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The Executive Director
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RE: Submission into Family Violence and Commonwealth Laws Discussion Paper 76

I wish to make a submission to your inquiry in relation to Discussion Paper 76. This submission is based on the findings from my research that I have been conducting since 2008 as a PhD candidate at the University of South Australia. This research has been on how the Australian Welfare to Work policy impacts on the lives of single mothers and their families who have experienced domestic violence¹. The research has consisted of a policy analysis of the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005* and interviews conducted with single mothers, women's emergency service staff and persons working for Centrelink, employment services, and as Job Capacity Assessors (JCA). The following submission is based on the findings from my research and relates to Questions and Proposals from Chapters 5, 7, 13, and 15.

Proposal 5-1 & 5-2

Agreed

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.**

¹ Myjenta. E. Winter. *Single mothers, domestic violence in the Welfare to Work era*. University of South Australia. (Unpublished Thesis)

A disclosure of family violence should be sufficient, as many victims do not have contact with other services or the legal system, due to fear of retribution by the perpetrator. Sexual assaults are usually not reported due to the insensitive manner victims of violence are treated within our society and by the legal system. Women and children should only need to disclose that they have experienced violence and should not be forced to disclose this form of violence or give details or further verification of this type of violence.

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.

Disagree-as stipulated above a woman’s disclosure should be sufficient. Disclosure with no other verification is currently sufficient to be granted an exemption from pursuing child support from violent ex-partners and therefore should be sufficient for women to be granted a participation exemption.

Proposal 5- 6

Agreed

Proposal 5- 7

Agreed

Proposal 5-8

Agreed

Proposal 5- 9

Agreed

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?

Answer (a) at the customer’s request

Proposal 7-4

Agree

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?

In practice, JCA assessors in relation to activity tests, participation requirements, Employment Pathway Plans and exemptions do not consider the needs and experiences of job seekers experiencing family violence. JCA assessors do not have expertise in family violence, nor are they trained in the area, nor do they have knowledge of the exemption available for people experiencing family violence. Their objective is to connect persons to employment services. My research indicated principal carers with and without medical certificates were classified as job ready, regardless of their mental and physical health or homelessness. ESA and JCA assessors should be recommending, the person be granted an exemption, and be fully exempt from participation requirements. My research also indicates sending a person to a JCA is a means of denying that person an exemption when the guidelines specifically state they are eligible for an exemption.

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

No. The failure to account for domestic violence was seen in the Questions on Notice, where only 53 exemptions for domestic violence had been granted, since March 2011², considering that majority of women who enter the welfare system as principal carers do so because of domestic violence³. Sexual assault of women and children is not acknowledged in the current legislation, and therefore the assessment process is inadequate.

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?

Persons experiencing family violence should be exempt from the entering into an Employment Pathway Plan (EPP) and from connecting to employment services. EPPs and activities associated with employment services should be suspended while the person has been granted an exemption.

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.

²Senate Standing Committee on Education Employment and Workplace Relations. (2011). Questions on Notice Budget Estimates 2011-2012. Outcome 4 -Employment & Participation Policy: DEEWR Question No. EW0318_12.Parliament of Australia.

³Myjenta. E. Winter *Single mothers, domestic violence in the Welfare to Work era*. University of South Australia. (Unpublished Thesis) Sharon Hays. (2003). *Flat broke with children: Women in the age of welfare reform*. New York: Oxford University Press.

Agree

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.

Agree. However, I strongly argue for principal carers to be granted an automatic 12 month exemption, to recognise ramifications of violence, having to deal with legal systems and to acknowledge that sexual violence commonly occurs in family violence. Women should not have to explain these circumstances due to the sensitivity of this problem. This exemption should not have terms attached, such as being connected to a service, for counselling or emergency accommodation due to the family violence⁴, as not all women are able to have access to these services as they are either unavailable or non-existent, unable to take further clients, or inappropriate due to poorly trained staff. Post separation violence, including assaults on children, continues for years, because of father/child contact through family court determinations⁵. The current policy focuses only on the separation point and needs to acknowledge the continuance of post separation violence. An automatic 12 month exemption should be granted to all principal carers who have experienced family violence. This also needs to include an automatic 12 month exemption for those caring for children that have also witnessed or experienced violence.

I disagree with the ALRC statement that automatic exemptions of 6 to 12 months will isolate victims of family violence from services⁶. When the only services victims of violence are referred to is the employment services, which have no expertise or training in family violence, or interest in that matter. Victims of violence are not referred to other support mechanisms. My research found, victims of violence were caused further distress by being forced by Centrelink and employment services to prioritise job seeking over caring for their children. This involved being told to leave their children (who had experienced and witnessed violence) home alone by Centrelink or be suspended from their income support payments. My research also found that mothers were capable of accessing services, and had connections to the labour market and education institutions⁷. The current welfare system only pushes women into low paid, unskilled, unstable jobs and is not supportive or beneficial to principal carers or their children. The existing exemptions do not acknowledge the seriousness of family violence or that family violence continues through child/ father contact determinations made by the family court.

⁴ Australian Law Reform Commission. (2011). Family violence-Commonwealth Laws Discussion Paper No. 76. Australian Government. p. 234.

⁵ Myjenta. E. Winter *Single mothers, domestic violence in the Welfare to Work era*. University of South Australia. (Unpublished Thesis)

⁶ Australian Law Reform Commission. Family violence-Commonwealth Laws Discussion Paper No. 76. p. 239.

⁷ Myjenta. E. Winter *Single mothers, domestic violence in the Welfare to Work era*. University of South Australia. (Unpublished Thesis)

My research also found that ex-partners were using violence against women and children to sabotage the women's ability to comply with the participation requirements to get them suspended from their Centrelink payments⁸. Post separation violence can be reduced if an automatic 12 month exemption was implemented, as ex-partners would then have one less avenue to perpetrate violence.

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?

These procedures are insufficient and do not ensure safety. There is no flexibility, there is no negotiation. Customers must agree to Centrelink's or the employment services terms, even when they apply the legislation incorrectly, such as forcing principal carers to do double the legislated participation requirements, or their payments will be cancelled. My research found being granted an exemption in the first place was a rarity, and was only granted when Women's Emergency Service workers advocated for the woman. Yet women were not receiving the correct exemptions. Being granted an extension was extremely hard to achieve. Women with no advocacy did not receive exemptions indicating many women are missing out on this protection mechanism.

Overall Centrelink practices did not show any acknowledgement of serious family violence and prioritised job seeking over care needs of children, and ignored the part-time requirements legislated for principle carers and instead applied participation requirements for job seekers without dependents.

A recent version of Centrelink's Internal Procedural Guidelines, stipulated that exemptions for domestic violence can be granted for up to 16 weeks, which is inconsistent with the legislation which stipulates that a person experiencing domestic violence MUST be granted an exemption of 16 weeks. This indicates how severely flawed and inflexible the system is when it cannot follow the legislated law. Furthermore the legislation stipulates under 502C, that one or more periods of exemption can be granted under subsection (4) and further exemption periods **must** be 16 week determinations as according to subsection (5)(b)⁹. However, principal carers are not receiving these extensions. This shows a strong reluctance by Centrelink to abide by the legislation.

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.

Agree

⁸ Ibid

⁹ Australia. (2005). *The Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005*.

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?

No, if victims of violence are not receiving information or being granted domestic violence exemptions, child support exemptions, crisis payments or the correct information on participation requirements, they would not be receiving information on this area. The Unemployed Non –Payment Period and the suspension system need to be abolished, as they both cause homelessness, deeper poverty and ill health. The non-payment period does not consider it is difficult for a person to prove that they left a job because of abuse or harassment, or employers being vindictive and claiming the person was sacked for misconduct when they left due to harassment¹⁰.

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.

Agree

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?

That staff are regularly trained on family violence, sexual discrimination and legislation relating to family violence, especially relating to exemption processes. Training modules need to be presented in the tender process. They must also demonstrate they employ staff who have expertise in family violence and have knowledge of services that specifically deal with domestic violence and sexual assault.

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?

Currently there seems to be a systemic failure to share information on individual job seekers as indicated in instances of family violence, where victims of violence have been incorrectly sent to JCAs, and then sent back to employment services. My research found there was a serious problem with Centrelink not correctly recording information and losing clients records. Centrelink and employment service staff need to have appropriate administration and IT skills before being employed in these organisations.

Proposal 15–1 Centrelink, DEEWR, JSA, DES and IEP providers, and ESA and JCA assessors (through the Department of Human Services) should consider issues, including appropriate privacy safeguards, with respect to the personal information of

¹⁰ Melissa Coad et al. (2006). "Welfare to Work or unworkable welfare?," http://www.vcooss.org.au/documents/VCOSS%20docs/Welfare/NACLC_welfarework.pdf.

individual job seekers who have disclosed family violence in the context of their information-sharing arrangements.

Agree

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.

Agree, but also needs to consider if there is only one JSA or DES provider in the area then the person who experienced the family violence needs to be granted an exemption from attending the service, and should not be expected to travel to another provider further away.

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?**

The focus of screening should be to send the person back to Centrelink to be granted a participation exemption, as people in these circumstances have limited ability to comply with the participation requirements because they are usually experiencing post separation violence, have to deal with legal systems including family court, have accommodation issues, care for children who also have witnessed and experienced violence, and are at risk of being breached and suspended if their situation goes un-noticed. Screening should be done in a sensitive and supportive manner by a person who has expertise and training in family violence and be conducted when a person seems to be experiencing stress, distress or are unwell, has obviously been assaulted or is having problems with the services requirements. Screening should be done in a private office not in an open space.

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?

There is a need to ensure that these guidelines are actually in the JSCI, and are in Centrelink's internal procedural guidelines and that they are actually consistent with the legislation. Centrelink staff and JSA staff also need regularly training about the correct procedures. This requires Centrelink guidelines to be more transparent, through making the internal procedural guidelines accessible to the public. Guidelines as well as information used by employment providers and JCA providers also needs to be accessible to the public to ensure that they are abiding by the legislation. Penalty's need to be imposed on Centrelink, employment services and JCA providers who do not follow the correct legislation.

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.

Strongly disagree. Many people who have experienced violence have been deprived of developing careers or gaining education qualifications. The system should encourage persons who have experienced violence to gain education qualifications and support them, through increasing income support payments. However, it does not. Due to current JSA provider's practices, which focus on making profits, a targeted job placement program would prove unbeneficial for victims of violence and would only lead to them being stuck in low paid, unstable jobs regardless of their qualifications. This situation would have detrimental effects on their mental and physical health. As Butterworth has found forcing people into low paying unstable jobs is not beneficial as those in low quality jobs have higher rates of depression than people who were unemployed¹¹.

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.

The problem with the JSCI being conducted over the telephone would be associated with Centrelink call centre staff having to work within targets set by management which is associated to pay increases. They have 6 minutes to respond to a phone call, 80% of that time allocated on the call and the other 20% is after call work. If they do not reach their statistical target, they are not eligible for a pay increase. This limitation on time is not helpful for jobseekers or applicants and discourages Centrelink staff from making proper assessments. This would also account for the number of mistakes made by Centrelink. Call centres need to function on helping and informing applicants and recipients, instead of being focused on targets and wage increments.

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?

Yes

¹¹Peter Butterworth. (2007). "Fair welfare: The experience of welfare receipt: Depression, demoralisation and despair?". Centre for Mental Health Research. The Australian National University.

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

Agreed-but instructions need to state person is to be referred to social worker and be given information on exemptions.

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?

Disclosure of family violence should automatically constitute a significant barrier to job seeking and complying with the participation requirements. However the person **should** be granted an exemption and not be sent to a JCA, unless there are medical reasons to do so.

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?

No. First job seekers who disclose family violence should be granted an exemption. Sending people to JCAs who then place them into the employment service system does not acknowledge the person is experiencing family violence. It also does not acknowledge the seriousness of the problem. Second, JCAs that have specific qualifications in family violence would be more beneficial if they understood that family violence contributes to medical conditions. Third ESAts and JCAs should not have the power to override medical certificates, when they do not have the expertise to make such judgments.

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

My research found there was no consideration of family violence even when women had medical certificates, verifying serious mental health conditions because of violence. Medical certificates were overridden to the detriment of the victim. Persons going through this procedure need to be properly informed and told to get medical verification. Family violence and sexual assault need to be recognised as having immense impacts on women and children’s mental and physical health for years, and contributes to the development of serious illnesses. Pushing people into employment services and the work first approach needs to be recognised as causing further stress to victims of violence and also a contributes to poorer

health outcomes. There also needs to be consideration that principal carers have children who have experienced or witnessed violence and need to be taken care off by their parent, which seems to be forgotten within these processes and the welfare system.

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

Disability employment services that offer personal support would be more beneficial for persons who have experienced family violence. However principal carers who have experienced family violence are not supported through the usual process of placing them into employment streams in the JSA system, where they receive no support to deal with family violence and the ramifications of violence, and are ‘parked’ until their time is up.

Proposal 15-5

Agree

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?

Need to consider that women will not be able to gain employment if they live in same area as the perpetrator, or their safety will be jeopardised if they are forced to search for jobs.

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