

**DEEWR Submission into the
Australian Law Reform Commission Inquiry into Family Violence and Commonwealth Laws**

The Department of Education, Employment and Workplace Relations (DEEWR) recognises the serious and devastating effect of family and domestic violence on victims and their families and is committed to supporting people who have experienced violence.

DEEWR will continue to work the Australian Law Reform Commission (ALRC), other Government agencies, stakeholders, and clients to improve our services for people who experience family and domestic violence.

The Australian Government has committed to reducing family and domestic violence in communities through a number of initiatives, including the National Plan to Reduce Violence against Women and their Children and the White Paper on Homelessness, and through the Government Social Inclusion Agenda and the Service Delivery Reforms. These initiatives build on reforms and investments over previous years that aim to give all Australians the opportunity and support they need to participate fully in community life, develop their potential and be treated with dignity and respect.

DEEWR's input responds directly to the relevant ALRC proposals and questions and provides information on current arrangements. DEEWR broadly supports a number of proposals however notes that other proposals will have serious legislative, administrative and resource implications.

Proposal/question number	Proposal	DEEWR Input
Proposal 3–1	<p>The <i>Social Security Act 1991</i> (Cth) should be amended to provide that family violence is violent or threatening behaviour, or any other form of behaviour, that coerces and controls a family member, or causes that family member to be fearful. Such behaviour may include, but is not limited to:</p> <ul style="list-style-type: none"> a) physical violence; b) sexual assault and other sexually abusive behaviour; c) economic abuse; d) emotional or psychological abuse; e) stalking; f) kidnapping or deprivation of liberty; g) damage to property, irrespective of whether the victim owns the property; h) causing injury or death to an animal irrespective of whether the victim owns the animal; and i) behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(h) above. 	<p>The Department of Education, Employment and Workplace Relations (DEEWR) supports in principle – noting that any amendments to the legislation would need to be jointly considered by DEEWR and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) as joint administrators of social security policy and law.</p>
Proposal 3–5	<p>The <i>Fair Work Act 2009</i> (Cth) should be amended to provide for a</p>	<p>DEEWR notes any definition of family violence in the <i>Fair Work Act 2009</i> would be</p>

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	consistent definition of family violence as proposed in Proposal 3–1	considered in the event one was required to support the operation of any specific provisions under the Act.
Proposal 3–6	<p>The following guidelines and material should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1:</p> <ul style="list-style-type: none"> • Department of Education, Employment and Workplace Relations and Job Services Australia Guidelines, Advices and Job Aids; • Safe Work Australia Codes of Practice and other material • Fair Work Australia material; and • other similar material. 	DEEWR supports a consistent and comprehensive definition of Family Violence. DEEWR will consider amendment of relevant guidelines and material to reflect any changes to legislation. DEEWR considers it is not practical or effective to include a definition of family violence in every document produced by the department although considers that reference to a source definition may be appropriate.
Proposal 5–1	<p>The Guide to Social Security Law should be amended to include:</p> <ol style="list-style-type: none"> a) the definition of family violence in Proposal 3–1; and 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. <p>In addition, the Guide to Social Security Law 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.</p>	<p>DEEWR notes that the existing guide definition states that domestic violence can include violence to someone who is not a family member for example a co tenant or people in shared housing situations, DEEWR would not want to see a narrowing of this current definition and notes that the proposed definition does not refer to non-family violence.</p> <p>Any amendments to the Guide would need to be jointly considered by DEEWR and FaHCSIA as joint administrators of social security policy and law.</p>
Proposal 5–2	Centrelink customer service advisers, social workers and members of the Social Security Appeals Tribunal and Administrative Appeals Tribunal should receive consistent and regular training on the definition of family violence, including the nature, features and dynamics of family violence, and responding sensitively to victims of family violence	DEEWR supports this proposal in principle.
Proposal 5–3	<p>The Guide to Social Security Law should be amended to provide that the following forms of information to support a claim of family violence may be used, including but not limited to:</p> <ul style="list-style-type: none"> • statements including statutory declarations; • third party statements such as statutory declarations by witnesses, employers or family violence services; • social worker’s reports; • documentary records such as diary entries, or records of visits to services, such as health care providers; • other agency information (such as held by the Child Support Agency); 	DEEWR supports this proposal in principle. The evidentiary implications of this proposal will need to be carefully considered in conjunction with FaHSCIA.

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	<ul style="list-style-type: none"> • protection orders; and • police reports and statements. 	
Proposal 5-4	The <i>Guide to Social Security Law</i> should be amended to include guidance as to the weight to be given to different types of information provided to support a claim of family violence, in the context of a particular entitlement or benefit sought.	DEEWR supports this proposal in principle. The evidentiary implications of this proposal will need to be carefully considered in conjunction with FaHSCIA. Noting that discretion will continue to rest with the person making the evaluation.
Proposal 5-5	Centrelink customer service advisers and social workers should receive consistent and regular training in relation to the types of information that a person may rely on in support of a claim of family violence.	DEEWR agrees in principle, however notes this falls within the responsibility of DHS.
Proposal 5-6	The <i>Guide to Social Security Law</i> should be amended to provide that, where a person claims that they are experiencing family violence by a family member or partner, it is not appropriate to seek verification of family violence from that family member or partner.	DEEWR supports this in principle.
Proposal 5-7	Centrelink customer service advisers and social workers should receive consistent and regular training in relation to circumstances when it is not appropriate to seek verification of family violence from a person's partner or family member.	DEEWR agrees in principle, however notes this falls within the responsibility of DHS.
Proposal 5-8	Centrelink customer service advisers and social workers should be required to screen for family violence when negotiating and revising a person's Employment Pathway Plan.	DEEWR considers existing Centrelink processes are sufficient to capture or identify victims of family violence in circumstances where victims choose to disclose. Victims of family violence with an activity test exemption are not required to enter into an EPP. If a person identifies as a victim of family violence, customer service advisers or social workers can amend their EPP and place the attendance at support services, such as regular counselling sessions into a person's EPP but only as a voluntary activity.
Question 5-1	At what other trigger points, if any, should Centrelink customer service advisers and social workers be required to screen for family violence?	DEEWR propose situations where young people are identified as at risk and/or unable to live at home. In addition, cases where debts are sought to be or have been waived for recipients of PPS.
Proposal 5-9	A Centrelink Deny Access Facility restricts access to a customer's information to a limited number of Centrelink staff. The Guide to Social Security Law should be amended to provide that, where a customer discloses family violence, he or she should be referred to a Centrelink social worker to discuss a Deny Access Facility classification.	DEEWR considers this the responsibility for the Department of Human Services.
Question 5-2	Should Centrelink place a customer who has disclosed family violence on the 'Deny Access Facility': a.at the customer's request; or b.only on the recommendation of a Centrelink social worker?	DEEWR considers this the responsibility for the Department of Human Services.

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Proposal 6-1	The <i>Guide to Social Security Law</i> should be amended to reflect the way in which family violence may affect the interpretation and application of the criteria 4(3) of the <i>Social Security Act 1991</i> .	DEEWR supports this in principle; however, notes that the legislation and the Guide provide the necessary flexibility to consider all the circumstances of a relationship, including the presence of domestic and family violence, when determining whether a person is a member of a couple under section 4 (3). Any amendments to the Guide would need to be jointly considered by DEEWR and FaHCSIA as joint administrators of social security policy and law.
Proposal 6-2	Centrelink customer service advisers and social workers should receive consistent and regular training in relation to the way in which family violence may affect the interpretation and application of the criteria in s 4(3) of the <i>Social Security Act 1991</i> (Cth).	DEEWR notes this falls within the responsibility of DHS.
Proposal 6-3	<i>The Guide to Social Security Law</i> should be amended expressly to include family violence as a circumstance where a person may be living separately and apart under one roof.	DEEWR supports this in principle; however, notes that the legislation and the Guide provide the necessary flexibility to consider all the circumstances of a relationship, including the presence of domestic and family violence, when determining whether a person may be living separately and apart under one roof under section 4 (3). Any amendments to the Guide would need to be jointly considered by DEEWR and FaHCSIA as joint administrators of social security policy and law.
Proposal 6-4	The <i>Guide to Social Security Law</i> should be amended to direct decision makers expressly to consider family violence as a circumstance that may amount to a 'special reason' under s 24 of the <i>Social Security Act 1991</i> (Cth).	Family violence is one factor that is considered under the current section 24 entry in the Guide (2.2.5.50 Discretion to Treat a Person as Not Being a Member of a Couple for a Special Reason). DEEWR would consider amending the existing wording to be more explicit in regards to family violence however, this would need to be done in conjunction with FaHCSIA.
Question 6-1	With respect to the discretion under s 24 of the <i>Social Security Act 1991</i> (Cth): (a) is the discretion accessible to those experiencing family violence; (b) what other 'reasonable means of support' would need to be exhausted before a person could access s 24; and (c) in what ways, if any, could access to the discretion be improved for those experiencing family violence?	DEEWR considers that: a) Yes this discretion is available to people experiencing family violence and precedents have been set in this regard. b) Section 24 is a discretionary decision considered on the merits of the individual case. Other reasonable means of support is not meant to be precisely defined as this will differ from individual to individual and consideration could only be given to the individual's personal circumstances, c) DEEWR is willing to explore this question with FaHCSIA and DHS as access to the discretion has a largely service delivery nature. DHS has service delivery responsibility.
Proposal 6-5	The <i>Guide to Social Security Law</i> should be amended expressly to	DEEWR supports in principle and will review the Guide to provide clearer guidelines

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	refer to family violence, child abuse and neglect as a circumstance in which it may be ‘unreasonable to live at home’ under the provisions of ‘extreme family breakdown’—Social Security Act 1991 (Cth) ss 1067A(9)(a)(i), 1061PL(7)(a)(i); and ‘serious risk to physical or mental well-being’—Social Security Act 1991 (Cth) ss 1067A(9)(a)(ii), 1061PL(7)(a)(ii).	to assessors if required.
Question 6–2	Should the Social Security Act 1991 (Cth) also be amended expressly to refer to family violence, child abuse and neglect as an example of when it is ‘unreasonable to live at home’?	DEEWR considers the Social Security Act 1991 does not require amendment to expressly refer to family violence, child abuse and neglect as an example of when it is ‘unreasonable to live at home’ the current broad description is intended to capture these situations and does include violence.
Question 6–3	Should ss 1067A(9)(a)(ii) and 1061PL(7)(a)(ii) of the Social Security Act 1991 (Cth) be amended: a) expressly to take into account circumstances where there has been, or there is a risk of, family violence, child abuse, neglect; and b) remove the requirement for the decision maker to be satisfied of ‘a serious risk to the person’s physical or mental well-being’?	DEEWR considers changes to the legislation as suggested may be open to exploitation by claimants of ‘unreasonable to live at home’ and could lead to young people making unsubstantiated allegations of family violence with the sole purpose of obtaining income support. DEEWR further considers that changes to the Guide to the Social Security Act (as outlined in proposal 6-5) would be sufficient.
Proposal 6-6	DEEWR and Centrelink should review their policies, practices and training to ensure that, in cases of family violence, Youth Allowance, Disability Support Pension and Pensioner Education Supplement, applicants do not bear sole responsibility for providing specific information about: a) the financial circumstances of their parents; and b) the level of ‘continuous support’ available to them.	DEEWR supports in principle and will review this policy in conjunction with DHS noting the current guide reference 3.2.5.70 Assessment and Mandatory Procedures has been developed as a result of ministerial direction and related government policies on the way assessments should be conducted for homeless youth.
Proposal 7-1	The <i>Guide to Social Security Law</i> should be amended expressly to include family violence as a reason for indefinite exemption from the requirement to provide a partner’s tax file number.	DEEWR will give consideration to extending the exemption period for a defined period in conjunction with FaHCSIA. Noting an indefinite exemption period would have implications for eligibility and verifying partner income, and this could lead to an incorrect rate of payment. DEEWR also notes that impacts on and consistency with the Family Assistance Legislation needs to be considered prior to amendments to the Social Security Act 1991. For example a partner’s tax file number is a requirement for payment of Child Care Benefit (CCB) or Child Care Rebate (CCR).
Question 7–6	In what way, if any, should the Social Security Act 1991 (Cth) or the Guide to Social Security Law be amended to ensure that newly arrived residents with disability, who are victims of family violence, are able to access the Disability Support Pension? For example, should the qualifying residence period for Disability Support Pension be reduced to 104 weeks where a person is a victim of family violence?	This question is the responsibility of the Department of Families, Housing, Community Services and Indigenous Affairs.
Proposal 7-4	Centrelink customer service advisers should receive consistent and regular training in the administration of the Job Seeker Classification Instrument including training in relation to:	This proposal is the responsibility of the Department of Human Services.

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	<ul style="list-style-type: none"> • the potential impact of family violence on a job seeker’s capacity to work and barriers to employment, for the purposes of income support; and • the availability of support services. 	
Question 7-8	In practice, to what extent can, or do, recommendations made by ESAt or JCA assessors in relation to activity tests, participation requirements, Employment Pathway Plans and exemptions account for the needs and experiences of job seekers experiencing family violence?	<p>DHS assessors are required to identify barriers to employment including medical and other social barriers.</p> <p>During the interview it is not uncommon for a customer to disclose family violence issues and the assessor is then required to link the customer to appropriate employment or community services to address these barriers.</p> <p>In the referral recommendation, barriers such as family violence would be identified with specific interventions suggested by the assessor to address the issue. Specifically, the assessor may recommend a Supporting Intervention (e.g. counselling) and liaise with numerous key stakeholders such as treating health professionals including doctors, psychologists/psychiatrists, community nurses, as well as Centrelink Social Workers.</p> <p>Under current arrangements, social security law prescribes that medical conditions or disabilities are the only factors that can reduce an individual’s hours of Work Capacity and the Disability Services Act 1986 requires that employment support requirements be directly linked to medical conditions or disabilities.</p>
Question 7-10	What changes, if any, to the Employment Pathway Plan and exemption processes could ensure that Centrelink captures and assesses the circumstances of job seekers experiencing family violence?	DEEWR considers flexibility exists to provide one or more periods of exemption from the activity test based on the individual’s specific circumstances. These are detailed at proposal 7-6 and Question 7-11. DEEWR therefore does not consider that any changes are necessary to the Employment Pathway Plan.
Proposal 7-5	The <i>Guide to Social Security Law</i> should expressly direct Centrelink customer service advisers to consider family violence when tailoring a job seeker’s Employment Pathway Plan	DEEWR supports in principle and will review the Guide to provide clearer guidelines to assessors if required. An individual’s personal barriers are already taken into consideration by Centrelink Customer Service Advisers when tailoring a job seekers Employment Pathway Plan. Additionally, individuals are asked as part of the JSCI update process whether there are any barriers which impacts on their capacity to fully participate.
Proposal 7-6	Exemptions from activity tests, participation requirements and Employment Pathway Plans are available for a maximum of 13 or 16 weeks. The ALRC has heard concerns that exemption periods granted to victims of family violence do not always reflect the nature of family violence. DEEWR should review exemption periods to ensure a flexible response for victims of family violence—both principal carers and those who are not principal carers.	<p>DEEWR believes that sufficient flexibility already exists in policy to provide one or more periods of exemption from the activity test based on the individual’s specific circumstances.</p> <p>These were supported by the Participation Review Taskforce Report.</p>
Question7-11	<p>In practice, what degree of flexibility does Centrelink have in its procedures for customers experiencing family violence:</p> <p>a) to engage with Centrelink in negotiating or revising an Employment Pathway Plan;</p>	DEEWR considers participation exemptions for job seekers who have experienced domestic violence are sufficiently provided for in the Social Security Act 1991 (the Act). The Act (under section 603A for Relief from Activity Test- special circumstances) provides that.

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	<p>b) or apply for or extending an exemption. Are these procedures sufficient to ensure the safety of victims of family violence is protected?</p>	<ul style="list-style-type: none"> Where necessary the period of exemption can be extended. <p>A new EPP should be negotiated to provide support for the person to overcome their personal barriers.</p>
Question 7–12	<p>A 26 week exclusion period applies to a person who moves to an area of lower employment prospects. An exemption applies where the reason for moving is due to an ‘extreme circumstance’ such as family violence in the ‘original place of residence’. What changes, if any, are necessary to ensure that victims of family violence are aware of, and are making use of, the exemption available from the 26 week exclusion period? For example, is the term ‘original place of residence’ interpreted in a sufficiently broad manner to encapsulate all forms of family violence whether or not they occur within the ‘home’?</p>	<p>Under Section 553B of the Social Security Act, Centrelink may grant an exemption from the 26 week exclusion period in special circumstances, including in circumstances of family violence. The policy in the Guide to social security law is sufficiently flexible to accommodate the differences of each case which is assessed by Centrelink on its own merits (section 3.2.1.35 of the Guide to the Social Security Act 1991 Move to Area of Lower Employment Prospects for NSA, YA & SpB Recipients). A review of Centrelink information products and processes may identify gaps in information and assistance to these people however, DEEWR believes the policy is sufficiently flexible to allow these exemptions to be appropriately granted to victims of family violence.</p>
Proposal 7–7	<p>The Guide to Social Security Law should expressly refer to family violence as a ‘reasonable excuse’ for the purposes of activity tests, participation requirements, Employment Pathway Plans and other administrative requirements.</p>	<p>DEEWR notes that this already occurs in practice and will review the definition/description of family violence under the reasonable excuse provisions in the Guide to social security law.</p>
Question 7–13	<p>Centrelink can end a person’s ‘Unemployment Non-Payment Period’ in defined circumstances. In practice, are these sufficiently accessible to victims of family violence?</p>	<p>The Social Security (Administration) (Ending Unemployment Non-payment Periods - Classes of Persons) (DEEWR) Specification 2009 (No. 1) legislative instrument outlines the ‘classes of persons’ who can have an unemployment non-payment period ended if serving that non-payment period would result in severe financial hardship. DEEWR supports the recommendation that this policy should be reviewed to ensure it is sufficiently broad to capture victims of family violence.</p>
Proposal 12–3	<p>In relation to Child Care Benefit for care provided by an approved child care service, the Family Assistance Guide should list family violence as an example of ‘exceptional circumstances’ for the purposes of:</p> <ol style="list-style-type: none"> exceptions from the work/training/study test; and circumstances where more than 50 hours of weekly Child Care Benefit is available. 	<p>DEEWR supports the listing of family violence as an example of “exceptional circumstances” as further clarification of current policy governing access to special Child Care Benefit (SCCB).</p> <p>The example would still need to be considered in the context of current SCCB policy criteria:</p> <ul style="list-style-type: none"> that the risk of abuse or neglect is serious that the child’s circumstances will be improved by increased access to child care that a financial barrier to accessing child care exists: or that the family is experiencing hardship such that a family’s income does not truly reflect their capacity to pay the normally charged fee. <p>It should be noted that in regard to Proposal 12-3 (b), no action is necessary. These circumstances can already be addressed in accordance with current policy guidelines. However, we do not support the specification of hours with the use of the example.</p>

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		<p>Access to SCCB is granted on a case by case basis and the current proposal would limit flexibility of access. The limit for CCB per child per week is 24 hours unless both parents (or the sole parent) are working, studying, training or looking for work, or have an exemption from the limit. The number of hours granted should reflect the needs of the child and family, taking into account their particular circumstances and needs, assessed against the policy criteria.</p>
Proposal 12-4	<p><i>A New Tax System (Family Assistance) Act 1999</i> (Cth) provides that increases in weekly Child Care Benefit hours and higher rates of Child Care Benefit are payable when a child is at risk of ‘serious abuse or neglect’. <i>A New Tax System (Family Assistance) Act 1999</i> (Cth) should be amended to omit the word ‘serious’, so that such increases to Child Care Benefit are payable when a child is at risk of abuse or neglect.</p>	<p>While DEEWR strongly agrees that the abuse or neglect of a child is unacceptable we do not support the omission of the word “serious”.</p> <p>SCCB is a payment that recognises that the circumstances of a child at serious risk of abuse or neglect will be improved by increased access to child care by removing any financial barrier to accessing child care that may exist. It is essential to recognise the link to child care, particularly as in most instances the decision maker regarding access to SCCB is a child care service provider, with child care as the focus rather than social policy. SCCB assists to ensure that child care is used as an intervening short-term solution where a more effective and appropriate action or program is needed.</p> <p>“Serious” as a descriptor, assists decision makers to further understand and apply SCCB policy. It is not a barrier to access to SCCB but ensures that approval is evidence based, appropriate and that funding is delivered to those truly in need. It also serves as a reminder to service providers of their obligations as mandatory reporters of abuse and neglect.</p> <p>This proposal would also have significant fiscal implications to Child Care Benefit appropriations and would require additional modelling and funds to support it.</p>
Question 14-1	<p>In addition to removal of the employee records exemption in the <i>Privacy Act 1988</i> (Cth), what reforms, if any, are needed to protect the personal information of employees who disclose family violence for the purposes of accessing new entitlements such as those proposed in Chapters 16 and 17?</p>	<p>Division 2 of Part 3-4 of the Fair Work Act 2009 provides certain rights to permit holders who exercise a statutory right of entry to investigate a suspected contravention. These include the right to inspect and make copies of records or documents that relate to the suspected contravention (section 483(1)(c) of the Fair Work Act 2009).</p> <p>If a new entitlement relating to family violence were created under the Fair Work Act 2009, permit holders would be entitled to inspect records relating to a suspected contravention, including a contravention of an employee’s right to such entitlements. This would potentially include access to information related to family violence (unless expressly excluded).</p> <p>However, it should be noted that the use or disclosure of information or documents obtained under the right of entry provisions of the Fair Work Act 2009 is closely regulated, and the improper use or disclosure of such information attracts a civil penalty under section 504 of the Fair Work Act 2009.</p>
Proposal 14-1	<p>There is a need to safeguard the personal information of employees who have disclosed family violence in the employment context. The Office of the Australian Information Commissioner and the Fair Work Ombudsman should, in consultation with unions and employer</p>	<p>DEEWR notes Fair Work Ombudsman has published a Best Practice Guide on Workplace Privacy.</p>

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	<p>organisations:</p> <p>a) develop a model privacy policy which incorporates consideration of family violence-related personal information; and</p> <p>b) develop or revise guidance for employers in relation to their privacy obligations where an employee discloses, or they are aware of, family violence.</p>	
Proposal 14–2	The Australian Government should initiate a national education and awareness campaign about family violence in the employment context.	<p>The Commonwealth has already provided funding of \$440,000 to the Australian Domestic and Family Violence Clearinghouse to carry out a project on domestic violence and workplace rights and entitlements.</p> <p>The principal aim of the project is to improve the knowledge and capacity of unions and employer organisations to support employees experiencing domestic violence including through collective bargaining.</p> <p>The funding provides for project managers to engage with employers and unions to inform them directly about these issues and the impacts for both workers and the workplace to build their capacity to support workers affected by domestic violence through the provision of training and resources, as well as to examine ways to address this through collective bargaining.</p> <p>Further, the Commonwealth has provided \$1 million in one off funding over 4 years (2010/11-2013/14) to the White Ribbon Foundation to engage with Australian businesses and industrial organisations to help them prevent and reduce violence against women. The project aims to create long-term sustainable change in attitudes to violence and to implementing prevention strategies through the workplace by increasing the knowledge and skills of participating staff and managers to address issues of violence against women. The project:</p> <ul style="list-style-type: none"> • is designed as an awareness, early intervention and prevention program specifically for workplace settings; • works to increase the knowledge and skills of staff and managers to address issues of violence against women; and • encompasses large, medium and small-scale workplaces.
Proposal 14–3	<p>Section 653 of the <i>Fair Work Act 2009</i> (Cth) should be amended to provide that Fair Work Australia must, in conducting the review and research required under that section, consider family violence-related developments and the effect of family violence on the employment of those experiencing it, in relation to:</p> <p>a) enterprise agreements;</p> <p>b) individual flexibility arrangements; and</p> <p>c) the National Employment Standards.</p>	<p>Section 653 of the Fair Work Act 2009 requires Fair Work Australia to undertake reviews and research in relation to enterprise agreements, individual flexibility arrangements, and the operation of the provisions of the National Employment Standards relating to requests for flexible working arrangements and extensions of unpaid parental leave.</p> <p>In conducting the review and research, Fair Work Australia must consider the effect that these matters have had on the employment (including wages and conditions of employment) of women, part-time employees, persons from a non-English speaking</p>

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		background; mature age persons and young persons. Whether family violence could be considered in the review and research of the effect these arrangements have on the employment of women is a matter for Fair Work Australia.
Question 14–2	In addition to review and research by Fair Work Australia, what is the most appropriate mechanism to capture and make publicly available information about the inclusion of family violence clauses in enterprise agreements?	<p>DEEWR notes the ALRC’s suggestion that the DEEWR Workplace Agreements Database (WAD) may be a useful and appropriate collection mechanism at Page 463 of the Discussion Paper but that it is seeking the views of stakeholders.</p> <p>In response, the Department can advise that it is possible, and it is willing, to collect data on the incidence of references to domestic violence in enterprise agreements. This data capture would cover not only agreements with domestic violence clauses but also those agreements that make some mention of the domestic violence issue as part of the agreement. Thus the scope of the WAD data on domestic violence will be broad.</p> <p>It would be possible to commence collection of the data for the June quarter 2011 onwards. The WAD data, similar to other non-wages data, would be available on request. Requests can be lodged currently at the ebtrends@deewr.gov.au mailbox.</p>
Question 14–3	How should Fair Work Australia collect data in relation to the incidence and frequency with which family violence is raised in unfair dismissal and general protections matters?	<p>DEEWR notes Fair Work Australia does not have specific data collection functions as such. It does however have certain disclosure obligations that relate to information it gathers in the course of performing its functions.</p> <p>If data collection responsibilities were to be imposed on Fair Work Australia, they should be imposed on the General Manager, rather than the Tribunal.</p>
Proposal 14–4	In the course of its 2012 and 2014 reviews of modern awards, Fair Work Australia should consider issues relating to data collection.	<p>In conducting the two year review of modern awards, Fair Work Australia must consider whether modern awards achieve their objective and are operating effectively and without anomalies or technical problems.</p> <p>The 4 yearly reviews of modern awards are the principal way in which a modern award is maintained as a fair and relevant safety net of terms and conditions.</p> <p>Depending on the process for and the scope of the reviews, which have not yet been announced, it would be open to any stakeholder to raise such issues or suggestions with Fair Work Australia during the course of the reviews.</p>
Question 15–1	In what ways, if any, should the Australian Government include a requirement in requests for tender and contracts for employment services that JSA and DES providers demonstrate an understanding of, and systems and policies to address, the needs of job seekers experiencing family violence?	<p>DEEWR considers the current Deed is very clear on tailoring services to job specific need. The Request for Tender for the Employment Services Deed 2009-12 required providers seeking to tender for JSA services to address a range of selection criteria. Tenderers bidding to deliver JSA services had to demonstrate an ability to deliver the full range of Stream Services tailored to individual job seeker needs. Tenderers were required to describe how they would deliver innovative, individualised and tailored services to meet the diverse needs of job seekers within their Employment</p>

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		<p>Services Area (ESA)¹ including strategies to assist the full range of job seekers—from those who are work ready to those who are highly disadvantaged (for example Indigenous Australians, people from a CALD background, refugees, the homeless), and who face multiple non-vocational barriers (including family violence) to employment.</p> <p>Tenderers were also required to describe their experience in establishing and building community linkages, including partnerships and or practical collaborations with relevant local community support organisations.</p> <p>The Employment Services Deed 2009-12 states that providers must comply with the Code of Practice and conduct the Services at or above the minimum standards in the Service Guarantees.</p> <p>The Code of Practice commits providers to helping each job seeker find their pathway into employment by:</p> <ul style="list-style-type: none"> • meeting the Service Guarantees which includes assisting those job seekers experiencing disadvantage address non-vocational barriers (including family violence), • tailoring assistance to the job seekers' personal circumstances, skills, abilities and aspirations, • using available Government funding appropriately to support job seekers, • treating every job seeker fairly and with respect, and • providing a fair accessible feedback process. <p>The Service Guarantees also require the Job Services Australia provider to take account recognised limits on the job seekers' ability to find work.</p>
Question 15–2	How is personal information about individual job seekers shared between Centrelink, DEEWR, the Department of Human Services, and JSA, DES and IEP providers?	<p>Certain information is shared on the Employment Services System (ESS) – a program providing a secure electronic environment that allows providers to manage their job seekers and caseloads.</p> <p>Due to privacy legislation not all information is shared across Centrelink and ESS.</p> <p>IEP Providers do not have access to the Centrelink and Employment Services System (ESS).</p>
Question 15–3	How does, or would, the existence of a Centrelink 'Deny Access Facility', or other similar safety measures, such as a 'safety concern flag', affect what information about job seekers DEEWR and JSA and DES providers can access?	Currently records that are coded as deny access on the employment services system have the personal details blanked out.
Proposal 15–1	Centrelink, DEEWR, JSA, DES and IEP providers, and ESA and JCA	The Employment Services Deed 2009-12 sets out the following requirements of

¹ 'Employment Service Area' or 'ESA' means a geographical area, within a Labour Market Region, identified and defined for the 2009-2012 Employment Services contract, and, for the avoidance of doubt, includes a Remote ESA.

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	<p>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.</p>	<p>providers in relation to Privacy and information sharing. Specifically in Section 5C – Control of information at clause 93 regarding personal and protected information, including privacy obligations and notifications to DEEWR in the event of breaches of such obligations. Also at clause 94 regarding the limited and strict conditions for disclosure of confidential information.</p> <p>Sections 3C and 3D of the DES DEED 2010-2012 cover personal and protected information and Records Management. These Deed requirements would cover any recommendations in this area.</p> <p>IEP Providers do not have access to the Centrelink and Employment Services System (ESS). Only relevant DEEWR IEP staff have access to job seeker records for the purposes of referring job seekers to an IEP activity or creating a job seeker record.</p>
Proposal 15–2	<p>The current circumstances in which a job seeker can change JSA or DES providers should be extended to circumstances where a job seeker who is experiencing family violence is registered with the same JSA or DES provider as the person using family violence.</p>	<p>A job seeker may change JSA provider if the job seeker:</p> <ul style="list-style-type: none"> • changes residential address and can no longer access their JSA provider’s Site—relocation. • or JSA provider, requests a Transfer by DEEWR, if at any time the job seeker and JSA provider are unable to maintain a reasonable and constructive servicing relationship—relationship failure • requests to change JSA provider and both JSA providers agree to the change—by agreement, or • requests DEEWR to change JSA provider where they can demonstrate they would receive better services from another JSA provider that could enhance their employment prospects—better services for the job seeker with another JSA provider. <p>These current arrangements do not preclude a job seeker who is experiencing family violence from changing providers. A job seeker who is experiencing family violence and is registered at the same provider as the person using family violence could demonstrate that they would receive better services from another JSA provider that could enhance their employment prospects. The job seeker experiencing family violence and the current and potential JSA provider could also reach a mutual agreement to enable the job seeker to change providers.</p>
Question 15–4	<p>Should JSA and DES providers routinely screen for family violence? If so:</p> <ul style="list-style-type: none"> • what should the focus of screening be; • how, and in what manner and environment, should such screening be conducted; and 	<p>DES and JSA providers, and Centrelink can conduct a Change of Circumstances Reassessment for an individual at any time during the servicing if the individual discloses information about their circumstance that may affect the level of services they receive.</p>

Proposal/question number	Proposal	DEEWR Input
	<ul style="list-style-type: none"> • when should such screening be conducted? 	<p>Disclosure by the individual of family violence may require a referral to a Centrelink Social Worker for immediate assistance and further assessment of the individual's needs.</p>
Question 15–5	<p>Under the Job Seeker Classification Instrument Guidelines if a job seeker discloses family violence, the job seeker should immediately be referred to a Centrelink social worker. What reforms, if any, are necessary to ensure this occurs in practice?</p>	<p>As noted by the ALRC, JSA providers are provided with information about what they should do if a job seeker discloses domestic violence, family grief or trauma. Specifically, 'A JSA provider should immediately refer a job seeker who discloses domestic violence, family grief or trauma to a Centrelink Social Worker'.</p> <p>The department has not received any direct feedback that the current arrangements are not working effectively for those disclosing family violence.</p>
Proposal 15–3	<p>JSA and DES providers should introduce specialist systems and programs for job seekers experiencing family violence—for example, a targeted job placement program.</p>	<p>Job Services Australia places a greater focus on the needs of the most disadvantaged Australian job seekers to achieve greater social inclusion.</p> <p>A key feature of Job Services Australia is the provision of services in accordance with a job seeker's assessed level of disadvantage. The services are provided in four Streams, with Stream 1 for the more job ready job seekers up to Stream 4 for the most highly disadvantaged job seekers with multiple vocational and non-vocational barriers (including family violence). Each Stream also offers access to Work Experience Activities.</p> <p>Work Experience for job seekers under Job Services Australia currently seeks to provide job seekers with the most flexible range of options reasonably possible. Work Experience comprises a number of vocational and non-vocational options onto which JSA providers can place job seekers, where they identify job seeker need. Several of these available options would assist with specific instances of family violence for both support for victims of family violence, and intervention for perpetrators, including:</p> <ul style="list-style-type: none"> • Anger and anxiety Management, and conflict resolution • Assertiveness Courses • Relationship Counselling • General Counselling Services • Trauma Counselling • Mediation <p>There is also scope for addressing possible contributory factors through activities such as:</p> <ul style="list-style-type: none"> • Drug or alcohol rehabilitation • Other Addictions Counselling

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		<ul style="list-style-type: none"> • Gambling intervention <p>The Employment Pathway Fund (EPF) is a flexible pool of funds available to Job Services Australia providers to purchase a broad range of assistance to support eligible job to overcome their vocational and non-vocational barriers to employment. Support for job seekers may include training, work experience, clothing, transport costs, as well as assisting them to overcome any personal difficulties which may be hindering their ability to find and keep a job such as mental health support, family mediation and anger management.</p> <p>DEEWR does not prescribe how JSA providers manage their job seekers, however we do encourage providers to have links with relevant community service providers. In the case of domestic violence we would provide guidance to JSA providers to facilitate access to the relevant services including the Police, Centrelink social workers and other support services as appropriate to the needs of the individual job seeker.</p>
Proposal 15-4	<p>As far as possible, or at the request of the job seeker, all Job Seeker Classification Instrument interviews should be conducted in:</p> <ol style="list-style-type: none"> a) person; b) private; and c) the presence of only the interviewer and the job seeker. 	<p>Employment Services provider Guidelines either already address, or are being updated, to cover this proposal.</p> <p>Published Job Services Australia provider Guidelines require:</p> <ul style="list-style-type: none"> • that JSCIs be conducted in a private setting • that JSCIs be conducted face-to-face, unless there are exceptional circumstances • interpreter services be used where appropriate • the JSA provider to encourage the job seeker to provide open and honest responses to all the questions to ensure that the job seeker received the most appropriate services, and • permit a job seeker to be accompanied by their nominee, including a family member, advocate, social worker or counsellor for support. <p>Disability Employment Services provider Guidelines are being updated to include the same requirements and will be published in the near future.</p>
Question 15-6	<p>The Job Seeker Classification Instrument includes a number of factors, or categories, including 'living circumstances' and 'personal characteristics'. Should DEEWR amend those categories to ensure the Job Seeker Classification Instrument incorporates consideration of safety or other concerns arising from the job seeker's experience of family violence?</p>	<p>Consideration of safety and other concerns arising from an individual's experience of family violence can best be assessed by the Centrelink social worker, who can then determine the appropriate course of action or actions than may be appropriate to meet the individual's immediate and longer term needs.</p>
Proposal 15-5	DEEWR should amend the Job Seeker Classification Instrument to	Given the relatively small numbers of job seekers reporting domestic violence, this

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	include 'family violence' as a new and separate category of information	factor does not appear to warrant a separate category, but will be maintained as a sub-category under 'Personal Factors'.
Question 15-7	A job seeker is referred to an ESAt or JCA where the results of the Job Seeker Classification Instrument indicate 'significant barriers to work'. Should the disclosure of family violence by a job seeker automatically constitute a 'significant barrier to work' and lead to referral for an ESAt or JCA?	<p>A process is already in place that requires referral to a Centrelink Social Worker where family violence is disclosed by an individual.</p> <p>The Social Worker will assess the impact of the disclosed family violence to determine the individual's immediate support requirements and any participation activity exemption that may be appropriate.</p> <p>The Social Worker may also consider that the severity of the disclosed family violence is a significant longer-term barrier to work that requires referral for an ESAt.</p> <p>Introducing a system-based auto-referral to ESAt could lead to a significant increase in the number of ESAts conducted and result in resourcing issues.</p>
Question 15-8	Where a job seeker has disclosed family violence, should there be streaming of job seekers to ESAt and JCA assessors with specific qualifications or expertise with respect to family violence, where possible?	<p>DEEWR considers DHS assessors have the relevant skills to take appropriate action if family violence issues are disclosed during an interview.</p> <p>Introducing specific assessor qualifications or expertise with respect to family violence ESAt could lead to assessor resourcing issues.</p>
Question 15-9	When conducting an ESAt or JCA, how do assessors consider the impact of family violence on a job seeker's readiness to work? What changes, if any, could ensure that ESAts and JCAs capture and assess the circumstances of job seekers experiencing family violence	<p>While conducting an ESAt, the DHS assessor is required to identify barriers to employment including medical and other social barriers</p> <p>During the interview if the individual discloses family violence issues the assessor will refer the individual to appropriate community or employment services to address these barriers.</p> <p>The ESAt report will identify barriers, including family violence, along with specific interventions suggested by the assessor to address the issue.</p> <p>The assessor may recommend a Supporting Intervention (e.g. counselling) and liaise with numerous key stakeholders such as treating health professionals including doctors, psychologists, psychiatrists, community nurses and Centrelink Social Work Services as may be appropriate to the individual's needs.</p>

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Question 15–10	In practice, to what extent can, or do, recommendations made by ESAt or JCA assessors in relation to stream placement or referral to DES account for the needs and experiences of job seekers experiencing family violence?	All instances of family violence disclosed during an ESAt are considered serious. In addition to the response provided to Question 15.9, if issues are current, the DHS assessor may need to immediately refer the individual to the police and/or crisis intervention services. Where minors are at risk, assessors have mandatory reporting requirements.
Proposal 15–6	<p>DEEWR and the Department of Human Services should require that all JSA, DES and IEP provider staff and ESAt and JCA assessors receive regular and consistent training in relation to:</p> <p>a) 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;</p> <p>b) recognition of the impact of family violence on particular job seekers such as:</p> <ul style="list-style-type: none"> • Indigenous people; • those from culturally and linguistically diverse backgrounds; • those from lesbian, gay, bisexual, trans and intersex communities; • children and young people; • older persons; and • people with disability <p>c) the potential impact of family violence on a job seeker’s capacity to work and barriers to employment;</p> <p>d) appropriate referral processes; and</p> <p>e) the availability of support services.</p>	<p>The Request for Tender for the Employment Services Deed 2009-12 required providers seeking to tender for JSA services to address a range of selection criteria. Tenderers were required to describe the recruiting and training strategies their organisation would implement and how they would retain suitably qualified and experienced staff in order to deliver the full range of Stream Services tailored to individual job seeker needs.</p> <p>The Department does not prescribe the training that JSA providers are required to provide their staff.</p> <p>Organisations contracted to deliver Australian Government funded employment services have agreed and are committed to observe the Employment Services Code of Practice. This Code of Practice sets out the principles and standards that underpin the delivery of employment services and other services to increase employment outcomes and participation in economic activities in Australia especially for disadvantaged client groups.</p> <p>Specifically, providers:</p> <ul style="list-style-type: none"> • commit to working with clients, employees, sub-contractors, and other providers to deliver quality employment services by ensuring staff have the skills and experience they need to provide quality and culturally sensitive services to job seekers employers and local communities and working in collaborative partnerships with stakeholders and communities to identify needs and how they can be met • Behaving ethically and acting with honesty, due care and diligence • Being open and accountable • Avoiding any practice or activity which a provider could reasonably foresee could bring employment services into disrepute • Sensitively managing any information collected
Question 15–11	In what ways, if any, should the Australian Government include a requirement in requests for tender and contracts for employment services that IEP projects and services, or panel providers, demonstrate an understanding of, and systems and policies to address, the needs of Indigenous job seekers experiencing family violence?	<p>In the Request for Tender (RFT) for the Indigenous Employment Program, tenderer’s must demonstrate their understanding of issues confronting Indigenous Australians as they relate to:</p> <ul style="list-style-type: none"> • commencement and retention in training and employment; • sustainable business development; and engagement in economic development activities.

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		<p>This information should include details about their knowledge of the barriers that prevent Indigenous Australians from participating in employment, education, training, the economy, and developing business initiatives.</p> <p>The RFT also requires they describe their strategies and experience they will use to collaborate with other organisations to address the barriers to employment, training education access to economic support.</p> <p>Where IEP directly contracts with employers, the package of assistance may include delivery of cross cultural awareness training, a strategy that supports the employer to increase their knowledge and awareness of the barriers to employment for Indigenous Australians.</p> <p>Additionally, some employers may recruit an Indigenous Employment Coordinator, whose role could be to educate and advise the organisation on issues/barriers relating to employment for Indigenous Australians.</p>
Question 15–12	In what ways, if any, should the JSA, DES, IEP or CDEP systems be reformed to assist Indigenous job seekers who are experiencing family violence	<p>The Australian Government is committed to halving the employment gap between Indigenous and non-Indigenous Australians within a decade.</p> <p>To help more Indigenous Australians into work, Job Services Australia will help ensure employment and training services meet the needs of Indigenous job seekers, Indigenous businesses and employers.</p> <p>Job Services Australia provides tailored assistance to job seekers, particularly disadvantaged Australians (including Indigenous Australians, people from culturally and linguistically diverse backgrounds and people with disabilities), to help individuals to obtain the skills they need and to secure sustainable employment.</p> <p>Organisations contracted to deliver Australian Government funded employment services have agreed and are committed to observe the Employment Services Code of Practice. This Code of Practice sets out the principles and standards that underpin the delivery of employment services and other services to increase employment outcomes and participation in economic activities in Australia especially for disadvantaged client groups.</p> <p>Specifically, providers:</p> <ul style="list-style-type: none"> • commit to working with clients, employees, sub-contractors, and other providers to deliver quality employment services by ensuring staff have the skills and experience they need to provide quality and culturally sensitive services to job

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		<p>seekers employers and local communities and working in collaborative partnerships with stakeholders and communities to identify needs and how they can be met.</p> <ul style="list-style-type: none"> • commit to helping each job seeker find their pathway into employment by meeting the Service Guarantees and tailoring assistance to the job seekers' personal circumstances, skills, abilities and aspirations. <p>In many locations across Australia, Job Services Australia providers can offer specialised services to job seekers who have been assessed as being highly disadvantaged. Highly disadvantaged job seekers can include Indigenous Australians, people from linguistically and culturally diverse backgrounds and people with disabilities.</p> <p>Tenderers were required to describe how they would deliver innovative, individualised and tailored services to meet the diverse needs of job seekers within their ESA including strategies to assist the full range of job seekers—from those who are work ready to those who are highly disadvantaged (for example Indigenous Australians, people from linguistically and culturally diverse backgrounds and people with disabilities), and who face multiple non-vocational barriers (including family violence) to employment.</p> <p>DEEWR does not prescribe how JSA providers manage their job seekers, however we do encourage providers to have links with relevant community service providers. In the case of domestic violence we would provide guidance to JSA providers to facilitate access to the relevant services including the Police, Centrelink social workers and other support services as appropriate to the needs of the individual job seeker.</p> <p>The objective of the Indigenous Employment Program is to increase Indigenous Australians' employment outcomes and participation in economic activities, contributing to the Government's commitment to halving the gap between Indigenous and non-Indigenous employment outcomes within a decade.</p> <p>IEP supports a range of activities that will develop the capacity of employers, Indigenous Australians and their communities to increase opportunities through employment, business and other economic development activities.</p> <p>The IEP through its IEP Panel/s or directly with employers provides a tailored package of assistance to encourage and support Indigenous Australians to take up training and</p>

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		employment opportunities, stay in jobs and enhance their future employment prospects.
Question 15–13	In what ways, if any, should the JSA or DES systems be reformed to assist job seekers from culturally and linguistically diverse communities who are experiencing family violence?	See response to Question 15-12
Question 15–14	In what ways, if any, should the JSA or DES systems be reformed to assist job seekers with disability who are experiencing family violence?	See response to question 15-12
Question 16–1	How do, or how could, Fair Work Australia’s role, functions or processes protect the safety of applicants experiencing family violence?	DEEWR notes the consideration of the role and functions of Fair Work Australia is a matter for that organisation, noting that Fair Work Australia is obliged to respect confidentiality.
Question 16–2	In making an application to Fair Work Australia, applicants are required to pay an application fee. Under the Fair Work Regulations 2009 (Cth) an exception applies if an applicant can establish that he or she would suffer ‘serious hardship’ if required to pay the relevant fee. In practice, do people experiencing family violence face difficulty in establishing that they would suffer ‘serious hardship’? If so, how could this be addressed?	Fees are only payable in respect of unfair dismissal applications. DEEWR notes the administration of this process is a matter for Fair Work Australia.
Question 16–3	In applying for waiver of an application fee, referred to in Question 16–2, applicants must complete a ‘Waiver of Application Fee’ form. How could the form be amended to ensure issues of family violence affecting the ability to pay are brought to the attention of Fair Work Australia?	As mentioned above, fees are only payable in respect of unfair dismissal applications. DEEWR notes amendments to this form are a matter for the President of Fair Work Australia. However, question 14 of the ‘Waiver of Application Fee’ form already provides scope for applicants to provide any other information which they believe Fair Work Australia should consider when deciding whether to waive the fee.
Question 16–4	In Proposals 14–1, 17–1 and 17–3 the role of the Fair Work Ombudsman is discussed. In what other ways, if any, could the Fair Work Ombudsman’s role, function or processes protect employees experiencing family violence?	DEEWR is of the view that the Fair Work Ombudsman’s role should not be expanded beyond its current role.
Proposal 16–1	Section 65 of the Fair Work Act 2009 (Cth) should be amended to provide that an employee who is experiencing family violence, or who is providing care or support to a member of the employee’s immediate family or household who is experiencing family violence, may request the employer for a change in working arrangements to assist the employee to deal with circumstances arising from the family violence. This additional ground should: a) remove the requirement that an employee be employed for 12 months, or be a long-term casual and have a reasonable expectation of continuing employment on a regular and systemic basis, prior to	An employee experiencing family violence and who has responsibility for the care of a child under school age, may currently request a change in working arrangements in accordance with section 65. This may include flexible hours to assist an employee manage child care arrangements after leaving an abusive partner. Further, the Fair Work Act 2009 already provides a range of additional measures that may assist employees who are experiencing domestic or family violence. These measures include statutory minimum entitlements under the National Employment Standards to personal and carers’ leave for full-time and part-time employees, an entitlement to two days per occasion of compassionate leave to support a family

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	<p>making a request for flexible working arrangements; and b) provide that the employer must give the employee a written response to the request within seven days, stating whether the employer grants or refuses the request.</p>	<p>member with a serious personal illness or personal injury, and a range of general protections. For example, it is unlawful for an employer to dismiss an employee for temporary absence from work, due to illness or injury where the employee has given the employer a medical certificate or is on personal/carer's leave.</p> <p>In respect of the eligibility requirements, requiring an employee to complete at least 12 months of continuous service with their employer prior to being eligible to request flexible working arrangements, ensures there is a reasonable time to establish the employee/employer relationship. Further, this requirement provides a reasonable qualifying period to balance the needs of the employer and employee. Employers and employees are also free to directly negotiate working arrangements that best suit their individual needs.</p> <p>If the 12 months' continuous service requirement was removed for employees experiencing family violence, this would result in a disparity between entitlements available to other groups of employees eligible to request flexible working arrangements (i.e. parents of children under school age). The existing requirement that an employer must respond to a request for flexible working arrangements within 21 days acknowledges the time required for employers to sufficiently consider and respond to such a request.</p>
<p>OPTION ONE: Proposal 16-2</p>	<p>The Australian Government should amend the National Employment Standards under the <i>Fair Work Act 2009</i> (Cth) to provide for a new minimum statutory entitlement to 10 days paid family violence leave. An employee should be entitled to access such leave for purposes arising from the employee's experience of family violence, or to provide care or support to a member of the employee's immediate family or household who is experiencing family violence.</p>	<p>As outlined in the response to proposal 16-1, the Fair Work Act 2009 already provides a range of measures that may assist employees who are experiencing domestic or family violence. These measures include statutory minimum entitlements to personal and carers' leave for full-time and part-time employees, an entitlement to two days per occasion of compassionate leave to support a family member with a serious personal illness or personal injury, access to flexible working arrangements and a range of general protections.</p> <p>The Fair Work Act 2009 also requires that all modern awards and enterprise agreements must include a model flexibility clause. This allows employers and individual employees to make individual flexibility arrangements that suit specific needs.</p> <p>It should also be noted that the National Employment Standards (NES) are minimum entitlements and should be seen as the benchmark in which employers can improve upon. The NES does not prevent employers from providing more generous provisions including domestic violence provisions in industrial instruments.</p>

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OPTION TWO: Proposal 16-3	The Australian Government should amend the National Employment Standards under the Fair Work Act 2009 (Cth) to provide for a minimum statutory entitlement to an additional 10 days paid personal/carer's leave. An employee should be entitled to access the additional leave solely for purposes arising from the employee's experience of family violence, or to provide care or support to a member of the employee's immediate family or household who is experiencing family violence.	Refer to answer to Proposal 16.2 for further information.
OPTION TWO: (cont) Proposal 16-4	The Australian Government should amend the National Employment Standards under the Fair Work Act 2009 (Cth) to provide that an employee may access the additional personal/carer's leave referred to in Proposal 16-3: a) because the employee is not fit for work because of a circumstance arising from the employee's experience of family violence; or b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support as a result of their experience of family violence.	Refer to answer to Proposal 16.2 for further information.
Proposal 17-1	The Fair Work Ombudsman should develop a guide to negotiating individual flexibility arrangements to respond to the needs of employees experiencing family violence, in consultation with the Australian Council of Trade Unions and employer organisations.	DEEWR notes the Fair Work Ombudsman has developed a best practice guide on the use of individual flexibility arrangements (IFAs). The guide explains how employees and employers can use IFAs to create flexible work practices that enhance productivity and job satisfaction. The amendment of the current IFA guide or the development of a new best practice guide to respond to the need of employees experiencing family violence is a matter for the Fair Work Ombudsman.
Proposal 17-2	The Australian Government should encourage the inclusion of family violence clauses in enterprise agreements. Agreements should, at a minimum: a) recognise that verification of family violence may be required; b) ensure the confidentiality of any personal information disclosed; c) establish lines of communication for employees; d) set out relevant roles and responsibilities; e) provide for flexible working arrangements; and f) provide access to paid leave.	DEEWR has provided funding to the Australian Domestic and Family Violence Clearinghouse (ADFVC) to carry out a project on domestic violence and workplace rights and entitlements. The principal aim of the project is to improve the knowledge and capacity of unions and employer organisations to support employees experiencing domestic violence including through collective bargaining.
Proposal 17-3	The Fair Work Ombudsman should develop a guide to negotiating family violence clauses in enterprise agreements, in conjunction with	DEEWR notes that the development of any new Best Practice Guides is a matter for the Fair Work Ombudsman.

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	the Australian Domestic and Family Violence Clearinghouse, the Australian Council of Trade Unions and employer organisations.	Further, as part of the ADFVC's Workplace Rights and Entitlements project, materials such as facts sheet have been developed for employers, unions and employees on the inclusion of family violence clauses in enterprise agreements.
Proposal 17-4	In the course of its 2012 review of modern awards, Fair Work Australia should consider the ways in which family violence may be incorporated into awards in keeping with the modern award objectives.	It would be open to any stakeholder to raise such issues or suggestions with Fair Work Australia during the course of the review.
Proposal 17-5	In the course of its first four-yearly review of modern awards, beginning in 2014, Fair Work Australia should consider the inclusion of a model family violence clause.	Depending on the process for and the scope of the review it may be open to any stakeholder to raise such issues or suggestions with Fair Work Australia during the course of the review.
Proposal 17-6	Fair Work Australia members should be provided with training to ensure that the existence of family violence is adequately considered in deciding whether there are 'exceptional circumstances' under s 394(3) of the Fair Work Act 2009 (Cth) that would warrant the granting of a further period within which to make an application for unfair dismissal.	DEEWR notes this is a matter for the Fair Work Australia President.
Question 17-1	Section 352 of the Fair Work Act 2009 (Cth) prohibits employers from dismissing an employee because they are temporarily absent from work due to illness or injury. Regulation 3.01 of the Fair Work Regulations 2009 (Cth) prescribes kinds of illness or injury and outlines a range of other requirements. In what ways, if any, could the temporary absence provisions be amended to protect employees experiencing family violence?	<p>Regulation 3.01 of the Fair Work Regulations 2009 (Cth) is broadly drafted to define a prescribed kind of illness or injury as one that exists if the employee provides a medical certificate or statutory declaration about the illness or injury within a certain timeframe. The definition does not confine the 'illness or injury' to physical illness or injury.</p> <p>It is possible that the current provision is broad enough to cover a temporary absence due to illness or injury related to family violence. However, to put the matter beyond doubt, the section could be amended to include specific reference to absence due to family violence.</p>
Proposal 18-1	<p>Safe Work Australia should include information on family violence as a work health and safety issue in relevant Model Codes of Practice, for example:</p> <ul style="list-style-type: none"> a) 'How to Manage Work Health and Safety Risks'; b) 'Managing the Work Environment and Facilities'; and c) any other code that Safe Work Australia may develop in relation to other topics, such as bullying and harassment or family violence. 	Please refer to comments at the end of the document
Proposal 18-2	Safe Work Australia should develop model safety plans which include	

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	measures to minimise the risk posed by family violence in the work context for use by all Australian employers, in consultation with unions, employer organisations, and bodies such as the Australian Domestic and Family Violence Clearinghouse.	
Proposal 18-3	Safe Work Australia should develop and provide education and training in relation to family violence as a work health and safety issue in consultation with unions, employer organisations and state and territory OHS regulators.	
Proposal 18-4	Safe Work Australia should, in developing its Research and Data Strategy: a) identify family violence and work health and safety as a research priority; and b) consider ways to extend and improve data coverage, collection and analysis in relation to family violence as a work health and safety issue.	
Question 18-1	What reforms, if any, are needed to occupational health and safety law to provide better protection for those experiencing family violence? For example, should family violence be included in the National Work Health and Safety Strategy?	

To be submitted as an attachment

Safe Work Australia

Thank you for an opportunity to comment on the ALRC Discussion Paper on Family Violence and Commonwealth Laws. Safe Work Australia will be responding to the specific proposals recommended in the discussion paper, however, this department which has also played a lead role in the harmonisation of OHS laws and regulations consider that the following contextual information is important when considering the proposals being canvassed in the Discussion Paper.

The consultation, legislative drafting process and decision process for the model Act, model regulations and model codes of practice has been overseen and agreed to by the Workplace Relations Ministers' Council (WRMC) as part of the Council of Australian Government's (COAG) agreement under the Intergovernmental Agreement for Regulatory and Operational Reform in OHS (IGA).

Safe Work Australia is the Government statutory agency with responsibility for improving work health and safety and workers compensation arrangements across Australia. Membership of Safe Work Australia consists of representatives from Commonwealth, State and Territory governments, employer and employee organisations.

In developing the regulations and codes of practice Safe Work Australia established a Strategic Issues Group on OHS (SIG-OHS) to develop the model work health and safety Regulations and Codes of Practice as outlined in the IGA, and that have been determined as a priority for OHS. These Regulations and Codes of Practice have been subject to extensive public consultation prior to consideration by WRMC.

The processes in place for the development of Regulations and Codes of Practice impact on the proposals suggested in the ALRC Discussion Paper, and are currently outside the process and scope of issues identified through the consultation processes undertaken to date. Any additional codes or content for codes would need to be agreed through Safe Work Australia's members.

It is also relevant to note that at this time five out of the nine jurisdictions have put the model Act before their parliaments, with the Commonwealth Work Health and Safety Bill introduced to Parliament on 6 July 2011.