



The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

20 April 2010

**Family Violence and Commonwealth Laws
Child Support and Family Assistance**

Attached please find Sole Parents' Union submission on the above issues paper.

Sole Parents' Union would like to stress that even though it is outside the terms of reference of this paper it is imperative that family violence be dealt with in the family law system as a whole, rather than through individual parts.

Addressing the issue of time in the Family Law Act, which preferences parents' rights over children's best interests and safety is essential before any other part of the family law system can adequately ensure children's safety.

Yours faithfully

Kathleen

Kathleen Swinbourne
Chair

Background

Sole Parents' Union welcomes the enquiry and any attempts to improve safety for women and children (and men) in family law.

Sole Parents' Union experienced difficulties in responding to this paper, and to the other papers which address violence and specific commonwealth laws. Violence and its effects needs to be addressed by the family law system as a whole, not by each part individually.

In our consultations and through the people who contact us we have found that there are different degrees of violence of abuse. This can range from low-level harassment and conflict where there is no fear, and where distancing the parties (such as through CSA collecting child support) improves the situation, through to situations where individuals are afraid for their safety and that of their children. Both groups are being let down by the family law system as a whole. Their safety cannot be addressed by the child support system alone.

We are also concerned that the enquiry appears to be restricted to those situations where violence occurred or occurs outside the child support system, and not where the child support system itself is used as the means of abuse of the other party.

In our consultations, and in stories provided to us by single parents, many identified child support as the method their ex-partners were using to try to continue control. As one person said:

"I didn't even ask for child support because I just wanted to get away. But he started threatening and harassing me anyway, and threatened to take the kids away from me if I made him pay anything."

While we understand that other matters pertaining to the family law system are outside the scope of this enquiry, we stress that child support is not separate to other issues, and therefore should not be considered in isolation.

Previous enquiries into both child support and family law have strengthened the link between time with children and money, to the point where both issues can now be used together as a form of abuse and control.

While violence is not defined in Child Support Legislation, behaviours which may be involved include *economic abuse*, of which child support is an intrinsic part.

The information contained in this report, and the quotes throughout are a result of consultations Sole Parents' Union undertook with some of its members, as well as other information provided to us by sole parents. Some quotes included are direct quotes, others are amalgamations of direct feedback. Where quotes are an amalgamation, the meaning has remained the same.

Question 1

Sole Parents' Union would support placing a definition of violence in both the *Child Support (Assessment) Act* and the *Child Support (Registration and Collection) Act*. Any such definition needs to be consistent throughout the family law system, and we support the definition proposed in the discussion paper with one amendment as shown in red below:

Family violence is violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful. Such behaviour may include but is not limited to:

- (a) physical violence;*
- (b) sexual assault and other sexually abusive behaviour;*
- (c) economic abuse;*
- (d) emotional or psychological abuse*
- (e) stalking;*
- (f) kidnapping or deprivation of liberty;*
- (g) damage to property, irrespective of whether the victim owns the property;*
- (h) causing injury or death to an animal irrespective of whether the victim owns the animal; and*
- (i) behaviour by the person using violence that causes a child to be exposed to the **behaviour or exposed to the** effects of the behaviour referred to in (a)-(h) above.*

Questions 2 & 3

This is an area that is extremely contentious. We have received feedback from parents that in some situations non-parent carers are caring for a child without their permission, in circumstances where the child is not at risk of violence or abuse.

However, Sole Parents' Union believes that as child support is for care of children, non-parent carers should be able to access child support payments more easily than they do now.

The need to prove "serious risk" is a significant barrier to non-parent carers. This needs to be addressed by the Family Law system as a whole to give non-parent carers legal status.

Questions 4 - 9

Family Tax Benefit has long been a problem area for sole parents, particularly the reasonable maintenance action test. We believe this exemption should be in legislation, not just in the guidelines.

Sole Parents' Union receives feedback from many sole parents that they would prefer not to seek child support, but that legal requirements force them to do so. This often occurs where there is low- to mid-level abuse, harassment or conflict which does not cause parents to be fearful, but which puts stress and strain on their lives, their ability to work and to adequately parent their children, as well as on any other adult relationship they may develop.

Sole Parents' Union believes that in these cases parents should be free to choose not to collect child support, and that the Family Tax Benefit should only be reduced to the same level that it would be if child support was received. This does not increase any cost to the commonwealth, not does it put children at risk. It therefore should not be up to the commonwealth to force parents and children into any other situation.

As outlined previously in this submission, child support itself can be the catalyst for harassment or abuse. This can arise not just between parents, but can also involve children. In our consultations parents have commented that children can be used to transfer money between parents:

My daughter came home the other week and gave me the cash her father had given to her for child support. Then she said to me "Mummy, why are you taking all daddy's money. He can't live in a nice house because you've got all his money." What can you say?

Another parent commented:

I've told the CSA not to collect any money, but they won't listen. He's got a debt and whenever he puts in a tax return or something happens they take the money off him. Then he comes around to me and demands it back. But if I don't collect it at all, then I don't get any family tax benefit from Centrelink and I can't afford to lose everything.

Reducing Family Tax Benefit to minimum in cases where a parent does not seek child support further disadvantages the carer parent, at no advantage to the commonwealth.

Where violence or abuse is an issue, and where child support is neither sought nor paid, family tax benefit should be paid at the maximum rate relevant to the carer parents' income.

While Sole Parents' Union is concerned that perpetrators should not obtain a financial or other advantage, our major concern is the safety of the victims, particularly children. Payment or otherwise of child support should not be seen as a "win" or "loss" by either parent. Child support is about supporting children, and it can equally be viewed as a loss if a parent is prevented from supporting their children adequately.

This can be even more so for parents who are victims of domestic violence and who have lost custody to the perpetrator. While for some, the necessity to pay child support to the person who has abused them is adding insult to injury, for others being denied the opportunity to support their children is just as bad. A possible way around this would be for victims of violence to be given the opportunity for extended use of NAPS, even up to 100%, rather than making direct payments to the perpetrator.

We strongly believe that this is an issue that needs to be addressed in the broader family law system, and should not be dealt with by each separate part in isolation. Many of these issues only arise because of the current Family Law Act which gives preference to parents' rights, and time spent with children over children's best interests.

Question 10

The Family Law Council Report December 2009 *Improving responses to family violence in the family law system: An advice on the intersection of family violence and family law issues* found that:

It is essential that all involved in the family relationship and family law system screen for matters likely to impact on children and parenting. There must be screening for family violence, mental health issues, substance abuse and other risk factors for children and parents.

Sole Parents' Union supports the ALRC recommendation for a national register that all government agencies can access to obtain information on child protection and protection orders.

Any necessary screening for domestic violence or child protection should only need to be done by the agency of first contact, which should then obtain all information necessary. This should occur whether the contact is made by phone, in person, or electronically.

If one agency, such as CSA, is unsure if they are the first contact a question to that effect should be asked, ie "Have you contacted anybody else such as Centrelink and provided them with all your details?"

While individuals generally have a right to privacy and have their details protected, Sole Parents' Union believes that protecting children at risk of harm should override other privacy considerations. Where there are concerns about violence and/or child protection, this information should be shared across agencies.

Questions 11 – 14

See response to question 10 above

Questions 15 & 16

Sole Parents' Union is extremely concerned that perpetrators may be awarded care of a child who may themselves have been a victim of abuse by the parent, or witnessed violence against their other parent. We strongly believe that this issue needs to be addressed in the Family Law Act itself, rather than through child support legislation.

Sole Parents' Union has heard of a number of cases where care is at the centre of disputes between parents, and is used by perpetrators to further abuse or control the victim. Perpetrators threaten court action, or take court action, to obtain care of or access to children that they then do not take up.

For this reason, the alignment of care by the CSA and Centrelink and basing child support on actual care are welcome. However Sole Parents' Union is concerned that in some cases carer parents who have been victims of violence do not seek to change their levels of child support as they are not aware this is an option, or because it is too difficult for them to do so and may even increase the opportunities for further abuse.

Until this problem is fixed at the source – that is, the awarding of care to perpetrators of violence, then there are no easy solutions to fixing it in child support legislation.

Questions 17 – 20

Sole Parents' Union strongly believes that the CSA should not be able to make decisions about individuals or families which may put members of that family at risk of violence or abuse. Therefore it is essential that the CSA be required to find out about the existence or pre-existence of violence prior to initiating any departure determinations or any other actions.

The implementation of a National Register as suggested by the ALRC would provide a point of reference for the CSA prior to initiating any action. Whether or not any existing orders are found, the individuals concerned (ie payee) should be consulted prior to the CSA initiating any action.

There should be provision in the legislation for the Child Support Agency to take action to initiate a departure determination based on needs of the carer parent and child/ren, not just because of psychological or other support as a result of witnessing or being victims of violence.

Questions 21-23

Some victims of violence elect to collect child support privately as a way to avoid child support altogether. Because of the requirement to take reasonable maintenance action, they are then forced into the situation whether they either have to lie about the child support collected, or they settle for minimum family tax benefit. Neither situation is acceptable.

For further information on this please see our response to Questions 4-9 above.

Question 24

In consultations Sole Parents' Union has heard of cases where payee parents have requested CSA to end CSA collection of a debt without realising the full impact of their doing so. This has resulted in them not receiving any child support whatsoever.

This situation could be improved if rather than ending CSA collection, payee parents were able to suspend it while they sought their own means of collection. If they find they are unable to do so they could request the CSA to restart collection.

Safeguards, such as proof of payment, would need to be put into place to prevent 'double dipping' by payees or coercion by payers to write off the debt.

Payees should not be able to request the CSA to lift a departure prohibition order. This is at the discretion of the CSA and should remain so.

Question 25

One of the reasons parents may enter into a disadvantageous child support or parenting agreement is the changes to the Family Law Act to encourage substantial time and shared parenting. Parents believe that this means they may lose custody of children to an abusive partner/parent and so sign agreements in the hope that no further custody action will occur.

This is not always the case.

The annexure to binding child support agreements provided by solicitors should include a statement as to the advice given, their satisfaction that their client understood the advice, and the reason their client gave for not accepting their advice and signing a disadvantageous agreement.

Questions 26 & 28

Our justice system is predicated on the presumption of innocent until proven guilty. Where there are charges laid, the party in question does – and should – have a right to respond to those charges.

Natural justice, however, demands that there is a level playing field for both parties, that allegations are properly investigated, and that all parties are safe throughout the process. The right to respond should not take precedence over the obligation to maintain safety.

Personal information about a party who has been the victim of violence should not be provided to the perpetrator.

Question 27

Sole Parents' Union has had no feedback on this issue.

Question 29

While it is outside the terms of reference of this review, the major reforms needed to improve safety in the family law system are within the Family Law Act itself. Any reference to parental time needs to be removed from the Act.

In addition, Sole Parents' Union would recommend that where there is adequate provision made for children, parents be permitted to elect not to collect child support. This can be done at no cost to the commonwealth, and would improve not only safety, but also security for children and families.

Question 30

Sole Parents' Union supports a consistent definition of violence being used across all parts of the family law and social security systems as identified in response to Question 1 above.

Questions 31 & 32

See our responses to Questions 15 and 16 and Question 10 above.

Questions 33 & 34

Sole Parents' Union has had no feedback on this issue.

Question 35

Feedback from our consultations is that sole parents are unaware of this issue. However, it must be reiterated that our constituents are already sole parents, and are therefore unlikely to be aware of this.

Questions 36 & 37

Sole Parents' Union has found that a number of sole parents are confused about the baby bonus and paid parental leave and how they interact or don't. More information on this needs to be made available.

A National Register of protection orders, including child protection orders could be a first point for Centrelink social workers, Indigenous Service Officers, and Multicultural Service Officers to access information about whether baby bonus applicants have protection orders or a child subject to child protection.

Questions 38 – 40

Sole Parents' Union has no feedback on this issue.