



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

27 April 2010

**Family Violence and Commonwealth Laws
Social Security**

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).

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 as a whole through cultural change, 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 system as a whole. Their safety cannot be addressed by the social security system alone.

A number of aspects of social security law do not apply specifically to sole parents, and these have not been addressed in this response.

Behaviours which may be involved include *economic abuse*, of which social security is an intrinsic part, particularly given the number of sole parents for whom it is their major source of income. The threat of losing this income, often through no fault of their own, could in itself be defined as a continuation of abuse they suffered in their relationships, albeit this time at the hands of the commonwealth.

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 the *Social Security Act 1991* (Cth) and the *Social Security (Administration) Act 1999*. 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 - 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.

Given the high incidence of domestic violence experienced by sole parents (often being a factor in separation), Centrelink should be required to enquire about the presence of violence, and the safety of both the individual (parent) and any children involved.

Information about the presence of violence and risk factors, but not necessarily all details, should be made available to all relevant agencies so that the victim does not have to continually tell and retell their story.

We understand there may be privacy issues with this approach, however we believe that while individuals generally have a right to privacy and have their details protected, protecting children at risk of harm should override other privacy considerations.

Sole Parents' Union has received feedback that while many Centrelink staff are excellent, providing all information necessary and ensuring applicants are aware of their entitlements, others are not so diligent, sympathetic or even believing. Nor do they generally provide information about child support eligibility and requirements, often merely advising the victim to contact the Child Support Agency for all information.

Sole Parents' Union has heard of incidents where Centrelink staff have provided personal details, including bank account details, to ex-partners, though these would appear to be isolated incidents. It is worrying however that it can happen even occasionally.

Sole Parents' Union often finds that rather than questioning Centrelink staff if they are unsure whether what they have been told is correct, sole parents will contact us or another agency. Many sole parents are wary of questioning Centrelink staff for fear that they might be 'punished' somehow, by not receiving payments or by being given more stringent work requirements, etc.

Questions 11 – 18

As with many interactions with Centrelink, Sole Parents' Union has had feedback of varying responses to claims of separation under the one roof. It seems to us from feedback that the more empowered women feel to insist they are separated, the more likely they are to be able to prove their case. This is obviously not true for those who are experiencing violence.

It can be extremely difficult for victims of domestic violence to prove separation under the same roof, particularly given the element of control by the perpetrator. Even when victims do manage to obtain an AVO and have the perpetrator removed from the house, some breach the AVO to return to the house thus perpetuating the cycle. This further disempowers victims from seeking help from Centrelink.

The lack of refuge accommodation and desire to give children at least some stability even if only in terms of stable housing, means it can be very difficult for victims of violence to get away.

Every time I tried to leave he'd threaten that he'd take the kids away from me. He told me that no court would award me custody if I didn't have somewhere to live and there was no way he was going to leave the house. I didn't even know you could be separated if you were still living together.

This difficulty is compounded by the very real fear that if they leave the relationship and do not have stable accommodation they may lose custody of their children to the perpetrator. This is an issue that needs to be addressed in Family Law, by removal of any mention of time with children, as well as any reference to any type of care arrangement as being the preferred option.

Question 24

There should be no requirement for sole parents to provide a tax file number for their expartner.

As long as Centrelink staff are trained to provide information on alternative means of proof of identity the current measures should be sufficient.

Question 25

The two year waiting period for parenting payment for victims of violence is too long. Where violence is an issue there should be no waiting period for social security payment. New migrants are unlikely to understand the social security system, and threats that they will not be able to get any financial support, or that they will be deported, have the effect of keeping them in unsafe relationships.

Questions 26 & 27

Sole Parents' Union has on many occasions provided information on participation requirements for sole parents.

We are very supportive of moves to assist sole parents into the paid workforce in order to help them be financially independent and support their children. However the current coercive regime is disempowering for many sole parents, whether victims of violence or not, by positing their caring role as secondary to their breadwinner role.

Questions 30-33

The requirement for an application for crisis payment to be made within seven (7) days of the 'extreme circumstances' can work to prevent sole parents from receiving a needed payment, given the definition of what is considered an 'extreme circumstance'. What Centrelink considers the crucial crisis point is not necessarily the same as for the individual concerned.

Crisis payment should continue to be available to those in crisis, rather than wrapped up in special benefit.

Question 34

Rent allowance should also include mortgage payments regardless of whether violence is present or not. For sole parents remaining in the family home, with a mortgage, not being able to access this payment puts them at risk of homelessness.

Question 38 – 44

Sole Parents' Union does not support the presence of family violence as an indicator for income management.

Sole Parents' Union does not support across the board mandatory income management as proposed by the government.

Income management, if introduced, should be on an as-needed basis, and not cover categories of people purely because they receive social security.