



Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc

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Your Reference :

Our reference :

25 September 2011

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

Dear Ms Wynn

RE: ALRC Discussion Paper No. 76

We thank you for the opportunity to respond to the ALRC Discussion Paper No.76 *Family Violence and Commonwealth Laws*.

We propose to provide only a limited response owing to the time frame and the organisation's capacity to provide submissions at this time.

The *Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc* ("ATSIWLSNQ") is a Community Legal Centre for Aboriginal and Torres Strait Islander Women in North Queensland. We are located in Townsville and our clients are women from regional and remote North Queensland, including Townsville, Palm Island, Charters Towers, Ayr, Mount Isa, Normanton and other Gulf communities.

Our service is funded to employ two (2) full-time workers and we undertake legal casework, advice and court representation for indigenous women. The ATSIWLSNQ aims to enhance community development through raising awareness about legal issues and access to legal services, and community legal education. We have some outreach services providing legal advice and community legal education to NQ communities outside of the Townsville metropolitan area.

The majority of legal casework is in Family Law, Child Protection and areas of civil law such as anti-discrimination, workplace issues, debt and family violence. As the legal issues faced by our clients are often complex and typically may involve a range of problems such as housing, debt, homelessness and family violence, our service provides our clients with legal advice in a number of civil areas, legal casework, including court representation, to the extent of our capacity and referrals to specialist and support services.

A significant number of our clients are affected by both family violence and also by the problems associated with managing their lives in a context of family violence. Some of the problems commonly faced by our clients in relation to family violence include:

- (a) Intervention and removal of children by the Queensland Department of Communities (Child Safety);
- (b) Child abduction by violent ex-partners;

- (c) Loss of child support due to the actions of violent ex-partners;
- (d) Loss of housing and accommodation due to family violence;
- (e) Poverty due to a variety of reasons associated with family violence;
- (f) Relative powerlessness to protect themselves and their children in some court proceedings if unable to prove risks of family violence from another party.

Examples of Problems involving family violence and Commonwealth Laws

Child Abduction for financial benefit

Most of our clients who have left relationships in which family violence was a significant factor, have continued to experience or be at risk of violence from an ex-partner after separation. In many of these cases, children are caught in ongoing patterns of harassment and family violence. In a number of cases where the children live primarily with the mother, the ex-partner / father of the children has abducted the children as a continuation of the violence and in some cases, claiming or hoping to claim a financial benefit.

The *Family Law Act 1975* requires parents to "encourage and facilitate" the children's relationship with the other parent. In many cases attempts to be compliant with the Family Law Act 1975 can render a parent and children vulnerable to family violence where children are spending time with the other party pursuant to a Court Order or an informal arrangement between the separated parents. For example:

- (a) Changeover arrangements, if not protected by appropriate court orders, may be places of volatility and violence;
- (b) The father may use the children as a way to pressure the mother or the maternal family into giving him money by not returning the children unless paid money; or
- (c) The father has lifestyle issues such as substance abuse and wants the relative security of a Centrelink sole parent benefit and therefore abducts the children, and lodges a claim for a Sole Parent Benefit stating that the children are living with him;
- (d) The father hears that Centrelink makes a special payment to parents (approx \$700-\$900 per child) once annually and the father abducts the children at around the time when the money is due to be paid, hoping to either pressure the mother into giving him the money or to claim it for himself or to prevent the mother from claiming it.

Some clients have expressed a preference that any annual bonus payments be available in the form of uniforms, books or educational benefits for their children.

We are aware that in some cases social security files may be flagged where parental abduction of a child has occurred. Claims by the "non-resident" parent may thereby be treated with caution by Centrelink.

Child Support

Some common scenarios where a violent ex-partner avoids paying child support include the following:

- (a) A violent ex-partner/father fights for more time with the children for the purpose of reducing his child support or to make the other parent liable to pay child support to him;
- (b) A violent ex-partner/father coerces the mother into signing a child support agreement which he then reneges on, leaving the mother to try to remedy the situation;
- (c) The parent who is caring for the children is too frightened to apply for child support for fear of retaliation from the violent ex-partner;
- (d) A grandparent (or another family member) is caring for grandchildren but is unwilling to pursue child support against a son or daughter (or other family member) if they fear retaliation. As they may also feel shame about family violence occurring, the grandparent/ other family member may be unwilling to disclose to any person (including a Centrelink social worker) what is happening.

Centrelink has made provision for scenario (c) by not requiring some women to pursue child support. Scenario (a) is a matter for the Courts and the Family Law, but it does place extraordinary stress upon a woman who already fears for the safety of herself and her children.

In other situations a violent ex-partner intimidates the payee parent into waiving a child support debt which has accrued due to his non-payment of child support.

Poverty

The variety of forms that poverty takes when family violence impacts on a family's financial security is well documented.

We have found many situations where women and children are constantly on the move between towns and between the homes of family members, trying to escape family violence from a violent ex-partner or other perpetrator of family violence. In such a situation, employment is impossible, housing is jeopardised and often has to be either given up or is taken away due to defaults in rent. Apart from the lack of stability and safety for children, the cost of avoiding family violence means that the family's (often limited) finances are strained and the family is usually made homeless.

Homelessness may result in clients defaulting on social security reporting requirements or requirements in relation to the children's school attendance.

We have provided a limited number of recommendations in our "Responses to Discussion Paper".

We have confined our responses to matters that have come to our attention as issues for clients of our service. Where we have not responded to a particular issue or question, this is either an issue which has not been raised by our clients or it is a matter which is not within the scope of our service.

Please note our concerns that the experiences of Aboriginal and Torres Strait Islander women do not appear to be consistently reflected in the Discussion Paper. The needs of Aboriginal and Torres Strait Islander women for culturally appropriate language and procedure, for them to be able to be screened by a person whose cultural understanding places women at ease, to be able to access services which are culturally appropriate, are simply not mentioned in most of the proposals contained in PD 76.

RESPONSES TO DISCUSSION PAPER

Principles from Family Violence – A National Legal Response

Seamlessness

We endorse the principle of "consistency of definitions" across Commonwealth laws, and we submit that the definition should be broad and inclusive, as contained in some of the statutory definitions in State legislation.

Fairness

We submit that the principle of fairness should include practical considerations such as the difficulty which may be experienced by people in raising "family violence" as an issue. *For example:* Many of our clients do not speak of their experiences of family violence until they feel comfortable to discuss it with the person they are disclosing to, if at all.

Reasons for non-disclosure include:

- Feelings of shame relating to the nature of the family violence or to community, family or cultural values;
- Feeling uncomfortable with the social worker / other person conducting the screening if she is judgemental, paternalistic, condescending or not skilled in communicating with Aboriginal and Torres Strait Islander women;
- Not being able to recognise that family violence has occurred;
- Fear of not being believed;
- Fear of not being understood;
- Fear of being judged by others generally, particularly where the person already feels marginalised by the wider community.

Difficulties may be exacerbated where the person senses scepticism on the part of the lawyers, the courts, police or others who will have access to the disclosures of family violence.

Such considerations should be taken into account, for example, when weighing up whether a person is able to claim an advantage, a protection or a procedural step or when deciding to whom a person should be referred for screening for family violence.

Timing of disclosures of family violence may not accord with community or professional expectations and it should not be assumed that a disclosure that is made “late” and not upon initial contact, should be given less weight or assessed as less likely to be genuine.

Staff administering Commonwealth laws where family violence is raised as an issue, should be trained appropriately and regularly.

Accessibility

We include the comments we have made in the preceding section under “Fairness” as they also relate to accessibility.

It is submitted that if reducing complexity also includes *information-sharing* between different government departments or agencies, care needs to be taken, not only to protect privacy but to ensure that the information is not used against the person experiencing family violence in a way that may be perceived to be punitive.

For example, under-reporting of family violence is common in many communities due to the fear that any attempts to obtain assistance from police or medical staff will result in mandatory reporting to child protection authorities and removal of children. In these cases the mandatory reporting requirements actually work *against* the protection of the children as well as the primary victim.

Accessibility which includes information-sharing therefore needs to ensure that it enhances women’s and children’s support, choices and therefore protection rather than increasing responses that may lead to further trauma to the family.

Effectiveness and self-agency / autonomy

It is submitted that self-agency or “working with” those affected by family violence is also key to effectiveness. Hence any decisions about reducing family violence whether for individuals, a family, a town or a community should be made *in partnership* with those affected by the family violence.

A failure to consult, and measures which deny individual choice, rather than enhancing choice, risk being ineffectual or regarded as punitive.

Privacy and System Integrity

Our service supports the privacy of client information and recognises that privacy standards need additional protection where system integrity means information-sharing between different administrative systems.

Chapter 3

Definition of “family violence”

We support the elements included in the definition provided in Proposal 3-1 and included in 3-2 through to 3-5, but would add that the definition fails to acknowledge the extent to which a person's cultural, spiritual and family life form part of the person's sense of identity or self-worth. Hence people can also be vulnerable to family violence through abuse of these areas of a person's identity.

It is submitted that “emotional or psychological abuse” may be too general and generally an inaccurate description for specific types of abuse such as:

- Cultural abuse;
- Deliberately isolating a person from their family, their community or social life, their cultural life or their religious or spiritual beliefs;
- Demeaning a person with reference to their culture, or spiritual beliefs.

We recommend that the definition incorporate forms of abuse which may affect Aboriginal or Torres Strait Islander women, such as cultural abuse and demeaning a person with reference to their culture or spiritual beliefs. We have found these types of abuse more common in relationships where the parties are from different cultures (e.g. a person from an Aboriginal culture in a relationship with a non-indigenous person).

Failure to recognise culturally specific abuse may result in these types of abuse being overlooked in family law proceedings, and in the Courts dealing with family violence applications and child protection issues, among others. Errors in assessing the type and extent of abuse can become compounded and do negatively affect outcomes for women and children.

Chapter 4

Screening, Information Sharing and Privacy in relation to Centrelink, the CSA and Family Assistance Office

We submit that in proposals 4-1 through to 4-4 consideration needs to be given to how the agency will provide support to families or individuals affected by family violence.

It is submitted that support services should be *culturally appropriate* and be available to provide initial intensive support if required.

Question 4-1

The ATSIWLSNQ supports screening for family violence, but emphasises that for Aboriginal and Torres Strait Islander women the screening process should be conducted in a way that is culturally appropriate. Essentially we recommend that an Aboriginal or Torres Strait Islander woman should be given choices as to who she speaks with in the screening process. Not every woman wants to speak to a person from her own culture about the problem, but she should have the option if this makes disclosure easier and support services more accessible.

We submit that the screening process should not only be protected by privacy but should also be seen by the client to be private. Any place where people can walk in or out or where there are cameras or recording devices is likely to be perceived as not private even if it is protected by privacy laws.

Further, we recommend that questions about family violence should include reference to non-physical forms of violence.

Proposal 4-15

In relation to Proposal 4-15, a particular concern for many women is the way in which child protection agencies respond to reports of family violence. If the proposal is merely that reports of family violence are to be subject to mandatory reporting to the Departments of Child Safety, this is likely to deter many woman from disclosing family violence even when it may be in their best interests to do so.

It is submitted that responses which include reporting to child safety authorities, need to first develop appropriate protocols with child safety services to ensure that responses will be supportive and may be tailored to individual and family needs, rather than introducing another mechanism to remove children from their families without regard to the long-term consequences.

Different families and situations require different responses. For example, while some women or children may need support to leave a situation, in other cases families wish to remain together and work on repairing family relationships, while receiving appropriate support services.

Chapter 6

Social Security - Relationships

Question 6-1

With respect to the discretion under s.24 of the Social Security Act 1991 (Cth)

- (a) We strongly support the discretion being accessible to those experiencing family violence. In our experience, it may be more difficult for women living in small communities to easily leave a violent relationship for a variety of reasons. There should be access to the discretion. The women affected by such a situation should be appropriately screened for their eligibility and they should be made aware of the discretion.
- (b) ..
- (c) Access to the discretion can be supported with appropriate screening including our comments in relation to Question 4-1.

Question 6-2

Family Violence in relation to "when it is unreasonable to live at home"

We support the express inclusion as a means of flagging situations involving family violence, child abuse and neglect, as well as removing any doubt as to access to this provision for applicants experiencing these situations.

Chapter 7

Social Security – Proof of identity, residence and activity tests

Proposal 7-1

We support the proposal as a matter of practicality.

Question 7-2

We support the use of the information-gathering power in s.192 in any situation where a woman and/or children either have immediate fears for their safety or have left a situation of family violence. As we have stated elsewhere, some women remain mobile for their own protection against family violence whether or not their fear of family violence is imminent.

Proposal 7-4

We strongly support the training proposed for Centrelink customer service advisers.

Proposal 7-6

We strongly support the proposal to have flexible exemption periods for people which reflect the nature of family violence.

Question 7-12

We are unable to comment on the terms used other than to comment that "original place of residence" sounds confusing and is likely to be a barrier to women for whom English is a second language, as is the case for many Aboriginal women in regional North and Far North Queensland.

It is our experience that many women experiencing family violence choose to move to an area where they have the support of a family member or a family network of support. Women who have moved to a metropolitan area from a rural or remote community frequently seek family support in a place of "lower employment" (their community of origin).

We strongly support the use of adequate information about the option to relocate in cases where family violence has been identified. We recommend that this information be available verbally from staff as well as brochures written in culturally-appropriate language.

Women may not identify "family violence" as referring to extended family, although it is not unusual for women to choose to relocate due to violence from siblings, cousins, in-laws and other extended family.

Proposal 7-7

We support the proposal to include family violence as a "reasonable excuse" for the purpose of the activity tests, participation requirements, Employment Pathway Plans and other administrative requirements.

Chapter 8**Social Security – Payment types and methods and overpayment****Proposal 8-1**

We support flexibility for claimant times as clients commonly experience problems such as transport difficulties, not knowing where to go or how to access their rights particularly if they have relocated to another town to escape family violence.

Proposal 8-2

We support the proposal to make women who do not leave the home eligible for a Crisis Payment and we support the proposed amendment.

By way of example, some women have become victims in their own homes from a violent ex-partner who has invaded the home. Some scenarios include situations in which the ex-partner has held the woman hostage or has stolen her ATM card, or has threatened and intimidated a woman into handing over her money.

Proposals 8-3 and 8-4

We strongly support the proposal in 8-3 and 8-4. Family violence is *not* foreseeable in the majority of situations. We refer to our comments above as just one type of situation where it is not foreseeable.

Proposal 8-5

We support the inclusion of the effect of family violence being taken into consideration.

Question 8-2

We support more flexibility around payment of a debt for victims of family violence.

A woman who is in a violent relationship may have had multiple separations in response to the violence. She may fail to notify Centrelink (and incur a debt) if she believes that a resumption of the relationship is unlikely to last. Some women have also lost track of whether they have informed Centrelink as required.

We support the inclusion of a number of options depending on a woman's personal circumstances. In some cases suspension of the debt may be appropriate where a woman has no capacity to repay or does not always have control over her payments due to family violence. We recommend that the timeline for repayment be flexible enough to taken into account a range of different situations.

Proposals 8-6 and 8-7

We support proposal 8-6 to amend s.1237AAD in the circumstances as described, and to provide similar amendments to the Guide.

Chapter 9

Child Support – Frameworks, Assessment and Collection

Proposals 9-1 to 9-6

We support the proposals in relation to definition and flagging of and screening child support recipients in the circumstances referred to.

In addition we support the inclusion of a provision that Aboriginal and Torres Strait Islander women be given the benefit of culturally appropriate referrals including referral to legal support where appropriate.

Chapter 10

Child Support – Agreements, Personal Information, Informal Carers

Proposal 10-1

We support the proposal.

Proposal 10-2

We support a referral but recommend that for an Aboriginal or Torres Strait Islander woman she should be consulted about culturally appropriate referrals and an appropriate referral should be made.

Question 10-2

We support this occurring at the customer's request. Where verification is requested, we support it being on the recommendation of a person suitably qualified, whom the customer regards as being culturally appropriate rather than being restricted to a Centrelink social worker.

Proposal 10-3

We support the proposal but again submit that the recommendation may come from a suitably qualified person whom the customer regards as culturally appropriate.

Proposals 10-4 to 10-6

We support 10-6 as an option with the addition of the provision that the parent who does not consent :

- (a) may seek legal advice;
- (b) is to be informed by the CSA of her right to obtain legal advice;
- (c) has 28 days for a legal submission to be made to the senior Child Support Agency officer on the person's behalf; and
- (d) upon a decision being made by the senior Child Support Agency officer, be advised of the parent's right of review.

The rationale for the proposed additional provisions is that we have found it is not uncommon for perpetrators of family violence to remove children and place them with a relative or another person as a means of continuing to inflict psychological distress upon the other parent. Unfortunately the perpetrator's family may either be unwilling to admit that there has been family violence or may cooperate due to also feeling intimidated by the perpetrator. The perpetrator is in any event more likely to place the children with a person sympathetic to him. In these situations it is important that the parent objecting to the removal of the children know that she should seek legal advice. The appropriate legal support would more likely be a Family Law application rather than a submission in relation to Child Support, but the parent should have the option.

Alternatively it is recommended that the file be flagged where there has been family violence and the children are with a non-parent, and that the parent objecting to the child support payment be advised of her right to seek legal advice as a matter of procedure.

Proposal 10-7

We support the proposal.

Question 10-4

We support the *Child Support Guide* being amended to include the CSA's response to an application from a non-parent/guardian carer in cases where one or both parents do not consent.

In practice, we recommend that there be discretion to assess child support liability but that procedural fairness be afforded to the objecting parent/s, including at the outset the CSA's duty to inform the parent/s of their right to object, right to legal advice, right to make submissions and the time limit for doing so.

Chapter 11**Child Support and Family Assistance – intersections and alignments****Proposals 11-1 to 11-3**

We strongly support these proposals as affording fairness and acknowledging the difficulties faced by women who are in all practicality unable to safely lodge claims for child support.

Chapter 12

Child Support and Family Assistance – intersections and alignments

Proposals 12-1

We support the proposal. We recommend that the definition incorporate the notion of culturally specific family violence (for example where a person's culture is demeaned by a partner whose cultural background is different or where a woman is verbally abused with reference to her aboriginality or culturally specific attributes). We refer to our comments made previously in relation to the definition.

Proposals 12-2 to 12-5

We support these proposals.

Chapter 13

Income Management – Social Security law

In relation to Income Management, while we recognise that income management in some form has been helpful for some families, we do not support any measures which are mandatory, not culturally appropriate or that require that goods and services be purchased exclusively at particular stores.

It is well documented that where people are denied choices as to where they buy goods and services, not only may it disadvantage them from seeking out budget options but vendors and service providers may take advantage of the lack of choice to charge exorbitant prices.

We are also informed that in cases where those on income management have been placed under a restrictive regime to purchase goods only at major supermarkets, recipients or their partners have found that they are able to purchase "gift cards" which may then be passed on to purchase alcohol.

Proposals 13-1

We support the proposal.

Proposal 13-2

We do not support the Cape York Welfare Reform model without further information and assessment of the impact on the communities and the individuals. In our experience, any system which seeks to impose restrictions, unless by consent of the individual/s affected, risks producing fractured communities and may be perceived as punitive action by the decision-makers (especially if local) rather than supportive measures. Further, such a system is open to abuse where there are long-standing disagreements between families or individuals.

We do support screening processes which provide solutions and support for people experiencing family violence who may wish to have some form of income management. We support cultural appropriateness being integral to the process.

We submit that any income management arrangement should be voluntary and may be assisted through culturally appropriate counselling, discussion and feedback at a local level.

We submit that any income management measure should be tailored to meet individual, family and cultural needs.

Proposal 13-3

We support the proposal to the extent that it creates flexibility. We do not support reference to the Cape York model without further information and assessment of the outcomes of the Cape York experiment.

Question 13-2

We refer to our comments in Proposal 13-2 above.

Proposal 13-4

We support the proposal.

Chapters 14 to 17

In relation to the recommendations with respect to employment law, our service does not deal with the range of legal issues that would enable us to make meaningful contributions to many of the questions and issues. We are able to comment in general terms only.

We support the submissions made by the Women's Legal Services NSW on 11 April 2011 in its responses to a previous Discussion Paper on the same issues.

Chapter 14**Employment Law Overarching Issues and a National Approach****Proposals 14-1 to 14-4**

We support the proposals and in particular that research be undertaken into the impact of family violence on the employment of those experiencing it.

Chapter 15**The Pre-Employment Stage****Proposals 15-1 to 15-4**

We support the proposals.

Proposals 15-6

We support the proposal.

Chapter 16**The Fair Work Act 2009 (Cth)****Proposal 16-1**

We support the provision of changes in working arrangements to assist an employee to deal with family violence.

Proposal 16-4

We support this option as it better fits the experiences and needs of our clients.

Chapter 17**The Fair Work Act 2009 (Cth) (cont)****Proposals 17-1 to 17-6**

We support the proposals and in particular support the proposal for flexibility contained in 17-1 to 17-3.

Chapter 18

Occupational Health and Safety Law

Proposals 18-1 to 18-4

We strongly support the proposals.

Chapter 19

Superannuation

Proposals 19-1 to 19-2

We support the proposals, but have the view that any provisions for early release of superannuation should be considered with caution given the variety of situations in which recipients may be stood over, robbed or intimidated and may potentially lose valuable savings.

We support a discretion for early release of superannuation in general terms but would generally regard the provision of Crisis support and flexibility in employment arrangements as preferable options, as first options before considering early release of superannuation.

We regret that at this time we do not have the capacity to make more meaningful contributions to the questions for discussion.

Should you require clarification or further information in relation to this submission, please do not hesitate to contact the writer (Ph 07 4721 6007).

Yours sincerely



Cathy Pereira
Principal Solicitor/Co-ordinator
ATSIWLSNQ Inc.