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**DISCUSSION PAPER**  
**Child Support and Family Assistance Issues Paper Submission**

To Whom It May Concern:

We are pleased to have the opportunity to make comment on the Discussion Paper released by the Australian Law Reform Commission on Employment and Superannuation Issues.

WEAVE (Inc) Convenor, Dr Elspeth McInnes AM, would be available to provide oral evidence or offer any other information as requested.

Yours sincerely,

Marie Hume  
Secretary  
WEAVE Inc



## **Women Everywhere Advocating Violence Elimination Inc (Australia)**

Women Everywhere Advocating Violence Elimination Inc (WEAVE Inc), formed in 2009, is a National Women's Alliance that aims to eliminate gendered violence (including sexual assault, domestic violence, stalking, sexual exploitation and trafficking). As a non-partisan coalition WEAVE Inc brings together groupings that have sometimes worked separately from one another, such as sexual assault services, women's health services, women's legal services, domestic and family violence services, and organisations working against trafficking. In drawing together key stakeholders that make up the 'violence against women sector' as well as survivors, and activist and interest groups, WEAVE embeds a wealth and diversity of experience and expertise within a single body.

### **WEAVE Inc Vision**

**To ensure that all women and children are able to live free from all forms of violence and abuse.**

### **WEAVE Inc Values and Principles**

#### **HUMAN RIGHTS**

WEAVE Inc employs a human rights framework that recognises that gendered violence is one of the most serious and widespread violations of fundamental human rights, in particular, the right not to be treated in an inhuman and degrading way, the rights to respect, physical, sexual and psychological integrity.

#### **FEMINIST FRAMEWORK**

WEAVE Inc works within a feminist framework that recognises that gendered violence is both a consequence and cause of gender inequity, embedded deeply within all levels of our society, and that efforts to end such violence must be accountable to women and promote women's empowerment and gender equality.

#### **EQUITY, DIVERSITY & INCLUSIVITY**

WEAVE Inc is committed to representing and working respectfully with the diversity of women in Australia. WEAVE Inc recognises, and seeks to advocate and lobby for, the particular and urgent needs of Indigenous women, women from immigrant, refugee and/or non-English speaking backgrounds, women with disabilities, as well

as the challenges faced by young women, older women and women in rural and remote areas.

### **WEAVE Objectives**

- (a) To provide leadership and advocacy at state and national levels in relation to all aspects of gendered violence.
- (b) To bring together in a single body the key stakeholders concerned with all aspects of gendered violence in order to access and disseminate the wealth and diversity of knowledge within the sector as a whole.
- (c) To contribute to and monitor policies, legislation and programs which impact on women and children experiencing gendered violence.
- (d) To promote and prioritise equity of access to services for all women including Aboriginal women, Torres Strait Islander women, women from immigrant, refugee and/or non-English speaking background, women in rural and isolated areas, older women, young women and women with disabilities.
- (e) To promote greater community awareness of gendered violence and its personal and social consequences using community development and educational strategies.
- (f) To build and promote alliances and collaborative relationships with other key stakeholders and networks.
- (g) To promote, further develop and disseminate 'cutting edge' knowledge of gendered violence arising from practice, research, community and activism.
- (h) To connect with international developments in advocacy, research and practice concerning gendered violence.

**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* (ALRC Report 114)?

Yes. Consistent definitions assist consistent understandings of family 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?

There are several problems attendant on this issue. One problem is that other family members, such as grandparents offer care for the child because the parent is unable to provide appropriate care due to issues such as drug and alcohol abuse, mental illness or domestic violence. The parent is more likely to agree to arrangements if there is no cost consequence to them. Payee parents who are unable to care for their children due to illness or the legacy of abuse should not be required to pay child support if they are temporarily unable to care for their child. Payer child support payments should be transferred to eligible carers only in circumstances where the child is unlikely to be returned to the care of the payee parent as payee parents having only a temporary interruption to care will still bear the continuing costs of caring for the child and providing a home for them.

**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?

Yes it does, but this protects the primary carer parent from losing care of their child and the means to support the child. Children always fare best when they are supported to safely remain with their primary carer and a first option should always be to support the parent’s capacity to provide suitable care.

**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) All initial assessments by Centrelink should include screening for family violence. When family violence risk is identified the person should ALWAYS be referred to a Centrelink social worker. The Centrelink social worker should provide all family violence referrals with information about ALL domestic violence provisions relevant to their situation such as child support domestic violence exemptions, income support activity test domestic violence exemptions and Crisis Payment. Where family violence history is confirmed on the balance of probabilities the social worker should be required to offer exemptions where appropriate. Information materials aimed at informing people experiencing domestic violence about their possible options should be developed and be readily available via the Centrelink homepage, brochures at Centrelink offices, mail-outs and newsletters and via the Child Support Agency through similar channels.
- (b) The exemption periods should always allow at least the specified period with options for further exemptions.
- (c) Exempted payees should not be subject to the FTB A income test on their earnings to compensate them for foregone child support.

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

Yes such information should be part of the standard information about the service.

**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?

1. Where a parent has an established record of violence (police attendances, injuries, restraining orders, charges, prosecutions, convictions, imprisonment) his children should be eligible to receive full FTB without income caps. Such men will often have poor earning capacity in any case due to their behaviour.
2. Australia could adopt the New Zealand approach of paying the payee the assessed child support and then pursuing payment from the payer. The initiation of a child support claim should commence with advice to both parents that the government reclaims Family Tax Benefit and pursues child support for children of separated parents. These steps would make the government the target of perpetrator rage and not the other parent and the children.

**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?

Yes. Many perpetrators regard claims for child support as an act of provocation by the woman and then target the reason for the child support – the children. Child redistribution through the courts or child abduction, and in rare cases, child homicide, have been used by perpetrators to reduce or end their child support obligation and to punish the mother. Many mothers with violent ex-partners speak of him taking the children by force, not returning the children from contact visits and threatening her against taking any action. By keeping the children, the perpetrator can then claim child support. The perpetrator should be prevented from financial benefit from child abduction.

**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?

Yes

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

The trade-off between violence and poverty is not good either way. Women will not seek exemptions if they are not aware they exist.

**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?

Yes. Forms should inquire whether the person has concerns for the safety of any member of their household. A number should be provided for people answering 'Yes' to call and discuss their position and their options.

**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?

All application communication with the Child Support Agency staff should include an inquiry as to whether there are any safety concerns. The website should have clear and readily accessible information about the Agency's policies with regard to family violence. Initial information mailed out to clients should include a brochure on family violence and the legal and policy provisions available to protect victims. Where the person's first language is not English the brochure should be available in community languages.

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

Yes. Nobody has ever been harmed by an inquiry about the safety of themselves or members of their family.

**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)?

Yes provided that all the usual privacy provisions for the Commonwealth public service apply. There also needs to be a requirement that any information obtained from the register should be verified with the victim customer as the information on the register might be dated, inaccurate or refer to a different person.

**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?

Information about family violence should be shared between the Child Support Agency and other relevant government agencies subject to the relevance of the knowledge and the informed consent of the victim.

**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?

There needs to be a process to investigate whether changes in parenting arrangements are (a) actually occurring and (b) are not the outcome of abduction or family violence. Changes in arrangements in a context of family violence should not be accepted without the free and express consent of the victim parent. It is also important to note that making false reports, getting third parties to make false reports and harassing the victim are common methods used by perpetrators to create difficulties for the victim. Harrassing or threatening a child support payee with a view to gaining a benefit should be a criminal offence.

**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?

The day to day life of children brings parents into contact with child care providers, schools, doctors, health clinics, and other services. These normally have details of the parent who brings the child to the service, who they would ring in an emergency and who has responsibility for managing the child's needs. A standardised data collection sheet could be given to parents to complete with signatures from the providers when children arrive at and leave a service to independently affirm the pattern of care where there is no agreement.

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

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

**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 CSA is not required to advise the payee of its intention to initiate a departure determination leaving her unprepared for any abusive responses from the payer which may result. The CSA should be required to determine whether there are any family violence risks in the case before acting and if there are such risks, the victim must be given opportunity to be informed, to provide a potential victim impact statement and to have the opportunity to refuse such action if they believe there is a risk to their own or their children's safety if the action proceeds.

**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?

Yes with respect to all actions which affect the amount and process of collection of child support.

**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?

The adoption of the New Zealand approach would improve outcomes for victims as the government pays the payee the assessed child support and collects from the payer, thereby eliminating the need for women to directly act against their violent ex with regard to child support. The introduction of the 'private collect' system created the situation where women can be pressured into private collection and consenting under threat to receiving less than the assessed amount. The abolition of the private collect system would fix the problem. It would be better if the emphasis shifted to supporting an automated debit system for the majority of self-managing parents whereby child support transfers are paid directly into a child support account, which can be scrutinised by CSA and Centrelink, and then transferred to the payee's account, and in cases where the payer does not pay the assessed amount, a collection process is automatically triggered. This would shift the burden from payees to say they are not getting the assessed amount, onto payers to establish they have paid the assessed amount. The current system hides behind women victims of violence and forces them to deal with the payers' rage. It is better if an anonymous government agency with access to Commonwealth security and law enforcement were to manage the interface. There is also a shift in concept away from 'private collect' to 'self management'. The system suggested here would support parents to self-manage but also detect and intervene when payments were not made by the due date or not made in full.

**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?

See previous response. Victims of family violence should be able to seek exemption from reasonable maintenance action. This should also exempt them from earned income caps and tapers on Family Tax Benefit payments. If the victim elects to proceed with child support it should be Agency collect.

**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?

See response to q 21.

**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?

Currently victims of violence have to privately manage the consequences of child support requirements in a context where family law provisions often force them to have ongoing interaction with their perpetrator, where state Police defer to family law provisions when there is abuse during contact and handovers and where perpetrators are normally able to avoid criminal consequences for their violent conduct.

It should be a crime to pressure, threaten or coerce a person to relinquish child support for their children. Once a child support debt is in existence and a Departure Prohibition Order is issued by the Child Support Agency, there should be no avenue for payees to cancel the Order or the debt. If the payee has no power to change the perpetrator's child support situation, there is no gain in threatening and pressuring her. If the debt were to the Commonwealth, and not the payee, the perpetrator would have to focus his dealings on the Agency not his ex-partner.

If violent perpetrators were prosecuted for threats to harm others made during court proceedings and in interactions with government agencies such as the Child Support Agency or family relationship services, there would be a stronger signal to perpetrators that choosing to use violence and threats will result in criminalization. Such threats are often ignored and discounted and excused by services staff as indications of men's distress at the separation. When violent conduct is met with deference, co-operation and support, it is reinforced as a viable strategy. In other words, agencies responding to violent men and fathers have a long history of tacitly supporting his violence while blaming mothers for provoking the violence against them. This is systemic abuse of women and systemic support for men's violence against women.

**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?

Independent legal advice is often unaffordable for women victims of violence. Such advice may not prioritise the financial well-being of the primary carer and her children. It is not sufficient protection. It should be a criminal offence to harass, threaten or otherwise coerce a person to make child support arrangements.

**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?

The Child Support Agency should be prevented from disclosing the home address and workplace details of payees and payers and all documents should be confidentialised in this regard. Victims of violence are



concerned that their details are circulated by default along with their financial and family circumstances. The financial data which underpins decisions should be independently verified as accurate rather than scrutinized by the other parent, as they would have little insight into its accuracy.

**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?

All Child Support Agency staff should be required to report threats to harm the self or others. Threatening to injure a person is a crime. Concealing a crime is a crime. By NOT reporting threats or injurious conduct the Child Support Agency is colluding with the perpetrator to support and sustain their conduct.

**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?

All details identifying other members of a person's household, the location of their household, workplace or place of study and contact details must be kept confidential.

**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 Child Support Agency needs to recognise the following facts:

- The child support population will feature a higher proportion of perpetrators and victims of domestic violence because men's violence against women is one of the most commonly nominated reasons women end marriage-like relationships. The possible presence of domestic violence should therefore be regarded as normal for this context.
- Domestic violence continues and often escalates at or after separation. This is the most common period for femicide (the killing of women by men).
- Child support activity is a key trigger for men's homicidal rage against mothers and children.
- Perpetrators use threats, harassment, stalking, assaults, court action, child abduction and child abuse as weapons to coerce and control women to not claim child support, to say they receive child support when they don't and to distribute the parenting arrangements to minimise child support.

The Child Support Agency needs to adopt a zero tolerance approach to the use of violence and to treat expressions or violence as criminal activity.

**Question 30** Should family assistance legislation 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* (ALRC Report 114)?

Yes

**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?

**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?

The day to day life of children brings parents into contact with child care providers, schools, doctors, health clinics, and other services. These normally have details of the parent who brings the child to the

service, who they would ring in an emergency and who has responsibility for managing the child's needs. A standardised data collection sheet could be given to parents to complete with signatures from the providers when children arrive at and leave a service to independently affirm the pattern of care where there is no agreement.

**Question 33** What reforms, if any, are needed to ensure that the Family Assistance Office identifies, and refers to social workers, cases in which children living in informal care may be at risk of harm because of family violence?

The Family Assistance Office needs to adopt a policy of required referral to social workers where violence is identified as an issue and this should flow through to all domestic violence provisions in the social security system.

**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?

There should be a case managed process to assess and manage the risks arising from FAO activity.

**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?

Develop information products and strategies to inform people about the domestic violence protections and supports available to them.

**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?

If Baby Bonus applicants are to be subject to income management if they disclose violence they will not disclose violence. Current government income management responses are punitive and are actively avoided by victims. Removing financial resources from victims limits their options and supports the perpetrator by imposing another means of loss and control on them.

**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?

Centrelink officers should not be able to access state child protection information about a person without that person's consent.

**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?

No. Access would improve by providing information about the support options available.

**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?

Yes. Children experience all child abuse as serious.

**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'?

All abuse is serious for each child involved.

**Question 41** Are there any other concerns about the interaction of family assistance law and practice and the protection of safety of victims of family violence? What reforms, if any, are needed to improve the safety of victims of family violence?

Imposing income management on victims of family violence supports perpetrators to increase their control of their victim. Victims face loss of income in addition to ongoing abuse which in turn further limits their options in managing their safety. Income management forces victims to conceal violence against them to avoid further income management sanctions.