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10 October 2011

Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

Email: cwth_family_violence@alrc.gov.au

Re: Submission on *Discussion Paper 76 – Family Violence and Commonwealth Laws*

Dear Executive Director,

The National Welfare Rights Network (NWRN) is a network of community legal centres throughout Australia which specialise in Social Security law and its administration by Centrelink. Based on the experience of clients of NWRN members, we also engage in policy analysis and lobbying to improve the current Social Security system and its administration.

NWRN member organisations provide casework assistance to their clients, generally by phone, at least in the first instance. NWRN members also conduct training and education for community workers and produce publications to help Social Security recipients and community organisations understand the system.

The discussion paper *Family Violence and Commonwealth Laws* canvasses a broad range of issues which impact of the lives of people experiencing family violence and NWRN welcomes the opportunity to respond to the proposals and questions explored in the report.

We acknowledge the lateness of this submission and appreciate the Commission's extension to allow for adequate consideration of the issues and consultations with our members.

Should you wish to obtain additional information on any of the matters raised in this submission please do not hesitate to contact Mr Lee Hansen, Principal Solicitor, on 02 9211 5389.

Yours sincerely,

Maree O'Halloran, AM
President
National Welfare Rights Network

Discussion Paper 76 – *Family Violence and Commonwealth Laws*

RESPONSE TO PROPOSALS AND QUESTIONS

Chapter 3: Common Interpretative Framework

Proposal 3–1 The *Social Security Act 1991* (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:
(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.

Proposal 3–3 *A New Tax System (Family Assistance) Act 1999* (Cth) should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1.

Proposal 3–4 *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth) should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1.

NWRN supports amendments to Social Security and Family Assistance legislation for inclusion of the above stated definition. NWRN considers that it is highly desirable to achieve a common interpretative framework across different legislative schemes.

We note that there will be a need to define 'family member' as the current definition of family member in the *Social Security Act* is exceptionally narrow. Section 23(14) of the *Social Security Act* defines family member as:

(a) the partner or a parent of the relevant person;
(b) a sister, brother or child of the relevant person;
(c) any other person who, in the opinion of the Secretary, should be treated for the purposes of this definition as one of the relevant person's relations described in paragraph (a) or (b).

Applying the above definition of family member would mean that any amendments adopted would have reduced utility as they would only protect persons within the above confines.
In our experience the discretion in sub-para (c) is exercised in a very circumspect manner and is not the most appropriate mechanism for extending the definition of 'family member'. Rather the

legislation should do this expressly; a definition of family member should include at least the following:[1]

1) former and current partners;
2) a person who has, or has had, an intimate personal relationship with the other person
3) a child of a person who has, or has had, an intimate personal relationship with the other person.
4) a person who is, or has been, a relative of the other person (with an inclusive and broad list of relatives provided)
5) a child who normally or regularly resides with the other person (or has previously done so)
6) a person who the Secretary determines is a family member taking into account the following:

    (a) the nature of the social and emotional ties between the relevant person and the other person both past and present;

    (b) whether the relevant person and the other person live or have lived together or relate together in a home environment;

    (c) the reputation of the relationship as being like family in the relevant person's and the other person's community both past and present;

    (d) the cultural recognition of the relationship as being like family in the relevant person's or other person's community;

    (e) the duration of the relationship between the relevant person and the other person and the frequency of contact;

    (f) any financial dependence or interdependence between the relevant person or other person both past and present;

    (g) any other form of dependence or interdependence between the relevant person and the other person both past and present;

    (h) the provision of any responsibility or care, whether paid or unpaid, between the relevant person and the other person both past and present;

    (i) the provision of sustenance or support between the relevant person and the other person both past and present.

Further the legislation should provide expressly that a determination that a person meets the definition of family member for the purposes of the above definition is independent of the question of a member of a couple determination under s 4 of the *Social Security Act*.

Proposal 3–6 The following guidelines and material should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1:
- 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.

[1] This recommended definition is based on the broad definition of 'family member' set out in the *Family Violence Protection Act* (Vic) 2008.

NWRN supports this proposal.

Proposal 3–7 The *Superannuation Industry (Supervision) Regulations 1994* (Cth) and, where appropriate, all Australian Prudential Regulation Authority, Australian Taxation Office and superannuation fund material, should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1.

NWRN supports this proposal.

Chapter 4: Screening, Information Sharing and Privacy

Proposal 4–1 Information about screening for family violence by Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should be included in the *Child Support Guide,* the *Family Assistance Guide* and the *Guide to Social Security Law.*

NWRN agrees that the approach of Centrelink and other service delivery agencies to screening should be clearly stated in the respective Guides.

It is preferable that such important policies are published publicly so that people know what their rights are and can make sure that the law is being applied correctly. Greater openness also helps community support workers to assist families to interact with Centrelink and to ensure that where a person is subjected to family violence, Centrelink's policies are applied for their benefit.

By way of example, legislative changes since July 2010 made it clear that a 16 week exemption must be given from the activity test in circumstances of domestic violence. However Centrelink internal guidelines up until recently stated that domestic violence exemptions can be "up to" 16 weeks. This created a discretion that did not exist in the legislation and was contrary to the law. Because these guidelines were not publicly available they were not able to be subjected to an appropriate level of public scrutiny.

NWRN notes with concern the potential for operational and instructional guidelines that lie behind the legislation to affect (perhaps negatively) people experiencing family violence. Any guidelines, scripts or operational instructions should be consistent with the primary documents on screening, information sharing and privacy.

Proposal 4–2 Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should routinely screen for family violence when commencing the application process with a customer, immediately after that, and at defined intervals and trigger points (as identified in Chapters 5 and 9–11).

Proposal 4–3 Screening for family violence by Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers

and Multicultural Service Officers should be conducted through different formats including through:

- electronic and paper claim forms and payment booklets;
- in person;
- posters and brochures;
- recorded scripts for call waiting;
- telephone prompts;
- websites; and
- specific publications for customer groups such as *News for Seniors.*

Proposal 4–4 In conducting screening for family violence, Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should take into consideration a customer's cultural and linguistic background as well as a person's capacity to understand, such as due to cognitive disability.

NWRN supports the proposal to screen at the point of claim and afterwards at further defined points.

The positioning of the Department of Human Services (DHS) as the 'master agency' of the five branded agencies (such as Centrelink, Child Support Agency, Medicare, Australian Hearing Services and CRS), and co-location of sites across Australia, should allow for greater reach of consistent information dissemination and messaging to target audiences with the aim of improving awareness of the supports and services available for people experiencing family violence.

NWRN agrees that the preferred approach is to facilitate for customers the opportunity to disclose that they are experiencing family violence if they choose do so. A direct or mandatory approach, with questions such as 'are you experiencing family violence?' should be avoided.

NWRN agrees with the use of multiple formats to inform Centrelink clients that they can obtain help, support or financial assistance or referral if they are affected by family violence. Each of the formats stated in the proposal are appropriate, we note that an audio-visual format may also be used as many Centrelink offices currently display government information in audio-visual format on television screens.

Given the significant degree of under-reporting of family violence, there is a strong case for Centrelink to communicate messages about family violence which are broadly targeted to the 7.2 million Australians who interact with Centrelink or the Family Assistance Office in some shape or form. These need to be balanced with communication that is well adapted to the needs and experiences of specific client groups, for example there is an opportunity to produce tailored articles in specific publications for client groups such as *News for Seniors, The Journey, and Pulse*.

NWRN notes that *The Journey* (a publication targeting communities from diverse cultural and linguistic backgrounds) has recently ceased publication in hardcopy format and in future will only be delivered in online format. Given the digital divide extends across multicultural communities,

this is a worrying precedent. NWRN views alternative online communication as complementary to, rather than as a replacement to, existing traditional methods of communication.

Question 4–1 In addition to the initial point of contact with the customer, at what trigger points should Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers screen for family violence?

NWRN does not propose to provide an exhaustive list of trigger points at which screening should occur and considers that Department of Human Services is best placed to determine particular trigger points. We note that such trigger points should be regular, at intervals and at varied 'decision-points'. We note that many of the areas covered in the ALRC discussion papers such as claim decisions, member of a couple decisions, debt recovery decisions are all appropriate points for screening.

Proposal 4–5 Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should receive regular and consistent training and support (including resource manuals and information cards) in:
- screening for family violence sensitively; and

- responding appropriately to disclosure of family violence, including by making referrals to Centrelink social workers.

Proposal 4–6 Training provided to Child Support Agency and Family Assistance Office staff, and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should include:
- the nature, features and dynamics of family violence, and its impact on victims, in particular those from high risk and vulnerable groups;

- 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 with disability;

- training 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; and

-training in relation to responding appropriately to and interviewing victims of family violence. In particular, training for Centrelink customer service advisers and social workers should include information about the potential impact of family violence on a job seeker's barriers to employment.

NWRN supports the proposal for training. See further our comments under proposals 5-2, 5-6 and 5-7.

Proposal 4–7 The Department of Human Services should ensure that monitoring and evaluation of processes for screening for family violence is conducted regularly and the outcomes of such monitoring and evaluation are made public.

NWRN supports the proposal. We agree that monitoring and evaluation should be conducted at regular intervals and the outcomes reported and made public.

Monitoring and evaluation should be integrated into existing or proposed quality assurance mechanisms, including those tied to customer complaints and requests for review. In this regard NWRN refers to the Internal Review Trial described in Attachment A of the Commonwealth Ombudsman's report *Centrelink - The Right of Review; Having Choices, Making Choices* (March 2011). In the design of internal review systems it is important that quality assurance processes ensure that where a decision maker has failed to have appropriate regard to family violence that they are alerted to this so that they may correctly apply the law or policy in future cases.

Proposal 4–8 The *Child Support Guide,* the *Family Assistance Guide* and the *Guide to Social Security Law* should provide that Child Support Agency and Family Assistance Office staff and Centrelink customer service advisers, social workers, Indigenous Service Officers and Multicultural Service Officers should give all customers information about how family violence may be relevant to the child support, family assistance, social security and Job Services Australia systems. This should include, but is not limited to:

- exemptions;
- entitlements;
- information protection;
- support and services provided by the agencies;
- referrals; and
- income management.

NWRN supports the proposal because in our experience there is a considerable lack of awareness of entitlements, exemptions and assistance available for a person experiencing family violence. This is especially the case in relation to the area of exemptions from activity requirements and entitlements to income support payments. In this regard, we draw attention to the 2009 Australia Institute Report, *Missing Out*, which found large numbers of Australians were not receiving entitlements.

This is a common problem that NWRN members see and this issue is a regular subject of discussions between Centrelink and NWRN in regular high level meetings. Young people and Indigenous Australians are especially at risk of missing out on entitlements.

NWRN has proposed that Centrelink consider instituting a system of 'positive data matching'. Data matching is used extensively to raise many of the 2.2 million Centrelink debts that were raised in 2009-10. NWRN supports a similar, but beneficial approach, that could be particularly helpful for vulnerable people, especially those experiencing family violence

We note that advice should include information about any relevant discretion in the social security or family assistance law that may be available such as for example waiver of a debt on the ground of special circumstances.

NWRN agrees that it is important that such policies be set out in the *Child Support Guide,* the *Family Assistance Guide* and the *Guide to Social Security Law* for reasons of accessibility and transparency which we refer to above in our response to proposal 4-1.

Proposal 4–9 The Department of Human Services and other relevant departments and agencies should develop a protocol to ensure that disclosure of family violence by a customer prompts the following service responses:
- case management, including provision of information in Proposal 4–8, and additional services and resources where necessary; and
- the treatment of that information as highly confidential with restricted access.

NWRN supports this proposal.

A case management approach must ensure that the person experiencing family violence is given the opportunity to access to the full range of supports and access to any and all relevant entitlements and exemptions. Experience shows that people do not currently receive access to their full range of entitlements and exemptions.

With respect to other relevant agencies, NWRN considers that both the Social Security Appeals Tribunal and Administrative Appeals Tribunal should adopt a specialist case management approach to assist clients experiencing or who have experienced family violence. This involves adopting special procedures and appointing a family violence support worker. We note that such an approach is adopted in other tribunals, for example the Victorian Civil and Administrative Tribunal employs a family violence support worker.[2]

Proposal 4–10 The *Guide to Family Assistance* and the *Child Support Guide* should provide that where family violence is identified through the screening process, or otherwise, Centrelink, Child Support Agency and Family Assistance Office staff must refer the customer to a Centrelink social worker.

NWRN supports this proposal.

The *Guide to Social Security Law* should also reflect the above referral process if does not already do so.

NWRN considers that social workers play an important role both in terms of the direct assistance they are able to provide to people experiencing family but also in the training and support they can provide to other Centrelink staff to enable those other workers to provide an appropriate service response to people experiencing family violence.

[2] *VCAT Annual Report*, 2010-2011, p 15 available at http://www.vcat.vic.gov.au/CA256902000FE154/Lookup/annual_report_vcat/$file/2010-11_complete_annual_report.pdf

Proposal 4–11 Where family violence is identified through the screening process or otherwise, a 'safety concern flag' should be placed on the customer's file.

Proposal 4–12 The 'safety concern flag' only (not the customer's entire file) should be subject to information sharing as discussed in Proposal 4–13.

Proposal 4–13 If a 'safety concern flag' is developed in accordance with Proposal 4–11, the Department of Human Services and other relevant departments and agencies should develop inter-agency protocols for information sharing between agencies in relation to the 'safety concern flag'. Parties to such protocols should receive regular and consistent training to ensure that the arrangements are effectively implemented.

Proposal 4–14 The Department of Human Services and other relevant departments and agencies should consider issues, including appropriate privacy safeguards, with respect to the personal information of individual customers who have disclosed family violence in the context of their information-sharing arrangements.

NWRN supports in principle the scheme set out in proposals 4-11 to 4-14 for recording and sharing safety concerns where family violence has been identified which seeks to balance the safety of the person experiencing family violence with their rights to privacy, autonomy and personal agency.

NWRN supports the proposal that a 'safety concern flag' should be shared internally within the Department of Human Services and externally with other relevant departments and agencies only with the informed consent of the customer in question.

Additionally, the Department of Human Services should develop (in consultation with stakeholders and clients) information/scripts explaining issues such as 'safety concern flags' and 'informed consent' to ensure that individuals and groups clearly understand processes and their rights with respect to information sharing, consent and revocation of these arrangements. Any information sharing arrangements should have simple 'opt in' and 'opt out' mechanisms.

NWRN understands informed consent to require the provision of detailed information as to which particular agencies may access the information and advice about how disclosure may affect the customer. A customer should be able to provide consent to disclosure that is limited to particular agencies or limited to a particular period of time.

NWRN supports the development of inter-agency protocols for information sharing. Such protocols should be published publically in the interests of transparency and accountability. NWRN agrees that staff should receive regular and consistent training on the protocols and the appropriate collection, use and disclosure of the information and privacy safeguards.

Proposal 4–15 The Department of Human Services and other relevant departments and agencies should develop policies and statements relating to family violence and child protection, to ensure consistency in service responses. These policies should be published on the agencies' websites and be included in the information provided to customers in Proposal 4–8.

NWRN supports the development of a Department wide policy on family violence and child protection which is published publically and addressed to service delivery issues. NWRN considers that substantive issues on the application of Social Security, Family Assistance and

Child Support Law to persons experiencing family violence should be addressed in the respective policy guides for those areas of Commonwealth law. There is a need for consistency between any Department wide policy and the particular policy guides.

NWRN agrees with the proposal that information on policy responses be made available on websites, however, it is critical that such important details are not limited purely to web-based information sites, and that they are more widely available.

Chapter 5: Social Security – Overview and Overarching Issues

Proposal 5–1 The *Guide to Social Security Law* should be amended to include:

(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.

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.

NWRN supports the proposal and refers to our comments under proposal 3-1.

The interaction of family violence and the social security system has specific features which should be elaborated upon in the *Guide to Social Security Law* so that decision makers are informed by contextual considerations. NWRN considers that the various forms that family violence takes needs to receive detailed attention in the *Guide*. It is important to remove the preconception that acts and conduct do not constitute family violence unless there is some aspect of physical violence involved. Further, there is the need for very detailed attention to economic abuse in the social security context. In particular there is a need to expressly recognise that as a result of the experience of economic abuse, a person may become reliant on the social security system.

NWRN agrees that the particular impact 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 should be addressed and informed by direct consultation with people identifying from those groups who have experienced family violence.

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.

NWRN supports the need for the provision of 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.

Training of Centrelink staff and Tribunal members on family violence can be more effective and enhanced if the agencies involved draw on the perspectives, experience and expertise of external stakeholders and client representatives, in addition to direct testing with client's themselves.

We note that the availability of training does not diminish the need for an appropriate policy and legislative framework which is clearly publicly stated, quality assurance and feedback mechanisms and day to day support for front line staff on issues of family violence.

Proposal 5–3 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:

- 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);

- protection orders; and

- police reports and statements.

NWRN supports the use of an inclusive list and to those items states in proposal 5-3 in principle.

We note, however, that the word of the victim of family violence should in most cases suffice. There is no compelling evidence to suggest that family or domestic violence incidents are concocted. The nature of family and relationship violence is that it is generally hidden from view, so Centrelink should generally give the victims the benefit of the doubt.

Third party reports must not be mandated for a finding of family violence to be made. Where no third party evidence is available, it must still be open to a social worker to make a finding that family violence exists based on the oral evidence of the victim.

If Centrelink does require further verification, the onus should be on Centrelink to collect that information with the consent of the person experiencing family violence. Centrelink has broad information gathering powers that it can use for this purpose if necessary. Requiring the victim of family violence to go out and collect supporting evidence may not be appropriate in many cases.

NWRN recommends that the *Guide* be amended to reflect that such information provided as evidence of family violence should never be used in support of an adverse member of a couple

decision. NWRN recommends that the *Guide* be amended to reflect this policy. To rely on evidence in this adverse way creates a disincentive for people to disclose the existence of family violence and operates to further victimise the person experiencing family violence. It may not in any case be reliable evidence of the existence of a member of a couple relationship. For example, we note that in our experience protection orders and police reports often incorrectly refer to a former partner as a current partner. A simple mistake by an officer in these cases can lead to a Centrelink decision imposing a massive member of a couple debt.

NWRN notes other precedents in the income support area where modest financial assistance is made available to assist people obtain specialist medical reports and information to assist with the claim for income support. Specialist assessment referrals currently exist in the area of assessment of medical qualification for DSP (*Guide to Social Security Law*, 3.6.2.15) Where family violence causes psychological injury, in appropriate cases, a referral for a specialist assessment should be arranged at Centrelink's expense. This may be in cases where it is appropriate to seek independent verification of the abuse or injury but none is otherwise available or in cases where the report would assist the decision maker in the exercise of discretion under social security law. Access to specialist referrals for evidence should not be limited to psychological evidence and should be considered in other appropriate cases.

Proposal 5–4 The *Guide to Social Security Law* 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.
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.

NWRN supports both proposals.

The guidance should enable a decision maker to give primacy to the uncorroborated evidence of a person who says they have experienced family violence. If such evidence is uncontradicted and is internally consistent there is no reason why it should not be accepted by the decision maker.

The verification available will vary depending on the nature and features of family violence in the particular circumstances, for example, a case of family violence characterised by economic abuse may be evidenced differently to the psychological injury caused by emotional abuse.

The verification available will also depend on whether the decision concerns current entitlements or past entitlements or both. Centrelink has very broad powers to investigate payments received in past periods, to make a retrospective decision concerning entitlement for that period, and to raise a debt where it finds a lack of entitlement for that period.

NWRN notes the ALRC's consideration that "the level of verification of family violence in member of a couple decisions should be appropriately high" for reasons of system integrity."[3] NWRN is concerned that a 'high' threshold of verification will unduly constrain the ability of a person

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experiencing, or who has experienced family violence, to satisfy a decision maker of that fact. For this reason NWRN does not support the use of a 'high' verification threshold for member of a couple decisions.

NWRN is particularly concerned about the use of a 'high' verification threshold for establishing family violence with respect to retrospective member of a couple decisions which result in the decision to raise a debt. The decision makers in these cases can often look to many years in the past. The statutory framework allows Centrelink even to revisit a decision that it originally made accepting the single status of a Centrelink customer. NWRN centres regularly see retrospective decisions concerning periods dating back over five and ten years and it is not uncommon to see debts raised in the range of $50,000 to $180,000. These are decisions based on an assessment made under s 4(3) a provision which has correctly been described as giving rise to 'nebulous' outcomes.

Where Centrelink can come along after the fact and determine that people have been living as a member of a couple and raise a significant debt the ability to obtain independent and contemporaneous evidence of family violence will be dramatically reduced. In such cases Centrelink should bear the onus of proving a lack of entitlement and where there is prima facie evidence of family violence that should be accepted unless Centrelink can demonstrate to the contrary.

NWRN is cognisant of the need for appropriate regard to safeguarding the integrity of the social security system. However, we consider that for the approach favoured by the ALRC in this proposal, caution should be exercised to ensure that people experiencing family violence are not any worse off as a result of any changes.

Proposal 5–6 The *Guide to Social Security Law* 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.

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.

NWRN supports these proposals.

In particular, NWRN welcomes the ALRC's focus on ensuring that Centrelink frontline staff and social workers receive regular training. However, we believe that the agencies would be assisted if more precise guidance could be given to defining what is meant by 'regular' training. Training needs to occur when policies are changed, for new staff, to accommodate regular internal movement and to refresh skills of existing staff.

In our experience, and in discussions with staff and according to staff evidence at public inquiries, training for staff is at times poorly resourced and at times can be rushed and perfunctory. When budgetary pressures loom large it also seems that expenditure on training is one of the first areas to suffer.

In our experience a person experiencing family violence may be deterred from disclosure because of the fear of retribution. All Centrelink staff and relevant decision makers should be bound by a clear rule of policy and practice not to seek verification of family violence from the family member or partner who is perpetrating the violence.

This policy should not prevent a person experiencing family violence from seeking to adduce evidence from the perpetrator that would support their claim of family violence. For example financial records within the possession and control of the perpetrator may assist in demonstrating a case for economic abuse.

Such evidence may be sought by Centrelink in reliance on section 192 of the *Social Security Act* or by Tribunals through the appropriate procedure for producing documentary evidence. Reliance on such measures should be at the complete discretion of the person experiencing family violence and a failure to adduce evidence from the alleged perpetrator should never be a basis for a forming an adverse inference against the person experiencing family violence. These principles should be clearly stated in policy with consideration given to the best ways to incorporate these also into Tribunal practice.

In cases concerning the existence or otherwise of a couple relationship the decision maker would usually seek to hear from an alleged partner, particularly at the tribunal level, this would usually be the case even in circumstances of family violence. In such cases hearing from the alleged partner may be an important piece of evidence for an assessment under section 4(3) of the *Social Security Act*, however, there is a need for practices and procedures to protect the safety of the person who has been the victim of family violence by the alleged partner.

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.

NWRN agrees with the proposal. We refer generally to our comments to proposals in chapter 14 below and note that the use of 'off the shelf' employment pathway plans is not conducive to tailoring participation requirements to a person's particular circumstances, such as experiencing family violence.

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?

We refer to our comments under question 4-1 above.

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.

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?

NWRN recommends that whether or not to use the facility should be at the discretion of the customer experiencing family violence after the facility has been explained including the disadvantages of the facility.

NWRN cannot see any significant arguments to support denial of a client request for inclusion on the 'Deny Access Facility' if they experience family violence. NWRN recommends amending the *Guide* to facilitate improved awareness and understanding of the operation of the 'Deny Access Facility' classification.

Chapter 6: Social Security - Relationships

Proposal 6–1 The *Guide to Social Security Law* should be amended to reflect the way in which family violence may affect the interpretation and application of the criteria in s 4(3) of the *Social Security Act 1991* (Cth).
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 *Social Security Act 1991* (Cth).
Proposal 6–3 The Guide to Social Security Law should be amended expressly to include family violence as a circumstance where a person may be living separately and apart under one roof.

NWRN supports each of these proposals.

In our experience it is unusual for family violence to be considered in section 4(3) assessments. When family violence is considered, the focus is usually exclusively on physical violence and not on the many other ways in which family violence may be experienced.

Further, in our experience there is not a common approach between decision makers on how family violence should affect their assessment under s 4(3). We have seen a number of decisions where there is a concerning lack or inadequate consideration of issues around family violence.

Guidance in the *Guide to Social Security Law* may be supported by reference to the principles enounced in *Kosarova v DEEWR Anor* [2009] FMCA 888 (10 September 2009); namely, that the decision maker must consider the impact of extreme violence on 'the nature of the household' (section 4(3) (b)) and 'the nature of the [parties'] commitment to each other' (section 4(3) (e)). However, it should not be necessary to prove 'extreme violence' in order for family violence to be taken into account. Further, all forms of family violence and not only physical violence need to be considered.

Guidance should be provided with respect to each of the specific matters set out in s 4(3) as well as any other relevant matters.

With respect to the financial aspect of the relationship which is the factor set out at s 4(3)(a) and with respect to each of the matters (i) to (iv) listed under that provision, the Guide to Social Security Law should provide guidance as to how family violence, economic abuse and financially controlling behaviour may affect a decision maker's assessment.

The nexus between member of a couple decisions which result in debts and prosecutions is also a matter of significant concern. People with an arguable case for administrative review of a decision to treat them as a member of a couple because of the existence of family violence, often choose not to pursue their rights because they are concerned about the risks of triggering a criminal investigation against them, that is the victim of family violence, related to the circumstances in which the debt arose.

With respect to living separately and apart under the same roof we support the proposal of clearly stating in the *Guide* that family violence may be taken into account in such a determination. We have seen cases where returning to live under the same roof after an incidence of family violence has been used as evidence in support of an affirmation of commitment to the relationship. The *Guide* to *Social Security Law* should caution against an approach.

Proposal 6–4 The *Guide to Social Security Law* 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 *Social Security Act 1991* (Cth).

Question 6–1 With respect to the discretion under s 24 of the *Social Security Act* 1991 (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?

NWRN supports the proposal to amend the *Guide to Social Security Law* to direct decision makers expressly to consider family violence as a circumstance that may amount to a 'special reason' under s 24 of the *Social Security Act 1991* (Cth).

In our experience current practice is to apply s 24 in only very limited circumstances, not-withstanding that the discretion is expressed in very broad terms. Whilst there are individual cases where the discretion has been applied in circumstances of family violence these are very rare.

Departmental policies relating to section 24 should be updated to take family violence into account (and for such decisions to be backdated where appropriate). Guidelines ought to remind decision makers of the different forms that family violence may take. Guidance should be provided that the existence of financial abuse is a strong factor weighing in favour of the exercise of the discretion because in these circumstance the usual advantages of pooling resources and achieving economies of scale are not achieved for the person experiencing financial abuse.

The discretion is not readily accessible to people experiencing family violence because unless a decision maker is directed by policy to take family violence in its various forms (including emotional and financial abuse) into account it is very unlikely that such a request would succeed.

Further, there are very low levels of awareness of the discretion in the community and varied levels of awareness amongst Centrelink CSAs. It is not uncommon for customers seeking to have

the discretion applied to be being turned away because the CSA is not aware of its existence. We are unaware of any specific Centrelink form that might be used in order to make a request that the s 24 discretion be exercised.

The *Guide* should be amended to ensure that the 'reasonable means of support' requirement can be met notwithstanding that a person experiencing family violence has not sought support from the perpetrator of family violence.

Proposal 6–5 The *Guide to Social Security Law* should be amended expressly to 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).
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'?

NWRN supports both proposal 6-5 and the amendment referred to in question 6-2.

We note that whilst the *Guide to Social Security Law* refers to violence, family violence includes a broader range of conduct, spelling this fact out clearly in legislation can only serve to facilitate good decision making. We often see cases where unless the 'violence' is physical, the decision maker has not considered the situation as sufficient to justify granting the unreasonable to live at home claim.

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'?

NWRN supports both amendments referred to in this question.

With respect to (a) above, we support the amendment because our experience has shown that these matters do need to be spelt out in express terms. Furthermore, there is a problem with the current wording in the legislation in that it refers to 'family breakdown' which overlooks the fact that families may remain intact, despite the persistence of damaging family violence.

With respect to (b) above, we support the amendment because once family violence is established the risk posed by this is well known, the decision maker should not have to turn their mind to satisfaction of an additional requirement such as this.

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.

NWRN supports the proposal in principle except the applicant should never be required to provide financial information about their parents in cases of family violence unless the information is within their direct possession and control.

Section 192 of the *Social Security Act* gives Centrelink the power to obtain information from people and other organisations to assist it to assess a person's past or current eligibility for social security. Centrelink uses these powers principally for investigating overpayments. Unfortunately, Centrelink rarely uses these powers to assist a person in a time of need, even if the person, for reasons beyond their control, is unable to provide certain documents to Centrelink. Centrelink needs to changes its attitude in relation to when it should use its information gathering powers.

Chapter 7: Social Security – Proof of Identity, Residence and Activity Tests

Question 7–1 In practice, is the form, 'Questions for Persons with Insufficient Proof of Identity', sufficient to enable victims of family violence to provide an alternate means of proving identity?

NWRN is not in a position to comment on this question.

Proposal 7–1 The *Guide to Social Security Law* should be amended expressly to include family violence as a reason for an indefinite exemption from the requirement to provide a partner's tax file number.

NWRN supports the proposal. We note that whilst the *Guide* (at 8.1.3.20) presently refers to violence it is appropriate that the G*uide* refer expressly to family violence in order to adequately capture the forms that family violence may take beyond physical violence.

The *Guide* currently states "This situation does NOT cover cases where there is merely a refusal on the part of the partner to provide the information and there are no violence or health concerns or an applicant is claiming or receiving payments in their own right." NWRN considers that this statement is too limiting because the refusal may be an act of family violence when it is considered in the context of a course of other conduct.

Question 7–2 Section 192 of the *Social Security (Administration) Act 1999* (Cth) confers certain information-gathering powers on the Secretary of FaHCSIA. In practice, is s 192 of the *Social Security (Administration) Act 1999* (Cth) invoked to require the production of tax file numbers or information for the purposes of proof of identity? If not, should s 192 be invoked in this manner in circumstances where a person fears for his or her safety?

NWRN's experience is that section 192 is rarely used to help someone claiming payments, including in the production of Tax File Numbers (TFNs), for proof of identity or to identify parental/partner income. Section 192 is readily and routinely used to investigate overpayments.

NWRN accepts that section 192 is a coercive power, for which any use should be carefully considered and justified. In circumstances of family violence, where Centrelink is acting to protect a person for whom it holds safety concerns, there is a demonstrable justification for the use such powers.

NWRN recommends that the *Guide to Social Security Law* be amended to expressly confirm that section 192 should be used by Centrelink when, because of family violence concerns, it is not appropriate to expect a customer to provide a piece of information required for the assessment of a claim or entitlement.

Question 7–3 When a person does not have a current residential address, what processes are currently in place for processing social security applications?

NWRN believes that Centrelink does have appropriate processes in place in these circumstances. Such processes should be better communicated so that people are aware that not having a current residential address should not act as a barrier to claiming, receiving payments and otherwise interacting with Centrelink. NWRN recommends the publication of specialist resources so that people are aware of the processes in place in for people experiencing homelessness and family violence.

Proposal 7–2 Proposal 20–3 proposes that the *Migration Regulations 1994* (Cth) be amended to allow holders of Prospective Marriage (Subclass 300) visas to move onto another temporary visa in circumstances of family violence. If such an amendment is made, the Minister of FaHCSIA should make a Determination including this visa as a 'specified subclass of visa' that:
- meets the residence requirements for Special Benefit; and
- is exempted from the Newly Arrived Resident's Waiting Period for Special Benefit.

NRWN supports the proposal as it is not appropriate to leave a person in these circumstances without access to income support. If a person is denied income support there is a greater risk that the person experiencing family violence may feel compelled to return to circumstances in which there safety is placed at risk because of family violence.

Question 7–4 Should the Minister of FaHCSIA make a Determination including certain temporary visa holders—such as student, tourist and secondary holders of Subclass 457 visas—as a 'specified subclass of visa' that:
- meets the residence requirements for Special Benefit?
- is exempted from the Newly Arrived Resident's Waiting Period for Special Benefit?

NWRN is not in a position to comment on this proposition.

Question 7–5 What alternatives to exemption from the requirement to be an Australian resident could be made to ensure that victims of family violence, who are not Australian residents, have access to income support to protect their safety?

An alternative would be that provision is made for income support to people experiencing family violence in Australia's international social security agreements. We acknowledge the considerable effort that would be required to amend the many agreements that are currently in place. Further the system involves an inherent inequity in providing income support to those who are fortunate enough to have resided in a country with which Australia has entered an agreement. On the other hand, such an approach would have the benefit of expanding the availability of social security to people experiencing family violence who are not residentially qualified and offering additional protection to Australian citizens and residents who experience family violence whilst abroad in agreement countries.

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?

NWRN is not in a position to comment on this proposition.

Proposal 7–3 The *Guide to Social Security Law* should be amended expressly to include family violence as an example of a 'substantial change in circumstances' for the Newly Arrived Resident's Waiting Period for Special Benefit for both sponsored and non-sponsored newly arrived residents.

NWRN supports this proposal. Under the existing arrangements we see many vulnerable people, some experiencing family violence, who are denied even the most basic levels of financial assistance that is available in Special Benefit.

Further NWRN recommends that the *Guide to Social Security* provides clarification that family violence after an irrevocable commitment to migrating to Australia can still be considered a 'substantial change in circumstances' notwithstanding that there may be evidence that a person had previously experienced family violence before they made an irrevocable commitment to migrating to Australia.

Question 7–7 What changes, if any, are needed to improve the safety of victims of family violence who do not meet the Newly Arrived Resident's Waiting Period for payments other than Special Benefit?

A number of changes to policy and legislation should be made so that Special Benefit provides an adequate and appropriate safety net to persons experiencing family violence. Several of these changes simply require a change in policy since Special Benefit is a discretionary policy based payment.

The NWRN have developed the following recommended changes to Special Benefit:

1. The requirement to have attempted to obtain support from all possible alternative sources before being granted special benefit should be removed from the *Guide to Social Security Law*.
2. The "homelessness" requirement for school students to qualify for special benefit should be removed.
3. The requirement for a parent to forego FTB in the case of a child receiving Special Benefit should be removed where the child's parent is without a sufficient livelihood and is not receiving a Social Security payment.
4. The special income and assets tests for Special Benefit should be abolished. Instead, the income and assets tests to be applied should be that of the pension or allowance that the person would be paid, if the person were residentially qualified for a social security payment. (eg Newstart Allowance for unemployed people of working age, Age Pension for those of Age Pension age). Legislation and policy should make it very clear that family assistance payments should not reduce the rate of Special Benefit in any way.
5. A special circumstances provision should be introduced to qualify any child within the Australian jurisdiction for a social security income support payment (eg special benefit) in special circumstances.
6. Measures should be taken to ensure that young people on special benefit have access to the full range of beneficial programs offered to young people on youth allowance.

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:
- 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.

NWRN supports the provision of training in relation to these intersections between the JSCI and family violence.

We reiterate that the availability of training does not diminish the need for an appropriate policy and legislative framework which is clearly and publicly stated, quality assurance and feedback mechanisms and day to day support for front line staff on issues of family violence.

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?

In our experience it is rare for activity tests, participation requirements and Employment Pathway Plans to be flexible. They are usually selected 'off the shelf' without due regard to tailoring these requirements to the jobseeker's particular circumstances.

An area of major concern relates to the granting of the 16 week activity test exemption for people experiencing domestic violence. Data indicated that at March 2011 just 53 sixteen week activity test exemptions had been granted.

Despite the passage of new laws from 1 July 2010 that were recommended by the 2009 Department of Education, Employment and Workplace Relations Participation Taskforce meant to assist women experiencing family and domestic violence, Centrelink has failed to apply the laws to assist women who are intended to benefit from the changes. The new laws allow for an extended exemption from the participation requirements required to receive certain payments if a person has experienced domestic violence.

People on income support have compulsory requirements that they are required to fulfil in order to remain qualified for the payment. Under social security law, exemptions from activity test or participation requirements can be granted for a specified period. The maximum exemption for domestic violence is 16 weeks.

According to data provided to a recent Senate Estimates question on notice, in March 2011, 61,590 social security recipients were exempt from the activity test for a variety of reasons. The main reason for an exemption was a temporary illness or injury, which accounts for around 38,000 or 62% of all exemptions. Domestic violence and relationship breakdowns accounted for just 0.086 per cent of all activity test exemptions.

This low level of exemptions for domestic violence is of concern given that about one in three Australian women experience physical violence and about one in five women experience sexual violence in their lifetime. Single parent groups, along with NWRN and domestic violence support groups have long held concerns with the low levels of exemptions granted.

Legislative changes since July 2010 make clear that a 16 week exemption must be given from activity agreements. However, Centrelink internal guidelines stated that domestic violence exemptions can be up to 16 weeks. These guidelines create a discretion that does not exist in the legislation.

NWRN is very pleased that the Department for Human Services took immediate action to update Centrelink's internal guidelines. However, this example highlights the case for greater transparency in Centrelink. These internal guidelines (called e-references) are a well-kept secret. This makes it difficult for people to exercise their rights and to know if the laws are being correctly applied. Greater openness would help community support workers to assist families interact with Centrelink and to ensure that where a person is subjected to domestic violence Centrelink's policies are applied for their benefit.

A more general issue relevant to the situation experienced by those experiencing domestic violence is general awareness of the available entitlements from Centrelink.

It is generally up to an individual to be aware of what payment or service that they may be entitled to receive. This is unsatisfactory and from NWRN's perspective we would like to see a cultural shift that would match citizens with their legal entitlements that are available and guaranteed under law.

Question 7–9 In practice, is family violence adequately taken into account by a Centrelink specialist officer in conducting a Comprehensive Compliance Assessment?

NWRN is unaware of whether Centrelink specialist officers conducting a Comprehensive Compliance Assessment screen for family violence. This would clearly be appropriate. NWRN recommends that the *Guide to Social Security* be updated to reflect such a requirement.

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?
Proposal 7–5 The *Guide to Social Security Law* should expressly direct Centrelink customer service advisers to consider family violence when tailoring a job seeker's Employment Pathway Plan.

NWRN supports the above proposal.

In order to capture and assess the circumstance of job seekers experiencing family violence Centrelink needs to implement screening as proposed by the ALRC and enter as appropriate a 'safety concern flag'.

Next there needs to be a change in the culture of how EPPs are developed from one in which an EPP is taken 'off the shelf' and effectively imposed on a jobseeker to one in which there is a genuine and open dialogue and a consideration of the jobseekers particular circumstances. The EPP could then be tailored to those particular circumstances and the barriers to employment that the jobseeker faces.

Since 2009 the Department of Human Services has been trialling new, tailored, case managed and holistic services in a number of locations that are aimed at supporting some of the most marginalised job seekers. One of these programs is called Local Connections to Work (LCTW). Currently operating in nine locations. It brings together a wide range of housing, employment, legal and health and community services in the one place and focuses on the client's needs by offering specialist, tailored and timely help. Importantly, participation in the program is voluntary.

People experiencing family violence are included in the target group for this program.

An additional $20 million was provided in the 2011-12 Federal Budget for an additional 14 LCTW sites. NWRN is an enthusiastic supporter of this program and considers it a good example of the types of positive schemes that could assist in improving social and economic outcomes for people experiencing family violence.

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.

We support the proposal. We refer to our comments at proposal 7-8 above.

Question 7–11 In practice, what degree of flexibility does Centrelink have in its procedures for customers experiencing family violence:
(a) to engage with Centrelink in negotiating or revising an Employment Pathway Plan; or
(b) apply for or extending an exemption.
Are these procedures sufficient to ensure the safety of victims of family violence is protected?

In the experience of NWRN members there is very limited flexibility provided to any person seeking to genuinely negotiate or revise an Employment Pathway Plan.

Question 7–12 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'?

Screening for family violence should occur when a Centrelink officer is considering imposing a 26 week exclusion period.

NWRN recommends that the *Guide to Social Security* (at 3.2.1.25) be amended to refer expressly to family violence as an example of an extreme circumstance.

The phrase "place of residence" is ambiguous as it may refer to the home or the area in which the person lives. This ambiguity should be resolved in the *Guide* by making it clear that family violence need not have occurred in the home for this provision to apply.

Proposal 7–7 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.

NWRN supports the proposal. Family violence should already be considered to be a 'reasonable excuse' however experience shows that the impact of family violence is not always appreciated by decision makers.

Question 7–13 Centrelink can end a person's 'Unemployment Non-Payment Period' in defined circumstances. In practice, are these sufficiently accessible to victims of family violence?

The *Social Security (Administration) (Ending Unemployment Non-payment Periods — Classes of Persons) Specification* may be taken to include victims of family violence, this would be much clearer if the instrument and the *Guide to Social Security Law* referred to family violence expressly as a circumstance in which an unemployment non-payment period should be ended.

Chapter 8: Social Security – Payment Types and Methods, and Overpayment

Proposal 8–1 The *Social Security Act 1991* (Cth) establishes a seven day claim period for Crisis Payment. FaHCSIA should review the seven day claim period for Crisis Payment to ensure a flexible response for victims of family violence.

NWRN supports extending the claim period, which does not leave enough time for a person to even find out that they may be eligible for payment. Currently, a person must lodge a claim generally within 7 days. This should be increased to 21 days.

Question 8–1 Crisis Payment is available to social security recipients or to those who have applied, and qualify, for social security payments. However, Special Benefit is available to those who are not receiving, or eligible to receive, social security payments. What reforms, if any, are needed to ensure that Special Benefit is accessible to victims of family violence who are otherwise ineligible for Crisis Payment?

We refer to previous comments on suggested changes to Special Benefit under question 7- 7.

Proposal 8–2 Crisis Payment for family violence currently turns on either the victim of family violence leaving the home or the person using family violence being removed from, or leaving, the home. The *Social Security Act 1991* (Cth) should be amended to provide Crisis Payment to any person who is 'subject to' or 'experiencing' family violence.

NWRN would support reforms that offer greater financial security for people experiencing family violence.

Proposal 8–3 The *Guide to Social Security Law* provides that an urgent payment of a person's social security payment may be made in 'exceptional and unforeseen' circumstances. As urgent payments may not be made because the family violence was 'foreseeable', the Guide to Social Security Law should be amended expressly to refer to family violence as a separate category of circumstance when urgent payments may be sought.

NWRN supports this proposal. Alternatively the 'unforeseen' requirement could be omitted as exceptional circumstances alone should justify an urgent payment whether those circumstances were foreseen or not. 'Family violence' could then be given as an example of 'exceptional circumstances'.

Proposal 8–4 The *Guide to Social Security Law* should be amended to provide that urgent payments and advance payments may be made in circumstances of family violence in addition to Crisis Payment.

NWRN supports this proposal.

Proposal 8–5 The *Guide to Social Security Law* should be amended to provide that, where a delegate is determining a person's 'capability to consent', the effect of family violence is also considered in relation to the person's capability.

NWRN supports this proposal. Beyond issues of 'capacity' or 'capability', the *Guide* should make it clear that a proposed nominee who is using family violence against the principal is not an appropriate person to meet the best interests of the principal and so to be appointed as a nominee.

Question 8–2 When a person cannot afford to repay a social security debt, the amount of repayment may be negotiated with Centrelink. In what way, if any, should flexible arrangements for repayment of a social security debt for victims of family violence be improved? For example, should victims of family violence be able to suspend payment of their debt for a defined period of time?

Debt recovery by withholdings or other arrangements can deprive a person experiencing family violence from the ability to apply available funds to provide for their own safety, for example to secure safe housing.

Temporary write off on the ground that a person has no capacity to pay is available under s 1236(1A)(b) of the *Social Security Act*. The *Social Security Guide* should be amended to provided that if a person is in financial hardship or requires all available funds to respond to family violence then they should be considered to have no capacity to pay. Alternatively a specific provision which provides for temporary write off whilst a person is experiencing family violence should be inserted into the *Social Security Act*. An amendment should ensure that the ability to secure a temporary write off should not be used as a reason to deprive a person from a permanent waiver of the debt.

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'.

NWRN supports amending the *Social Security Act* so that access to special circumstances waiver remains available to a particular customer unless the customer knowingly makes a false statement or knowingly fails to comply with the *Social Security Act* or a person acting as his or her agent does so.

Currently waiver of a debt because of special circumstances is unavailable if the debt is caused by any person 'knowingly' making a false statement of failing to comply with the *Social Security Act*. If the perpetrator of family violence makes a false statement or fails to comply with a requirement imposed by the *Social Security Act* resulting in a debt, special circumstances waiver will be unavailable even if such action is done without the knowledge or consent of the victim of

family violence or where the victim is acting under duress. The legislation clearly places the victims in an untenable and unfair position. The proposed amendment would cover the situation where the debtor was instrumental in procuring the false statement or representation or the failure or omission to comply with the relevant legislation, but would not capture a partner or family member who was acting under duress.

NWRN notes the recommendation of the Senate Legal and Constitutional Affairs References Committee report on *Review of Government Compensation Payments* (December 2010) that the Australian Government review 'waiver of debt' provisions contained in social security legislation and consider amendments to that legislation where current provisions could cause unfair and unjust outcomes for welfare recipients. That inquiry heard evidence from the Welfare Rights Centre describing:

> the current debt waiver provisions in social security legislation as 'unbalanced and unfair' and, in some cases, leading to 'perverse and unintended onerous outcomes'. [The Centre] suggested that there had been a tightening of social security legislative provisions, noting that while in the past 'not all overpayments were actually recoverable debts, now regardless of the cause almost all are recoverable debts'. [The Centre] also highlighted a number of specific waiver of debt provisions which related to situations where Centrelink was the sole or primary cause of a debt or where a person owes a debt 'but they are in that position due to domestic violence or acting under duress, usually from an ex-partner'.[4]

The Minister for Families, Housing, Community Services and Indigenous Affairs is reported to have announced a review in response to the report.[5] However NWRN is unaware of the outcome of this review and in meantime recovery of debts continues under unjust and unfair rules.

NWRN recommends that the proposed amendment be replicated in s 101 of the *A New Tax System (Family Assistance) (Administration) Act* 1999.

Proposal 8–7 The *Guide to Social Security Law* should be amended expressly to refer to family violence as a 'special circumstance' for the purposes of s 1237AAD of the Social Security Act 1991 (Cth).

NWRN supports the proposal.

We are aware of cases in which waiver has been refused because family violence, being an all too common problem in our community, cannot be characterised as a 'special circumstance' as it is not said to be unusual, uncommon or exceptional. We disagree with this approach and consider that it should be remedied by a clear change to policy. Amendment to the *Guide to Social Security Law* and the *Family Assistance Guide* to recognise that family violence can be considered as a special circumstance should assist in rectifying a situation in which decision makers can be reluctant or avoid taking into account family violence in these matters.

[4] Para 3.24, Senate Legal and Constitutional Affairs References Committee report on Review of Government Compensation Payments (December 2010) .
[5] Patricia Karvelas, 'Welfare errors may be waived' *The Australian*, 8 December 2010

Chapter 11: Child Support and Family Assistance – Intersections and Alignments

Proposal 11–1 Exemption policy in relation to the requirement to take 'reasonable maintenance action' is included in the *Family Assistance Guide* and the *Child Support Guide*, and not in legislation. *A New Tax System (Family Assistance) Act 1999* (Cth) should be amended to provide that a person who receives more than the base rate of Family Tax Benefit Part A may be exempted from the requirement to take 'reasonable maintenance action' on specified grounds, including family violence.

Proposal 11–2 The *Family Assistance Guide* should be amended to provide additional information regarding:
(a) the duration, and process for determining the duration, of family violence exemptions from the 'reasonable maintenance action' requirement; and
(b) the exemption review process.

Proposal 11–3 The Centrelink e-Reference includes information and procedure regarding partial exemptions from the 'reasonable maintenance action' requirement. The Family Assistance Guide should be amended to make clear the availability of these partial exemptions.

NWRN supports this proposal.

Chapter 12: Family Assistance

Proposal 12–1 The *Family Assistance Guide* should be amended to include:
(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.
In addition, the *Family Assistance Guide* should refer to the particular impact of family violence on: Indigenous peoples; those from a culturally and linguistically diverse background; those from the lesbian, gay, bisexual, trans and intersex communities; older persons; and people with disability.

NWRN supports this proposal for the same reason as stated above for proposal 3-1.

Proposal 12–2 The Family Assistance Guide should be amended expressly to include 'family violence' as a reason for an indefinite exemption from the requirement to provide a partner's tax file number.

NWRN supports this proposal for the same reasons as stated above for proposal 7-1.

Proposal 12–3 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:
(a) exceptions from the work/training/study test; and
(b) circumstances where more than 50 hours of weekly Child Care Benefit is available.

NWRN supports this proposal.

Proposal 12–4 *A New Tax System (Family Assistance) Act 1999* (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'. *A New Tax System (Family Assistance) Act 1999* (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.
Proposal 12–5 The *Family Assistance Guide* should be amended to provide definitions of abuse and neglect.

NWRN supports both proposals.

The higher rate of child care benefit should be available where there is a risk of abuse or neglect to the child.

The qualifying mechanism should apply to the nature/level of risk rather than the nature of the abuse. Caution should also be taken when qualifying the nature of the risk which should be more than merely theoretical, but should not so high as to preclude cases where granting the higher rate of child care benefit might reduce the risk of abuse to a child. We submit that a broad discretion to Centrelink in deciding the level of risk would be appropriate here.

We consider that "abuse" and "neglect" should be given their ordinary meaning, informed by guidance which should be set out in the *Family Assistance Guide*.

Further, the current requirement is that the child care service forms the opinion that a child is at risk of serious abuse or neglect. It should also be possible for a person to receive the higher rate of child care benefit where Centrelink forms the opinion (eg during an assessment with a social worker) that a child is at risk of abuse and/or that granting the special rate may reduce the risk to the child.

Chapter 13 – Income Management

Proposal 13–1 The *Social Security (Administration) Act* 1999 (Cth) and the *Guide to Social Security Law* should be amended to ensure that a person or persons experiencing family violence are not subject to Compulsory Income Management.
Question 13–1 Are there particular needs of people experiencing family violence, who receive income management, that have not been identified?

Proposal 13–2 In order to inform the development of a voluntary income management system, the Australian Government should commission an independent assessment of voluntary income

management on people experiencing family violence, including the consideration of the Cape York Welfare Reform model of income management.

Proposal 13–3 Based on the assessment of the Cape York Welfare Reform model of income management in Proposal 13–2, the Australian Government should amend the Social Security (Administration) Act 1999 (Cth) and the *Guide to Social Security Law* to create a more flexible Voluntary Income Management model.

NWRN supports amendments to both the *Social Security (Administration) Act* 1999 (Cth) and the *Guide to Social Security Law* to ensure person or persons experiencing family violence are not subject to Compulsory Income Management. This includes ensuring that existing categories of vulnerability are appropriately amended, that a general exception is established and that information acquired during the course of addressing an instance of family violence is never used in support of a determination of compulsory income management.

NWRN agrees that the experience family violence is so interwoven with existing vulnerability factors that it is necessary to completely exempt a person or persons experiencing family violence from being subject to Compulsory Income Management. This is necessary to avoid people experiencing family violence from being reluctant to disclose their circumstances to Centrelink for fear of being 'marked' for income management.

A further concern is the role of Centrelink social workers in these assessments is blurring the roles of providing support and enforcing compliance and punitive measures.

NWRN supports Proposal 13-1; however, we consider that any system of compulsory income management based on vulnerability is going to cause people experiencing family violence to be reluctant to disclose to Centrelink.

NWRN supports the Commission's approach to exempting people experiencing family violence from income management. As noted by our members to the discussion paper, there is no evidence that income management is of benefit to people experiencing family violence. Welfare Rights workers in the Northern Territory assert that it is a complex and time consuming process to seek and obtain exemptions.

NWRN is concerned that the income management exemptions are one-sided.

Compulsory income management, as pointed out in the Discussion Paper, was first introduced in the Northern Territory (NT) in 73 "prescribed communities" as part of the Northern Territory Emergency Response in 2007. It was directly discriminatory and the provisions of the *Racial Discrimination Act 19*75 were suspended to allow it to operate.

On June 21, 2010 the Federal Government introduced a new form of compulsory income management in the NT that was supposedly compliant with the *Racial Discrimination* Act. However, in the NT 96 per cent of people on income management are still Indigenous Australians.

Exemptions from income management are available to a person where they satisfy certain conditions. Given that 96 per cent of people in the NT subject to income management are Indigenous Australians, it would be reasonable to presume that it would be this group which mostly benefited from the exemptions. However this is not the case.

In relation to this discretionary area of decision-making, namely the granting of exemptions from income management, discrimination and paternalism appear rife. As at March 2011, there were 2,130 people that obtained an exemption from income management.[6] Seventy-five per cent were non-Indigenous and just 25 per cent were Indigenous.

Put another way, non-Indigenous welfare recipients, who make up just 4 per cent of the entire population on quarantined payments in the NT, accounted for three quarters of all exemptions granted.

The office of the Minister for Indigenous Affairs, Jenny Macklin, wrote recently to the Welfare Rights Centre in defence of the Government's income management policies. "Income management", proclaimed the Minister's office, "is non-discriminatory and operates within the bounds of the *Racial Discrimination Act 197*5".

This may be so. But NWRN's analysis of the exemptions data strongly suggests that at its core the exemptions policy appears to be discriminatory in its application.

Question 13–2 In what other ways, if any, could Commonwealth social security law and practice be improved to better protect the safety of people experiencing family violence?

Income support payment should be sufficient to meet living costs and cover work, training and the additional costs of disability. Newstart Allowance is just $243 per week, and UTLAH Youth Allowance is just $194 per week. NSA for a single person is $131 per week less than the austere age pension rate. The table below highlights the amounts that various income support recipients experiencing domestic violence have to get by on each week.

[6] Department of Families, Housing, Community Services and Indigenous Affairs, Numbers of Income Management Customers 22 April 2011, data provided at Senate Estimates Hearings, 2011 and provided to Welfare Rights Centre, 29 July 2011.

Comparison table of social security payment rates (September 2011)				
Payment (single)	**Rate (pw) single**	**Difference between payments and rate of pension (pw)**	**Yearly income**	**Payment type as a % of pension**
Pension	$374.40	Nil	$19,469	100%
Newstart Allowance (NSA)	$243.40	$131.00	$12,657	65%
Parenting Payment (Single)	$320.75	$53.65	$16,679	86%
NSA (Principal Carer)	$263.30	$111.10	$13,692	70%
Youth Allowance at home under 18	$106.35	$268.05	$5,530	28%
Youth Allowance over 18 Independent	$194.35	$180.05	$10,106	$52

Many people experiencing family violence may be in receipt of Parenting Payment (Single). The table above shows a $53 a week difference between the single rate of pension and that paid to Parenting Payment (Single) recipients. In June 2009 these payments were at a similar rate. Parents missed out on the $32 a week pension increase in September 2009. Indexation since then has led to the situation where currently the difference is now $53 a week. The difference between pensions and parents on Newstart Allowance (Principal Carer) is now $111 per week. This is the result of the compounding impacts of the 2006 Welfare to Work changes and the 2009 pension increases.

Proposal 13–4 Priority needs, for the purposes of s 123TH of the *Social Security (Administration) Act 1999* (Cth) are goods and services that are not excluded for the welfare recipient to purchase. The definition of 'priority needs' in s 123TH and the *Guide to Social Security Law* should be amended to include travel or other crisis needs for people experiencing family violence.

NWRN supports this proposal.

Chapter 15: Employment Services and Support

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?

NWRN supports imposing tendering and contractual requirements on JSA and DES providers. For further comment refer to our response to question 15-4 below.

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?

NWRN believes that information sharing protocols between Centrelink, DEEWR, the Department of Human Services, and JSA, DES and IEP providers should be published in the public domain.

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?

Information held by Centrelink or the Department of Human Services concerning the existence of family violence should be disclosed to DEEWR, JSA and DES providers only with the informed consent of the Centrelink customer. Informed consent requires a discussion with the customer of the risks of disclosure, including any risks to the security of private and sensitive information.

The transfer of sensitive information from government to private agencies requires special safeguards to protect the security and privacy of that information. Whilst ideally all JSA and DES providers should be equipped to offer appropriate supports to people experiencing family violence, there are already existing strains in the system. In this regard consideration should be given to establishing JSA and DES agencies that specialise in providing pre-employment assistance to persons experiencing family violence.

An additional problem is that there is currently insufficient resources to assist deeply disadvantaged job seekers (which would include people experiencing family violence). For example, in the "work experience phase job seekers (Stream 4) are only supported with assistance to the value of $500 per annum. The Government needs to consider increasing the level of financial assistance for deeply disadvantaged job seekers.

The Government should also consider ensuring that people experiencing family violence are allowed significant access to the 10,000 six monthly wage subsidies set to begin in 2012.

Proposal 15–1 Centrelink, DEEWR, JSA, DES and IEP providers, and ESAt and JCA assessors (through the Department of Human Services) should consider issues, including appropriate privacy safeguards, with respect to the personal information of individual job seekers who have disclosed family violence in the context of their information-sharing arrangements.

NWRN supports the proposal. Refer to our response to question 15.4.

Proposal 15–2 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.

NWRN understands that the existing circumstances in which a jobseeker can change providers are:

1. Where the jobseeker has moved location
2. By agreement between the current provider, the proposed provider and the jobseeker
3. Through the DEEWR Customer Service Line, the jobseeker may be asked to demonstrate that they will receive better service by the alternative provider.
4. Where there has been an irretrievable breakdown between the jobseeker and the provider

The scenario set out in the proposal does not clearly fit into any of the above mentioned circumstances. A jobseeker should be able to change providers in these circumstances 'as of right' and policy should reflect this expressly.

Question 15–4 Should JSA and DES providers routinely screen for family violence? If so:
- what should the focus of screening be;

- how, and in what manner and environment, should such screening be conducted; and

- when should such screening be conducted?

JSA and DES providers routinely screen for family violence and similar approaches and practices adopted by Centrelink, with appropriate safeguards in relation to information, informed consent and privacy should be considered.

People experiencing family violence may face additional hurdles in rural or remote settings, where privacy and concerns over disclosure and conflicts of interest where, for instance, a perpetrator may also live or access services.

The JSA and DES system recognises that assisting people into work involves addressing barriers to employment. Pre-employment assistance should be tailored to addressing barriers to employment. People experiencing family violence will often experience difficulties looking for work themselves, and these may be compounded by problems that their children may also experience. The experience of family violence may be continual or recurrent, leading to sustained and severe barriers to securing employment.

NWRN recognises the important role for Job Services Australia and Disability Employment Services providers in supporting people experiencing family violence. Many of the challenges with screening, recognition and providing appropriate supports, services and referrals, may be similar to those already acknowledged by the ALRC when dealing with Centrelink.

There are, however, some important and key differences which need to be taken into consideration. Some of these were raised during consultations with the ALRC on the discussion paper.

While there may be some notable exceptions, employment service providers will generally have limited, perhaps even inadequate levels of skills, knowledge and capacity to deal appropriately with many of the critical issues around family violence. This is understandable. Employment consultants are not social workers, nor do many possess the required skills and expertise that are required to deal with family violence in an appropriate manner.

The focus of JSA's is on employment and training outcomes, and they are primarily renumerated for such.

Nevertheless, employment service providers have a significant role to play with respect to the overall supports for people experiencing family violence, and they will need to have skills in identification, support and referral.

Links with local agencies, which form part of the ratings and quality system, are integral.
JCA and DES contracts need to ensure that providers are equipped, knowledgeable, trained and able to appropriately support, refer and manage client's experiencing family violence.

It will be critical to ensure that the intervention of employment service providers does no harm to vulnerable individuals.

Question 15–5 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?

In many circumstances, it may be appropriate to immediately refer a person who discloses domestic violence to a social worker. However, this would most likely have resource implications for Centrelink and could limit access to social work assistance for others in similar need of assistance from a qualified social worker.

Appropriate policies would need to be developed to address such a change. Access may not be available face-to-face, and consideration needs to be given to whether referral to a call centre social worker is sufficient or appropriate in the circumstances.

It is appropriate here for NWRN to comment that in our experience, there is a low level of awareness regarding the availability of social workers at Centrelink, and we have found this to be a particular issue with young people.

Proposal 15–3 JSA and DES providers should introduce specialist systems and programs for job seekers experiencing family violence—for example, a targeted job placement program.

NWRN supports the proposal. There are limited specialist service providers, though existing specialist providers exist, primarily in relation to homelessness, culturally specific and refugee services, as well as youth and indigenous employment services.

One limitation to the availability of specialist providers is that they may not be located in sufficient numbers and in locations where clients experiencing family violence reside.
Other difficulties exist as in reality job seekers have rather limited choices in terms of providers. There are also practical difficulties that limit choices for job seekers.

Proposal 15–4 As far as possible, or at the request of the job seeker, all Job Seeker Classification Instrument interviews should be conducted in:
(a) person;
(b) private; and
(c) the presence of only the interviewer and the job seeker.

Wherever possible, the JSCI should occur in person, though this may not always be possible. We refer to the NWRN submission on Employment Services – 2012-15 for other matters related to client's experiences with employment services.[7] Areas of difficulties may be exacerbated by the experience of domestic violence.

Question 15–6 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?

NWRN supports such an amendment.

Proposal 15–5 DEEWR should amend the Job Seeker Classification Instrument to include 'family violence' as a new and separate category of information.

NWRN supports the proposal.

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?

NWRN is not in a position to comment on this proposition.

[7] http://www.welfarerights.org.au/Policy%20papers%20%20submissions/The%20future%20of%20employment%20services%20in%202012-15.pdf

Chapter 19: Superannuation

Proposal 19–2 Regulation 6.01(5)(a) of the *Superannuation Industry (Supervision) Regulations* 1994 (Cth) should be amended to require that an applicant, as part of satisfying the ground of 'severe financial hardship', has been receiving a Commonwealth income support payment for 26 out of a possible 40 weeks.

Question 19–5 Are there any difficulties for a person experiencing family violence in meeting the requirements under reg 6.01(5)(b) of the *Superannuation Industry (Supervision) Regulations* 1994 (Cth) as part of satisfying the ground of 'severe financial hardship'? If so, what changes are necessary to respond to such difficulties?

Question 19–6 Should the *Superannuation Industry (Supervision) Regulations* 1994 (Cth) be amended to allow recipients of Austudy, Youth Allowance and CDEP Scheme payments to access early release of superannuation on the basis of 'severe financial hardship'?

NWRN supports the proposals. However the ALRC's proposal needs to be strengthened to capture the circumstances of people who are not receiving an income support payment. These by definition can be some of the most vulnerable people in our community.

Some argue against early release of superannuation on the grounds that it may erode an individual's eventual retirement benefits, and they will be reliant on the age pension as their main source of income in retirement. Many women experiencing family violence are unlikely to be able to accrue significant savings for retirement, despite the achievement of sufficient superannuation savings being a worthy policy goal. For individuals experiencing family violence the immediate need for safety and security, for themselves and their children, must take priority. Many of the client's that contact Welfare Rights regarding early release of superannuation are experiencing major personal crisis at the time that they are seeking access to their superannuation. Policy needs to recognise that people experiencing domestic violence or the potential loss of the principal residence or requiring funds for urgent medical needs, have other important, immediate and more pressing priorities.

NWRN proposes the following with respect to the current laws surrounding early access to superannuation under the hardship provisions. The superannuation legislation allows early release of superannuation benefits only in very limited circumstances. These are the four main aspects of the current system that have been identified as being unduly harsh:

1) One of the grounds of satisfying "severe financial hardship" is the requirement that the person must be in receipt of an income support payment for a specified time. Currently, persons under 55 and 39 weeks of age must have been in continuous and actual receipt of a Centrelink payment for 26 weeks. For persons over 55 and 39 weeks they must have been in receipt of a Centrelink payment for a cumulative total of 39 weeks since turning 55. Where a person does not meet this condition, he may make an application on, very limited, compassionate grounds. It is our experience that many people find this course of action time-consuming and see the requirement as an additional hurdle, making it extremely difficult to gain access to their funds in urgent situations. Proposal 19-2 addresses this issue.

2) The hardship rules do not allow a person in receipt of YA (studying full-time) or Austudy to access their superannuation benefits under any circumstance. This blanket prohibition is unfair

and unreasonable. What the legislation fails to consider are instances where a young person has no other means of support and who may be in a financially dire situation, such as experiencing sudden ill health, or have incurred some unavoidable and reasonable expense, such as urgent hospital or medical fees. Question 19-6 addresses this issue.

3) The legislation also fails to consider New Zealand citizens who are not considered an Australian resident for the purposes of Social Security law and who are denied access to income support payments, by virtue of the 2001 reciprocal international agreement between Australia and New Zealand. This effectively means that for most New Zealand citizens who may have worked in Australia, accrued superannuation benefits and paid taxes for years, are not only burdened by lack of access to income support but also by the oppressive early access to super provisions.

4) Where a person is not in receipt of an income support payment due to a penalty which is applied by Centrelink, as a general rule, they do not meet the early release requirements and are therefore barred from accessing their superannuation funds. In many instances, these restrictive rules trigger not just financial hardship but potential homelessness. We note that the Commonwealth Ombudsman in their submission to the Senate inquiry into the Employment Services Bill (2008) also brought this unfair application of the hardship provisions to the Government's attention.

Following are case studies which do not directly involve family violence but which demonstrate difficulties a person experiencing family violence may have in accessing there super.

Case study 1: Destitute and no access to super

Edward received a compensation payment following a motor vehicle accident. The payment included a component for his lost capacity to earn a living. Because of the compensation payment he is subject to a social security compensation preclusion period which precludes him from receiving most social security payments until 2015, unless he has "special circumstances".

Unfortunately, Edward had little experience in handling money and his compensation money has run out. Sadly, he was also unsuccessful in his attempts to have the compensation preclusion period reduced via the Centrelink appeals system.

He is now living with the help of charities. He does have superannuation that could help him survive until the preclusion period ends in 2015, but hasn't been able to have that superannuation released to him under the rules for early release of super. This is because he can't provide a certificate from Centrelink saying that he has been on social security for the last six months.

Case study 2: Early release of super eroded

Peta was granted an early release of her superannuation of $56,000 on compassionate grounds to pay for special medical treatment, not available through the public system, for her autistic son.

After tax was taken out, she received $44,000. She contacted Centrelink and was told that the super was exempt from the income test and would not affect social security payments.

Unfortunately, her Family Tax Benefit (FTB) was then cut off for the rest of the year, and a $2,500 FTB debt was raised. This is because FTB is paid under the Family Assistance Act and, unlike payments under the Social Security Act, an early release of super is treated as income for family assistance purposes.

Peta said that she would still have applied for the early release of superannuation even if she had known the effect on her FTB earlier because she said "I have no choice, I have to pay for the treatment".

Peta says she knows many parents with autistic children who are accessing their superannuation early to pay for treatment. In any case, whatever the compassionate reason for early release, it is arguably not in the public interest for the released payment to be clawed back by the government when it is so desperately needed by the recipient.

Parliament could prevent this from happening to parents like Peta by changing the definition of income for family assistance purposes to exclude superannuation payments released early on compassionate grounds.

Question 19–7 Should reg 6.01(5)(a) of the Superannuation Industry (Supervision) Regulations 1994 (Cth) be amended to provide that applicants must either be in receipt of Commonwealth income support payments or some other forms of payment—for example, workers' compensation, transport accident or personal income protection payments because of disabilities?

NWRN support such an amendment. This approach would be consistent with previous NWRN proposals to ensure that people in dire financial circumstances and who are excluded from receiving an income support payment would have appropriate access to early release provisions in appropriate situations.

Proposal 19–3 APRA should amend the *Guidelines for Early Release of Superannuation Benefits on Compassionate Grounds* to include information about family violence, including that family violence may affect the test of whether an applicant lacks the financial capacity to meet the relevant expenses without a release of benefits.

NWRN supports this proposal.

Question 19–12 Should reg 6.19A of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) be amended to provide that a person may apply for early release of superannuation on compassionate grounds where the release is required to pay for expenses associated with the person's experience of family violence?

NWRN supports this proposal.

Question 19–15 What training is provided to superannuation fund staff and APRA staff who are assessing applications for early release of superannuation? Should family violence and its impact on the circumstances of an applicant be included as a specific component of any training?

NWRN has no knowledge of the current training arrangements for superannuation fund staff and APRA staff who are assessing applications for early release of superannuation. However, we believe that family violence and its impact on the circumstances of an applicant should be included as a specific component of any training.