

Full name:

AASW Qld Branch and Welfare Rights Centre

Proposal 5–1:

Providing a definition of family violence that is reflective of the lived experiences of women and children is a critical aspect of developing an inclusive and appropriate framework for legislative reform.

As previously stated in Chapter 3-1, we recommend that all relevant Commonwealth Laws and Regulations 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:

- a) physical violence;
- b) sexual assault and other sexually abusive behaviour;
- c) financial 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;
- i) Socially isolating a person;
- j) Denying cultural and/or religious autonomy; and
- k) threats to commit any of the above or threats to commission others to do so;
- l) behaviour by the person using violence that causes a child to be exposed to the effects of behaviour referred to in (a)–(k) above.

The AASW Qld and WRC highlight the importance of Social Security Law having specific regard to economic abuse and suggest several examples are cited with the Act.

Brannigan (2004) asserts that financial abuse is a profoundly unrecognised phenomenon which is deeply hidden in societal expectations that couples equitably share income and resources for the good of the family. Forms of financial abuse can include denied access to bank accounts, lack of decision making on financial expenditure, denied money to buy food and clothing, medicine and pay bills. Women may be coerced into paying their partner's debts which they did not incur or having loans taken in their names which results in women being debt ridden long after the relationship has ended.

Proposal 5–2:

Comprehensive and appropriate training for all staff across the Social Security Appeals Tribunal and Administrative Appeals Tribunal, as well as staff within Centrelink, Child Support Agency and Family Assistance Office staff, and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should be compulsory. We recommend that such training includes information on:

- the nature, features and dynamics of family violence, and its impact on victims, in particular those from high risk and vulnerable groups;
- dynamics of financial abuse and ways this affects victims accessing financial assistance;
- the context in which violence occurs to dismiss the concepts of 'mutual battering';
- recognition of the impact of family violence on particular customers such as Indigenous

peoples; those from culturally and linguistically diverse backgrounds; those from lesbian, gay, bisexual, trans and intersex communities; children and young people; older persons; and people who live with a disability;

- working from an inclusive framework and practice;
- ways to ensure customers who disclose family violence, or fear for their safety, know about their rights and possible service responses, such as those listed in Proposal 4–8;
- how to respond appropriately to victims of family violence. In particular, training should include information about the potential impact of family violence on a job seeker’s barriers to employment;
- training on when and why women / victims make decision to stay or leave an abusive relationships;
- the roles and responsibilities of everyone within the Social Security in ensuring the safety of victims and their children;
- understanding and interpreting procedures aimed at providing enhanced assistance to victims;
- impact of secondary victimisation; and
- identifying appropriate referral pathways.

Proposal 5–3:

The provision of what may be seen as ‘adequate’ documentation to support a claim of family violence can be problematic for some women. It would be feasible that on leaving or attempting to leave family violence, Centrelink may be the first agency to which a victim turns for support. Ensuring they will be financially viable is a key factor determining when women leave and how well they cope once they have left. Women should not be forced to report to other agencies, i.e. police, courts etc in order to obtain the necessary documentation.

The AASW Qld and WRC recommend that in those cases where assessment cannot occur with confidence, the matter should be referred to a Centrelink Social Worker or the Family Violence Case Management Team for consideration.

Proposal 5–4:

While the AASW Qld and WRC acknowledge that inevitably different weight will be given to different types of information provided, we note that a hierarchy of ‘forms of information’ could result in unfair outcomes for the victim of family violence. For example, if that person had no third party corroboration and therefore their story was taken less seriously.

Furthermore, if a person only had one of the types of supporting forms of information listed in Proposal 5-3, would that mean that their situation was viewed as less serious and therefore less deserving of consideration? If there is genuine, considered doubt as to the veracity of a person’s view of their situation, then they should be referred to a Centrelink Social Worker for an assessment as referred to in our response to Proposal 5-3 above.

Proposal 5–5:

Training should be comprehensive and ongoing as outlined in 5.2.

Proposal 5–6:

The AASW Qld and WRC support Proposal 5-6, and we note that the Guide should make it clear that in cases of young people seeking Youth Allowance at the independent rate on the basis of it being ‘unreasonable to live at home’ due to family violence, it is not appropriate for Centrelink to seek verification of this from the young person’s family member. Safety considerations should always take precedent in any interaction with young people who are experiencing family violence.

Proposal 5–7:

The AASW Qld and WRC agree with Proposal 5-7 and recommend this point be included in training as outlined at 5.2.

Proposal 5–8:

The AASW Qld and WRC have made considerable comments at 4-3 regarding our concerns on the introduction of universal screening for family violence and request that our recommendations in Chapter 4-3 be considered in response to Proposal 5-8.

We believe that Centrelink should provide information on family violence to all customers and then facilitate a safe, supportive and inclusive practice for those victims of family violence who choose to disclose. With specific regard to Proposal 5-8, the system needs to be flexible enough to allow jobseekers to choose for themselves whether or not they wish family violence be taken into account when drawing up their EPP. While participation requirements will be too onerous for some victims of family violence, or simply more than they can deal with at the time, for others, the obligation to participate can provide them with an argument as to why they need to go out and interact with others and can therefore be beneficial. The client needs to be able to determine what is most appropriate for their particular circumstances.

Question 5–1 :

We again draw attention to the comments made at Proposal 4-3 regarding our concerns on the use of universal screening.

Proposal 5-9:

Our view is that the advantages and disadvantages of the Deny Access Facility classification should be explained to the client and the person should be free to choose to access this at the time, or later, should their needs change. Clients of the Welfare Rights Centre have found that the DAF classification can hamper their dealings with Centrelink, causing frustrating delays in, for example, obtaining information. Clients would need to be given information on the process of having this facility removed from their files when they have re-established themselves and are at a point where safety concerns have reduced.

Question 5–2 :

The AASW Qld and WRC strongly agree that a person should only be placed on the ‘Deny Access Facility’ at their request. The purpose of the deny access facility should be explained to persons who disclose family violence, as should the disadvantages of this facility. Clients of the Welfare Rights Centre have found that the DAF classification can hamper their dealings with Centrelink, causing frustrating delays in, for example, obtaining information. Whether or not to use this facility should be at the discretion of the client.

Proposal 6–1 :

The AASW Qld and WRC are concerned that victims of family violence may not always be adequately informed of their entitlements to social security. Information on eligibility and exemptions specifically in respect to benefits allowable to victims of family violence, need to be provided in a consistent and user friendly manner. The Guide to Social Security Law should also include examples showing the impact of family violence on each relationship ‘factor’ and also includes suggestions for questions to assist in eliciting this information. For example, in relation to finances, questions should consider the level of decision making victims of family violence have had on family resources and they way in which this has impacted on them.

Proposal 6–2:

The AASW Qld and WRC note that Centrelink often operates in a ‘climate of disbelief’ which at times can be punitive and unsupportive. Income security is of pivotal importance for women leaving abusive relationships and gaining the right support from Centrelink is critical

to this. Centrelink staff need regular training and supervision on the myriad of ways family violence impacts on the lives of women and their children, especially aspects of financial abuse which are rarely understood and acknowledged within Centrelink.

Proposal 6-3:

We acknowledge the high incidence of financial abuse that occurs within family violence and the extreme poverty in which many victims and their children are forced to live. The way in which financial resources are exploited within family violence needs to be better understood to allow for the treatment of income as separate and not pooled as 'household income'.

Branigan's (2004) research highlights that 83% of women reported they were expected to take on the majority of financial responsibility for running the household with little or no access to their partner's income. The implications of this on the women and their children need to be recognised, for example, one woman reported experiencing anaemia as she was forced to go continually without food.

Having access to financial resources is a critical factor in women's decision making on leaving violent relationships.

"I planned to leave one day so began making arrangements. I started collecting the change from the grocery money and became adept at 'running out of items' that need replacing. I would put money in a cavity in the linen closet, \$5 at a time. I felt like a fugitive and lived in constant anxiety." (Victim quoted in "His Money or Our Money. 2004).

Proposal 6-4:

The AASW Qld and WRC support Proposal 6-4.

Question 6-1:

The AASW and WRC are responding to this question on two levels: Practically – Are those who would benefit from the discretion able to access it?

Legally - Whether or not the discretion can correctly be applied to a person in a relationship who is experiencing family violence.

Practically:

The discretion under s24 is not necessarily accessible, in order to access this, a person either needs to be aware of the option (most unlikely for most Centrelink customers), or have this option explained to them by a Centrelink officer. The latter is unlikely to occur, due to the expert level of Social Security legal knowledge required and to the fact that Centrelink works from the starting point that a customer needs to ask or claim for something. This is why we believe that the Social Security Guide needs to direct decision making.

This issue underlines the fundamental problem with s24: benefitting from it requires expert knowledge. It also raises the question: how many decision makers would consider this option routinely in cases of family violence?

The other problem identified with the administration of s24 is that decision makers can become 'stuck' on the issue of whether or not the situation is "extreme" or "special". (This problem was raised by WRC in their response to Issues Paper 39.)

Legally:

Section 24 provides for a person to be treated as a single person for a special, limited purpose. As the WRC noted in their submission to Issues Paper 39, family violence is rarely, if ever, used as a reason for applying the discretion.

We support the recommendation made by the WRC in their earlier submission to the ALRC, that section 24 be amended in order to provide for a victim of family violence to not be treated as a member of a couple. While from a hard-headed, pragmatic point of view, this discretion cannot be applied as some sort of “compensation” for the person experiencing family violence, there are situations where to apply the discretion would be desirable and fair. For example, in the case where a victim of family violence has no independent access to money, (due to the control of her partner) and is not able to receive a Social Security payment, due to her partner’s income being over the income limit and she wishes to save up some money in order to be able to leave the relationship.

We note that while the purpose of ensuring that the customer has sufficient / more funds would be directed towards facilitating the victim’s independence, there is a risk that the extra funds will instead be used by the perpetrator, who takes this away from the victim. In this way, the perpetrator is thereby actually rewarded for their actions. This risk is noted, as something to be aware of, not as a reason for not using s24 where it is appropriate.

In relation to point c), we suggest that once someone has disclosed family violence and been referred to a Social Worker– they should be told about s24 provision.

Proposal 6–5:

The AASW Qld and WRC support Proposal 6-5. While the Social Security Law Guide 3.2.5.30 already mentions ‘violence’, family violence includes a much broader range of behaviours and spelling it out for decision makers can only serve to facilitate decision making. Experience has shown that decision makers are less inclined to grant Unreasonable To Live At Home in situations where the violence is other than physical.

Question 6–2:

The AASW Qld and WRC agree with this. The WRC has had cases where unless the ‘violence’ is physical, the decision maker has not considered the situation sufficiently serious to warrant the granting of UTLAH. WRC is currently appealing one of these because the point is already arguable, however if “family violence”, with its much broader definition, was specified in the Act, there would be no need for these young people to have to go through the appeal process and, most likely, fall through the cracks in the process.

Question 6–3:

The AASW Qld and WRC support the inclusion of a broad definition of family violence as outlined in Proposal 3-1. Past experiences have shown that there is not a consistent understanding of family violence and how this impacts on people dependent on them with specific reference to children and young people, CaLD women, Aboriginal and Torres Strait Islander women and women with disabilities. Furthermore, there is a problem with the existing wording of the legislation, in that it refers to ‘family breakdown’, which overlooks the fact that families can stay intact, despite the persistence of damaging Family Violence, and therefore the young person may not qualify for Unreasonable To Live At Home.

(b) remove the requirement for the decision maker to be satisfied of ‘a serious risk to the person’s physical or mental well-being’?

The risk and harm posed to a young person’s well-being through the impact of family violence is well documented. We believe it is time to move on from the antiquated belief that children are tough and can adapt to anything. The research clearly shows us that children experience significant trauma as a result of family violence, and while some children are able to adapt to some extent, no child should not have to endure family violence as identified and

supported in the national frameworks: Protecting Children is Everyone's Business (2009) and the National Plan to Reduce Violence against Women (2009).

Proposal 6–6:

The AASW Qld and WRC support Proposal 6-6. Not only is it most unfair to expect the victims of family violence to have bear sole responsibility for having to establish their entitlement, it can also exacerbate the risks to them if they are required to seek information from their abusive parent/s/ partner/ family. We suggest that Centrelink use the extensive powers it already has to obtain information, (e.g. in cases of debt investigation), with a view to assisting a customer.

Question 7–1:

Proposal 7–1:

The AASW Qld and WRC support Proposal 7-1. The inclusion of a broad definition in Social Security Law will provide a wider explanation and understanding of family violence and the ways in which such violence is perpetrated against victims and the power and control that perpetrators have over their victims.

For many women leaving abuse can also mean they are separating themselves from their partner's finances, of which they often have no knowledge. By Centrelink asking victims to provide information about their partner's finances that may not be readily available to them, could seriously compromise their safety if they are required to seek this. Withholding payment from a victim of family violence on the grounds that they cannot provide information relating to their partner, including tax file numbers, can produce unjust outcomes for the victim as well as pose added risks. Withholding such vital information from the victim becomes another means of exerting control over them by the perpetrator.

Question 7–2:

The AASW Qld and WRC do not support the invoking of s192. Centrelink does use this power to look at partner income for the purposes of checking a customer's Family Tax Benefit entitlement. If this power was used to find a partner's tax file number or to establish a person's identity, this would save a great deal of unnecessary stress for the victim. For example, in situations where the perpetrator partner refuses to provide their income details, Centrelink should use s192 to obtain this information from the Taxation department.

Question 7–3:

There are many occasions whereby a victim of family violence may not have a current address or an address they feel they can disclose without compromising their safety. In those instances it should be acceptable to agree to victims of family violence having their mail sent to community services C/- addresses, or Centrelink Social Workers C/- addresses.

Problems can arise with this system if Centrelink has difficulty contacting a customer. For example, the Welfare Rights Centre recently experienced a situation where a client's payment was suspended until such time as the customer could provide a verifiable address to Centrelink. This caused a great deal of distress and further victimised the woman who was a victim of family violence.

If victims of family violence are withholding their address for safety reasons, they should not be disadvantaged by this through the suspension of payments.

Proposal 7–2:

It is our belief that access to the family violence exception be extended to Prospective Marriage (Subclass 300) Visa holders where reasonable evidence is presented to substantiate that claim. People who access Prospective Marriage (Subclass 300) Visas have relocated from their country of origin with the reasonable belief that they were coming to Australia to be married or to form and maintain a long term relationship. Those aspirations are shattered upon the realisation that the future partner turns out to be a perpetrator of violence and abuse. It seems reasonable to provide protection and a pathway to residency rather than to penalise the victim and deport them (AASW, 2011).

On the issue of evidentiary requirements in the form of Domestic Violence Protection Orders, this assumes that all victims would readily access the courts. Anecdotal evidence from the women's sector demonstrates that many women from CaLD backgrounds are very fearful of legal processes and courts. This often stems from previous experiences of oppression in country of origin and/or lack of understandings of civil and criminal matters. Additionally; the lack of support and knowledge of systems in Australia render women with limited to no resources and lead them to not taking action that involves legal processes. It is important therefore, that evidentiary requirements other than judicial evidence are accepted and processed as per the Migration Regulations (AASW, 2011).

Statutory Declarations are considered an alternative to judiciary evidence but this can also be problematic. Deferring victims of domestic and family violence who have already been assessed by 'Competent People' to have experienced domestic and family violence presents scenarios that need to be reviewed as a matter of urgency.

Question 7-4:

We propose a special category of Visa, enabling entitlement to Special Benefit, applies to those who due to family violence and the whole of their circumstances ought not to be expected to leave Australia. For example, this would be for a victim of family violence who was parenting children and needed to remain in Australia in order for the children to continue to have access to both parents or for the victim to have access to their children.

By way of example, a Welfare Rights Centre client in such a situation was not entitled to Special Benefit as she was a "non-protected Special Category Visa" holder. After leaving a violent relationship and subsequently losing her job, she was faced with the choice of returning to New Zealand or living in her car. She chose the latter, in order to be able to continue to see her children, who had remained in the care of the perpetrator. To extend this to tourists would not seem to be practicable or realistic, given that they are in Australia only for a short period and are expected to be self supporting during that period.

Question 7-5:

Refer to our response to Question 7-4

Question 7-6:

The above question raises several issues with respect to family violence. The client may be a person with a disability which has increased their vulnerability to violence, or they may be a person who has an acquired disability as the result of the violence they have endured. Our suggestion is that fundamental to all decision making is the safety and wellbeing of victims of violence. Therefore, when a person has reached Australian shores as a new resident, we have an obligation under the Human Rights Conventions we are signatory to, to provide the appropriate level of support. Victims of violence suffer enormous trauma and distress, to further re victimise a person on the basis of disability and therefore, access to a disability pension is something that we do not support. The AASW Qld and WRC believe

that this is an area that requires greater consultation, but that fundamentally, the overarching principles of our duty to care for victims of violence in Australia, remains paramount.

Proposal 7-3:

We agree with Proposal 7-3. The onset of family violence for immigrant women can often begin once they have arrived in Australia and are isolated from their family, friends and other supports. Anecdotal evidence from the multicultural women's services show that many women are either forced to stay with their abusing partner or are often deterred from accessing emergency accommodation services owing to their lack of financial resources, including welfare payments and Medicare cards. The evidentiary requirements to demonstrate family violence is occurring needs to be reflective of the specific needs of immigrant women and children.

Question 7-7:

Financial support is often a determining factor on whether a victim of family violence will leave or stay with their abuse. The barriers can encompass many factors, but securing financial support is critical to this. We believe the dollar-for-dollar reduction in Special Benefit for any money earned through paid work is unfair and cruel and contrary to the goal of assisting recipients achieve independence. This payment should have an earnings threshold, as per other payments. Such a change would assist people experiencing family violence to regain their independence.

Proposal 7-4:

The impact of family violence on a person's capacity to work will vary from individual to individual and may change with time. For some, the impact of family violence may mean that engaging in job seeking activities and/or paid work is not possible or reasonable to expect – at least for a period of time. For others, having participation requirements may provide the person with needed justifications as to why they have to go out and associate with other people from time to time, thus serving to mitigate against social isolation.

The AASW Qld and WRC believe that training for Centrelink customer service advisers should be regular and include:

- all aspects of the training topics already outlined at 4-6;
- 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
- information on support services both within Centrelink as well as external services.

Question 7-8:

Our view is that while it is possible to get an exemption from participation for a personal or family crisis, specific reference to family violence should be included in the exemption criteria.

Question 7-9:

Question 7-10:

Proposal 7-5:

We refer to Proposal 7-4, we note that the impact of family violence on a person's capacity to work will vary from individual to individual and may change with time. For some, the impact of family violence may mean that engaging in job seeking activities and/or paid work is not possible or reasonable to expect – at least for a period of time. For others, having participation requirements may provide the person with needed justifications as to why they have to go out and associate with other people from time to time, thus serving to mitigate against social isolation.

Proposal 7-6:

The AASW Qld and WRC agree with the above and believe that giving victims 2 weeks exemption is totally inadequate when they may have a myriad of things going on for them. A longer minimum period, of 13 weeks, would be a more reasonable time period.

Question 7-11:

Question 7-12:

Leaving a violent relationship does not always ensure safety as many victims are stalked, threatened and at times killed post separation. Many victims will move several times seeking safety for themselves and their children. We suggest that a person at risk of having their payment suspended as per above, should be asked for an explanation of why they moved, prior to imposing the exclusion period. If the reason is family violence they should be informed that an exemption is possible and what they need to do to obtain one. Furthermore, Centrelink staff should take this opportunity to provide the individual with information about support services available to them.

Proposal 7-7:

The AASW Qld and WRC agree that family violence is already considered a 'reasonable excuse', but experience shows that the impact of family violence is not always understood or appreciated by Centrelink decision makers. Therefore, we would recommend that training be provided to staff about the impact of family violence and the implications for victims.

Question 7-13:

Proposal 8-1:

The AASW Qld and WRC agree that the current arrangement of 7 days claim for a crisis payment should be reviewed with specific consideration for victims of family violence. Many victims are not aware that they can even apply for a crisis payment nor that they can receive this up to four times in a twelve month period. Information needs to be made available for victims of family violence which explains clearly what their entitlements are and when and how they can apply.

We propose that the claim period for a crisis payment be extended to 13 weeks.

Question 8-1:

The AASW Qld and WRC believe that a Crisis Payment should also be available to victims of family violence would also qualify for a Special Benefit.

Proposal 8-2:

The AASW Qld and WRC support Proposal 8-2 and refer to the comments made at Proposal 6-3.

Proposal 8-3:

The AASW Qld and WRC support Proposal 8-3 and agree that family violence should be considered as a separate category with criteria based against a person's overall safety and wellbeing.

Proposal 8-4:

The AASW Qld and WRC support Proposal 8-4 and highlight the fact that many victims of family violence are often in dire poverty upon leaving an abusive partner. Sharp's (2008) study on the impact of financial abuse on women showed that 47% of the women were in paid employment before meeting their abusive partner and only 16% were in paid employment after leaving the violent relationship. Correspondingly only 18% of the women were receiving benefits prior to meeting their abusive partner while 84% were receiving benefits post separation. This research highlights the importance of this proposal.

Proposal 8-5:

The AASW Qld and WRC agree with Proposal 8-5 but suggest that this would need to

consider whether the delegate is aware of the existence of family violence. Furthermore, it is important to consider that a person with limited capacity / capability to consent may also not be able to disclose family violence.

Question 8–2:

The AASW Qld and WRC believe the issue of who is the debtor in such cases can exacerbate the difficulties faced by the victim. Welfare Rights Centre has examples of female victims of family violence having a Centrelink debt to repay, as a consequence of their receiving PPS when it should have been PPP, or from receiving PPP at a too high rate. Usually in such situations, the woman is aware of her obligations, but is unable to report accurately to Centrelink, either because her partner refuses to keep her accurately informed of his earnings, or because he coerces her into misinforming Centrelink. Either way, the victim is the debtor, compounding the difficulties she faces. In such couple situations, where arguably the perpetrator has benefitted from this arrangement, it would be more just for the debt to be divided between the parties, or to be recovered wholly from the perpetrator.

We believe in situations of coercion, the question of whether the victim is at all responsible needs to be addressed. “Eventually I didn’t need to be told to lie, I just did” (As per Watson v Secretary, 2002). This is a significant issue that needs to be addressed. See also amendments to s1237AAD

WAIVER

Proposal 8–6 Section 1237AAD of the Social Security Act 1991 (Cth) provides that the Secretary of FaHCSIA may waive the right to recover a debt where special circumstances exist and the debtor or another person did not ‘knowingly’ make a false statement or ‘knowingly’ omit to comply with the Social Security Act. Section 1237AAD should be amended to provide that the Secretary may waive the right to recover all or part of a debt if the Secretary is satisfied that ‘the debt did not result wholly or partly from the debtor or another person acting as an agent for the debtor’.

The AASW Qld and WRC note that this proposal is somewhat unclear. We are concerned with the lack of avenue for appeal of a debt for victims of family violence who “knowingly” misinformed Centrelink due to coercion from their violent partner, as referred to in our comments on Question 8-2 above.

The AASW Qld and WRC recommend that “knowingly” be removed as this section already states “...and it is desirable to waive”.

The Guide to Social Security Law should contain guidelines as to what “desirable” means. This would direct the decision maker to give significant weight to whether or not the person “knowingly” received a payment to which they were not entitled over other factors, without it excluding cases that might otherwise have overwhelming factors, such as family violence coercion, making it still desirable to waive.

Proposal 8–6:

Proposal 8-7:

The AASW Qld and WRC agree with Proposal 8-7. This would help with the problem that family violence is often not considered ‘unusual, uncommon or exceptional’ by decision

makers. Where family violence is a significant cause of how/why the debt occurred, it should be taken into account.