



## **Child Support Program**

**Submission to the House of Representatives Standing Committee on  
Social Policy and Legal Affairs Inquiry into the Child Support Program**

June 2014

**Family, Youth and Children's Law Services – Victoria Legal Aid**

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## About Victoria Legal Aid

Victoria Legal Aid (VLA) is an independent statutory authority set up to provide legal aid in the most effective, economic and efficient manner.

VLA is the biggest legal service in Victoria, providing legal information, education and advice for all Victorians.

We fund legal representation for people who meet eligibility criteria based on their financial situation, the nature and seriousness of their problem and their individual circumstances. We provide lawyers on duty in most courts and tribunals in Victoria.

Our clients are often people who are socially and economically isolated from society; people with a disability or mental illness, children, the elderly, people from culturally and linguistically diverse backgrounds and those who live in remote areas. VLA can help people with legal problems about criminal matters, family separation, child protection and family violence, immigration, social security, mental health, discrimination, guardianship and administration, tenancy and debt.

We provide:

- Free legal information through our website, our Legal Help line, community legal education, publications and other resources
- Legal advice through our Legal Help line and free clinics on specific legal issues
- Minor assistance to help clients negotiate, write letters, draft documents or prepare to represent themselves in court
- Grants of legal aid to pay for legal representation by a lawyer in private practice or a VLA staff lawyer
- A family mediation service for disadvantaged separated families
- Funding to 40 community legal centres and support for the operation of the community legal sector.

## VLA's Child Support Legal Service

VLA's Family, Youth and Children's Law Program aims to help people resolve family disputes and achieve safe, workable and enduring care arrangements for children. This also involves helping parents to build the capacity to resolve future disputes without legal assistance.

The VLA Child Support Legal Service is an important pillar in this program. Through this service, we provide casework and advice services, duty lawyer assistance, a daily telephone advice line, community legal education and information kits for self represented litigants. VLA child support lawyers assist clients with administrative processes available through Department of Human Services (DHS) (Child Support) to change assessments, object to decisions, draft agreements and enforce or discharge arrears. Our clients often do not have the literacy, language or educational skills to make written applications, nor the financial capacity or knowledge to conduct searches of the other party's financial circumstances. In some matters, if all administrative avenues are exhausted, the child support lawyer may assist the parent at an appeal hearing before the Social Security Appeals Tribunal (SSAT) or the Administrative Appeals Tribunal.

Grants of legal aid are provided (subject to means and merits guidelines) to represent clients at the State Magistrates or Federal Circuit Court in cases:

- To appeal or respond to a decision from the SSAT on a point of law
- Seeking a departure from an administrative assessment
- To privately enforce a child support debt
- To seek or respond to a lump sum application of child support
- To represent the rights of children over the age of 18 years seeking maintenance to pursue their studies or because they are unable to support themselves due to a disability
- In cases that have been deemed too complex to be heard by the SSAT
- Where an old “Stage 1” court order – that is, a child maintenance order made prior to the Child Support scheme – needs to be varied or discharged
- To vary or discharge binding financial agreements
- To obtain declarations that a person is entitled or not entitled to an administrative assessment of child support from another party.

In 2012-13, VLA’s Child Support Program provided assistance to a total of 3,737 clients across a range of services including duty lawyer, legal advice, Legal Help line and casework funded by a grant of aid. Almost 96 percent of child support related grants of aid were conducted by in-house lawyers with expertise in child support. We provide legal assistance to both payee and payer parents.

VLA is well placed to comment on the child support system given our extensive legal practice experience in this area. Our cases tend to be complex and the parties may be entrenched in conflict, with many cases also dealing with family violence or the risk of family violence. We represent economically disadvantaged clients with approximately 78 percent of VLA funded child support clients (excluding Legal Help line) in receipt of a government payment. Many of our grants of legal assistance are for clients from culturally and linguistically diverse backgrounds.

## Executive Summary

For parents engaging in the child support system the legislative framework and formula can be difficult to understand. For VLA clients the complexity of the scheme is a particular challenge. VLA is concerned where complexity results in cumbersome processes or outcomes for parents that unnecessarily exacerbate financial hardship and negatively impact on a parent's capacity to provide for a child.

This submission outlines some of the challenges experienced by both payee and payer parents. With respect to payee parents, we believe modifications to the change of assessment process and to enforcement procedures would provide greater certainty and consistency for payee parents, address issues around complexity as well as reducing reliance on legal assistance and improving access to justice.

For payer parents the complexity of the process for discharging arrears can create financial hardship. For payer parents experiencing particular challenges – such as mental illness or incarceration – the system could better support them.

For parents and children experiencing family violence or at risk of family violence, safety must be the first consideration. Exemptions may be an appropriate tool. However, additional steps could be considered that maintain safety and uphold a perpetrator's responsibility to financially support their child.

VLA supports the National Legal Aid submission. These comments are submitted in addition.

## Summary of Recommendations

Challenges experienced by payee parents:

- Set a longer default period than the current typical 15 months, for decisions to depart from child support administrative assessments
- Consider implementing a system within DHS (Child Support) to flag cases in which the payer parent is self-employed and able to make use of tax planning, in order that DHS (Child Support) initiate the change of assessment review at appropriate intervals
- Develop and use a new, more simplified, form for change of assessment applications where circumstances have not changed, requiring the attachment of the previous successful decision
- Extend the application of the DHS (Child Support) administrative process for seeking arrears under private collect arrangements beyond the current nine month period to cover the full seven years
- Consider what support DHS (Child Support) requires to increase supervised payment collection as well as investigation and securing of child support arrears
- Introduce clear and transparent criteria for assessing matters in which DHS (Child Support) will pursue enforcement action and communicate decisions whether or not to undertake enforcement action with reference to these criteria

Challenges experienced by payer parents:

- Consider introducing further procedures to reduce risks associated with ongoing pursuit of non-payment, including establishing a timeline for escalating to formal debt recovery processes
- Automatically assess payer parents in gaol receiving only a prison allowance for sundries, on a 'nil' assessment
- Introduce a regular payment deduction process for payer parents in gaol receiving a wage for prison work

Cases where there is family violence or a risk of family violence:

- Require 'DHS (Child Support) collect' and do not permit private collection methods in cases where family violence or a risk of family violence is identified.
- Consider implementing a system within DHS (Child Support) to flag cases in which there may be regular changes of assessment but family violence risk is present, in order that DHS (Child Support) initiate the change of assessment reviews at appropriate intervals



## The complexity of the system

The current child support scheme, adopted in 1989, replaced a system of court ordered maintenance. The court-based system was criticised for its discretionary approach which led to inconsistent outcomes for parents and children in similar circumstances. The proportion of the population covered was inadequate. Only 30 percent of non-resident parents were making regular payments and only 26 percent of sole parent pensioners were receiving maintenance.<sup>1</sup> Furthermore, average levels of maintenance were inadequate and there was little or no indexation of court orders.

The *Child Support (Assessment) Act 1989* (Cth) and the *Child Support (Registration and Collection) Act 1988* (Cth) introduced an administrative formula that aims to provide greater certainty and equity for children through access to fair, secure and regular child support at a level that represents an appropriate share of their parent's income.

To achieve this outcome, the formula is underpinned by the principle that parents should share the actual costs of raising the child based on their combined incomes. The formula also takes into account the care arrangements, number of children, and responsibilities arising from children from other relationships. This results in legislation and a formula that is some of the most technically complex in Australian law.

For parents engaging in the child support system the legislative framework and formula can be difficult to understand in practice. This frustration is reflected in Commonwealth Ombudsman data. DHS (Child Support) is the fourth most complained about agency, with 10 percent of claims in 2012-13 made relating to DHS (Child Support).<sup>2</sup>

For VLA clients the complexity of the scheme is a particular challenge. Issues of illiteracy, low education levels, culturally and linguistically diverse backgrounds, disability, and mental illness can make it difficult for clients to understand the system and engage with the system to ensure it provides equitable outcomes that deliver for children. When providing legal advice, VLA lawyers are first spending time educating clients about the system and how it relates to their current circumstance in order to reduce confusion and frustration.

VLA is concerned that if parents are unable to navigate a system that they perceive as too complex this unnecessarily exacerbates financial hardship and negatively impacts on capacity to provide for the child.

## Challenges experienced by payee parents

### Change of Assessment

When a parent's circumstances change or a parent believes that the child support assessment does not reflect the current situation, they can seek a change of assessment. Under the relevant legislation, one of the reasons a parent can apply for a change of assessment is if the child support assessment is unfair because of the income, property and financial resources or earning capacity of one or both parents of the child for whom child support is payable.<sup>3</sup>

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<sup>1</sup> Commonwealth Ministerial Taskforce, *In the best interests of the children: Reforming The Child Support Scheme – Report of the Ministerial Taskforce on child support* (May 2005).

<sup>2</sup> Commonwealth Ombudsman, *2012-13 Annual Report* (2013), 50. There were a greater number of complaints about Child Support in the previous year, 2,228 complaints in 2011-12 compared to 1,736 complaints in 2012-13.

<sup>3</sup> *Child Support (Assessment) Act (Cth) 1989*, ss98C and 117(2)(c)(ia).

This is a regular focus of VLA's work. Many VLA clients are payee parents seeking assistance in preparing a change of assessment application in situations where the payer parent is self-employed and is able to make use of tax planning to minimise their income for tax purposes. In these circumstances, other evidence may be used to demonstrate capacity to pay child support at a higher level. However, without legal advice or support, parents may not be aware of or able to gather the permitted evidence to substantiate their application.

## 1. Case Study

Isra\* first contacted VLA because she was caught in a dispute with her ex-husband, John\*, about access to her child. Isra was in a vulnerable situation. She and her daughter were living in a friend's garage. She spoke limited English and she did not understand her legal rights in relation to access and child support payments.

John had started up his own business. He declared to DHS (Child Support) that he was not earning an income, so was unable to make child support payments. He stated that his living expenses were being met by his new wife on an annual income of a little over \$30,000.

VLA was able to secure monthly child support payments but John objected. His payment obligation was re-set at zero based on a re-assessment of his reduced capacity to earn through his own business.

VLA, experienced in identifying undeclared income by parents who are self-employed, appealed on Isra's behalf to the Social Security Appeals Tribunal.

After careful scrutiny of her ex-husband's household expenditure against his declared income of nil, the Tribunal found that his weekly household expenses were in fact nearly \$2000 per week or \$100,000 per annum. The Tribunal ordered John to make monthly child support payments of just over \$400, including backdated payments.

*\*Names have been changed to respect anonymity*

A child support assessment applies for a period of fifteen months.<sup>4</sup> Where there has been a decision to depart from an administrative assessment in special circumstances (called a special assessment), for example because the actual costs of raising the child are higher than usual or the payer parent has a greater capacity to pay than indicated by standard evidence, the time period that decision covers is often also set for a period of 15 months. As a result, many parents with assessments that take into account special circumstances, are required to submit a change of assessment every fifteen months to maintain the payment level even though the special circumstances of their case have not changed.

## 2. Case Study

Susan\*, a VLA client, has received seven grants of legal aid over a ten year period to assist her with Change of Assessment applications – both making her own applications and responding to those of Bill\*, the father of the child. Susan and Bill's child has special needs due to an autism spectrum disorder and an intellectual disability.

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<sup>4</sup> *Child Support Assessment Act (Cth) 1989, s7A.*

Bill is self-employed and therefore in a position to minimise the taxable income by which DHS (Child Support) assesses his child support liability. Over the years, however, he has also demonstrated access to financial resources to buy, renovate and sell investment properties.

Susan is a single parent with three other children. As a result she has limited time to navigate the child support administrative system. She also does not have the capacity to undertake the work needed to demonstrate the case for special schooling and medical expenses for the child or the payer parent's capacity to pay. This includes carrying out title and business searches and establishing the current average salary for the sector in which the father is employed. VLA provides this assistance to Susan.

The child support special assessment has been set almost continuously through Change of Assessments since mid 2004. After a number of years, the annual rate of child support increased following lodgement of evidence of actual income following VLA work to identify more accurate calculation of Bill's access to financial resources.

We believe that, where the special circumstances are unlikely to change, there is merit in setting a longer term for the departure decision. This would reduce the regularity (and thus burden) of the change of assessment process for payee parents who seek simply to maintain, not change, ongoing payments that reflect the payer parent's capacity to pay or payments that reflect the actual costs of raising the child. The longer time period would provide greater certainty and consistency for both parents in their financial support of the child(ren). The payer parent would still be able to initiate a change of assessment where their circumstances changed and they believed their current liability now exceeded their capacity to pay.

In addition, in cases where the payer parent is self-employed, and able to make use of tax planning to minimise their income for tax purposes, we recommend consideration of a greater oversight role for DHS (Child Support) in ensuring payer parents are meeting their child support obligations. One approach to this would involve implementing a system that attaches a flag to these clients' case files. Every fifteen months (or a longer period as discussed above), DHS (Child Support) would be prompted by the flag to initiate a change of assessment review.

Given the complexity of these cases, a DHS (Child Support) initiated review would reduce the burden on payee parents seeking or maintaining a fair level of payments and their reliance on legal assistance to do so, and would improve access to just outcomes for payee parents in particularly difficult situations due to the payer parent's ability to minimise their income for tax purposes, obscuring capacity to pay child support at a higher level.

For payee parents who are not aware of the special circumstance provisions or are unable to access legal help to assist in collating the necessary evidence, a more systematic, agency-led, approach such as that above would better achieve an objective of the legislation:

*that the level of financial support to be provided by parents for their children is determined according to their capacity to provide financial support...*<sup>5</sup>

Finally, and for broader application, we recommend DHS (Child Support) develop and use a new, more simplified, form for each subsequent change of assessment application where the child's expenses have not changed and the previous change of assessment application was successful. For example, the revised process could require a parent to complete the more simplified form and

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<sup>5</sup> *Child Support Assessment Act (Cth) 1989, s 9(2)(a).*

simply attach the previous (change of assessment, objection or SSAT) decision. A senior case officer could then consider extending the decision.

This form could be completed without legal help by a greater number of clients, improving access to justice.

## Recommendations

- Set a longer default period than the current typical 15 months, for decisions to depart from child support administrative assessments
- Consider implementing a system within DHS (Child Support) to flag cases in which the payer parent is self-employed and able to make use of tax planning, in order that DHS (Child Support) initiate the change of assessment review at appropriate intervals
- Develop and use a new, more simplified, form for change of assessment applications where circumstances have not changed, requiring the attachment of the previous successful decision.

## Enforceability

The number of cases DHS (Child Support) intended to enforce through the court decreased by thirty percent in 2012-13.<sup>6</sup> When payment arrears cases are escalated to the internal DHS (Child Support) debt recovery team, the criteria used for assessing whether or not litigation is appropriate is unclear. Whilst voluntary repayment arrangements are the cheapest option to enforce a child support debt, it is clear that for some payer parents the only successful method of payment is via legal proceedings with the advantages of being able to subpoena financial records and secure assets with equitable charges and the like. For payee parents not receiving the child support payments for their child, the unreliability of DHS (Child Support) enforcement creates financial uncertainty and reduces capacity to provide for the child. Reduced enforcement (and the accrual of penalties) can also result in unaddressed arrears for the payer parent that can later create financial hardship (see further below).

In VLA's experience, enforceability is a particular issue for payee parents on private collect arrangements. When arrears accrue, there is a DHS (Child Support) administrative process for seeking outstanding payments for the three to nine month period prior to when the payee parent notified DHS (Child Support) of the non-payment (if the payee parent transfers on to DHS (Child Support) collect at the same time). However, for arrears dating back before the three to nine month period, the payee parent must pursue the payment of arrears through the court.

For many payee parents the arrears may be of monetary significance to the payee in meeting outstanding child rearing costs. However, the court may not be a viable option for enforcing arrears in cases where the cost of court proceedings is disproportionate to the debt. Thus payee parents are left with no viable option for seeking payment of arrears.

## 3. Case study

Abigail\*, a mother of two young children, contacted VLA seeking advice about child support arrears owed to her. Her only other income was Centrelink payments.

She had been in a private collect arrangement since 2012. She reported that she believed she was encouraged by DHS (Child Support) to enter into this arrangement with her ex-husband.

<sup>6</sup> Statistic provided at DHS (Child Support) stakeholder consultation, September 2012.

At that time the father was assessed to pay approximately \$20 per fortnight based on an estimated income lodged by the father. He subsequently lodged his taxation returns which showed an actual income of double that amount. His child support payment was recalculated and DHS (Child Support) advised he owed an additional \$3,500.

As it was a private collect arrangement, Abigail registered her case for 'child support collect' but this only entitled her to assistance in seeking the arrears owing for the previous 3 month period.

Abigail was able to persuade the father to make some payments privately to her but was still owed approximately \$2,000 in child support payments. The costs of VLA taking this matter to court on Abigail's behalf to enforce her private agreement with the father would significantly outweigh the child support arrears and she was therefore not entitled to a grant of legal aid to issue legal proceedings.

VLA has had no luck to date in reaching a negotiated settlement with the father for the arrears owed.

We believe there is merit in considering extending the application of the administrative process beyond the nine month period to cover the full seven years for payee parents, in private collect arrangements, seeking enforcement of arrears. This will reduce the number of court proceedings. It will also address issues of access to justice in cases where court proceedings are disproportionate to the debt, resulting in no viable option to the payee parent seeking payment of arrears.

We also recommend a reorientation to DHS (Child Support) supervised payment collection. In VLA's experience, parents may be encouraged (or are under the impression that they are encouraged) to arrange private collection methods for child support. However, if child support arrears accrue, this leaves the payee parent with no viable option in cases where the cost of court proceedings is disproportionate to the debt.

The reduced number of enforcement cases brought to court by DHS (Child Support), the complexity of the enforceability system, and the lack of a viable option to payee parents in many cases, undermines the purpose of the legislation. The payer parent avoids parental responsibility to contribute to the costs of raising the child while creating financial pressure on the payee parent and negatively impacting on the ability of the payee parent to provide for the child. We also note that reduced enforcement undermines the deterrence effect of the penalty system.

We recommend a re-focus by DHS (Child Support) on investigating and securing child support arrears; particularly before arrears and penalty debt substantially accumulate. For debts not pursued by DHS (Child Support) there should be clear and transparent criteria used and the assessment against the criteria communicated to the payee parent. Not doing so, breeds frustration and undermines confidence in the system to deliver for payee parents and the child in their care.

## **Recommendations**

- Extend the application of the DHS (Child Support) administrative process for seeking arrears under private collect arrangements beyond the current nine month period to cover the full seven years
- Consider what support DHS (Child Support) requires to increase supervised payment collection as well as investigation and securing of child support arrears
- Introduce clear and transparent criteria for assessing matters in which DHS (Child Support) will pursue enforcement action and communicate decisions whether or not to undertake enforcement action with reference to these criteria



## Challenges experienced by payer parents

VLA provides legal assistance to both payee and payer parents. VLA does so to ensure we are supporting the entire post-separation family and delivering a wide benefit to the community.

Once appropriate levels of child support for payee parents are established, they may be able to go on to access better housing, education and health for their children. However, VLA also sees an important role in assisting payer parents. Many of these clients have been required to pay more child support than they could afford, through an incorrect assessment or court order not reflective of their poor financial circumstances. This debt may have followed them for many years. In acting for payer parents to discharge arrears of child support while still meeting current payment obligations, lawyers can assist them to participate more fully in the economic and social life of their community and in turn to be better equipped to maintain or build relationships within their family, particularly with their children.

Another example of the complexity of the child support system is in this area. There are multiple avenues to discharge arrears – administrative, procedural, via the SSAT or Court, depending on the timeframe for the matter.

In VLA's experience, payer parents often have difficulties navigating the child support system if they are trying to reduce or discharge a child support debt that may be incorrect. For a self-representing parent to sufficiently understand the criteria for each option and the specific procedures for each is unrealistic, acting as a barrier to achieving a fair outcome.

### 4. Case Study

Tom\* is the father of two children. While in employment he provided child support of approximately \$700 per month. In 2006, due to ill health Tom ceased employment and his rate of payable child support decreased to the annual minimum of \$320 per month.

In 2007, Tom's ex-wife sought a change of assessment on the basis that the minimum rate did not take into account Tom's earning capacity. She was successful, and Tom's child support liability increased. By this time, however, Tom had moved overseas. He was not aware of this decision and even if he had knowledge, the stipend he received for the volunteer work he was undertaking was minimal.

On returning to Australia five years later, Tom owed over \$32,000 in child support arrears, excluding late payment penalties.

VLA assisted Tom through a number of different stages. An administrative application objecting to DHS (Child Support)'s 2007 assessment was first lodged. This objection was disallowed. Subsequently VLA sought an independent review by the SSAT. The SSAT confirmed Tom's earning capacity did not match that set by DHS (Child Support) in 2007. SSAT reduced his arrears for the 2007-2008 period. For the 2008-09 period, SSAT re-set Tom's child support liability at the minimum amount per month. For 2009 to 2012, the SSAT concluded Tom's child liability support was higher than the minimum due to his stipend, and set a higher rate accordingly.

While Tom was receiving a stipend, it was minimal. Thus a higher rate was not appropriate. Through two avenues, VLA sought to reduce Tom's child support liability for the period 2009 to 2012. For the most recent 18 month period, a Change of Assessment was lodged. For the remaining time back to

2009, VLA could not apply through an administrative process. Rather VLA prepared an application for leave in the Court for consideration of a departure application.

Eventually, \$22,000 of child support debt was discharged.

Tom is committed to repaying the remainder of his child support arrears in small increments while he remains on Centrelink payments. Now relieved of the additional anxiety and stress of his financial problems, he is hopeful his medical condition will improve and he will be able to return to the workforce and better manage his child support payments.

VLA sees two types of situations in which payer parents are at risk with respect to DHS (Child Support) processes focused on the payer parent: continued pursuit of non-payment of debt where there are mental health issues linked to lack of financial capacity to pay; and where the payer parent is incarcerated.

### **Payer parent with mental health concerns exacerbated by financial hardship**

VLA acknowledges the measures taken by DHS (Child Support) to reduce the risk of exacerbating mental illness linked to inability to pay and ongoing attempts to secure payment of child support and outstanding child support debt. However, in VLA's experience the approach to this issue is not always consistent. We also believe further measures could be considered.

When efforts to negotiate a realistic repayment arrangement are unsuccessful, or if an agreed repayment arrangement fails due to lack of capacity to pay, the same (unsuccessful) approach should not be indefinitely applied. Continued and prolonged use of unsuccessful methods to secure payment of debt risks exacerbating distress, anxiety and mental illness linked to genuine lack of capacity to pay. In some cases, anxiety may be exacerbated by the payer parent's failure to meet repayments which would not have been agreed to if they understood the obligations the repayment arrangement would impose. Lack of understanding may be linked to issues of illiteracy, low education levels, English as a second language, disability, and poor mental health.

Some lessons could be taken from the debt collection guidelines for collectors and creditors developed by ASIC and the ACCC.<sup>7</sup> These guidelines note that demands for repayment of a debt might be unwelcome but can nevertheless be appropriate if legitimate and reasonably made, however, unduly frequent contact that is likely to have the effect of wearing down or exhausting a debtor can constitute undue harassment, and this is particularly likely if the collector makes a number of phone calls or other contacts in rapid succession.

In particular, consideration could be given to establishing a timeline for escalating to formal debt recovery processes once other attempts including phone calls have proven unsuccessful.

A new process that DHS (Child Support) may also wish to consider providing to payer parents with mental health issues is the right to receive agency correspondence via mail only. This would reduce the number of phone calls, which a parent experiencing mental health issues linked to financial hardship, may find distressing and a contributing factor to their poor health. If a parent elects this option, it must be made clear to the client that if they change address, DHS (Child Support) must be notified. This will assist DHS (Child Support) in continuing to pursue the debt, albeit in a manner that is less confrontational to the payer parent.

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<sup>7</sup> ACCC and ASIC, *Debt Collection Guidelines for Collectors and Creditors* (2005).

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## Obligations of incarcerated parents

We understand that DHS (Child Support) provides prisons with a contact number that parents can use to contact a case officer to discuss their specific child support obligations while in prison. There may also be prison visits by agency staff in order to provide information to parents in prison. These are important educative processes if consistently adopted and implemented.

However, clients report that they have been provided with no information and were unaware that they should have informed DHS (Child Support) that they were in gaol.

Parents have sought advice from VLA following the accrual of child support debt, arrears and penalties while in prison, as their assessment was not changed by DHS (Child Support) upon their incarceration. On exiting prison, the parent is carrying a debt which creates financial hardship when attempting to reintegrate back into the community.

For prisoners receiving only the 'basic prison allowance' for sundries (not a wage), we believe the consistent practice should be to assess the parent on a 'nil' assessment.

When a parent is incarcerated and receives a wage from work undertaken while in prison, the minimum assessment may appropriately apply. However, debt and penalties can accumulate (with payment required on release) as there appears to be no readily available automatic deduction method and the parent may not be able to arrange an alternative payment method. We recommend consideration of processes that can be adopted to enable payer parent in gaol to make regular payments and reduce their likelihood of debt accumulation.

### Recommendations

- Consider introducing further procedures to reduce risks associated with ongoing pursuit of non-payment, including establishing a timeline for escalating to formal debt recovery processes
- Automatically assess payer parents in gaol receiving only a prison allowance for sundries, on a 'nil' assessment
- Introduce a regular payment deduction process for payer parents in gaol receiving a wage for prison work

## Cases where there is family violence or risk of family violence

VLA has a dedicated Family Violence Program which aims to provide targeted services that contribute to the safety of adults and children impacted by family violence. As noted above, many of our child support cases involve high conflict families. VLA seeks to secure just and equitable financial support outcomes for children without exacerbating family violence or the risk of family violence.

Our experience confirms that some victims of family violence may not self-identify as such and fail to proactively seek out information that would be of assistance to them. We acknowledge and commend the focus on family violence at DHS (Child Support), including training for staff. We believe that this is an issue that requires ongoing vigilance and as such it is important that DHS (Child Support) continues to strive for best practice that ensures all staff consistently screen all clients for family violence and advise all clients that if they fear for their safety, an exemption option exists.

As a general principle, the perpetrator of family violence should not be exempted from their responsibility to financially support their child. However, this must be balanced against the priority to



protect parents and children who have experienced or are at risk of family violence. The decision by the payee parent to request an exemption is a difficult one as it requires the parent to balance safety considerations against the financial challenges created by lack of child support from the perpetrator of the violence.

## **5. Case Study**

Eliza\* had applied for an exemption due to family violence. Six years later, she discovered that the liable parent was on a substantial income. By applying for an exemption Eliza had foregone quite a considerable amount of funds which could have provided significant financial support for the child.

Eliza sought advice from VLA on whether she could seek back-dated child support payments and was disappointed to learn that she could not. Eliza had sought an exemption to protect herself from family violence at the time, but suffered a significant financial penalty by doing so. The funds in question would have made a demonstrable difference to the child's education and life opportunities.

The impact of family violence and the use of exemptions is a perennial challenge that has been regularly discussed in the child support policy and legal community. It is in this context that we recommend the consideration of two additional processes to assist payee parents in situations of family violence or at risk of family violence. Both recommendations seek to reduce the interaction between ex-partners and the exposure of the payee parent to retaliatory violence linked to attitudes around economic control.

First, private collection methods should not be permitted in cases where family violence or a risk of family violence is identified. Second, in situations of family violence where other factors lead to regular change of assessment applications, we recommend applying the flag approach (identified above in discussion on self-employed payer parents) to these cases as well. This would see an 'independent' party – DHS (Child Support) – initiate change of assessments rather than the payee parent. Both measures may assist in challenging the perception that the payee parent is 'nominating', 'seeking' or 'registering' the payer parent (perpetrator of family violence) for child support. Rather it is an obligation imposed by legislation on the payer and administered by the state.

## **Recommendations**

- Require 'DHS (Child Support) collect' and do not permit private collection methods in cases where family violence or a risk of family violence is identified.
- Consider implementing a system within DHS (Child Support) to flag cases in which there may be regular changes of assessment but family violence risk is present, in order that DHS (Child Support) initiate the change of assessment reviews at appropriate intervals.