

# Response to Australian Law Reform Commission Discussion Paper 76

## 30 September 2011



### **Australian Law Reform Commission Inquiry into Family Violence and Commonwealth Laws**

On 19 August 2011, the Australian Law Reform Commission released Discussion Paper 76 for its current Inquiry into family violence and Commonwealth laws and called for submissions on over 30 proposals for reform.

The Inquiry has as its focus the treatment of family violence in specific areas of Commonwealth law and the impacts on those experiencing family violence. Proposals in the Discussion paper are structured around the issues of Social Security, Child Support and Family Assistance, Income Management, Employment, Superannuation and Migration.

A related series of issues papers was previously circulated for comment to inform the direction of the Inquiry.

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## 1 Introduction

The Department of Human Services (DHS) welcomes the opportunity to respond to the Australian Law Reform Commission's (ALRC) Discussion Paper and appreciates the level of interest and detail around the critical areas of family violence and service responses.

There are profound repercussions for those who experience family violence, in addition to long term consequences for both individuals and the communities in which they live. The Australian Government has targeted the issue of family violence through a range of initiatives, including the National Plan to Reduce Violence against Women and their Children, the White Paper on Homelessness, the National Framework for Protecting Australia's Children and its broader Social Inclusion agenda.

Many of the themes of the Discussion Paper are consistent with DHS's recent findings arising from work on family violence issues undertaken by the Child Support program and the development of a DHS Family and Domestic Violence Strategy following the recent integration of the department with Centrelink and Medicare Australia as part of the Service Delivery Reform agenda. The Service Delivery Reform agenda is also relevant for customers experiencing family violence, for example with respect to seamless and coordinated service responses.

DHS broadly supports the themes outlined in the Discussion Paper and is also supportive of many of the ALRC's proposals, although our response recommends caution around the implementation of these, noting they are subject to relevant administrative and resource considerations.

Within this submission, DHS outlines current supports and arrangements for customers experiencing family violence together with details of relevant initiatives underway to improve our service responses. As part of this work, DHS is seeking to test approaches to enhance the experience of its customers and better address some of the challenges faced by those experiencing family violence. The submission contributes a service delivery perspective to the identification of family violence issues and subsequent approaches. This perspective recognises the critical nature of the department's role in connecting people to appropriate assistance and ensuring this responsibility is undertaken in a timely, sensitive and intelligent manner.

DHS delivers payments on behalf of nine government partner agencies, including the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), Department of Employment, Education and Training (DEEWR) and the Department of Health and Ageing (DoHA). The Discussion Paper provides a number of proposals for consideration by those agencies with direct policy responsibility where DHS responses are not appropriate in a service delivery context, for example FaHCSIA has policy responsibility for the *Social Security Act 1991*, the Social Security Guide, the Family Assistance Guide and both child support acts. DEEWR has responsibility for the *A New Tax System (Family Assistance) Act 1999* and the *Fair Work Act 2009*. However, for the purposes of effective 'end to end' service delivery, DHS necessarily maintains strong and cooperative working relationships with these partner agencies.

Areas of most significance for DHS in the Discussion Paper are those strategies to support mainstream services to identify and respond to customer need. These areas reflect DHS's own work, ensuring that service improvements associated with Service Delivery Reform include approaches to family violence issues which are positioned to contribute to improved outcomes for customers. These can be grouped into three overarching topics: screening (including risk assessment); training for staff; and management of information (including protections). The department's response is therefore focused primarily on these areas and the associated issues.

### 1.1 The Department of Human Services

DHS is responsible for the development of service delivery policy and provides access to social, health and other payments and services. It was created in October 2004 as part of the Finance and Administration portfolio. On 1 July 2011, the *Human Services Legislation Amendment Act 2011* integrated the services of Medicare Australia, Centrelink and CRS Australia into the Department of Human Services.

The department delivers services through various customer access channels, including face to face services, call centre networks and online services providing social support through linkages with other assistance available in the states and territories and the wider community.

Service delivery is undertaken by DHS through the:

- **Centrelink** program which delivers a range of government payments and services to Australians - including retirees, families, carers, parents, people with disability, Indigenous people, and people from diverse cultural and linguistic backgrounds. The Centrelink program also provides services at times of major change and emergency.
- **Medicare** program which supports the health of Australians through efficient services and payments, such as Medicare benefits, the Pharmaceutical Benefits Scheme, the Australian Childhood Immunisation Register and the Australian Organ Donor Register.
- **Child Support** program which provides support to separated parents to provide the financial and emotional support necessary for their children's wellbeing.
- **CRS Australia** which helps people with a disability, injury or health condition to find and keep a job, by providing individualised vocational rehabilitation and helping employers to keep their workplaces safe.
- **Australian Hearing** which is a statutory authority that provides a full range of hearing services for children and young people up to the age of 21, eligible adults and age pensioners, and most war veterans. This service includes assessing hearing, fitting hearing devices and providing counselling and rehabilitative programs to enable eligible clients to manage their hearing impairment.

DHS is comprised of more than 39,000 employees, representing nearly a quarter of the Australian Public Service. Through its programs DHS connects with almost the entire Australian population. In 2009-10, there were 7.0 million Centrelink customers<sup>1</sup>, 1.3 million child support customers<sup>2</sup>, over 57,000 Job Seekers assisted by CRS Australia<sup>3</sup> and 22.1 million customers enrolled in Medicare<sup>4</sup> with in excess of \$40 billion in total Medicare benefits paid<sup>5</sup>. Australian Hearing undertakes Community Service Obligations under which 101,418 services were provided in 2009-10.<sup>6</sup>

## 1.2 Service Delivery Reform

DHS is transforming the way it delivers Medicare, Centrelink and Child Support services to make people's dealings with government easier and quicker. This transformation, called Service Delivery Reform, will result in improved outcomes for Australians and more efficient delivery of government services.

Service Delivery Reform will make it easier for people to do business with government in a time and manner that suits their circumstances, give people better quality services and more intensive help and support at times in their lives when they need it and give people better service from government that ensures they receive the benefits and support they are entitled to in ways that are effective for them.

As part of Service Delivery Reform, a new service delivery approach called Case Coordination is being trialled to provide people facing disadvantage or complex challenges with better integrated services and intensive support. The support and assistance offered will vary depending on customers' needs, from simple referrals to services such as training programs or information about other services, to intensive support involving multiple coordinated appointments with non-government and local community services, such as for homelessness issues associated with family violence or rehabilitation from gambling dependency.

The department is also working to enhance services for job seekers in disadvantaged locations through *Local Connections to Work*, a place based approach to support highly disadvantaged job seekers in selected deeply disadvantaged locations. By 2014-15 there will be a total of 24 sites assisting disadvantaged job seekers overcome barriers to social inclusion and economic participation.

<sup>1</sup> Department of Human Services 2011, *Centrelink Annual Report 2009–2010*, p 8, viewed 16 September 2011, <<http://www.humanservices.gov.au/corporate/publications-and-resources/annual-report/index>>

<sup>2</sup> Department of Human Services 2011, *The Department of Human Services Annual Report 2009–2011*, p 8, viewed 16 September 2011, <<http://www.humanservices.gov.au/corporate/publications-and-resources/annual-report/index>>

<sup>3</sup> *Ibid*

<sup>4</sup> Department of Human Services 2011, Medicare Statistical Tables 2009 – 2010, Table 1a, viewed 23 September 2011 <<http://www.humanservices.gov.au/corporate/publications-and-resources/facts-and-figures/medicare/0910-medicare-statistical-tables>>

<sup>5</sup> Department of Human Services 2011, *Medicare Australia Annual Report 2009–2010*, p 7, viewed 16 September 2011, <<http://www.humanservices.gov.au/corporate/publications-and-resources/annual-report/index>>

<sup>6</sup> Australian Hearing 2010, *Australian Hearing Annual Report 2010*, p iii, viewed 16 September 2011, <<http://www.hearing.com.au/annual-reports>>

The department is also working to improve customers' access to services regardless of their geographical location by expanding mobile and outreach services, enhancing web and telephone services and co-locating Centrelink, Medicare and Child Support offices in a number of locations. These initiatives simplify interactions for the community and contribute to improved customer outcomes.

To better understand customers needs and work with them to design, shape and deliver better services the department is using an approach called co-design. Co-design draws on the knowledge and insights of customers, stakeholders and staff to design the services that people expect in a way they prefer. Community and staff engagement forums, online community forums and email will inform the department and enable it to identify gaps in services, create better prototyping, plan with more certainty and implement the newly designed services with more impact and higher take-up.

In addition to the work being undertaken as part of the Service Delivery Reform agenda, a range of place based measures have been identified as part of the *Building Australia's Future Workforce* package. These measures aim to improve the circumstances of some of the most disadvantaged members of society, by supporting their ability to gain, or prepare to eventually enter employment. Ten local government areas have been selected as priority locations for the place based measures nationally.

The measures:

- involve extra responsibilities and more assistance for teenage parents on income support, jobless families and other vulnerable groups to support children and families, and help parents enter or return to the workforce; and
- include new participation requirements for some parents receiving income support, expanded Communities for Children services and the introduction of income management in five of the 10 locations.

The department's responses to family violence issues are framed by the context and objectives of the Service Delivery Reform agenda.

### **1.3 Responses to family violence in DHS**

In Australia, family and domestic violence is a serious issue for individuals, families and the broader community.

The independent review of the decision making and quality assurance processes of the Child Support program was commissioned by the Secretary of DHS and undertaken by David Richmond AO between 7 September and 30 November 2009 (the Richmond Review). The review acknowledged the work undertaken by the Child Support program to identify issues and improvements in its responses to family violence and recommended that its deliverables be expedited.

In response to the identification of family violence as an area where a more consistent and integrated response could deliver service improvements and potentially contribute to improved outcomes for customers, DHS established a Steering Committee to develop a consolidated departmental strategy. The Steering Committee includes staff from across DHS, including the Child Support program, Centrelink and Medicare.

The aim of a DHS strategic approach to family and domestic violence is to facilitate better outcomes for staff and customers experiencing family violence. The strategy will build on the existing responses already in place in the Child Support (in response to the Delivering Quality Outcomes Review) and Centrelink programs in DHS to provide a framework for developing or aligning policies and procedures for responding to family and domestic violence.

An external and internal stakeholder consultation process undertaken to inform the development of the strategy considered three areas of the department's response to family and domestic violence: customer service, community relationships, and staff awareness and well-being. Key findings emerging from these consultations and associated research have helped to identify those areas involving family violence issues in which the department performs well, in addition to outlining some areas for further development.

The department currently undertakes a number of activities that support customers and staff experiencing family and domestic violence, for example:

- assessment and processing of individual benefit claims and administrative requests;
- support, tailored assistance and service brokerage for family and domestic violence by Social Work Services;
- in some local areas, community engagement workers, social workers and some customer service staff have excellent relationships with and make regular referrals to local service providers;
- identifying customers experiencing or at risk of family and domestic violence, as part of a broader needs assessment, in those parts of DHS employing a more holistic or tailored approach, such as Case Coordination in Centrelink, Indigenous Liaison Officers in some remote regions, Personalised Services within the Child Support program and potentially Local Connections to Work; and
- some initiatives, such as Local Connections to Work, link local community service providers directly into relevant customer service processes. Local Connections to Work has trialled having relevant service providers directly available on premises to customers.

Some of the areas in which DHS is seeking to improve its responses are:

- some customers feel that they are not believed or treated with respect - for this reason, many customers opt not to disclose that they are experiencing or are at risk of family and domestic violence;
- where customers do disclose, they often have to repeat their story multiple times to different people within the department;
- having accessible information for customers about family and domestic violence on DHS websites or from offices about the department's response to family and domestic violence, and its impact on benefits/entitlements/rights/obligations;
- considering what its service support should be to customers who perpetrate, as opposed to experience, family and domestic violence; and
- ensuring all DHS program areas have procedures or guidance in place regarding family and domestic violence issues.

These findings and others arising through the work on its family and domestic violence strategy indicate that DHS is already providing, in at least some areas, most of the services and response which are required by customers impacted by family and domestic violence. However, these services are not always being provided consistently, in a joined-up way, and in all areas across the department. Consistent with the broader objectives of Service Delivery Reform, through the strategy, DHS aims to identify and address areas in which it can improve approaches to family and domestic violence for the benefit of customers and staff. Existing family violence practices and procedures in the Child Support program and Centrelink have provided a foundation for the overarching departmental strategy which will align with the principles and themes of Service Delivery Reform.

#### **1.4 Resourcing of services to vulnerable customers**

DHS employs approximately 700 social workers in more than 300 locations around Australia. Social workers provide professional counseling, support and referral services to customers in crisis and to customers with complex problems. This includes:

- people impacted by family violence;
- young people without adequate family support;
- people experiencing or at risk of homelessness;
- people who require intensive assistance to meet their participation requirements;
- people with complex issues including substance abuse, mental health issues or family and other relationship difficulties.

DHS social workers are deployed across most of the department's business areas including:

- services during domestic and international emergency recovery periods such as the Queensland floods, Victorian bushfires and Bali bombings;
- through Centrelink Call; and
- as part of specialist teams in supporting carers, child support, business integrity, income management, participation, compliance and Indigenous services.

DHS is funded for a limited number of social workers and uses the resources available judiciously in providing services to highly vulnerable customers. The demands on these resources are significant and must be carefully managed to ensure services are provided to those in most need.

DHS supports the ALRC's recommendations to provide support to customers at risk of or experiencing family violence. However, DHS notes that provision of additional services and support to these customers must be done within existing resources, and therefore balanced against the needs of other vulnerable customer groups. DHS is not in a position to commit to specific servicing of customers impacted by family violence until resourcing issues are fully understood, costed and priorities are negotiated with partner agencies and Government. Resourcing pressures include staff time, training and systems and procedural support. This submission is prepared within that context.

## **2 Screening and risk identification**

### **2.1 Common interpretative framework**

The Discussion Paper puts forward a number of proposals in relation to a common interpretive framework for the understanding of family violence across different legislative schemes, in particular, a common definition of family violence (proposals 3-1 to 3-9 refer). DHS agrees that reliance on a common definition would support a common understanding and approach across the Government sector. This definition could be used in training material and relevant procedures.

DHS supports the adoption of the ALRC definition by Commonwealth agencies. DHS also notes, from a service delivery perspective, that the following additional concepts are important for the department's understanding of family and domestic violence:

- violence is not always 'family' violence – that is, it does not always take place between members of a family or couple. Definitions of 'domestic' violence envisage situations where the victim and the user of violence live together. Other than couples and families, 'domestic' violence can occur between people co-habiting for other reasons, such as friends, people living in a shared house or in other non-familial domestic arrangements, or live-in caregivers;
- the family and domestic violence concept needs to include both *current* and *former* members of a family/relationship or household. The research and consultations show that family and domestic violence does not always stop at separation, and may in fact begin then;
- family and domestic violence is not just a series of behaviours, but an underlying attitude and approach to intimate relationships on the part of the person who uses violence, based on an attitude of superiority, entitlement, and an adversarial approach. The experience of family and domestic violence is not simply the experience of a sequence of events, but one which influences and controls all areas of the victim's life, and this reality must be reflected in the department's understanding of family and domestic violence; and
- family and domestic violence frequently takes one of the following forms:
  - *Coercive controlling violence* - an ongoing pattern of force, threat, and other means by one person to dominate and obtain submission and compliance from another; and
  - *Situational violence/violent resistance* - violence or force arising out of a conflict or stressful situation or used in self defence, but not related to a larger pattern of power and control of one person over another.

For particular program areas of DHS, the term 'economic abuse' raises especially sensitive issues, for example for child support customers, because the Child Support program facilitates and enforces transfer of money from one to the other. The meaning and limits of the terms of the definition of family violence must be made very clear, to ensure that they are useful and do not lead to further confusion or conflict. It may be useful to provide examples of some of the forms of family and domestic violence within the definition so that these can be recognised.

## 2.2 Screening

Proposals 4–1 to 4–4 and Question 4–1 of the Discussion Paper address arrangements for screening for family violence by staff in the Child Support program, Centrelink and the Family Assistance Office. The proposals recommend screening commences upon application for child support or social security and at defined points afterwards and the ALRC seeks advice on what these defined points should be. Proposal 4-7 suggests that DHS should regularly monitor and evaluate screening processes with the outcomes to be publicly available.

DHS is conscious of the barriers to disclosure of family violence outlined in the Discussion Paper and continues to explore options for surmounting these, noting that the department's substantial and varied customer base presents a challenge to determining a single best practice response. DHS is actively exploring a number of approaches to risk identification, screening and assessment for different customer interactions. The capacity to facilitate access to appropriate support and assistance is a key component of any screening approach.

Family and domestic violence can manifest itself in many ways, and different forms of family and domestic violence can sometimes display the same behaviours (although the underlying pattern and power dynamics will be very different). Often a service delivery agency such as DHS will first become aware of the family and domestic violence because a particular behaviour becomes evident. One of the roles of screening and service provision is to then attempt to explore the relationship dynamics which lie behind and drive the behaviour.

Victims of violence often find it difficult to disclose their situation, due to feelings of stigma and shame, a fear of not being believed, or a feeling the agency is not interested. Many have actual experiences of not being believed or their concerns being dismissed (Benevolent Society, 2009; Kaspiw et al., 2009).

Where survivors do disclose, very often they have to tell their stories multiple times. Family and domestic violence support services can be fragmented, complex and hard to access.

Recent evaluations of the family law system have recommended that, as a preliminary step to providing support and making appropriate referrals, all cases coming before the family law courts should be screened for the presence of family violence (Chisholm, 2009; Family Law Council, 2009). The most effective models of screening involve routine questions at key intervention points.

As noted in the Discussion Paper, 'screening' merely identifies the risk. 'Assessment' is more complex and assesses the person's whole needs; it is the precursor to Case Coordination and tailored customer assistance and should be carried out by a professional or highly skilled worker. An unskilled response to disclosure carries the risk of further traumatising the sufferer. Consequently, where staff responding to disclosures do not have professional skills, their response should be limited to containment and immediate referral to a worker or service who can provide assessment and support services (Laing, 2003; Robinson & Moloney, 2010; Winkworth & McArthur, 2008).

Since 2000, New South Wales Health has routinely screened for family and domestic violence via four simple questions. Between six and 11 per cent of women screened identified as having experienced family violence (nearly a quarter of these were the first time the woman had spoken about her experience). An offer of referral to support services was made to all these women, and 13 per cent accepted the offer. More than 90 per cent of women screened were relieved or happy to be asked about family violence, and the majority of women felt that routine screening sent the message that family violence is wrong and that victims are not alone (Bonner, Campillo & Cosier, 2002; Laing, 2003; NSW Health, 2007; Spangaro, Zwi & Poulos, 2010).

The department supports the provision of detailed information about family and domestic violence and its impact on DHS benefits and entitlements at multiple points during the life of a customer's case, including at initial application for registration. At the same time, the provision of detailed verbal information about family violence by staff would need to be considered with regard to the length and information level already associated with current interviews and processes.

DHS would not, however, define the provision of this information as 'screening'. Risk screening is the asking of questions of customers in relation to the existence of family violence (Robinson & Moloney, 2010). Direct questioning is seen by most researchers and practitioners as the best way to elicit information about family violence, given the stigma, disbelief and lack of respect often encountered by survivors (Chisholm, 2009; Family Law Council, 2009).



The benefits of risk identification and screening include assisting the Commonwealth to perhaps better identify customers in need. Potential problems include an initial increase in work load as staff become accustomed to the information/techniques available and incorporate these accordingly within customer interactions.

DHS also notes that the Discussion paper suggests that information regarding screening should be incorporated into the *Child Support Guide*. However, given its procedural nature, information on risk identification and related guidance to assist decision making is accessible in tools such as procedural instructions and IT modules.

As a mainstream service provider, with a substantial customer base, DHS considers that any screening approaches need to be part of a risk assessment framework that considers:

- customer responses or behaviour which might indicate family and domestic violence;
- proactive risk identification questions at the point the customer first makes contact with programs where family and domestic violence may be an issue; and
- screening questions at certain key administrative events linked to greater risk of family and domestic violence.

DHS acknowledges that, whatever the referral option, risk identification should not occur in the absence of an immediate supportive response being available to the customer. Nor should risk identification be undertaken in such a way as to make the customer's situation worse. Risk identification must be accompanied by the immediate availability of someone qualified to carry out a more complex screening and assessment, and to provide support and advocacy.

A risk assessment process suggests an immediate response can be made available and this would need to be ensured through a variety of service channels including face to face, Social Worker National Telephone Access Centre and call centre options. At this early stage of the DHS integration, access to services provided across the department is still being refined. For example, the Child Support program which works primarily in a telephone environment, currently accesses Centrelink social workers only where a customer requests an exemption to end a case. The Child Support program model for family violence issues is risk identification followed by the offer of an immediate referral to an expert service, including external professional counsellors.

DHS also acknowledges that there are sections of the community that are more vulnerable to family violence due to power imbalances based on Indigenous status, culture, sexuality, disability or age. The department agrees that a clear understanding of the features, dynamics and experience of family and domestic violence is crucial for customer service staff and that this information should be included in policy documents, procedures and training materials.

The ALRC specifically identifies a number of Child Support program processes for collection of child support and suggests that family violence be considered as a reason to stop taking an action (proposals 9–1 to 9–6 refer). It is acknowledged that certain actions taken by DHS as part of its administration of the child support scheme can represent family violence trigger points for some customers. The benefit of risk identification and information provision at these points is that the Child Support program may in some cases be able to consider alternative forms of action. Although there is a legal requirement to pursue collection, where family violence is an issue alternative action can be considered. In cases where family violence is identified, the Child Support program will contact the affected parent to advise them of the intended action and advise them of the options available, for example, electing to end collection or seeking an exemption from Centrelink.

Where a case has indications of family violence, this information is taken into account prior to initiating significant action. Change of Assessment teams regularly consult with customers prior to instigating any significant action against the other party. This contact is also used to inform the customer of any potential impact on their benefits, income etc. Where there is already an indication of family violence, these customers are contacted to discuss any possible exacerbation of the violence based on the likely outcome. This does not preclude an adverse finding against the violent party. The aim will be to provide extra time for the party at risk to take steps to minimize their risk by consulting with police or counselors.

The Child Support program's procedural instructions already include information and consideration of family violence trigger points, which will be revised as appropriate to reflect the changes in the definition of family violence and new practices around family violence. Procedural instructions and training are considered effective tools to outline these requirements rather than the *Child Support Guide*, as suggested in the Discussion Paper.

In regards to ending a case, where the receiving parent is entitled to receive more than the base rate of FTB Part A, an election to end must be approved by Centrelink. Approval will only be provided by Centrelink if the customer is not entitled to receive more than the base rate of FTB Part A or the customer holds an exemption from taking reasonable maintenance action from Centrelink. Exemptions are granted by social workers or Indigenous Services Officers and include family violence and the parent not being the parent of the child or unknown amongst other reasons. These customers are referred to social workers or Indigenous Services Officers as a matter of course.

### **2.3 Referrals and Pathways**

Proposal 4–10 recommends that the *Guide to Family Assistance* and the *Child Support Guide* provide that where family violence is identified through the screening process the customer must be referred to a Centrelink social worker. DHS agrees that identification of family violence must elicit an immediate response to link the customer with appropriate support, however, the nature of the requirement for support will vary according to individual circumstances. Referral to a social worker is not the only appropriate response and it is important to recognise the role of other services in the family violence sector. This is consistent with strategies around coordinated responses outlined in the National Council's Plan for Australia to Reduce Violence against Women and their Children.

When a customer discloses a risk of family violence (or any other risk or problematic issue outside child support considerations), the customer is offered an immediate referral to an appropriate service provider in the Government or community sector. To ensure maximum uptake of referrals, as a general rule, customers are transferred immediately to the service provider via warm transfer ('warm transfer' is the ability to transfer a customer's call directly from the Child Support program to the service provider without the customer having to end the call – in effect, the customer is able to speak to the service provider as part of the same call he or she made to the Child Support program).

Centrelink has processes for referrals in place for payments such as Crisis Payment for domestic violence. Any strategy mandating referrals to social workers for any and all indications of family violence would need to be considered in the context of the customer's current circumstances, concerns and supports and the possible resourcing implications. It is not correct to presume that every customer who presents with or identifies a family violence issue requires a higher level of intervention through a social worker. In some circumstances lower level responses, such as information provision, may be appropriate, and in some situations customers may be receiving suitable assistance through other organisations in the family violence sector and only financial assistance is sought from DHS. It is important to acknowledge the referral alternatives available through support services such as refuges, 1800-RESPECT, Family Relationships Centres, the Family Relationships Advice Line, and the Child Support program's Parent Support Service.

Once family violence issues are identified, it may not be possible or necessary for DHS to offer a case management approach to every customer concerned, as suggested at Proposal 4–9. Service responses must be based on the complexity of the customer's case, the level of support networks the customer has and services that may be provided by other Commonwealth, state/territory agencies or by other service providers. DHS provides case coordination services (including referral to specialist service providers) rather than case management.

### **2.4 Child Support Family Violence Risk Identification Pilot**

DHS is currently running a Child Support program pilot in two sites of proactive family violence risk identification. The pilot consists of a small sample of Customer Service Officers, who asked customers brief questions at certain key points (initial registration and requests for change of assessment), preceded by a short introductory statement.

The questions were asked of both paying and receiving parents of both genders.

The questions were designed to be as inclusive as possible and simple enough to avoid re-traumatisation or prompt detailed responses which might lead to needing to re-tell the story again later, and also vicarious traumatisation of staff.

Where customers respond positively to concerns around safety they were offered warm transfers to appropriate family violence and similar services which can provide further assessment and support. Where customers declined warm transfers, they were offered contact information about relevant services. Where customers indicate family violence concerns, a Sensitive Issues Indicator for family violence is activated on their electronic record.

The primary referral source for the pilot is the 1800-RESPECT National Family Violence Helpline. The Helpline was created in 2010 as part of the Government's National Plan to reduce violence against women and their children.

The Discussion Paper raises issues about relevant trigger points (for example Question 5–1) at which screening for family violence should be required and this is an area that the Child Support program pilot will help to inform. Various intervention points have been identified as being points where the provision of additional information or support around family violence may be particularly relevant for the customer. The effectiveness of using risk assessment at both initial registration and at subsequent trigger points will need to be further explored as multiple risk assessments could be frustrating for customers and resource intensive for the department.

### **3 Training**

DHS recognises the importance of quality, comprehensive and appropriate training for staff in the delivery of effective responses to family violence as referenced throughout the Discussion Paper (for example, proposals 4–5 and 4–6). Within its current work on the DHS family and domestic violence strategy, the department is considering the most effective approaches to ensuring appropriately targeted and tailored training for the different requirements of its large staffing base. A preferred model would supplement current training procedures and assist staff undertaking a range of duties at all levels.

It is important that in any question of training around sensitive issues such as family violence that there is an understanding that it is not an issue that can be sorted out, rather it is an event that affects customers, families and communities. This understanding is critical in enabling staff to respond in an appropriate manner.

As part of the work currently underway to develop the DHS strategy, a small team researched contemporary training content for family and domestic violence responses. DHS will use the findings to enhance and expand existing family and domestic violence training resources for staff with respect to their various roles and requirements. For example, there are a number of positions in the department that are not primarily customer facing but have a key role in raising awareness of issues and services in the community, such as Multicultural Service Officers.

Similarly, Indigenous Service Officers, now known as DHS Indigenous Specialist Officers (DHS ISOs), are committed to contributing to safe communities by assisting specialists and professionals in helping Aboriginal and Torres Strait Islander Australians access crisis payment, in particular, overcoming family violence and reconnecting released prisoners to family and/or community. DHS ISOs currently receive appropriate training and support to ensure their knowledge of family violence issues is relevant within the context of Aboriginal and Torres Strait Islander communities and people. DHS ISO's are supported with their knowledge of DHS payments, programs and services together with their knowledge of Aboriginal and Torres Strait Islander service delivery and policy priority areas.

Specific training on family and domestic violence is currently being finalised for delivery to Child Support program Operations staff. This training includes risk indicators and appropriate response options and follows previously delivered training on Understanding Family Violence and Integrated Customer referrals. These topics are aimed at increasing staff awareness of family and domestic violence and enhancing responsiveness where relevant customer circumstances arise. The nature, features and dynamics of family violence and its impact is incorporated in the training content together with practical guidance for related staff/customer interactions. Centrelink social workers will support the training by providing relevant context and subject matter expertise to optimise learning outcomes. The training will reflect of the importance of referral responsibilities and options in relation to identified trigger behaviours or self identified customers at risk.

The Child Support program training also addresses issues for staff in hearing about family violence from customers, how to manage vicarious trauma, and what support options are available to staff.

DHS supports the overarching principles of the ARLC's Discussion Paper with respect to training for staff, however, the wide range of training needs across the department's different staffing roles and levels of experience would require a strategic approach to ensure effective outcomes within available resources. A high level proposed training framework suggests a staged approach around four broad categories of need:

- General understanding and awareness of family and domestic violence and its impacts (targeted at all staff);
- A deeper understanding of family and domestic violence and the ability to identify risk and subsequent responses and referral approaches (targeted at customer service officers and specialised service delivery staff, such as for Case Coordination);
- Refresher training for social workers and professional staff to maintain current knowledge and awareness of family and domestic violence issues; and
- General understanding of family and domestic violence issues together with an appreciation of the role and capacity of the employer to support employees (targeted at team leaders and managers).

## **4 Information**

DHS has a range of strategies and processes in place to support the effective management of information flowing to and from customers. In the interests of prioritising seamless and useful services to customers at the time they are needed, DHS seeks to ensure that information about services, entitlements and assistance is accessible to customers and staff through a range of channels. Where possible, DHS will facilitate a 'tell us once' approach to allow customers to have their information shared across the department to avoid having to retell their stories multiple times, particularly where sensitive areas such as family and domestic violence are concerned. At the same time DHS is acutely aware of the need to protect customer privacy.

In response to the Discussion Paper's proposals around the use of a safety concern flag (Proposal 10–3 refers), the department notes that it has experience with the use of vulnerability and sensitive issues indicators. The DHS experience suggests that while some benefits can manifest in terms of reduced repetition for the customer, there remain a number of issues to be considered (for example appropriate period of application and review processes).

DHS would expect that information about family and domestic violence would remain highly confidential in most cases. Any customer information supplied to the department is protected by the confidentiality provisions contained in the legislation and various security measures, however, sensitive information such as details of family violence issues could be further protected. For example, Social Work Services have a separate data base (SWISS) that could be used to store extra sensitive information as it has restricted access.

Disclosure of sensitive customer information to other agencies could only be done at present under existing legislative or policy mechanisms – such as under Public Interest provisions for threat to life, health or welfare, for the purposes of Social Security law (if necessary to the Social Security Appeals Tribunal for example), under the Secretary to Secretary provisions, or with the customer's consent. Inter-agency protocols do not allow the release of customer information; it is necessary for there to be a legislative provision that allows release. With respect to pre-employment processes, however, information contained within Job Capacity Assessment reports is available to those staff working with the customer within the relevant DEEWR funded employment services. Information disclosed to the assessor by job seekers can also, with customer consent, be provided to other departmental staff or third parties such as supporting organizations or health professionals (Question 15–2 refers).

An exception to confidentiality might include the release of some information to state or territory child protection authorities, where DHS learns that a child may be at risk of abuse or neglect. DHS currently receives approaches from Police and Coroners seeking evidence of family violence that may be recorded on customer files. Recently a State Coroner issued a subpoena seeking evidence of any threats or reports of family violence recorded on a customer file for a customer who is missing and suspected to be deceased.

Legislative and security requirements would not prevent a safety concern flag being placed on the customer's record, however, the benefits of a flag would need to be balanced with the benefits of information sharing to support effective responses. The costs of system development and associated staff training and processes would also need to be considered. If a safety concern flag is placed on the customer's record it would need to be kept current, measures would need to be put in place to ensure it is not inadvertently released to third parties or other agencies inappropriately. Procedures would also need to be implemented to ensure the information that leads to the safety concern flag being placed on the

customer record is accurate and is regularly reviewed. At present, Centrelink's vulnerability indicators have review periods ranging from 12 weeks for Significant Caring Responsibilities to 52 weeks for a number of others, including for psychiatric problems or mental illness. The Child Support program's Sensitive Issues Indicator has a standard default review period of 25 months.

The easiest way of disclosing to other programs is via informed customer consent, which means the customer will need to be advised of the 'safety concern flag', what it means, and who it could be potentially disclosed to. The customer may also want some assurance about what another agency might use this information for - for example State Police services. It is also likely to lead to other agencies wanting further information.

Practices for informing customers of vulnerability indicators and Sensitive Issues Indicators are not mandated. Centrelink generally advises customers of the presence of a vulnerability indicator while the Child Support program does not advise when a Sensitive Issues Indicator is activated. However, the Child Support program agrees that consideration should be given to advising the customer when activation takes place, in order to give the customer some say in its use. Similarly, the customer could be asked at this time as to whether or not he or she would consent for the issues indicator to be visible to other areas (such as Centrelink) within the department.

The Discussion Paper questions whether CSA should ensure that notices of assessment pursuant to s 76 of the *Child Support (Assessment) Act 1989* (Cth) do not include parties' names (10-1 refers). The suggestion of not including parties' names on notices of assessment is to protect those customers who have changed their names due to fear of family or domestic violence and not disclosed the reason for a name change to – the Child Support program. Where particular individuals have concerns, the Child Support program has a simple process in place to remove the customer's name from assessment letters. Removing all names on notices of assessment and replacing them with terms such as 'mother' and 'father' could lead to confusion for customers with multiple cases. If parents cannot not clearly identify the case the assessment notice relates to this could undermine their rights to natural justice.

The Discussion Paper correctly notes the Child Support program's procedures for handling offensive material submitted during the Change of Assessment and Objections processes has recently been updated. That update was in direct response to the Ombudsman's case study at 10.58 of the Paper. DHS agrees that these changes address many of the potential domestic violence issues inherent in the open exchange of information processes.

The ALRC's proposal 10-1 is that senior officers should determine whether to inform the other party of offensive material and, where requested, provide it to the other party. The department acknowledges the ALRC's residual concerns in Proposal 10-1, that if the material is not sent to the other parent they may not be aware of a possible threat against them. Threats, however, are not covered by the policy. If a threat of any kind were made the matter would be reported to the appropriate authorities. Given that threats would be reported to the appropriate authorities to investigate and take action, such a proposal would, in practice add little if any value. The intention of the policy is the Child Support program's processes should not be used as a means to offend the other parent.

The secrecy provisions of each child support Act<sup>7</sup> generally prevent the department providing information about one customer to another customer unless the information is necessary for the administration of either Act. Although these provisions include an exemption if communicating protected information is necessary to prevent a 'credible threat', this exemption may not cover scenarios where there is no overt threat involved. Consequently, it may be a breach of the secrecy provisions for a departmental officer to advise the other customer when the department receives a document that has been deemed unacceptable due to its offensive content.

The Child Support program's security incident management procedures provide guidelines for Customer Service Officers in relation to threats made by customers against their former partners (or any other person). Managing threats includes escalating issues to more senior officers and reporting to the police where appropriate. Where a threat is made by one customer against a former partner a Sensitive Issues Indicator for family violence would be activated as a matter of course.

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<sup>7</sup> Section 16 of the *Child Support (Registration and Collection) Act 1988* and section 150 of the *Child Support (Assessment) Act 1989*.

Where a threatened customer indicates distress she or he could be referred to a support service, such as the Parent Support Service, as part of the Child Support program's current risk identification and referral approach.

Where security issues indicate it is necessary, the Customer Service Officer who receives the disclosure can escalate the case to a senior officer to make the decision as to whether or not a case should become a Restricted Access Customer (RAC) case due to family or domestic violence. The department considers it would not be necessary for a social worker to have to make the decision. All customer case material is treated as protected information by staff. The RAC status can be used in cases where there is an actual threat of harm and protecting information on a person's whereabouts is critical to providing safety.

DHS would expect that information about family and domestic violence would remain highly confidential in most cases. Exceptions would include the release of some information to State child protection authorities, where DHS learns that a child may be at risk of abuse or neglect, in accordance with relevant legislation and policy requirements.

Placing a safety concern flag on a customer record in itself has a number of benefits such as minimising the number of times that a customer needs to tell their story and to explain the impact of family violence on their ability to comply. Some Centrelink experience with similar indicators suggests that the flag in itself is not the answer but should be suggestive that other supports may be in place or offered. Other related issues to be addressed include the length of time a flag should stay on a customer record and the nature of any review process needed. Any data drawn from the safety concern flag needs to be interpreted with caution and not as a definitive answer about the prevalence of family violence in our community.

## 5 Other issues

### 5.1 Child support eligibility

The Discussion Paper poses two options in relation to child support eligibility:

#### **OPTION ONE: Proposal 10–4**

**Proposal 10–4** Section 7B(2)–(3) of the *Child Support (Assessment) Act 1989* (Cth) limits child support eligibility to parents and legal guardians, except in certain circumstances. The limitation on the child support eligibility of carers who are neither parents nor legal guardians in section 7B(2)–(3) of the *Child Support (Assessment) Act 1989* (Cth) should be repealed.

DHS is concerned that if the limitation is repealed this could potentially allow individuals who are not providing any real care to apply for a child support assessment, for example, when children are older their friends could attempt to apply as their carers. The limitation ensures that the objects of the legislation and scheme are fulfilled, as it was the intention of the legislature that the biological parents or legal guardians be financially responsible for these children. Any proposal to broaden the category of who can apply for child support should be considered by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) as the department with policy responsibility.

#### **OPTION TWO: Proposals 10–5, 10–6 and 10–7, and Question 10–4**

**Proposal 10–5** The *Child Support (Assessment) Act 1989* (Cth) provides that, where a parent or legal guardian of a child does not consent to a person caring for that child, the person is ineligible for child support, unless the Registrar is satisfied of:

- 'extreme family breakdown'—s 7B(3)(a); or
- 'serious risk to the child's physical or mental wellbeing from violence or sexual abuse' in the parent or legal guardian's home—s 7B(3)(b).

Section 7B(3)(b) of the *Child Support (Assessment) Act 1989* (Cth) should be amended to:

- (a) expressly take into account circumstances where there has been, or there is a risk of, family violence, child abuse and neglect; and
- (b) remove the requirement for the Registrar to be satisfied of 'a serious risk to the child's physical or mental wellbeing'.

**Proposal 10–6** The *Child Support Guide* should provide that:

- (a) where a person who is not a parent or legal guardian carer applies for child support; and
- (b) a parent or legal guardian advises the Child Support Agency that he or she does not consent to the care arrangement; and
- (c) it is alleged that it is unreasonable for a child to live with the parent or legal guardian concerned.

the following should occur:

- (1) a Centrelink social worker should assess whether it is unreasonable for the child to live with the parent or legal guardian who does not consent, and make a recommendation; and
- (2) a senior Child Support Agency officer should determine if it is unreasonable for the child to live with the parent or legal guardian who does not consent, giving consideration to the Centrelink social worker's recommendation.

**Proposal 10–7** The *Child Support Guide* should include guidelines for assessment of circumstances in which it may be unreasonable for a child to live with a parent or legal guardian.

Of the two options outlined in the Discussion Paper, option 2 is the preferable option for DHS. This option appears to be more consistent with the objects of the Child Support legislation and, as such, would have less impact on the underlying framework of the Scheme. The details of this option, however, need to be explored closely with FaHCSIA with a view to determining whether the proposal would deliver the best outcome for customers and families.

In relation to proposal 10-6, this practice is currently in place. Centrelink (through Centrelink social workers) assists with the determination as to whether it is unreasonable for a parent to provide care for a child. Furthermore, the Procedural Instruction dealing with Applications for Assessment contains the steps that staff are required to follow in making these decisions.

In relation to 10-7, the *Child Support Guide* has been recently updated to include guidelines for such decision making.

The Discussion Paper also asks, in relation to the *Child Support Guide*:

**Question 10–4** Should the *Child Support Guide* be amended to specify the Child Support Agency's response to an application for child support from a carer who is not a parent or legal guardian of the child, where:

- (a) only one of the child's parents consents to the care arrangements; or
- (b) neither of the child's parent consents to the care arrangements, and it is unreasonable for the child to live with one parent?

In practice, how does the Child Support Agency respond to an application for child support in these circumstances?

The DHS response to this enquiry is:

Where neither of the parents consents:

The *Child Support Guide* properly explains the Child Support program's policy, in line with the objects of the scheme as settled by FaHCSIA and DHS. One of these objects is to emphasize parental responsibility (not limited to financial) where there is no risk to the child. Where there is a risk to the child the non-consent of a parent does not prevent a third party carer from obtaining an assessment of child support.

When Child Support receives an application from a non-parent carer and the parent or legal guardian advises the Child Support program that they do not consent to the non-parent carer providing care, Child Support will investigate to establish whether the non-parent carer satisfies the requirements of the definition of an eligible carer (section 7B of the *Child Support (Assessment) Act 1989*).

The terms of the legislation imply that if the parent does not agree to the care arrangements they must be prepared to provide care for the child. Some reasonable indication of an alternative living arrangement for the child is required.

The Child Support program will be satisfied that it is unreasonable for a parent or guardian to care for the child if:

- there has been [extreme family breakdown](#); or
- there is a [serious risk](#) to the child's physical or mental wellbeing from violence or sexual abuse in the home of the parent or legal guardian concerned (section 7B(3)).

The Child Support program will be satisfied that there has been an extreme family breakdown if:

- the child has never lived with the parent; or
- there has been a substantial period since the parent has provided care for the child; or
- other circumstances indicate extreme family breakdown.

However, the Child Support program is unlikely to be satisfied that there has been an extreme family breakdown if the parent has spent frequent and regular time with the child over a substantial part of the period when another person provided care for the child. Child Support may seek evidence of extreme family breakdown.

When determining whether there is a serious risk to the child's mental or physical wellbeing as a result of violence or sexual abuse in the home of the parent or legal guardian, the individual circumstances of each case, including any evidence provided, will be considered. Examples of evidence that may assist to substantiate a claim of serious risk of violence/abuse to the child include, but is not limited to, police reports/statements; apprehended violence orders; domestic violence orders; medical reports; or applications for a restraining order.

Examination of procedural instructions may highlight areas to improve the process.

Where only one of the parents consents:

At present where a non-parent carer applies for child support, they are expected to apply against both parents and the consent of both parents is sought. In the scenario where one parent does not consent, the Child Support program will investigate whether it is unreasonable for that parent to care for the child.

## **5.2 Pre-employment processes**

Questions 15–7 to 15–9 in the Discussion Paper ask about family violence issues in the context of job seekers' readiness to work.

As part of the assessment process for an Employment Services Assessment or Job Capacity Assessment, the assessor is required to identify barriers to employment including medical and other social barriers. Where family violence issues are disclosed by the customer during the interview the assessor is required to link the customer to the appropriate services to address these issues. In the referral recommendation, the assessor identifies barriers to employment, including family violence, and suggests specific interventions to address these. For example, counselling may be recommended and the assessor would liaise with support areas on the customers behalf, such as treating health professionals and Centrelink Social Work Services.

DHS notes that while assessors have the relevant skills and capability to respond appropriately to family violence issues raised by job seekers during interview, family violence is not the primary focus of these staff members. Specific qualifications or expertise with respect to family violence is not an expectation of assessors.

## **5.3 Early release of superannuation**

Following a recent Machinery of Government change, the Early Release of Superannuation Benefits on Compassionate Grounds program was delegated from the Australian Prudential Regulation Authority (APRA) to DHS.

Legislation was passed on 15 September 2011 to enable DHS to administer the Compassionate Grounds program in its own right. Up until this time, DHS administered the Compassionate Grounds program under delegation from APRA. Staff involved in the administration of this program are all former APRA employees, now employed by DHS.

DHS has provided comments in regard to Early Release of Superannuation Benefits on Compassionate Grounds. The department notes, however, that APRA continues to play a role in preserving the integrity of Australia's retirement incomes policy and may have further input on the superannuation issues raised in the Discussion Paper.



The APRA service charter and the Service Delivery Agreement (SDA) between APRA and DHS requires that applications for Early Release of Superannuation Benefits on Compassionate Grounds must be assessed by DHS within 10 business days. As noted in the Discussion Paper, this turnaround time can increase in busy periods.

DHS also administers prioritisation criteria which allow for applicants in certain circumstances to have their application assessed with 48 hours of prioritisation being approved. This includes for example, applications made under mortgage assistance where the applicant has been served a Notice to Vacate by the sheriff's office. The department notes that while the prioritisation criteria provides for quick processing times, any funds released through a compassionate grounds approval must be applied to the expense claimed in the application, for example to treat a life threatening illness or injury or to prevent mortgage foreclosure. Family violence is not specified as a consideration within the specified compassionate grounds for release.

In considering applications for Early Release of Superannuation Benefits on Compassionate Grounds, assessors will take into account a range of relevant factors that may or may not be specifically detailed within the material produced by the Australian Tax Office to provide general guidance for assessors. If family violence was to be specifically referenced in guidance material, consideration would need to be given to verification requirements.

While not specifically stated, however, some of the compassionate grounds for early release would be relevant to family violence circumstances. For example, there is evidence to suggest that women with disabilities are at a much greater risk of family violence than women who do not have a disability (Healey, Howe, Humphreys, Jennings, and Julian: 2008) and the compassionate grounds include provision for modifications required for a home or vehicle to accommodate special needs.

The department's view is that consideration of family violence circumstances is more appropriate within the compassionate grounds provisions than through amendment of the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

With respect to personal privacy and safety it should also be noted that contact with applicants, regardless of whether there are family violence circumstances, is directed to the contact details nominated by the individual. An application approval or decline is advised in writing to the individual and the address supplied by that individual. As is the case for social security claims, this address need not be a personal private residence - a separate postal address can be nominated. Similarly, where requests for further information are made via phone, these are directed to the individual's preferred contact number provided on their application form.

The early release options discussed in the ALRC's paper must also take into account the long term financial wellbeing of some of our community's most vulnerable members. DHS considers that any amendments to the *Superannuation Industry (Supervision) Regulations 1994* (Cth) may be more appropriately undertaken in the context of a more general review of the compassionate grounds and retirement incomes policy.

## **5.4 Income Management**

The Discussion Paper proposes that 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. DHS notes that this is a matter for FaHCSIA to determine.

Should the Australian Government commission an independent assessment of voluntary income management on people experiencing family violence, DHS would participate and assist with any subsequent implementation.

The Discussion Paper also suggests that 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. The responsibility for definition and identification of priority needs rests with FaHCSIA, however, DHS notes that section 123TH already lists public transport services and the acquisition, repair, maintenance or operation of motor vehicle, motor cycle or bicycle as priority needs.

## Appendix A – List of proposals and questions

### 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 3–2** The *Child Support (Assessment) Act 1989* (Cth) and the *Child Support (Registration and Collection) Act 1988* (Cth) should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1.

**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.

**Proposal 3–5** The *Fair Work Act 2009* (Cth) should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1.

**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.

**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.

**Proposal 3–8** The *Migration Regulations 1994* (Cth) should be amended to provide for a consistent definition of family violence as proposed in Proposal 3–1.

**Proposal 3–9** The Department of Immigration and Citizenship's *Procedures Advice Manual 3* for decision makers should include examples to illustrate coercive and controlling conduct that may amount to family violence, including but not limited to:

- a) the threat of removal; and
- b) violence perpetrated by a family member of the sponsor at the instigation, or through the coercion, of the sponsor.

### 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*.

**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.

**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?

**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.

**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.

**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.

**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.

**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.

**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.

**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.

### ***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.

**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.

**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

**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.

**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.

**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.

**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?

**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?

### ***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.

**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?

**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'?

**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'?

**Proposal 6–6** [The Department of Education, Employment and Workplace Relations] 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.

### ***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?

**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.

**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?

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

**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.

**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?

**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?

**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?

**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.

**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?

**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.

**Question 7–8** In practice, to what extent can, or do, recommendations made by ESA 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?

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

**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.

**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.

**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?

**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’?

**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.

**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?

### ***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.

**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?

**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.

**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.

**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.

**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.

**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?

**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’.

**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).

### ***Child Support—Frameworks, Assessment and Collection***

**Proposal 9–1** The *Child Support Guide* should be amended to include:

- a) the definition of family violence in Proposal 3–1;
- 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 *Child Support 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.

**Proposal 9–2** The *Child Support Guide* should provide that the Child Support Agency should screen for family violence when a payee:

- a) requests or elects to end a child support assessment;
- b) elects to end Child Support Agency collection of child support and arrears; or
- c) requests that the Child Support Agency not commence, or terminate, enforcement action or departure prohibition orders.

**Proposal 9–3** The *Child Support Guide* should provide that Child Support Agency staff refer to Centrelink social workers payees who have disclosed family violence, when the payee:

- a) requests or elects to end a child support assessment;
- b) elects to end Child Support Agency collection of child support and arrears; or
- c) requests that the Child Support Agency terminate, or not commence, enforcement action or departure prohibition orders.

**Proposal 9–4** The *Child Support Guide* should provide that the Child Support Agency should contact a customer to screen for family violence prior to initiating significant action against the other party, including:



- a) departure determinations;
- b) court actions to recover child support debt; and
- c) departure prohibition orders.

**Proposal 9–5** The *Child Support Guide* should provide that, when a customer has disclosed family violence, the Child Support Agency should consult with the customer and consider concerns regarding the risk of family violence, prior to initiating significant action against the other party, including:

- a) departure determinations; 24 *Family Violence—Commonwealth Laws*
- b) court actions to recover child support debt; and
- c) departure prohibition orders.

**Proposal 9–6** The *Child Support Guide* should provide that the Child Support Agency should screen for family violence prior to requiring a payee to collect privately pursuant to s 38B of the *Child Support (Registration and Collection) Act 1988* (Cth).

### ***Child Support—Agreements, Personal Information, Informal Carers***

**Question 10–1** Should the Child Support Agency ensure that notices of assessment pursuant to s 76 of the *Child Support (Assessment) Act 1989* (Cth) do not include parties' names?

**Proposal 10–1** The *Child Support Guide* should provide that Child Support Agency forms or supporting documentation containing offensive material should be referred to a senior officer. The senior officer should determine whether to inform the other party of the offensive material and, where requested, provide it to the other party.

**Proposal 10–2** The *Child Support Guide* should provide that, where a customer discloses family violence, he or she should be referred to a Centrelink social worker to discuss a Restricted Access Customer System classification.

**Question 10–2** Should the Child Support Agency provide a Restricted Access Customer System classification to a customer who has disclosed family violence:

- a) at the customer's request; or
- b) only on the recommendation of a Centrelink social worker?

**Proposal 10–3** Where the Child Support Agency receives a threat against a customer's life, health or welfare by another party to the child support case, the *Child Support Guide* should provide that the Child Support Agency will:

- a) place a safety concern flag on the threatened customer's file; and
- b) refer the threatened person to a Centrelink social worker.

**Question 10–3** What reforms, if any, are necessary to improve the safety of victims of family violence who are child support payers?

**The next proposals are presented as alternate options: Proposal 10–4 OR Proposals 10–5, 10–6 and Question 10–4**

#### **OPTION ONE: Proposal 10–4**

**Proposal 10–4** Section 7B(2)–(3) of the *Child Support (Assessment) Act 1989* (Cth) limits child support eligibility to parents and legal guardians, except in certain circumstances. The limitation on the child support eligibility of carers who are neither parents nor legal guardians in section 7B(2)–(3) of the *Child Support (Assessment) Act 1989* (Cth) should be repealed.

#### **OPTION TWO: Proposals 10–5, 10–6 and 10–7, and Question 10–4**

**Proposal 10–5** The *Child Support (Assessment) Act 1989* (Cth) provides that, where a parent or legal guardian of a child does not consent to a person caring for that child, the person is ineligible for child support, unless the Registrar is satisfied of:

- 'extreme family breakdown'—s 7B(3)(a); or
- 'serious risk to the child's physical or mental wellbeing from violence or sexual abuse' in the parent or legal guardian's home—s 7B(3)(b).

Section 7B(3)(b) of the *Child Support (Assessment) Act 1989* (Cth) should be amended to:

- a) expressly take into account circumstances where there has been, or there is a risk of, family violence, child abuse and neglect; and
- b) remove the requirement for the Registrar to be satisfied of 'a serious risk to the child's physical or mental wellbeing'.

**Proposal 10–6** The *Child Support Guide* should provide that:

- a) where a person who is not a parent or legal guardian carer applies for child support; and
  - b) a parent or legal guardian advises the Child Support Agency that he or she does not consent to the care arrangement; and
  - c) it is alleged that it is unreasonable for a child to live with the parent or legal guardian concerned.
- d) the following should occur:
1. a Centrelink social worker should assess whether it is unreasonable for the child to live with the parent or legal guardian who does not consent, and make a recommendation; and
  2. a senior Child Support Agency officer should determine if it is unreasonable for the child to live with the parent or legal guardian who does not consent, giving consideration to the Centrelink social worker's recommendation.

**Proposal 10–7** The *Child Support Guide* should include guidelines for assessment of circumstances in which it may be unreasonable for a child to live with a parent or legal guardian.

**Question 10–4** Should the *Child Support Guide* be amended to specify the Child Support Agency's response to an application for child support from a carer who is not a parent or legal guardian of the child, where:

- a) only one of the child's parents consents to the care arrangements; or
- b) neither of the child's parent consents to the care arrangements, and it is unreasonable for the child to live with one parent?

In practice, how does the Child Support Agency respond to an application for child support in these circumstances?

## ***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.

### ***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.

**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.

**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.

**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.

### ***Income Management—Social Security Law***

**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.

**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?

**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.

### ***Employment Law—Overarching Issues and a National Approach***

**Question 14–1** In addition to removal of the employee records exemption in the *Privacy Act 1988* (Cth), what reforms, if any, are needed to protect the personal information of employees who disclose family violence for the purposes of accessing new entitlements such as those proposed in Chapters 16 and 17?

**Proposal 14–1** There is a need to safeguard the personal information of employees who have disclosed family violence in the employment context. The Office of the Australian Information Commissioner and the Fair Work Ombudsman should, in consultation with unions and employer organisations:

- a) develop a model privacy policy which incorporates consideration of family violence-related personal information; and
- b) develop or revise guidance for employers in relation to their privacy obligations where an employee discloses, or they are aware of, family violence.

**Proposal 14–2** The Australian Government should initiate a national education and awareness campaign about family violence in the employment context.

**Proposal 14–3** Section 653 of the *Fair Work Act 2009* (Cth) should be amended to provide that Fair Work Australia must, in conducting the review and research required under that section, consider family violence-related developments and the effect of family violence on the employment of those experiencing it, in relation to:

- a) enterprise agreements;
- b) individual flexibility arrangements; and
- c) the National Employment Standards.

**Question 14–2** In addition to review and research by Fair Work Australia, what is the most appropriate mechanism to capture and make publicly available information about the inclusion of family violence clauses in enterprise agreements?

**Question 14–3** How should Fair Work Australia collect data in relation to the incidence and frequency with which family violence is raised in unfair dismissal and general protections matters?

**Proposal 14–4** In the course of its 2012 and 2014 reviews of modern awards, Fair Work Australia should consider issues relating to data collection.

### ***The Pre-Employment Stage***

**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?

**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?

**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?

**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.

**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.

**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?

**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?

**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.

**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.

**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?

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

**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?

**Question 15–8** Where a job seeker has disclosed family violence, should there be streaming of job seekers to ESAt and JCA assessors with specific qualifications or expertise with respect to family violence, where possible?

**Question 15–9** When conducting an ESAt or JCA, how do assessors consider the impact of family violence on a job seeker’s readiness to work? What changes, if any, could ensure that ESAts and JCAs capture and assess the circumstances of job seekers experiencing family violence.

**Question 15–10** In practice, to what extent can, or do, recommendations made by ESAt or JCA assessors in relation to stream placement or referral to DES account for the needs and experiences of job seekers experiencing family violence?

**Proposal 15–6** DEEWR and the Department of Human Services should require that all JSA, DES and IEP provider staff and ESAt and JCA assessors receive regular and consistent training in relation to:

- a) the nature, features and dynamics of family violence, including: while anyone may be a victim of family violence, or may use family violence, it is predominantly committed by men; it can occur in all sectors of society; it can involve exploitation of power imbalances; its incidence is underreported; and it has a detrimental impact on children;
- b) recognition of the impact of family violence on particular job seekers such as:
  - Indigenous people;
  - those from culturally and linguistically diverse backgrounds;
  - those from lesbian, gay, bisexual, trans and intersex communities;
  - children and young people;
  - older persons; and
  - people with disability
- c) the potential impact of family violence on a job seeker’s capacity to work and barriers to employment;
- d) appropriate referral processes; and
- e) the availability of support services.

**Question 15–11** In what ways, if any, should the Australian Government include a requirement in requests for tender and contracts for employment services that IEP projects and services, or panel providers, demonstrate an understanding of, and systems and policies to address, the needs of Indigenous job seekers experiencing family violence?

**Question 15–12** In what ways, if any, should the JSA, DES, IEP or CDEP systems be reformed to assist Indigenous job seekers who are experiencing family violence?

**Question 15–13** In what ways, if any, should the JSA or DES systems be reformed to assist job seekers from culturally and linguistically diverse communities who are experiencing family violence?

**Question 15–14** In what ways, if any, should the JSA or DES systems be reformed to assist job seekers with disability who are experiencing family violence?

**Question 15–15** In the context of the Australian Government review of new approaches for the delivery of rural and remote employment services, in what ways, if any, could any new approach incorporate measures to protect the safety of job seekers experiencing family violence?

## ***Employment—The Fair Work Act 2009 (Cth)***

**Question 16–1** How do, or how could, Fair Work Australia’s role, functions or processes protect the safety of applicants experiencing family violence?

**Question 16–2** In making an application to Fair Work Australia, applicants are required to pay an application fee. Under the *Fair Work Regulations 2009* (Cth) an exception applies if an applicant can establish that he or she would suffer ‘serious hardship’ if required to pay the relevant fee. In practice, do people experiencing family violence face difficulty in establishing that they would suffer ‘serious hardship’? If so, how could this be addressed?

**Question 16–3** In applying for waiver of an application fee, referred to in Question 16–2, applicants must complete a ‘Waiver of Application Fee’ form. How could the form be amended to ensure issues of family violence affecting the ability to pay are brought to the attention of Fair Work Australia?

**Question 16–4** In Proposals 14–1, 17–1 and 17–3 the role of the Fair Work Ombudsman is discussed. In what other ways, if any, could the Fair Work Ombudsman’s role, function or processes protect employees experiencing family violence?

**Proposal 16–1** Section 65 of the *Fair Work Act 2009* (Cth) should be amended to provide that an employee who is experiencing family violence, or who is providing care or support to a member of the employee’s immediate family or household who is experiencing family violence, may request the employer for a change in working arrangements to assist the employee to deal with circumstances arising from the family violence. This additional ground should:

- a) remove the requirement that an employee be employed for 12 months, or be a long-term casual and have a reasonable expectation of continuing employment on a regular and systemic basis, prior to making a request for flexible working arrangements; and
- b) provide that the employer must give the employee a written response to the request within seven days, stating whether the employer grants or refuses the request.

***The next proposals are presented as alternate options: Proposal 16–2 OR Proposals 16–3 and 16–4***

### **OPTION ONE: Proposal 16–2**

**Proposal 16–2** The Australian Government should amend the National Employment Standards under the *Fair Work Act 2009* (Cth) to provide for a new minimum statutory entitlement to 10 days paid family violence leave. An employee should be entitled to access such leave for purposes arising from the employee’s experience of family violence, or to provide care or support to a member of the employee’s immediate family or household who is experiencing family violence.

### **OPTION TWO: Proposals 16–3 and 16–4**

**Proposal 16–3** The Australian Government should amend the National Employment Standards under the *Fair Work Act 2009* (Cth) to provide for a minimum statutory entitlement to an additional 10 days paid personal/carer’s leave. An employee should be entitled to access the additional leave solely for purposes arising from the employee’s experience of family violence, or to provide care or support to a member of the employee’s immediate family or household who is experiencing family violence.

**Proposal 16–4** The Australian Government should amend the National Employment Standards under the *Fair Work Act 2009* (Cth) to provide that an employee may access the additional personal/carer’s leave referred to in Proposal 16–3:

- a) because the employee is not fit for work because of a circumstance arising from the employee’s experience of family violence; or
- b) to provide care or support to a member of the employee’s immediate family, or a member of the employee’s household, who requires care or support as a result of their experience of family violence.

## ***Employment—The Fair Work Act 2009 (Cth) Continued***

**Proposal 17–1** The Fair Work Ombudsman should develop a guide to negotiating individual flexibility arrangements to respond to the needs of employees experiencing family violence, in consultation with the Australian Council of Trade Unions and employer organisations.

**Proposal 17–2** The Australian Government should encourage the inclusion of family violence clauses in enterprise agreements. Agreements should, at a minimum:

- a) recognise that verification of family violence may be required;
- b) ensure the confidentiality of any personal information disclosed;
- c) establish lines of communication for employees;
- d) set out relevant roles and responsibilities;
- e) provide for flexible working arrangements; and
- f) provide access to paid leave.

**Proposal 17–3** The Fair Work Ombudsman should develop a guide to negotiating family violence clauses in enterprise agreements, in conjunction with the Australian Domestic and Family Violence Clearinghouse, the Australian Council of Trade Unions and employer organisations.

**Proposal 17–4** In the course of its 2012 review of modern awards, Fair Work Australia should consider the ways in which family violence may be incorporated into awards in keeping with the modern award objectives.

**Proposal 17–5** In the course of its first four-yearly review of modern awards, beginning in 2014, Fair Work Australia should consider the inclusion of a model family violence clause.

**Proposal 17–6** Fair Work Australia members should be provided with training to ensure that the existence of family violence is adequately considered in deciding whether there are ‘exceptional circumstances’ under s 394(3) of the *Fair Work Act 2009* (Cth) that would warrant the granting of a further period within which to make an application for unfair dismissal.

**Question 17–1** Section 352 of the *Fair Work Act 2009* (Cth) prohibits employers from dismissing an employee because they are temporarily absent from work due to illness or injury. Regulation 3.01 of the *Fair Work Regulations 2009* (Cth) prescribes kinds of illness or injury and outlines a range of other requirements. In what ways, if any, could the temporary absence provisions be amended to protect employees experiencing family violence?

### ***Occupational Health and Safety Law***

**Proposal 18–1** Safe Work Australia should include information on family violence as a work health and safety issue in relevant Model Codes of Practice, for example:

- a) ‘How to Manage Work Health and Safety Risks’;
- b) ‘Managing the Work Environment and Facilities’; and
- c) any other code that Safe Work Australia may develop in relation to other topics, such as bullying and harassment or family violence.

**Proposal 18–2** Safe Work Australia should develop model safety plans which include measures to minimise the risk posed by family violence in the work context for use by all Australian employers, in consultation with unions, employer organisations, and bodies such as the Australian Domestic and Family Violence Clearinghouse.

**Proposal 18–3** Safe Work Australia should develop and provide education and training in relation to family violence as a work health and safety issue in consultation with unions, employer organisations and state and territory OHS regulators.

**Proposal 18–4** Safe Work Australia should, in developing its Research and Data Strategy:

- a) identify family violence and work health and safety as a research priority; and
- b) consider ways to extend and improve data coverage, collection and analysis in
- c) relation to family violence as a work health and safety issue.

**Question 18–1** What reforms, if any, are needed to occupational health and safety law to provide better protection for those experiencing family violence? For example, should family violence be included in the National Work Health and Safety Strategy?

## **Superannuation Law**

**Question 19–1** The ALRC is not proposing that a trustee should have an express obligation to consider whether an application for superannuation splitting is being made as a result of coercion. Are there any other ways a trustee or another body could consider this issue? If so, what if any steps could they take to limit or ameliorate the effect of that on a victim of family violence?

**Proposal 19–1** In *Family Violence—A National Legal Response* (ALRC Report 114) the Australian Law Reform Commission and NSW Law Reform Commission recommended that the Australian Government should initiate an inquiry into how family violence should be dealt with in respect of property proceedings under the *Family Law Act 1975* (Cth). Any such inquiry should include consideration of the treatment of superannuation in proceedings involving family violence.

**Question 19–2** What changes, if any, are required to ensure that the Australian Tax Office considers family violence in determining appropriate compliance action in relation to trustees of SMSFs who fail to comply with superannuation or taxation law, where that action may affect a trustee who is:

- (a) a victim of family violence; and
- (b) not the subject of compliance action?

**Question 19–3** What changes, if any, to guidance material produced by the Australian Tax Office may assist in protecting people experiencing family violence who are members or trustees of a SMSF?

**Question 19–4** What approaches or mechanisms should be established to provide protection to people experiencing family violence in the context of SMSFs?

**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'?

**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?

**Question 19–8** Should APRA Superannuation Circular No I.C.2, *Payment Standards for Regulated Superannuation*, be amended to provide guidance for trustees in relation to:

- a) what constitutes a 'reasonable and immediate family living expense' in circumstances involving family violence; and
- b) the effect family violence may have on determining whether an applicant is unable to meet reasonable and immediate family living expenses?

**Question 19–9** As an alternative to Question 19–8 above, should APRA work with the Australian Institute of Superannuation Trustees, the Association of Superannuation Funds of Australia and other relevant bodies to develop guidance for trustees in relation to early release of superannuation on the basis of 'severe financial hardship', including information in relation to:

- a) what constitutes a 'reasonable and immediate family living expense' in circumstances involving family violence; and
- b) the effect family violence may have on determining whether an applicant is unable to meet reasonable and immediate family living expenses?

**Question 19–10** In practice, how long do superannuation funds take to process applications for early release of superannuation on the basis of 'severe financial hardship'? What procedural steps may be taken to facilitate the prompt processing of applications in circumstances involving family violence?



**Question 19–11** In practice, how long does APRA take to process applications for early release of superannuation on compassionate grounds? What procedural steps may be taken to facilitate the prompt processing of applications in circumstances involving family violence?

**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.

**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?

**Question 19–13** Should the *Superannuation Industry (Supervision) Regulations 1994* (Cth) be amended to provide for a new ground for early release of superannuation for victims of family violence? If so, how should it operate? For example:

- a) which body should be responsible for administering the new ground;
- b) what criteria should apply;
- c) what evidence should be required;
- d) if individual funds administer the new ground, should there be common rules for
- e) granting early release on the new ground; and
- f) what appeal mechanisms should be established?

**Question 19–14** What amendments, if any, should be made to application forms for early release of superannuation to provide for disclosure of family violence where it is relevant to the application?

**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?

**Question 19–16** In practice, how do superannuation funds and APRA contact members or those who have made an application for early release of superannuation? Is there, or should there be, some mechanism or process in place in relation to applications involving family violence to deal with safety concerns associated with:

- a) contacting the member or applicant; or
- b) the disclosure of information about the application?

**Question 19–17** Should the 90 day period for a superannuation fund to respond to a complaint by a member be reduced to 30 days?

**Question 19–18** Should there be central data collection in relation to applications for early release of superannuation in order to identify:

- (a) the extent to which funds are being accessed early on the basis of any new family violence ground, including numbers of applications and success rates; and
- (b) whether there are multiple claims on the same or different funds? If so, which body should collect that information, and how?

**Question 19–19** Are there any other ways in which superannuation law could be improved to protect those experiencing family violence?

### ***Migration Law—Overarching Issues***

**Question 20–1** From 1 July 2011 the Migration Review Tribunal will lose the power to waive the review application fee in its totality for review applicants who are suffering severe financial hardship. In practice, will those experiencing family violence face difficulties in accessing merits review if they are required to pay a reduced application fee? If so, how could this be addressed?

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

- a) as a ‘time of application’ and a ‘time of decision’ criterion for visa subclasses
- b) where there is a pathway from temporary to permanent residence; and
- c) as a ‘time of decision’ criterion, in all other cases.

**Question 20–2** Given that a secondary visa applicant, who has applied for and been refused a protection visa, is barred by s 48A of the *Migration Act 1958* (Cth) from making a further protection visa application onshore:

- a. In practice, how is the ministerial discretion under s 48B—to waive the s 48A bar to making a further application for a protection visa onshore—working in relation to those who experience family violence?
- b. Should s 48A of the *Migration Act 1958* (Cth) be amended to allow secondary visa applicants who are experiencing family violence, to make a further protection visa application onshore? If so, how?

**Question 20–3** Section 351 of the *Migration Act 1958* (Cth) allows the Minister for Immigration and Citizenship to substitute a decision for the decision of the Migration Review Tribunal if the Minister thinks that it is in the public interest to do so:

- a. Should s 351 of the *Migration Act 1958* (Cth) be amended to allow victims of family violence who hold temporary visas to apply for ministerial intervention in circumstances where a decision to refuse a visa application has not been made by the Migration Review Tribunal?
- b. If temporary visa holders can apply for ministerial intervention under s 351 of the *Migration Act 1958* (Cth), what factors should influence whether or not a victim of family violence should be granted permanent residence?

**The next proposals are presented as alternate options: Proposal 20–2 OR Proposal 20–3**

**OPTION ONE: Proposal 20–2**

**Proposal 20–2** The *Migration Regulations 1994* (Cth) should be amended to allow a former or current Prospective Marriage (Subclass 300) visa holder to access the family violence exception when applying for a temporary partner visa in circumstances where he or she has not married the Australian sponsor.

**OPTION TWO: Proposal 20–3**

**Proposal 20–3** Holders of a Prospective Marriage (Subclass 300) visa who are victims of family violence but who have not married their Australian sponsor, should be allowed to apply for:

- (a) a temporary visa, in order make arrangements to leave Australia; or
- (b) a different class of visa.

**Question 20–4** If Prospective Marriage (Subclass 300) visa holders are granted access to the family violence exception, what amendments, if any, are necessary to the *Migration Regulations 1994* (Cth) to ensure the integrity of the visa system?

**Question 20–5** Should the Prospective Marriage (Subclass 300) visa be abolished, and instead, allow persons who wish to enter Australia to marry an Australian sponsor to do so on a special class of visitor visa, similar to that in place in New Zealand?

**Question 20–6** Should the *Migration Act 1958* (Cth) and the *Migration Regulations 1994* (Cth) be amended to provide that sponsorship is a separate and reviewable criterion for the grant of partner visas?

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

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

## ***The Family Violence Exception—Evidentiary Requirements***

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

**Question 21–1** Where an application for a family violence protection order has been made, should the migration decision-making process be suspended until finalisation of the court process?

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

**Question 21–2** If the requirement in reg 1.23 is not repealed, what other measures should be taken to improve the safety of victims of family violence, where the violence occurs after separation?

**The next proposals are presented as alternate options: Proposal 21–3 OR Proposals 21–4 to 21–8**

### **OPTION ONE: Proposal 21–3**

**Proposal 21–3** The process for non-judicially determined claims of family violence in reg 1.25 the *Migration Regulations 1994* (Cth) should be replaced with an independent expert panel.

### **OPTION TWO: Proposals 21–4 to 21–8**

**Proposal 21–4** The *Migration Regulations 1994* (Cth) should be amended to provide that competent persons should not be required to give an opinion as to who committed the family violence in their statutory declaration evidence.

**Proposal 21–5** The *Migration Regulations 1994* (Cth) should be amended to provide that visa decision makers can seek further information from competent persons to correct minor errors or omissions in statutory declaration evidence.

**Proposal 21–6** The *Migration Regulations 1994* (Cth) should be amended to provide that visa decision makers are required to provide reasons for referral to an independent expert.

**Proposal 21–7** The *Migration Regulations 1994* (Cth) should be amended to require independent experts to give applicants statements of reasons for their decision.

**Proposal 21–8** The *Migration Regulations 1994* (Cth) should be amended to provide for review of independent expert assessments.

## ***Refugee Law***

**Proposal 22–1** The Minister for Immigration and Citizenship should issue a direction under s 499 of the *Migration Act 1958* (Cth) to visa decision makers to have regard to the Department of Immigration and Citizenship's *Procedures Advice Manual 3* Gender Guidelines when making refugee status assessments.

**Question 22–1** Under s 417 of the *Migration Act 1958* (Cth), the Minister for Immigration and Citizenship may substitute a decision for a decision of the Refugee Review Tribunal, if the Minister considers that it is in the public interest to do so. Does the ministerial intervention power under s 417 of the *Migration Act 1958* (Cth) provide sufficient protection for victims of family violence? If not, what improvements should be made?

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