

# Homeless Persons' Legal Service

Legal help for the homeless and those at risk of homelessness  
A joint initiative of the Public Interest Advocacy Centre Ltd  
and the Public Interest Law Clearing House Inc



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## **AUSTRALIAN LAW REFORM COMMISSION – FAMILY VIOLENCE AND COMMONWEALTH LAWS**

### **DISCUSSION PAPER 76 (DP 76)**

**26 September 2011**

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Homeless Persons' Legal Service  
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## Introduction

### Homeless Persons' Legal Service

The Homeless Persons' Legal Service (**HPLS**) is a joint initiative of the Public Interest Advocacy Centre (**PIAC**) and the Public Interest Law Clearing House (**PILCH**) NSW. Since 2004, HPLS has provided free legal advice and representation to over 5,000 people who are homeless or at risk of homelessness.<sup>1</sup>

PIAC is solely responsible for the content of this submission.

### HPLS Submission to Issues Paper 39 – Family Violence and Commonwealth Laws – Social Security

On 15 April 2011, HPLS provided a submission to the ALRC in relation to Issues Paper 39, *Family Violence and Commonwealth Laws – Social Security*. Based on the information and recommendations contained in that submission, HPLS makes the following responses to selected Proposals and Questions raised in the Discussion Paper.

## Response to proposals and questions in in the Discussion Paper

**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

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<sup>1</sup> Further information about PIAC, PILCH NSW and HPLS is provided as Appendix A to this document.

(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.

**As indicated in the HPLS submission dated 15 April 2011, HPLS supports this proposal.**

**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.

**HPLS supports this proposal.**

**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.

**HPLS supports this proposal. We refer the Commission to our submission dated 15 April 2011, in which we emphasised the importance of Centrelink staff employing a principle of trauma-informed care, which takes as its starting point the likely presence and long-term effects of family violence. HPLS submits that all training of Centrelink customer service advisers, social workers and members of the Social Security Appeals Tribunal and Administrative Appeals Tribunal be conducted with a focus on the importance of trauma-informed care.**

**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.

**HPLS supports proposals 5-3 and 5-4.**

**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 5–7** 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 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).

**HPLS supports proposals 5-5, 5-7 and 6-2. We refer the Commission to our submission dated 15 April 2011, in which we emphasised the importance of Centrelink staff employing a principle of trauma-informed care, which takes as its starting point the likely presence and long-term effects of family violence. HPLS submits that all training of Centrelink customer service advisers be conducted with a focus on the importance of trauma-informed care.**

**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 5–8** 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.

**HPLS supports proposals 5-6 and 5-8.**

**Question 5–1** At what other trigger points, if any, should Centrelink customer service advisers and social workers be required to screen for family violence?

**We refer the Commission to our submission dated 15 April 2011, in which we referred to reluctance of victims of family violence to disclose their experiences of family violence. HPLS submits that all Centrelink forms, correspondence and telephone prompts should directly seek information about family violence. This will facilitate victims of family violence overcoming their reluctance to disclose their experiences.**

**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).

**HPLS supports this proposal. We refer the Commission to our submission dated 15 April 2011, in which we indicated that while the *Guide to Social Security Law* includes evidence of domestic violence as indicating the absence of commitment and/or emotional support, it is submitted that this does not give adequate weight to the existence of family violence in determining whether a person is a member of a couple. HPLS submits that s 4 should be amended specifically to include as a relevant criterion, the existence and effect of family violence.**

**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.

**HPLS supports this proposal. We refer the Commission to our submission dated 15 April 2011, in which HPLS submitted that both the *Social Security Act* and the *Guide to Social Security Law* should provide family violence as an example of where people may be living separately and apart under one roof. In this way, decision makers will be prompted to consider family violence when making a determination about separation under one roof. The HPLS submits that without clear articulation of family violence as an example of people living separately and apart under one roof, there is a risk that victims of family violence may be forced into homelessness, in order to receive Centrelink payments.**

**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).

**HPLS supports this proposal.**

**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 circumstances when it is ‘unreasonable to live at home’?

**HPLS submits that the *Social Security Act 1991* (Cth) should be amended expressly to refer to family violence, child abuse and neglect as an example of circumstances 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) to remove the requirement for the decision maker to be satisfied of ‘a serious risk to the person’s physical or mental well-being’?

**HPLS submits that ss 1067A(9)(a)(ii) and 1061PL(7)(a)(ii) of the *Social Security Act 1991* (Cth) should be amended as indicated.**

**Proposal 6–6** DEEWR and Centrelink should review their policies, practices and training to ensure that, in cases of family violence, Youth Allowance, Disability Support Pension and Pensioner Education Supplement, applicants do not bear sole responsibility for providing specific information about:

- (a) the financial circumstances of their parents; and
- (b) the level of ‘continuous support’ available to them.

**HPLS supports this proposal. We refer the Commission to our submission dated 15 April 2011, in which HPLS submitted that it is unreasonable for a young person who has left home due to family violence, to be required to provide asset and income details from a parent the young person is not residing with, or with whom the young person may have had minimal contact. Such a requirement may leave a young person without access to Youth Allowance, placing the young person at risk of being unable to secure safe accommodation,**

**or being forced to return to a home in which she or he is exposed to family violence.**

**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.

**HPLS supports this proposal. A person who has been forced into unstable accommodation due to family violence may not be able to provide a partner's tax file number, and may be exposed to risk of harm if they believe they are required to return to the home in order to obtain such proof of identity. Inability to receive social security due to an inability to provide a partner's tax file number creates further obstacles for victims of family violence to secure stable and secure accommodation.**

**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.

**HPLS supports this proposal. We refer the Commission to our submission dated 15 April 2011, in which HPLS submitted that where a situation of family violence has been identified, the requirement that the claim be made within seven days of the circumstance should be waived.**

**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.

**HPLS supports this proposal. We refer the Commission to our submission dated 15 April 2011, in which HPLS submitted that Crisis Payment should be available to any person who has experienced financial hardship as a result of family violence. HPLS submits that the nature of family violence is broad and encompassing. The preferred definition of family violence refers also to economic abuse, emotional abuse, stalking, deprivation of liberty, damage to property, and causing a child to be exposed to violent or abusive behavior.**

**In the submission HPLS stated that any reported allegation of family violence should be considered as an "extreme circumstance", and therefore eligible for Crisis Payment. HPLS submits that this approach is consistent with a trauma-informed care approach to administering Crisis Payment.**

**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.

**HPLS supports this proposal. We refer the Commission to our submission dated 15 April 2011, in which HPLS submitted that the fact that the Guide does not refer to family violence as an exceptional and unforeseen circumstance is a significant omission, given the**

**interrelatedness of family violence to homelessness, and that accordingly, family violence should be expressly referred to as an exceptional and unforeseen circumstance within the *Guide*, for the purposes of determining eligibility for an urgent payment of a person's social security payment.**

**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.

**HPLS supports proposals 8-4 and 8-5.**

**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?

**HPLS submits that a range of flexible repayment arrangements of a social security debt could be made available for victims of family violence. These include:**

- suspending payment of debt for a specified period of time;
- full or partial debt waiver;
- reduction of instalment payments;

**In addition, where a flexible repayment arrangement is being considered by Centrelink, it is submitted that a referral should be made to a financial counseling service.**

**Proposal 8–6** Section 1237AAD of the *Social Security Act 1991* (Cth) provides that the Secretary 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 of FaHCSIA 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).

**HPLS supports proposals 8-6 and 8-7.**



# Appendix A

## The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only, broadly-based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC receives funding from Industry & Investment NSW for its work on energy and water, and from Allens Arthur Robinson for the Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

## The Public Interest Law Clearing House

The Public Interest Law Clearing House (PILCH) NSW was established in 1992 by the Law Society of New South Wales, the Public Interest Advocacy Centre and the private legal profession to respond to the growing incidence of unmet legal needs within the community. Underlying the establishment of PILCH is the commitment from lawyers that the provision of legal services on a *pro bono publico* ('for the public good') basis is intrinsic to legal professional responsibility.

The aims of PILCH are:

- to identify matters of public interest that warrant legal assistance *pro bono publico*;
- to identify the legal needs of non-profit organisations;
- to match disadvantaged and under-represented individuals, groups and non-profit organisations with a need for otherwise unavailable legal assistance with PILCH member firms and barristers;
- to utilise the diverse skills and resources of lawyers in a broad range of public interest matters;
- to expand the participation of private practitioners in the law reform process;
- to seek the integration of *pro bono* work with legal practice;

- to encourage co-operation between private practitioners and public interest lawyers: and
- to establish/coordinate public interest projects which seek systemic reform.

PILCH provides services to community organisations and individuals for free. It is a membership-based organisation with members including small, medium and large private law firms, corporate law departments, individual barristers, barristers' chambers, law schools, accounting firms, Legal Aid NSW, the Law Society of NSW, the NSW Bar Association, and PIAC.