% of her income, there will be no money left for other necessary items or other ongoing costs that are associated with leaving the violence, such as relocation costs, medical and legal bills, and non-payment of child support by the perpetrator. Some women may see that there is no other option in this situation but to return to the violence.

## **Employment Law**

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<sup>1</sup> Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children, 2009-2021

The impact of domestic violence on employment for women is significant. Women may have to cease employment as the workplace may be a site for continued abuse<sup>2</sup>. Even if violence is not occurring at the workplace, domestic violence has a broad range of psychological, emotional and physical consequences. This may lead to women requiring time off work to attend court or medical appointments or reduced concentration in the workplace<sup>3</sup>. Women's hours of employment maybe restricted to within school hours to ensure that children are safely dropped off and picked up from school. Improving the ability of women experiencing domestic and family violence to retain employment and obtain employment is an enabling factor in them being able to achieve safety, improves women's social and economic wellbeing and reduces the risk of homelessness. Over 80 % of women access women's refuges do not have an independent income.

The NSW WRM therefore supports either of the ALRC proposed options 16.2 or 16.3 & 16.4. The NSW WRM also supports all other proposals from 16.1 to 18.4.

## **Pre-employment**

### **Information Sharing and Privacy**

The WRM shares the concerns of other stakeholders who have noted about lack of the confidentiality of job seekers information as highlighted in the discussion paper. The WRM is aware of one instance where a woman's safety was greatly compromised by a *Job Service Provider (JSP)*. The woman, who was being accommodated by one our member refuges previous JSP had disclosed to the perpetrator's sister not only the town the woman had moved to but also that she was staying at the refuge. The perpetrator then proceeded to make threats (involving the use of firearms) against the woman's safety and the safety of the refuge staff on numerous occasions. The woman has since left Australia as a result of the very real threat to her safety. Subsequent discussions between this JSA and the refuge revealed that the JSA had access to range of information that had been provided to Centrelink from the woman the information included copies of medical certificates provided by a GP for Centrelink purposes that highlighted her experiences of domestic and family violence and the trauma she was experiencing as a consequence of the violence. This JSP provider was no longer providing any services to this woman. On investigation and complaints being lodged that is a formal process that occurs between those agencies without woman being aware of these processes.

The discussion paper has also highlighted similar concerns about breaches of confidentiality. The NSW WRM therefore supports proposal 15-1 - "Centrelink, DEEWR, JSA, DES and IEP providers, and ESAt and JCA assessors (through the Department of Human Services) should consider issues, including appropriate privacy safeguards, with respect to the personal information of individual job seekers who have disclosed family violence in the context of their information-sharing arrangements".

The WRM would also recommend in addition to this increased training to employment providers on family violence and increased communication strategies to victims of family violence (and services that support them) on their rights to privacy and confidentiality and complaints processes for when this is breached.

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<sup>2</sup> Murray, S., Powell, A, 2008, 'Working it out: domestic violence issues and the workplace', *Issues Paper 16*, Australian Domestic Violence & Family Violence Clearinghouse: April 2008

<sup>3</sup> Ibid

## **Part G - Migration**

The NSW WRM is acutely aware of the increased barriers for victims of family violence in achieving safety if they are not either Permanent Residents or Australian citizens. The ability of victims to access a range of services and supports to increase their safety and wellbeing is significantly restricted because of their migration status. It also hampers the effectiveness of interventions provided by family violence services including women's refuges who are working with victims of family violence who are unable to access the Family Violence provisions within the Migration Act. The case study provided by WEAVE and included in the ALRC's discussion paper is not unusual. Many NSW WRM members from all parts of NSW are reporting that their ability and capacity to provide effective support to women who are not permanent residents is particularly reduced by a lack of access to income and housing support provided by Government agencies.

The NSW WRM, therefore supports the following proposals by the ALRC:

**Proposal 20–1** *The Migration Regulations 1994 (Cth) should be amended to provide that the family violence exception applies to all secondary applicants for all onshore permanent visas. The family violence exception should apply:*

(a) *as a 'time of application' and a 'time of decision' criterion for visa subclasses where there is a pathway from temporary to permanent residence; and*

(b) *as a 'time of decision' criterion, in all other cases.*

**Proposal 20–2** *The Migration Regulations 1994 (Cth) should be amended to allow a former or current Prospective Marriage (Subclass 300) visa holder to access the family violence exception when applying for a temporary partner visa in circumstances where*

**Proposal 20–4** *The Australian Government should ensure consistent and regular education and training in relation to the nature, features and dynamics of family violence, including its impact on victims, for visa decision makers, competent persons and independent experts, in the migration context.*

**Proposal 20–5** *The Australian Government should ensure that information about legal rights, family violence support services, and the family violence exception are provided to visa applicants prior to and upon arrival in Australia. Such information should be provided in a culturally appropriate and sensitive manner.*

**Proposal 21–1** *The Department of Immigration and Citizenship's Procedures Advice Manual 3 should provide that, in considering judicially-determined claims, family violence orders made post-separation can be considered.*

**Proposal 21–2** *The requirement in reg 1.23 of the Migration Regulations 1994 (Cth) that the violence or part of the violence must have occurred while the married or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator should be repealed.*

## **Temporary Visa Holders**

The NSW WRM notes the tension highlighted in the Discussion Paper between maintaining the integrity of the visa class system and the social security system and the need to improve temporary visas holders access to income support, housing and other support services. The WRM reiterates the point made by the ALRC that Australia has both moral and legal obligations to improve the safety of all victims of family violence regardless of their migration status. Complex tensions do not supersede these obligations.

The WRM in response to question 7-4 believes that the Minister of FaHCSIA should be able to make a Determination including certain temporary visa holders—such as student, tourist and secondary holders of Subclass 457 visas—as a ‘specified subclass of visa’ that:

- meets the residence requirements for Special Benefit
- is exempted from the Newly Arrived Resident’s Waiting Period for Special Benefit

In addition to actions aimed at increasing victims access to Commonwealth supports and services the Commonwealth Government should work with State and territory Governments and the family violence sector to improve access to housing and other supports services.