



Australian Government

**Department of Families, Housing,
Community Services and Indigenous Affairs**

Deputy Secretary

Ms Sabina Wynn
Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

Dear Ms Wynn

Please find attached the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) submission to the Australian Law Reform Commission (ALRC) inquiry into family violence and Commonwealth laws.

The submission provides a brief discussion of the key issues relating to areas of responsibility for FaHCSIA and raises a number of matters ALRC may wish to consider in preparing the final report.

FaHCSIA recognises the importance of raising awareness of family violence in the community and taking a whole-of-government approach to addressing issues.

I understand the *Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011* currently before Parliament proposes a revised definition for family violence and has recently been supported by the *Senate Legal and Constitutional Affairs Legislation Committee*.

The contact officer for this submission is Mr Gary Knox, Section Manager, Social Security Policy Branch, FaHCSIA. (email: gary.knox@fahcsia.gov.au; phone: 02 6244 7564) Please contact Gary if you require further feedback on any items raised in the report.

Yours sincerely

Liza Carroll

24 October 2011

**Department of Families, Housing, Community Services and Indigenous Affairs
(FaHCSIA) Submission**

to

**Australian Law Reform Commission (ALRC) Inquiry into Family Violence
Discussion Paper 76 – Released August 2011**

Legislative Amendments

In principle, FaHCSIA is broadly supportive of the proposal to have a consistent definition of family violence in Commonwealth legislation as it would support actions raised in the *National Plan for Reducing Violence against Women and their Children* and the *National Framework for Protecting Australia's Children*. It would also assist with gaining a shared understanding across the community of what constitutes family violence, who is affected and who is eligible to seek access to service and support as a consequence. However, prior to preparing the final report, ALRC may wish to consider the following matters in assessing the consequences of including the proposed definition in all Commonwealth legislation.

- Including such a definition, in itself, could be misleading as it may not create any new legal entitlement or change to current policy or practice. It may however increase complexity and length of legislation.
- For each piece of legislation, there would need to be consideration of the elements of the central definition of family violence to ensure they are appropriate in the context of the current law and policy without creating unintended consequences.
- Whilst there may be initial consistency, it would require monitoring and maintenance to ensure consistency into the future. For example, processes would need to be in place to ensure that any changes to the central definition in the Family Law Act are reflected in all other Acts which have adopted the same definition. This approach could give Departments flexibility to not adopt changes to the central definition if at odds with policy, and thus again create future inconsistency.
- In order to strengthen the family law's legislative response to family violence and give primacy to the safety of children, the proposed definition would need to be used in its entirety by all Commonwealth legislation.
- FaHCSIA notes that the proposed definition requires that the victim be coerced, controlled or to feel fearful in order for the perpetrator's behaviour to be classified as violent or threatening. Given the subjective nature of these elements, there is the potential for inconsistent assessment of legal entitlements without more definitive policy and practice guidance.
- The operational provisions of the family assistance legislation relate to reasonable actions, and the presence of family violence does not automatically trigger an exemption based on the customer having a reasonable excuse for not complying with normal requirements.

FaHCSIA notes the *Child Support Assessment Act 1989*, *Social Security Act 1991* and *A New Tax System (Family Assistance) Act 1999* already authorise the sharing of information for the purpose of administering the Acts.

Specific Legislative Amendments

FaHCSIA Position	Proposal/Question Number
FaHCSIA supports	P8-6 (current consideration underway)
FaHCSIA supports however notes further consideration of issues/risks required by ALRC	P4-13; P7-2; Q7-5(linked to P7-2); Q10-1; P10-5
FaHCSIA does not support in current form	Q7-4; P8-1; P8-2; P11-1; P13-1; P13-3

Service Delivery Proposals

FaHCSIA supports many of the proposals relating to improved service delivery for victims of family violence, however notes it is a matter of operational policy for the Department of Human Services (DHS) (including Centrelink, Family Assistance Office, Child Support Agency and Medicare) as to whether such proposals could be given effect. Similarly, this also applies to proposals suggested for the Social Security Appeals Tribunal.

With regard to screening, FaHCSIA notes there is no evidence that existing procedures for screening are inadequate, but supports any improved processes that could be implemented by DHS. FaHCSIA acknowledges the role of service delivery officers in determining the relevance and appropriateness of information to be provided to individuals depending upon their specific circumstances. FaHCSIA agrees that customers should be referred to an appropriate support service following a disclosure of family violence, and is also aware that DHS (Centrelink) already promote and offer social worker services to people who have experienced or who are at risk of domestic or family violence, and that all social workers are qualified. In regard to child support it is important to note that any screening for family violence should be applied to both paying and receiving parents.

In many cases it may be that the customer does not disclose enough information to indicate that family violence is occurring, the extent to which they are affected, or not be prepared to provide supporting evidence. If proposals around improving training and education, screening, and availability of information are implemented and successful, this may assist.

Service Delivery

FaHCSIA Position	Proposal/Question Number
FaHCSIA supports (however proposal is an operational matter for DHS to consider)	P4-2; P4-3; P4-4; P4-5; P4-6; P4-9; P4-10; P4-11; P4-12; P4-14; P4-15; P5-2 (SSAT); P6-2; Q10-2; P10-3; P10-6; P10-7; Q10-4

Guide Amendments

A substantial number of proposals suggest amendments to the *Guide to Social Security, Family Assistance Guide* and *Child Support Guide*. Amending information in the *Child Support Guide* would be a matter for DHS. FaHCSIA considers many of the proposals for the *Guide to Social Security* and *Family Assistance Guide* could be taken into account as part of the ongoing Guide review processes that are in place. An important consideration is to ensure that specifically referencing the definition of family violence in multiple chapters throughout the Guide does not cause confusion, contribute to inconsistency, or cause unnecessary complication to the overall Guide.

Guide Amendments

FaHCSIA Position	Proposal/Question Number
FaHCSIA supports and will consider as part of the Guide review process	P4-1; P4-8; P5-1; P8-3; P12-1; P12-2
FaHCSIA supports however notes further issues/risks may need consideration by ALRC	P5-4; P8-4
FaHCSIA believes Guide information currently covers issue (additional references could be considered as part of the Guide review process)	P5-3; P5-6; P6-1; P6-3; P6-4; Q6-1(a); P7-1; Q7-1; P7-3; Q8-1; Q8-2 (linked to section 1234 of <i>Social Security Act 1991</i>); P8-7; P13-4
Guide amendments already undertaken	P11-2; P11-3

Income Management (Chapter 13)

This chapter raises a number of concerns about the intersection between income management and domestic violence. FaHCSIA notes that these concerns have been raised by a number of stakeholders over recent years but that it is important that they be placed in context. In particular, we note the following:

- There is substantial evidence that income management has improved the life and wellbeing of a number of families and individuals, including providing protection from financial exploitation. While the evaluation of the new scheme of income management in the Northern Territory is still underway, results from the evaluation of income management in Western Australia (conducted by ORIMA Research in 2010) found that a majority of participants believed income management had made a positive impact on the wellbeing of individuals, children and families, including that:
 - Around 6 in 10 income managed clients thought that it had made their lives better;
 - The proportion of people who had been unable to pay for at least one essential item (such as food, utilities, rent) in the 12 months prior to commencing income management, decreased by 25 per cent once they were on income management;
 - Around 70-80 per cent of respondents reported that they were able to save money when they were on income management, up from 50-55 per cent before being involved in the scheme.

The report as written makes no mention of any of these findings.

- FaHCSIA further notes that while the chapter calls for an independent assessment of income management, it does not acknowledge that the Government has already commissioned an independent consortium of experts from the Australian National University, the Australian Institute of Family Studies and the Social Policy Research Centre at the University of New South Wales to undertake a methodologically robust evaluation over four years of income management in the Northern Territory. The evaluation will inform future consideration of policy and legislative issues related to domestic violence. Public information about this evaluation can be found at the following link:
<http://www.fahcsia.gov.au/sa/families/pubs/nim/Pages/p4.aspx>
- The chapter as written also risks conveying the impression that the Cape York model of income management is not part of the income management legislation in the *Social Security (Administration) Act 1999*, whereas in fact the Cape York scheme is also legislatively based, and also involves compulsory income management. It does differ from some of the measures of income management operating in the Northern Territory in that it involves individualised conferencing resulting from various triggers. In many ways the Cape York model is similar to the model currently operating in Western Australia (where the trigger for income management is referral by a child protection officer).
- FaHCSIA thinks it imperative that *chapter 13* be completely clear on the following two points:
 - The occurrence of domestic violence and its reporting to Centrelink is not and never has been a trigger for placement on income management.
 - Decisions made to place a person on the Vulnerable Welfare Payment Recipient measure of income management are made by a Centrelink social worker drawing on all their professional experience and skills including factoring in issues of domestic and family violence.

Employment (Chapters 16 & 17)

FaHCSIA agrees that proposals concerning *The Fair Work Act 2009* need to be addressed at a whole of government level.