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21 April 2011
The Executive Director
Australian Law Reform Commission

Dear Sir/Madam,

The Australian Association of Social Workers Queensland Branch, (AASW) welcomes the opportunity to comment on the Issues Paper in relation to Child Support and Family Assistance. As you may be aware, the AASW has made a submission in response to the Family Violence – Improving Legal Frameworks discussion paper and also to the Attorney General's Department in relation to the draft Family Law Amendment (Family Violence) Bill 2010 and to the two previous ALRC Issues Papers, IP36 and IP37.

The AASW is committed to working with government at all levels on an ongoing basis in relation to this critical issue. The social work profession is committed to maximising the well being of individuals and society. It considers that individual and societal wellbeing is underpinned by socially inclusive communities which emphasise principles of social justice and respect for human dignity and human rights, including the right to freedom from intimidation and terror in society. Minimum standards of human rights include also the right to adequate housing, income, employment, education and health care.

This submission focuses on a number of the issues involved in domestic and family violence which the AASW believes must be considered and decided upon in the context of a strong ethical framework that gives priority to human dignity and worth and the pursuit of social justice.

The AASW is the only national organisation for social workers in Australia, with over 6,000 members, many of whom are involved in the delivery of domestic and family violence services in a range of fields of practice.

Social Workers support, assist, and advocate on behalf of women, children and men affected by domestic and family violence. Social Workers work with children, young people, adults and families to prevent families affected by and exposed to violence. Many of these social work roles focus on intervening before domestic and family violence occurs, supporting parenting, educating young people and influencing other social determinants of violence. They ultimately seek to empower family members to take control of their lives and move beyond the effects of domestic and family violence.

Our submission is based on consultation and discussion with social workers who have particular expertise in this area. The Social Workers who contributed to the submission include: Dr Deborah Walsh, Georgina Warrington, William Lawreance, Joanna Burnett, Sally Thompson and Fotina Hardy.

We look forward to working with you in relation to these very important issues.

Yours sincerely

Fotina Hardy
Vice President
AASW Queensland Branch

AASW Queensland Branch Submission to the Australian Government ALRC regarding Family Violence and Commonwealth Laws Issues Paper 38 *Child Support and Family Assistance*

Question 1 Should the *Child Support (Assessment) Act 1989 (Cth)* and the *Child Support (Registration and Collection) Act 1988 (Cth)* be amended to insert a definition of family violence consistent with that recommended by the Australian Law Reform Commission and NSW Law Reform Commission in *Family Violence – A National Legal Response (ARLC Report 114)?*

The AASW in previous submissions to the ALRC and NSW Law Reform Commission and to the Attorney General's Department has argued that we need a consistent definition across all legislation that intersects in relation to family violence. The AASW supports in principle the definition proposed by the ALRC and NSW Law Reform Commission Final Report (2010), Recommendation 5-1 and identified by the Attorney-General's Department in relation to the *Family Law Amendment (Family Violence) Bill 2010* Section 4AB Definition of family violence etc, as specified below.

(1) For the purposes of this Act, ***family violence*** means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the ***family member***), or causes the family member to be fearful.

(2) Examples of behaviour that may constitute family violence include (but are not limited to):

a) an assault; or

b) asexual assault or other sexually abusive behaviour; or

c) stalking; or

d) repeated derogatory taunts; or

e) intentionally damaging or destroying property; or

f) intentionally causing death or injury to an animal; or

g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or

h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or

i) preventing the family member for making or keeping connections with his or her family, friends or culture; or

j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.

This definition is consistent with that proposed by the AASW in our previous submissions. However, the AASW identified the following alterations to the draft Bill definition that require addressing:

- Subsection a – the term assault needs to be expanded to provide greater clarity and articulation of physical assault.
- Subsection c – the child's exposure to domestic and family violence includes exposure to violence against a family pet.
- That stalking behaviour and behaviour by the person using violence that causes a child to be exposed to the effects of the behaviour be included in the definition.
- The AASW also supports the need for examples to be included in the legislation, such as examples of emotional and physical abuse or intimidation and harassment that can serve to illustrate conduct. In particular, examples that cover vulnerable groups: e.g. Indigenous people; women from CALDB; people with disability, aged people.

The AASW supports the inclusion of cultural abuse in the definition, which is particularly relevant when Australian men or Australian permanent residents perpetrate abuse towards women from CALD backgrounds. Anecdotal experiences identify situations such as: women not allowed to speak their own language at home with their children; not allowed to cook their own food; not allowed to practice their own rituals and/or spiritual beliefs or maintain contact with

people from their own community. Such examples are particularly present in mixed marriages where domestic and family violence occurs. Understanding the importance of the cultural dimensions that exist within domestic and family violent relationships are critical components to any comprehensive and inclusive definition of violence.

Question 2 What changes, if any, are needed to improve accessibility to child support payments for non-parent and non-guardian carers of children at risk of family violence?

The AASW does not have an opinion on this issue at this time.

Question 3 Does the requirement that the child be at 'serious risk' constitute a barrier to child support for non-parent and non-guardian carers, where parents or legal guardians do not consent to them providing care?

A child at 'serious risk' in the care of a non-parent or non-guardian carer where the parent did not consent to the care being provided could constitute reasonable grounds for the non-parent and non-guardian carer to be exempt to pursue child support and should be eligible to the full rate of Family Tax Benefit Part A that they are entitled to.

Question 4 In relation to the legislative requirement that a person take reasonable maintenance action, in order to receive more than the base rate of Family Tax Benefit Part A, what changes, if any, are needed to family assistance and child support legislation and policy to:

(a) ensure that exemptions are accessible to victims of family violence;

(b) ensure that exemption periods are of an appropriate duration; and

(c) address any financial disadvantage of victims of family violence who are exempted?

a) To ensure that exemptions are accessible to victims of family violence requires a range of measures to disseminate information pertaining to this option. It is critical that the CSA ensure that people accessing the agency have information available about how the CSA defines domestic and family violence in plain language and that the information provides detail about the exemption process. The following cases are provided to highlight the issues:

M reported that when her ex-husband was focused on the number of nights the children were to attend, which became rigid and inflexible. She stated, "He had it in his mind that this was his paid for right and that the children had to attend regardless of what was going on in their lives at the time. My kids have missed out on so many birthday parties because if they fell on 'his time' they couldn't go. Sometimes the kids wanted to go for the day but he was so focused on nights to make sure he didn't have to pay as much he would bully them into going. That just wasn't right. Then when the exemption came into place the kids were no longer under pressure to go. They had their lives back".

S stated that, "the current system allows the 'paying parent' to avoid or minimise payments in a variety of ways e.g. income hidden in business arrangements. For the controlling parent this is wonderful as they can continue to financially control the family with lack of financial contribution. In our family we got an exemption to stop all CSA payments (minimal as they were) as the only escape from intimidation, harassment and manipulation. Life has been far less stressful since, but it still hurts to see the ex go on long overseas trips and buy luxury cars but have no money (or even a sense of responsibility) to support his children".

To ensure all who come in contact with the CSA have adequate information requires that all services likely to come into contact with victims of violence be also aware of this option. Information dissemination can occur nationally through domestic violence resource services and peak bodies with particular attention to those immigrant and

Indigenous services across the nation. Information forwarded to service providers who undertake domestic and family violence training could encourage trainers to include the information as a core component of the training. That information could also be made available from time to time to peak professional bodies that can be circulated in journals or bulletins to memberships. These could include the Australian Association of Social Workers, Australian Institute of Welfare and Community Workers, Australian Psychologist Association and other like organizations.

b) The Issues Paper highlights that once an exemption is there is a review at least every 12 months. In the case of exemptions being granted due to violence or fear of violence the Issues Paper notes that the exemption is granted for a 12 month period and a social worker reviews the exemption to establish if the exemption is still appropriate and if so then it may be granted on a permanent basis. The fact that this information is not readily available needs to change in order for victims of violence to be able to make informed decisions and can be prepared for a review of their circumstances 12 months on.

c) It is not possible to fully redress the financial hardship experienced by a range of victims of violence, however, when an exemption is granted then the victim should be entitled to the maximum amount of Family Tax Benefit Part A that they are entitled to.

Question 5 Should Child Support Agency staff be required to provide information about family violence exemptions when dealing with applications for child support assessment?

The provision of information in the question above does not provide an adequate context for the provision of information about family violence exemptions. Should the question above mean that - should CSA staff be required to provide information about family violence exemptions to the other party then our answer would be a resounding “no”. Many perpetrators have gone to extreme lengths to ensure there is no evidence of their violence

toward their families and if they become aware that the CSA exemption is formed on an assessment on the 'violence or the fear of violence' provision by a Centrelink social worker then it is likely some perpetrators will seek to challenge such as assessment. This would not be in the best interest of the victim or the children and would make the system unworkable. The AASW recommends that the current notification procedures remain in place that state to the other party that there is no longer a financial obligation to pay child support rather than explicitly state it is as a result of an exemption and on the grounds of violence or a fear of violence.

The AASW is of the strong belief that whilst family violence should and cannot be tolerated, children should never be disadvantaged particularly because of financial matters.

Question 6 What reforms, if any, are needed to ensure that persons who use family violence are not relieved from financial responsibility when victims obtain exemptions from the requirement to take reasonable maintenance action?

Cases such as the Freeman case remind us that in some instances the lives of the victims and their children are more important than the financial responsibility of the perpetrator. Reforms are certainly required to ensure that perpetrators of family violence take responsibility for financially supporting their children, as otherwise this maintains the cycle of control and abuse. We would suggest that the reforms be developed in an holistic way, and that consultation with the Domestic and Family Violence sector would be important in doing so.

Question 7 Should a person who has been granted an exemption from the requirement to take reasonable maintenance action due to family violence, also be exempt from paying child support to the person who has used family violence?

The AASW support the position that once a person has been granted an exemption from the requirement to take reasonable maintenance action due to family violence they should also be exempt from paying child support. It is our members experience when working with victims of violence that many women do not forgo potential income from child support lightly and to also be required to pay child support is not reasonable under these circumstances.

Question 8 Exemption policy in relation to the requirement to take reasonable maintenance action is currently provided for in the *Family Assistance Guide* and the *Child Support Guide*. Should legislation 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 grounds of family violence?

The Issues Paper indicates that amending the legislation to include exemptions may provide victims of violence with increased procedural certainty and would recognize exemptions as a significant policy issue is supported by the AASW.

The Issues Paper provides the example of an alternative model where in some US states the child support debts accrue while exemptions are in place and once the exemption expires the payer is liable to pay the debt in full. This is of concern to the AASW as the exemption would serve only to delay the safety issues to the time the exemption expired. It is our concern that the perpetrator becoming aware that the debt accrued could trigger an escalation of violence and place the victims at risk. The other concern with this model is that once the debt has accrued and is paid then the woman is likely to owe an outstanding debt to Centrelink for Family Tax Benefit Part A payments that were made to her during the time the debt was accruing. This is problematic and can further exacerbate the stress for the victim.

The one exception that we can envisage is that if the person who has used the violence dies then the claimant should be able to pursue a claim against the deceased estate to recover

outstanding child support. If such claims against any deceased estate were to be successful then the claimant would need to be made aware that a debt would be owed to Centrelink for over payment of Family Tax Benefit Part A and the claimant would need to settle that debt upon receipt of the funds.

Question 9 Do any other issues arise for victims of family violence in obtaining exemptions from the requirement to take reasonable maintenance action?

When women experience coercive controlling behavior that does not include physical violence many have applied for an exemption on the grounds of 'harmful or disruptive effect' due to the evidence required to pursue an exemption under the 'violence or fear of violence'. It is the AASWs opinion that the CSA review the evidence requirement to substantiate domestic and family violence. It is our view that consultation with the domestic and family violence service sector with emphasis on services for immigrant women would be useful to determine appropriate levels of evidence that are not too onerous on the victim and do not require a personal protection order. Women report that there appears to be a heavy reliance on personal protection orders as evidence of domestic and family violence. It is our experience that there are many circumstances where even with the existence of serious physical assault, it is not safe to pursue such an order.

By providing victims with information and access to support when there has been a disclosure, referrals can then more appropriately be made to social workers who are trained to undertake assessments, which include risk assessments. Our view, based on extensive practice experience indicates this is far more effective than introducing a routine screening risk assessment tool.

Question 10 Should application forms for a child support assessment, or other Child Support Agency forms—including electronic forms—seek information about family violence? If so, how?

Application forms and other CSA forms should contain information about how domestic and family violence are defined and information about how to access Centrelink social workers for support and assistance when completing the forms would be appropriate. Routinely screening for domestic and family violence is problematic (Taft, 2001; Ramsey et al, 2002) and should not be conducted in a situation where there is not the expert support immediately available. It has been found that the value of routine screening for domestic violence is questionable due to the screening questions not being able to encapsulate the broader definitions of violence and therefore have the potential to screen out people who are subject to coercively controlling tactics whose experience do not match the screening tool domains. Research using tools to discriminate violence from non-violence use detailed questionnaires that often include some 35 questions. This type of process in practice is not workable, cumbersome and of little value if the person has not self identified. It is our view that people need the opportunity to see examples of the coercive controlling tactics that make up the broader definition of violence to then be able to make an informed decision about where their experience fits or not. It is our experience that this process for some takes time. Many domestic violence services define violence and then under each heading provide brief examples of what these might mean. This has been an effective strategy for women's domestic violence services for over 30 years.

Question 11 Should Child Support Agency staff be required to inquire about family violence when a person makes a telephone application for a child support assessment? In what other circumstances, if any, should Child Support Agency staff be required to inquire about family violence when dealing with customers?

Please see our comments in answer to question 10.

CSA staff should only inquire about domestic and family violence if they suspect or detect violence during the relaying of the circumstances by the victim. Staff at CSA should undertake training and have access to ongoing training and support for these and the other trauma reports they are exposed to as part of their day-to-day working conditions. Training and support have been shown to reduce the risk of vicarious traumatisation and burn-out in staff populations who work with trauma (Hesse, 2002).

When people are service users of CSA and have previously reported domestic and family violence situations then these facts should be acknowledged by the CSA staff as it has been reported by women victims that to retell their story over and over again to the same agency is distressing and traumatizing. It would be the view of the AASW that measures be undertaken to minimize the number of times a person has to provide detail of the domestic and family violence experienced.

Question 12 Should Centrelink staff be required to inquire about family violence when referring a person to the Child Support Agency?

Centrelink staff should provide information about how domestic and family violence is defined by the department and inquire about whether the person would like a referral to a social worker to discuss the options available. Centrelink staff should not inquire about family violence directly unless the customer reports behavior that is consistent with domestic and family violence at which time the Centrelink staff member would refer the person to social workers.

Question 13 Are Centrelink social workers, Indigenous Service Officers and Child Support Agency staff able to access information about persons who have identified themselves as victims of family violence as to whether they have obtained a protection order or similar? Should Centrelink social workers, Indigenous Service Officers and Child Support Agency staff be able to access the national register recommended in *Family Violence—A National Legal Response*, Report 114 (2010)?

The AASW supports access for social workers to the national register where they have the consent of the person who is named on the order. Much social work assistance and support is now conducted over the phone particularly with people who live in rural, regional and remote Australia. Where permission is granted (this can occur verbally in over the phone consultations) it is essential that this information be accessible to social workers in order to provide victims of violence the best possible service in a timely manner.

Question 14 In what circumstances, if any, should information about family violence be shared between the Child Support Agency and other government agencies, such as Centrelink?

It is the view of the AASW that this only occurs with the express permission of the victim or if the staff member genuinely believes that there are risks to the children then a report to the local child protection agency would be appropriate.

Question 15 In what ways, if any, can the legislative basis for Child Support Agency determinations about the percentage of care, be improved for victims of family violence?

Percentages of actual care do not always reflect the Court Orders and providing evidence for this is onerous and difficult for victims of violence. Centrelink accepts evidence for a change in

care status and when that same evidence is presented to CSA it is not accepted. This places an unfair burden on the victim to re-enter the court process to change the Court Orders to reflect actual time or engage with other agencies to achieve an agreed position.

The following case is used to illustrate our point. In the case of B, she states that the CSA made the decision to pay on Court Ordered time rather than actual time spent with the father even when she was able to prove a change in the level of care. She said, *"…they send you out forms asking if you have had a change in care level. You go through their whole ridiculous process to prove same and then when he appeals they decide to pay on court ordered percentage of care rather than actual care. What was the point? Complete waste of my time and energy and just reinforced the injustice message that I have got all the way through this process".*

CSA needs to review the evidence required to substantiate claims and disputes between actual care and court ordered care so there is consistency between Centrelink assessments and CSA.

Question 16 In what ways, if any, can the rules, as stated in the *Child Support Guide*, for the Child Support Agency to verify actual care when parents dispute the care that is occurring, be improved for victims of family violence?

Where the evidence of actual care and Court Ordered care differ there needs to be a mechanism in place where this can be measured that does not require the resident parent to provide the level of proof required that currently exists. To reengage with the system after sometimes spending many months going through the lead up to court orders and then the final orders is not something women report they want to do again with many stating they were left traumatized from the experience. Many women have stated that the requirement to get their ex-partner back to the negotiating table whether in court or through mediation or counseling is not something they wanted to do. It is our understanding from the women our members work

with that this is consistent complaint and children's needs are being lost in the disputes between court ordered and actual care.

The following case illustrates this: M stated: *"Requiring the other party to attend anything is problematic. He failed to attend mediation so many times it wasn't funny so trying to get him to resolve disputes between court ordered care and actual care by doing anything with him would be a nightmare."*

Question 17 Is family violence adequately taken into account in the grounds for a departure determination?

The AASW does not have a position on departure determinations at this time.

Question 18 What reforms, if any, are needed to ensure that victims of family violence obtain a departure determination where appropriate?

The AASW does not have a position on departure determinations at this time.

Question 19 Should the Child Support Agency be required to ask payees if they have concerns about family violence before it initiates departure determinations?

The AASW takes the view that routine screening for domestic and family violence should not be undertaken.

Question 20 Should the Child Support Agency be required to ask customers about family violence prior to initiating other proceedings or actions? If so, which proceedings or actions should this requirement apply to?

The AASW takes the view that routine screening for domestic and family violence should not be undertaken.

Question 21 What reforms, if any, are needed to protect victims of family violence who, due to fear of persons who have used violence: (a) elect to collect child support privately, or elect to end collection by the Child Support Agency; and (b) privately collect less than the assessed amount of child support, or no child support?

Cases that are identified by CSA staff where the payee nominates to collect child support privately; to end collection and/or collect privately or collect no child support due to a fear of domestic and family violence often occur as a result of defensive acquiescence. That is to acquiesce to the perpetrators demands by reducing financial contributions as an act of protection for herself and her children in order to contain the violence. This type of behavior is sometimes indicative of high levels of threatened violence as a result of actual experiences and very difficult to resolve. For those people who have identified domestic and family violence there may need to be a mechanism where in cases of domestic and family violence the CSA collects automatically with the victim being fully informed of the option to make an application for an exemption. This then shifts the responsibility from the individual victim to the "system" potentially removing one area where the perpetrator can exercise control.

It is the opinion of the AASW that self determination must be upheld with points along the continuum of care that include the right to review. That is the right of women when their circumstances change and they feel safe to speak about the abuse and violence that there be a mechanism to understand the delay in reporting rather than acting punitively or not believing the victim based upon the delay. The AASW is arguing for a presumption of violence at the

point of disclosure acknowledging that delays in reporting are often due to realistic safety concerns.

Question 22 In practice, how does the requirement to take reasonable maintenance action affect victims of family violence who collect less than the full amount of child support? What reforms, if any, are needed to ensure that victims of family violence in these circumstances are not financially disadvantaged by receiving less Family Tax Benefit Part A?

Should domestic and family violence be determined then the CSA should automatically take over collection of child support (unless there is an application for an exemption).

Question 23 What reforms, if any, are needed to ensure that victims of family violence are not required by Child Support Agency to privately collect child support?

Should domestic and family violence be determined then the CSA should automatically take over collection of child support (unless there is an application for an exemption).

It is the opinion of the AASW that information should be made available to people even after they have a private agreement in place that an application for an exemption can be made. It is our understanding that an exemption can be retrospective for 2 years. It would be our opinion that the CSA consider special circumstance applications that would go beyond the two year time frame due to the fact that in some situations the domestic and family violence there can be a considerable delay in recognizing the situation as violence.

Question 24 What reforms, if any, are needed to protect victims of family violence who, due to fear of persons who have used violence, elect to: (a) end Child Support Agency collection of child support debt? (b) request that Child Support Agency revoke a Departure Prohibition Order?

The AASW does not have a position on this issue at this time.

Question 25 In cases where victims of family violence are subject to pressure to enter into child support agreements, are the provisions in the *Child Support (Assessment) Act 1989* (Cth) providing that: (a) independent legal advice must be provided; or (b) annual child support assessments may not be decreased sufficient to protect victims from entering into disadvantageous agreements, and if not, what reforms are needed?

The AASW does not have a position on this issue at this time.

Question 26 What reforms, if any, are necessary to protect the safety of victims of family violence, where the Child Support Agency discloses information about one party to another in accordance with child support legislation? Are changes to the legislation required, and if so, what changes?

All financial information provided to the CSA is passed onto the other party thus leaving victims of violence exposed and vulnerable to the control and manipulation of the perpetrator. While the payee is expected to provide very detailed financial statements because of their obligation under the reasonable maintenance action rule, the payer is not forced to do the same. It appears that the CSA does not compel people to comply to their obligations for child support particularly if the payer is not engaged with the taxation system, and members involved in the

domestic and family violence community report being left with the opinion that the CSA is a toothless tiger.

The following case is used to illustrate this point: B stated that once she was granted an exemption she obtained a level of privacy that was not available to her while she was "forced" to engage with CSA. B states, *"Getting an exemption from Centrelink meant I had privacy. Anything done with CSA is open and shared material that is he was always sent copies of all my financial details everything, it was outrageous. He continually stated that his income was $30,000 while he drove the latest Mercedes and purchased a 5 bedroom holiday house at the beach and made it quite evident that his income was really good. He hadn't put in a tax return in, even though he is legally supposed to and all CSA would do was to send him a reminder with no real follow up or penalties attached, they were useless. I kept getting the message that what he said was not subject to evidence but everything I said had to be verified in triplicate".*

In addition P stated, *"While you remain in the system he has access to all your financial information. This is violating. Even if there is an independent agreement that no child support is being paid I was still told I had to be registered with the agency and had to give up all sorts of private info that they promptly handed onto him".*

It appears that while the CSA does have investigative powers they do not appear to be utilized to reduce the payee's burden of providing the level proof needed to establish the true income levels of payer. If the income of the payer is disputed then the investigative powers of the agency should be enacted and the payer compelled to comply.

It would be our opinion that in all cases summary data be shared to each party so each could contextualize and verify income status of the other party but full sharing of all information requires review. This summary data would be provided by each party will the full knowledge it was being shared to the other party.

Question 27 Are victims of family violence adequately protected by the Child Support Agency's procedures to deal with threats made to the Child Support Agency against them by family members? What reforms, if any, are needed to protect victims where family members make threats against them to the Child Support Agency?

The AASW does not have a position on this issue at this time.

Question 28 Is the personal information of persons at risk of family violence adequately protected by Child Support Agency practices, such as the Restricted Access Customer System? In what ways, if any, can the protection of personal information be improved?

The AASW does not have a position on this issue at this time.

Question 29 Are there any other concerns about the interaction of child support law and practice and the protection of safety of victims of family violence? What reforms, if any, are necessary to improve the safety of victims of family violence?

The following comments relate to the level of paperwork and communication between the consumers and CSA.

Some women have reported that the CSA's contact process is problematic. The experiences of 'B' a sole working parent who was contacted repeatedly by phone at work by CSA used to underscore the current issues. B stated:

"Each time they contacted I felt obliged to take their call even though it was really inappropriate at work. I was worried that if I didn't take the call it would be noted that I was a 'difficult' client. After every single CSA phone contact I was left distressed and unable to focus on my work. In the end I had to deputise my father as a proxy as it was just too distressing to deal with them. I

think CSA should be open to work with working parents after hours, you know ask us to nominate times that we would be available to be contacted to reduce the intrusion on our work time. I was constantly worried that I would lose my job while at the same time terrified CSA would mark me as a difficult client".

One woman noted that:
"Their (CSA) paperwork is a nightmare to follow. I have 3 tertiary degrees and cannot make head or tail of it. Heaven help many lesser educated women or those with English as a second language".

These cases are used to illustrate the very real issues that victims of violence who are clients of the system experience, and therefore, the need to redress the current situation so that we stop re traumatizing these women and their children. It is the AASW's position that the paperwork required is onerous and difficult to negotiate this is of particular concern to Indigenous people and those from culturally and linguistically diverse backgrounds.

***Question* 30 Should family assistance legislation be amended to insert a definition of family violence consistent with that recommended by the ALRC and NSW LRC in Family Violence –A National legal Response (ALRC Report 114)?**

The AASW Queensland Branch is of the belief that any definitions of family violence need to be consistent across all legislation and jurisdictions.

We raise the issue here of the potential for unintended consequences that could result in delays to determinations about cases. A concern identified is that by including the definition in the Social Security legislation, this can present situations where the Social Security Appeals Tribunal and the Administrative Appeals Tribunal can find themselves having to make determinations about whether domestic and family violence has occurred, which is also the role of criminal courts. The practical effect of this would be delays to proceedings by the

Tribunals as they wait for corresponding criminal matters to be completed. Furthermore, there is concern about the expertise and capability of Tribunal members to make such determinations.

There may also be issues about the standard of proof and what relevant evidence may be taken into account when making a decision on this type of issue. The ALRC in Report 114 stated that *"Adopting consistent definitions of family violence across different legislative schemes allows the courts to send clear messages about what constitutes family violence."* While this may be true, Social Security legislation is about whether or not someone has the ability to claim an allowance/pension/payment. The concern arises in terms of placing the onus on Centrelink staff to make the decision about whether family violence has occurred and how a decision maker from Centrelink would deal with a situation of alleged family violence; what avenues are open to the claimant for redress/appeal/rights etc; is the decision maker trained to understand these issues?; do they have relevant referrals and information?

A further concern is that criminal law requirements hold the standard of *"innocent until proven guilty beyond reasonable doubt".* A decision maker from Centrelink should not have any such standard, their judgment in this area should be based on the precautionary principle - i.e. it is better to pay ten people FTB incorrectly than to let one genuine claim go by unpaid. We suggest that a more appropriate benchmark would be operating from a "balance of probabilities."

Question 31 In what ways, if any, can the legislative basis for Family Assistance Office determinations about the percentage of care, be improved for victims of family violence?

The whole issue of establishing a pattern of care is difficult for victims of family violence. Not only are the usual issues of the perpetrator attempting to / taking control of the children present, but in addition there are financial consequences for the victim.

The rule regarding minimum of 35% care for eligibility for any FTB, produces unjust outcomes and it is the experience of social workers that this not reflect the reality of what is happening. Social workers identified that the issue of making a determination about percentage of care can provide the opportunity for perpetrators of violence to further control and perpetrate harm to the victims and their children. While recognizing that Centrelink requires a way of determining who is eligible for FTB, the current formula of 35% is seen to be arbitrary and the AASW argues that a more equitable, and flexible system is required. This is particularly important during the initial phases when a victim who is escaping violence is more vulnerable and in fact requires financial support through security of income. By way of example, the AASW suggests that a period of 12 months may be appropriate to ensue financial security.

For example, one parent increases the amount of time they care for the child with the aim of qualifying for FTB, thereby reducing the payment for the other parent. Alternatively, one parent will take steps to increase their share of the care so as to cancel the other parent's eligibility for payment.

Therefore, the problem arises when one parent had been in receipt of FTB then the other parent makes a retrospective claim for the past period. If the FTB claim is granted, the first parent will both have reduced FTB and also incur a debt. Our experiences show cases of women believing that this retrospective claim was used by the perpetrator as another means to exert control and to punish them, which arises where the couple have separated.

The following case is used to illustrate this issue:

Client C fled family home without her 2 young children during a violent incident; the perpetrator subsequently had the children for the next 3 months whilst she was trying to retrieve them through the legal process. Throughout this time she was attempting to set up a home for them to stay with her, but her benefits were reduced which made it almost impossible for her to obtain accommodation. She ended up staying with her family and eventually got 2 nights a week through an interim order given by a magistrate whilst obtaining a DVO. The perpetrator took out a DVO against her and once this went to court the magistrate changed the care

arrangements to a fortnightly cycle of 2 nights (which made the days of care different each cycle). This disrupted the children; C had to take them out of child care that she had just settled them into (trying to establish supports and networks in the new area). The perpetrator continues to report to Centrelink that she does not have care of the children, resulting in regular letters to her requesting her to come in and review her FTB share care arrangements.

Question 32 In what ways, if any, can the rules, as stated in the Family Assistance Guide, for the Family Assistance Office to verify actual care when parents dispute the care that is occurring, be improved for victims of family violence?

Where the FTB child has been removed from the care of the other parent without their consent, this is considered "disputed care". When FBT is discontinued during this period we view this as unfair having detrimental outcomes for the original caring parent placing at risk any capacity for the party to pursue the return of the children.

Legislation does not provide for cases where there is no court order in place, and there is an assumption that both parents share the care when in fact there are many examples where this is not the case. For example the instance of a migrant woman whose infant was taken from her by the father, he simply ran off with the stroller plus child. He immediately claimed FTB and PPS and, as there was no order in place, the mother's FTB and PPS were cancelled. This action by Centrelink compounded the difficulties and injustices of her situation. With no income, she fell behind on the rent and was in danger of losing her accommodation, thereby making it less likely that a court would order the child be returned to her care.

Members of the AASW report that they have worked with many similar cases. Women in such cases have been told by the police that their best course of action is to take matters into their own hands and fetch the child back, not a course of action that women who have experienced FV are likely to attempt to undertake due to the risks to themselves and their children. Anecdotal experience indicates that there is a high likelihood of an immediate escalation of

domestic and family violence in such situations and the fatal outcomes in these circumstances are well documented. There obviously is an inability to enter into reasonable discussions about the child's care arrangements under these circumstances.

The rule regarding the necessity for there to be an order in place, for the original caring parent to be able to continue to receive FTB during the period where there is disputed care and where the primary parent is seeking the return of the children needs to be abolished.

Question 34 What reforms, if any, are needed to improve the safety of children considered at risk of family violence, when the Family Assistance Office, due to a change in care, cancels a former carer's Family Tax Benefit, or starts paying Family Tax Benefit to a new carer?

Please see response to question 31

Question 35 What, if any, improvements are needed to ensure that applicants for family assistance are aware of, and using, the exemption from providing their partners' tax file numbers in cases of family violence? Should A New Tax System (Family Assistance) (Administration) Act 1999 (Cth) expressly refer to family violence as an example of an indefinite exemption?

Centrelink customers are not always made aware of this exemption. Perpetrators use the withholding of necessary information as another means to control the victim.
The Act should expressly refer to family violence as an example of an indefinite exemption.

To change the onus away from the person having to provide for a tax file number in cases of abuse or to have a waiver of that requirement as a procedural step rather than a legislative one appears to meet the needs of this vulnerable group. The example below highlights our concerns here.

A client approached the Welfare Rights Centre seeking to challenge a Centrelink debt. This debt came about after she was declared as a Member of a Couple, the other member of which had refused to provide any information to Centrelink regarding his tax file number, income or assets. This refusal in turn resulted in the cancellation of the client's Family Tax Benefit and retrospectively enforced a debt of some $50,000 as the previous two years' Family Tax Benefit had been deemed not payable due to the other person not declaring a taxable income. This matter was forwarded to the Director of Public Prosecutions from Centrelink as there was belief in fraudulent or misleading actions on the part of the client. The client suffered great financial burdens, with immediate threats of utilities being suspended due to outstanding accounts and homelessness for her and her children due to rental arrears.

The client and the other person had been living together, on and off, for the better part of fifteen years and shared many activities in social, domestic, sexual and financial aspects of their lives. While the client fitted the legal definition of being in a relationship, this was mainly due to the physical and emotional/mental abuse in the relationship which kept her living as she did. It was only when the debts of more than $50,000 and prosecution were lodged, all of which would have been erased had the other person allowed Centrelink to access the relevant documents from the Australian Tax Office, did the client understand that she was in an abusive relationship.

Question 36 What, if any, reforms are needed to ensure that baby bonus applicants who are victims of family violence are referred to social workers, Indigenous Service Officers and Multicultural Service Officers?

This perhaps is more for an internal policy of Centrelink rather than a legal avenue, that decision makers and counter staff at Centrelink are made aware of the signs and issues involved to detect the possibility of this.

Question 37 What, if any, reforms are needed to ensure that social workers, Indigenous Service Officers and Multicultural Service Officers are able to access information about whether a baby bonus applicant has a protection order or a child subject to child protection?

The AASW supports access for social workers to the proposed national register where they have the consent of the person who is named on the order. Much social work assistance and support is now conducted over the phone particularly with people who live in rural, regional and remote Australia. Where permission is granted (this can occur verbally in over the phone consultations) it is essential that this information be accessible to social workers in order to provide victims of violence the best possible service in a timely manner.

The AASW membership understand that the issues regarding access to information about whether a baby bonus applicant is subject to a child protection notification or order is an extremely complex issue and requires a separate process for consultation with the States and Territories child protection systems and Centrelink social workers; Indigenous Service Officers and Multicultural Service Officers.

Question 38 Are increases in weekly Child Care Benefit hours and higher rates of Child Care Benefit sufficiently accessible in cases of family violence? What reforms, if any, are needed to improve accessibility?

The AASW does not have an opinion on this issue at this time.

Question 39 Does the legislative requirement that the child be at 'risk of serious abuse' serve as an unreasonable barrier to eligibility for higher rates of Child Care Benefit and increased weekly hours of Child Care Benefit?

The AASW does not have an opinion on this issue at this time.

Question 40 Should A New Tax System (Family Assistance) Act 1999 (Cth) and A New Tax System (Family Assistance) (Administration) Act 1999 (Cth) be amended to insert definitions of 'abuse' or 'serious abuse'? Should the Family Assistance Guide provide definitions of 'abuse' or 'serious abuse?

The AASW would support the inclusion of definitions of 'abuse' or 'serious abuse' in the legislation if it were going to enhance procedural certainty for victims of violence. If it were not going to enhance procedural certainty for victims then this may be better placed in policy supporting the legislation.

It is critical for victims of violence to have flexibility around the decisions regarding eligibility for payments particularly when the victim delays disclosing the experience of abuse. That when determining the entitlement for a payment under the act the Secretary have regard to whether there is a possibility of abuse and should a disclosure be forthcoming that it be considered retrospectively.

Other issues:

The AASW would like to draw attention to issues when the customer does not have access to information about the range of possibilities available to them when they have no access to any income. There are particular difficulties for women escaping family violence where they need social security payments in order to be able to live independently from the perpetrator, however for Centrelink purposes, their finances are still linked to the perpetrator. That is, reduced rate of / ineligibility for FTB or their older children are not able to obtain Youth Allowance. The following case study illustrates our point:

A woman had months with no income while Centrelink examined the situation of the family company of which she had been a Director. Only months later did she find out about the "unrealisable asset" provisions. This example illustrates why it is essential that Centrelink customers who are experiencing / have experienced FV are referred to Centrelink workers who

understand all the relevant legislation and policies and can advise the person on the best way to obtain their entitlements.

The AASW suggest that the an over-arching purpose statement be included in the legislation which provides that the purpose of the legislation is to provide for a living allowance for persons whose needs, situation and/or care requirements prevent them from gaining and maintaining paid employment and as such, a decision under the Act is to weigh the consequences of not providing for an individual in great need due to their circumstance greatly and in those circumstances, no regard is to be had for the fiscal pressures.

The AASW suggests that we perhaps include a section right at the beginning of the Act that said:
Regardless of any other intention stated in this Act, a decision made using any provision of this act will be made with the interests of the child or children involved as the paramount concern.

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