

# Women's Legal Services Australia (WLSA) Submission to House of Representatives Standing Committee on Social Policy and Legal Affairs on Child Support 2014

## **1. Introduction**

Women's Legal Services Australia (WLSA) is a national network of community legal centres specialising in areas of law that disproportionately affect women and children in accessing justice. Members of WLSA regularly provide advice, information, casework and legal education to women and service providers on a range of topics including family law, child protection, child support, domestic violence personal protection orders, reproductive health rights and discrimination matters.

We have a particular interest in the intersection of violence against women and the law and ensuring that disadvantaged women, such as Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse backgrounds, women with disabilities, rural women, women from LGBTIQ<sup>1</sup> communities, young women, older women and women in prison are not further disadvantaged by the system.

We provide holistic, high quality and responsive legal services to women from a feminist framework. This means in practice we place the individual woman who seeks our service at the centre of our interactions and we try to respond to them as a 'whole person' rather than just a 'legal problem' that needs a solution.

Throughout the lifetime of our network we have recognized the disadvantage of women living in rural, regional and remote areas to accessing legal advice. Many of our services have tried to address this disadvantage by the provision of a 1800 free call Statewide telephone number and some have specific lawyers or adopted service provision models that allows for the provision of services to women who live in non-metropolitan areas of Australia.

Some of our members have been in existence for over 30 years and we have members in each State and Territory.

## **2. Overall Comments**

### ***Child support is important but not the highest priority for many of our clients***

Despite primarily providing legal assistance to women in the areas of separation and family law, child support (perhaps surprisingly) is not the main legal problem that women seek family law advice about. The overwhelming issue is about how to work out safe children's arrangements post-separation with the other parent when there has been domestic violence and/or child abuse. Concerns about child support are a secondary (albeit important) issue for our clients. Safety concerns for themselves and their children are the most pressing issue. These concerns continue despite the specific amendments made by the *Family Law*

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<sup>1</sup> Lesbian, gay, bi-sexual, transgender, intersex and queer.

*Legislation Amendment (Family Violence and Other Measures) Act 2011* that prioritized the protection of children as a primary consideration of their best interests.

Our clients are forced to confront the child support issue because it is often used as a ‘tool of financial control and abuse’ of the mother. This continues to occur despite the supposed **disconnection** between the decision about the amount of time children spend with a parent and the payment of child support. For example, women are told by their ex-partners *“if you want money off me – I’ll take the kids off you”*. These sorts of threats are very real to women who have lived with violence and they are aware or quickly become aware they may not be eligible for legal aid and will therefore have to fight for their children alone in an FDR session or acting for themselves in the court.

In light of this threat, women often enter into objectively unfair private arrangements to avoid family court litigation. The result is, of course that ultimately their children are financially deprived and many households live in poverty. Many women rely on child support so that they are able to meet the basics of survival such as rent, electricity and food, as opposed to child support being a “top up” to an otherwise solid economic existence. They are left to explain to their children the reasons why they are unable to join sporting teams or go on school excursions and deal with the emotional aftermath of this.

#### ***Fathers not having contact with children***

We anticipate many submissions may speak to this issue. We ask the parliamentary committee to not necessarily take these claims at face value and to refer to credible academic research on the issue. The WLSA network advocates for gender equality and our position is that we do not believe that sufficient weight is given in decision-making in the family law system to the impact of domestic violence on women and children.

In our experience, it is rare that there will be orders that a child has no contact with the other parent. It is only in the most extreme cases, where there are issues about the safety of the children, that such orders will be made. However, there still exists a myth about an “entitlement” to shared care and this seems to translate into a demand for shared care, even where it is not developmentally appropriate for the child, for example, where the child is young or where the father has little involvement in the child’s life prior to separation. As lawyers, we provide legal advice in accordance with the *Family Law Act*, case law and current court practice. As a result our advice to women on a daily basis, even when there is violence- is about doing their best and in the safest possible way (within the constraints of the current system) to make their children available to have time and communicate with the other parent.

When the current legal system so positively encourages the ongoing involvement of the other parent in the life of the child, it is difficult to understand the basis of these continuing claims about *“the mother stopped me having contact, so it is unfair that I should have to pay child support”*.

Also, as children grow into their teenage years, greater weight is given in family law decision-making to their views about spending time with the other parent. Some children strongly resist spending time with the other parent for a variety of reasons including because they have also directly suffered from the violence or seen the impact on their mother or they are uncomfortable with the other parent, especially if they have not taken any real interest in their life or know how to communicate with them. Whilst for others, they may simply not want to, or can’t fit the parent into their otherwise busy schedule because

their life focus has moved on from their parents to school, friendships and other social activities; these parents still have a financial responsibility to support their child(ren).

***Claims that domestic violence are routinely accepted by the court***

Statements that the family law courts accept claims of domestic violence as a matter of course without evidence are also unfounded. In our experience, it can be very difficult for victims of violence to provide the court with sufficient evidence that back up their concerns about safety.

***Assumptions that Mothers can just move away***

The reality is that relocating with a child is notoriously difficult. If a mother moves without the court's permission or the other parent's consent, the court may order that the child be returned or that the child live with the other parent even when there has been domestic violence.

### **3. Summary of Recommendations**

1. That the best interests of the child be the paramount consideration in child support legislation.
2. That the child becomes the primary "client" of child support.
3. That child support policy and literature reflect this understanding.
4. The child support policy distinguish between those families that have experienced domestic violence and those families who are 'high conflict'.
5. That the definition of high conflict specifically exclude matters involving domestic violence or abuse.
6. That child support policy and practice reflect the following reality:
  - financial abuse is a common feature of domestic violence; and
  - that child support is a key platform where ongoing abuse can be perpetrated against victims and children.
7. That a special pathway be developed for cases involving domestic violence and specifically cover matters where the victim of violence is both the payee and payer.
8. That the pathway be developed following standards of international best practice and in consultation with specialists in domestic violence who have expertise working with victims of violence (including WLSA representatives) and perpetrators of violence, () and that the pathway include (for example):
  - That the safety of victims of violence and children be the priority in these cases;

- That a permanent case worker be appointed with specialised training and who can provide consistent decision-making in the case;
  - That in this pathway particular regard should be given to the amount of information that is released to the other parent because its release could have safety ramifications for the victim of violence and their children;
  - That consideration be given to referring the cases to a specialist model of mediation that has been developed specifically for matters involving domestic violence (eg Coordinated Family Dispute Resolution model);
  - In the alternative, these mediations be lawyer assisted;
  - That exemptions from private collections be specifically considered because forcing victims to directly negotiate with the perpetrator will rarely result in fair outcomes for children and at its worst, can be dangerous;
  - That consideration be given at an earlier point than other cases not involving violence about a referral to an adjudicated decision; and
  - That these cases be closely monitored for systems abuse.
9. That a domestic violence screening tool be developed for the Child Support Program.
10. That all Child Support Program staff be trained in screening for and identifying domestic violence and that the trainers have clinical experience in working with victims and perpetrators of domestic violence (following standards of international best practice).
11. That any alternative dispute resolution processes developed or already in place should not take place without appropriate financial disclosure.
12. That specific consideration should be given to improving the mechanisms currently in place about providing information to prisoners (including women prisoners) about applying for an exemption from child support payment during their prison term and that specific consideration be given to violent offenders (including those who have offended against children) from accumulating child

support debt and using this as a means to have further contact with the family post-release by commencing proceedings to dismiss the debt.

13. That the Child Support Program consider other strategies operating in other jurisdictions such as Canada to incentivize payment and to avoid accrual of arrears.
14. That consideration be given to the New Zealand approach where payment of child support is paid to a government and consistency of payment is assured because the government 'tops up' even when the payee fails to make payment. This ensures that a stable and reliable income source is provided to the family and that the children are not disadvantaged. Pursuing arrears clearly becomes the responsibility of the government agency.
15. That specific consideration be given to assist fair payment of child support when the payer is self-employed or owns their own business.
16. That given the intersection of poverty, gender, violence against women and issues of financial abuse and control through the Child Support system, each Women's Legal Service be specifically funded for a child support lawyer.
17. That a broad based empirical study be conducted into the financial outcomes of men and women post separation in Australia.

The Australian Law Reform Commission's Issues Paper 38 "Family Violence and Commonwealth Laws- Child Support and Family Assistance"<sup>2</sup> provides some evidence in relation to our concerns outlined in this paper including, but not limited to:

- that child support can be used to perpetuate financial abuse on victims of violence and their children; in particular, the issue of private agreements and family violence was considered,
- concerns about the disclosure of personal information where there was family violence and its impact on safety and
- that some victims may not pursue their children's appropriate amount of child support because of fear of reprisals.

The ALRC recommend a common definition of violence be adopted, screening take place and training for staff.

We now provide comment on the specific terms of reference of the inquiry:

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<sup>2</sup> <http://www.alrc.gov.au/publications/family-violence%E2%80%94child-support-and-family-assistance/child-support-laws>

#### **4. Linkages between family law court decisions and Child Support**

##### ***The “best interests of the child” is not the paramount objective of child support legislation***

Although the principal object of both the *Child Support (Assessment) Act* 1989 and child maintenance under the *Family Law Act* for dependent children over 18 years and children otherwise outside of the Child Support scheme are the same, that is “ensuring that children receive a proper level of financial support from their parents”, the over-arching consideration in making parenting orders (including child maintenance orders) under the *Family Law Act* is that the child’s best interests is the paramount consideration.

##### ***The paramouncy principle refocuses attention on the children***

The application of the paramouncy principle has a huge impact on the way disputes are handled, on their outcome and processes. The issues of children’s time with a parent and their financial support are kept as separate issues and this arguably assists in diffusing disputes. It works in the favour of both the main carers of children and the parent who doesn’t live with the children. For example, the main carer of the child must provide the child for contact if it is in the child’s best interest even if they don’t like the other parent or want them in their life. Similarly, if a parent isn’t spending much time with their child (which can be for a variety of reasons) that parent still has an obligation to financially support the child because it is about the best interests of the child for this to occur.

We submit that thought should be given to introducing the paramouncy principle into Child Support legislation to make it consistent with family law decision-making and also as a strategy of focusing attention by the system and individuals involved in it, on providing fair and equitable financial outcomes for children post-separation.

At the moment, arguably the Child Support Program essentially has three clients - the payer, the payee and the children. The Program is therefore forced to consider the implications for everyone in decision-making and that in so doing, it can be at the cost of children. Arguably, if the focus is placed on child support being about the best interests of children, then this approach may make decision-making easier for the Child Support Program and more equitable for the children.

Some of the submissions to the inquiry already speak about the need for a “culture change”. Perhaps a focus on the paramount interests of the child could lead this culture change.

##### ***Communication from the Child Support Program about payment should focus on the child***

This would flow through the whole system including how the Child Support Program communicates with parents in their literature about the payment of child support. Current literature often refers to payment to the payee parent. This communication should be tweaked to read for example, “payments for the benefit of the child that are made to the other parent”.

#### **5. How the scheme could provide better outcomes for “high conflict” families**

“High conflict” families are different to families where domestic and family violence feature. It is important to specifically name domestic and family violence, as there are implications for safety when we do not. It is important not to mutualise domestic and family violence into a term such as “high conflict”. High conflict should be specifically defined and exclude matters involving domestic violence or abuse.

The statistics are clear that violence against women and children in Australia is extensive and at unacceptably high rates. 1 in 3 women experience violence and 1 in 5 women experience sexual violence in their lifetime. 1 in 4 children witness violence in their home (ABS 2006). Apart from the impact on the emotional health of individuals and the community as a whole, this violence has a significant economic cost being (US \$) 14.7 billion in 2013 (KPMG 2014). It is of course one of the reasons that there is bi-lateral support for the *National Plan to Reduce Violence Against Women and their Children 2010 – 2022*.

Additionally, we know that allegations of violence and/or abuse frequently accompany post-separation child-related disputes and that separation does not stop the violence. Indeed, we know that separation is extremely dangerous for women and children escaping violence because the violence (rather than stopping) can escalate up to and including lethality.

These following statistics relate to the family law system:

- “More than half the parenting cases that come to the (family) courts involve allegations by one or both parties that the other has been violent [which] often go together with other problems [including] substance abuse and mental ill-health.” (AIFS 2006)
- The majority of clients of Family Relationship Centres have some family violence issues. (AGD Family Law Services Background Paper 2013);
- Multiple users of the family law system were families affected by family violence, safety concerns, mental health and addiction problems (AIFS 2009). Parenting arrangements for these families took longer.
- “There is a lack of understanding among family law system professionals of the nature of family violence and the implications it has for making parenting orders.” (AIFS 2006)

### ***It is common for domestic violence to include financial abuse***

A common feature of domestic violence is financial control and economic abuse. The child support system provides a key forum where such abusive behavior can be played out. Families where there has been violence can be multiple and frequent users of services. It is highly probable (and the previous statistics and research would tend to back this up) that the vast majority of users of the child support system where there is “identified conflict and ongoing issues about payment and non-payment” are families who have experienced domestic violence.

### ***Power and control***

The dynamic that drives these “disputes” is the ongoing exertion of power and control by the perpetrator over their former partner and children although ostensibly the dispute is referred to as a “child support dispute”. We are unaware of any statistics that prove the levels of “high conflict” in the family law system.

### ***Different responses are required for domestic violence and high conflict matters***

Matters involving domestic violence are not and should not be categorised as “high conflict” which suggests a mutuality of both parents participating in unreasonable behaviour. We know that there is a gendered experience of domestic violence and it involves the selective, uninvited, repetitive oppression of one person by another person. It requires specific and specialised responses by systems and individuals, otherwise the perpetrator’s behaviour can easily be minimised, dismissed or their actions obfuscated. Categorising domestic violence as “high conflict” and intervening on this basis without recognition of the violence, is dangerous for women and children.

***Safety should always be the priority in cases involving domestic violence***

It is dangerous not to recognise violence for what it is and respond accordingly with the safety of victims (including children) as the highest priority. Separation is well recognised as the most dangerous time for women and children escaping violence. However, danger for women and children peaks again when women take steps post-separation towards permanent separation eg: the finalisation of family law matters that can take place 12-18 months after separation.<sup>3</sup> Child support negotiations, reviews and objections processes are therefore taking place in a time of heightened risk.

***All Child Support staff require training in identifying and responding to domestic violence***

We know that victims of domestic violence will not necessarily identify as victims and be upfront in advising staff. They may however, provide clues to their situation such as *"He cut me off financially. He controlled everything or made all the decisions. I had no say"*. These can be indications of domestic violence being present. Also, perpetrators of domestic violence don't present obviously as "perpetrators". They can present as highly reasonable, charming or as victims of the system. All child support staff including first point of contact staff should be trained in screening for and identifying domestic violence, making appropriate referrals and they should be backed up by agency policy that seeks to prevent ongoing systems abuse by perpetrators. Training should be undertaken by those who have expertise in working with victims of domestic violence and also with perpetrators. (It is essential that the perpetrator programs meet international standards of best practice).

The Attorney-General's Department funded the DOORS program which is a risk assessment tool for family law agencies to screen for and identify risk. The program may not be suitable for the Child Support Program, but perhaps is a starting point to consider the development of a Child Support Program domestic violence screening tool.

***A specialised approach is required for cases involving domestic violence***

After domestic violence is screened for and identified, we recommend that these cases be transferred to specially trained case workers and that the matters be case managed. Cases involving domestic violence need to be managed by the one case worker to aid transparency, accountability and consistency as perpetrators of violence thrive in environments where there is an uncoordinated approach and decision-makers that continuously change.

A specialised approach would allow for flagging these files and for monitoring the amount of objections, change of assessments, SSAT decisions or court decisions that are involved in a matter as a means of identifying whether the perpetrator is engaging in systems abuse and determining early on whether an alternative approach is required. For example, whether the matter should be referred to a specialised domestic violence mediation process or to an adjudicated decision.

***That such a specialised approach specifically cover both payer and payees***

It is not uncommon for women who have experienced domestic violence to not be the full-time carers of the children post separation. This can be for a variety of complex reasons including:

- That domestic violence harms the mother/ child relationship;

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<sup>3</sup> Hardesty Jennifer L. "Separation Assault in the Context of Post-divorce Parenting: An Integrative Review of the Literature" Violence against Women 2002 quoting Ellis (1992) at p.600.



- That the perpetrators of domestic violence specifically target this relationship as a tactic of abuse;
- That courts and decision-makers may not adequately take into account issues of domestic violence in decision-making or consider the long-term consequences of placing children with perpetrators;
- That there is inadequate legal aid and many victims of violence are unable to adequately represent themselves in court applications;
- Some children identify and align with the perpetrator as a strategy of survival;
- Many agencies including mediation services and professionals do not adequately screen for domestic violence or understand the dynamics of violence in post-separation parenting.

With the current emphasis in family law legislation on shared parenting arrangements, there is also an increase in families where there is shared care or substantial and significant care. Of course, shared parenting options are an attractive option for perpetrators of violence as they are to involve themselves legally in family activities and this allows them numerous opportunities for exerting ongoing control of the family.

Perpetrators of violence will use any means available to them to continue to exert power and control over the victim of violence. Obviously, perpetrators who have the children with them are in an extremely powerful position vis á vis the victim. They can continue to exert financial abuse over the victim of violence (the payee parent) and their cases should also be part of the specialised pathway and should be case managed. Case managers should be alert to issues of system and other abuse.

***Privacy concerns where there is domestic violence***

One of the members of our network has seen clients who have raised with the lawyer serious concerns about the release of their private information by the Child Support Program to the other parent, about their income, work status, address etc when there has been/is domestic violence.

As a result, clients can be reluctant to supply the Child Support Program with relevant and up to date information about their circumstances that may serve to increase the amount of child support they receive, for fear of that information being shared with the other party.

There are also cases where there is a fear of revictimisation through systems abuse. For example, if information is shared by the Child Support Program with the other parent it could be used against one party in further litigation. For example, information that the mother had to cease work due to health reasons, and then this information is used by the father in arguing for changes to the time arrangements in the family courts.

In cases involving domestic violence in particular, the Child Support Program should be able to withhold certain information from the other parent depending on its relevance to an assessment for child support payments.

***Centrelink staff also require specialised domestic violence training***

Similarly to Child Support staff, Centrelink staff also require training to screen for and identify domestic violence. It is essential that victims of violence are advised at the first possible instance of the option of seeking an exemption from the collection of child support if it is too dangerous. Some services have identified that this does not occur.

***Specific policy is required to exempt victims of violence from private collections***

Parents who are able to freely negotiate have the ability to enter into private arrangements for collections. However, there is no distinction in child support policy about which families are best suited for private collections. We know that perpetrators of violence use these private collections arrangements as a means of negotiating time with the children and minimising their financial obligations to the children. It is not uncommon for perpetrators to pursue and obtain shared care of the children as a means to minimise payment. After obtaining the court orders, some fail to take this time up.

Some victims of violence and their children live with this result as they are too scared to go back to court to change the orders which, in itself would be difficult to alter because *a substantial change in circumstances* is required. Other women are worried that any court action would be an incentive for him to start exercising the care arrangements pursuant to the orders. These women often have had safety concerns for their children about a shared care arrangement but have been unable to prove this. They accept their financial predicament as the price they pay for safety.

Some victims of violence will approach the Child Support Program about the unfairness of the arrangement and that the court orders don't reflect the reality of care being undertaken. However, they are often told by Child Support to take the matter back to court. As discussed, some victims simply do not have the financial/emotional strength to pursue such an action.

Other victims are too scared to undertake such direct negotiations and will opt out of the system altogether and won't pursue child support because of fear of reprisal.

Victims of domestic violence should not be forced into directly negotiating with the perpetrator of the violence about such arrangements. They will rarely be able to negotiate a fair outcomes and the children will suffer financially. At its worse this can be dangerous.

## **6. Effectiveness of mediation and counselling as part of the family assistance frameworks**

***Processes should only operate when full disclosure of financial circumstances has occurred***

It is important that mediation and other forms of dispute resolution only occur where there has been full disclosure of financial circumstances. Many of our clients are in situations where they do not have full details about their former partner's finances. Withholding financial information is a common tool used by perpetrators of domestic violence. Where there may be informal dispute resolution or negotiation by child support staff, women have reported feeling coerced into not pursuing their applications for change of circumstances by being given an "off-the-cuff" assessment of prospects of success without full disclosure having taken place.

***Specialised model of mediation required when there is domestic violence, or children will miss out***

We believe that a specialised model of mediation is required to properly assist families where there has been domestic violence and they are negotiating family law issues, including child support. We support a Coordinated Family Dispute Resolution model (CFDR) approach being considered in this context. CFDR was specifically designed to assist families mediate issues around children's arrangements where there was violence. CFDR provided a high level of support to both the victim and perpetrator of violence, including

access to legal assistance and representation at the mediation. A key feature of the model was the specialised risk assessment undertaken. Not all families were suitable for the program because of reasons of risk and safety and these cases were referred to court.

CFDR therefore acted as an important filter, identifying matters that could benefit from mediation with appropriate support and those where a court decision was required. The CFDR model was piloted in 5 sites around Australia but was not funded by the former government because of financial reasons. However, a cost benefit analyses should be considered about not implementing a specialised model to respond to domestic violence eg additional Centrelink payments, continual objections and change of assessment processes, court applications, counselling services, Legal Aid, etc.

Reference has already been made to the key research of KPMG about the mounting cost to the Australian community of not appropriately addressing violence against women.

### ***Legal assistance is essential***

If CFDR is not adopted at least a process that involves legal assistance is required. Unfortunately there are long-term consequences if parties enter into unfair child support agreements, as these agreements are very difficult to change. Lawyers can provide parties with appropriate warnings, advice and drafting of fair and appropriate child support agreements.

### ***Professor Parkinson's idea to refer to FRCs***

The reality is that many FRCs are also not equipped to deal with these issues. Our previous comments about a specialised mediation approach to cases involving domestic violence are relevant. In some cases where there has been ongoing disputation over many years or avoidance of payment, an adjudicated decision is required, including matters where there has been domestic violence.

Concerns previously raised about processes that force decisions to be made in circumstances when full disclosure of financial information has not taken place are equally valid to FRC mediations as they are to current Child Support processes.

## **7. Other Issues:**

### ***Arrears***

It is important that the department administering child support establishes some clarity around collection of arrears. Clients are not aware of what steps the department will commit to in order to chase up outstanding payments; and what powers they will exercise to collect child support.

Also, the Department needs to commit to enforcing arrears at an earlier stage – often our clients can be owed tens of thousands before enforcement processes are commenced.

### ***Other ideas for consideration to incentivise prompt payment***

In Canada, **as a last resort** there are enforcement processes that allow for the suspension of drivers licences and passport. See <http://www.justice.gc.ca/eng/fl-df/enforce-execution/sol.html>

In particular see:

*If your passport or federal licence is being suspended*

*Only a Maintenance Enforcement Program<<http://www.justice.gc.ca/eng/fl-df/enforce-execution/provpro.html>> can apply to have your Canadian passport or federal licence suspended. This is often a last resort when other enforcement measures have failed. Usually, warning notices will be sent before a federal licence or passport is suspended. If you receive such a notice, you should contact the Maintenance Enforcement Program<<http://www.justice.gc.ca/eng/fl-df/enforce-execution/provpro.html>> that sent you the notice. Program officials may agree not to suspend your licence or passport if you make arrangements to pay the amount you owe.*

*If your passport is suspended while you are travelling*

*If you are abroad when your passport is suspended, you have two choices:*

- \* make arrangements to pay your support debt with the Maintenance Enforcement Program that asked for the suspension; or*
- \* ask the closest Canadian government office, such as a Canadian embassy or consulate, to give you an emergency travel document. This document will let you return to Canada but it will not allow you to travel anywhere else. For more information, contact Passport Canada<<http://www.ppt.gc.ca/service/contact.aspx>>.*

A potential loss of the privilege to travel or to drive would provide incentive for people to responsibly manage their child support matters i.e. notifying Child Support that the incorrect income is being applied or the actual amount of time that the children are spending with both parents etc. At the present moment it is not uncommon for people to have large child support debts, for those debts to go unpaid and then at the end of the case (when the child is 18) for the payer parent to seek a discharge of debt. These circumstances are particularly ranking as the child is never supported and the payee parent bears the burden of support entirely.

Providing incentive for people to do the right thing in meeting their obligations earlier or correcting an error early on would hopefully lead to a reduction in the circumstances where large debts accrue.

Research should be undertaken into whether there are any unintended consequences before considering implementing such a scheme, such as how it would impact in cases of payers who are victims of family violence.

### ***Hiding income***

The ability of the payer to hide their real income because they own a business or are self-employed is a continual complaint over many years. Women in these situations are often desperate and frustrated that the 'system' is used to deny their children the financial assistance they require. We are not experts in this area, but surely there must be ways that these parties cannot so easily flout the law and deprive their children.

### ***Women in Prison***

Some of our network members visit women's prisons to provide legal advice. Women in prison can leave prison with accumulated child support debt if the Child Support Program is not notified about the period of incarceration. This obviously puts them financially on the back foot immediately when re-entering the community.

On some occasions Centrelink may be aware of the incarceration and stop their payments but there is a failure to communicate with the Child Support Program and the debt continues to accumulate.

We understand that Child Support may provide information to prisoners about notifying the Child Support to avoid the accumulation of debt. We don't know how effective this is in reality as the Agency would have to negotiate with each governor with each prison to negotiate entry, etc. Specific consideration should be given to how to do this more effectively.

### ***Perpetrators of violence and abuse in prison***

Another consideration is that some payees who have been prisoned for relevant domestic violence or child abuse offences can deliberately accumulate the child support debt during their prison term by not advising the Child Support Program of their incarceration. Upon release, they then use the application process to negate the debt as a means to have further contact with the family. As you can imagine this causes incredible amounts of distress and stress to the family involved. There is a need for better coordination of government departments so that the Child Support Program is automatically informed about incarceration without the need for the offender to be involved in any way in the process.

### ***A consideration of the New Zealand approach***

WLSA has not had time or capacity to research this extensively but our understanding is that:

- Any child support the paying parent pays goes to the Government to help cover what the payee gets from the Government. The payee can find out what the paying parent is supposed to pay in child support and ask for a review if they think it's not enough. Once the payee's benefit stops, the child support goes directly to the payee.
- For payees on Government benefits, NZ Inland Revenue will top-up payees when payers are in default in paying child support.
- Also, the default income level for payers is the cap (maximum, or presently about NZ\$130Kpa) and not the average weekly earnings like we use in Australia. These two issues have apparently always been the stand-out differences between the Australian and NZ child support systems.
- It has long been the case that where the paying parent doesn't pay the assessed child support amount, the custodian parents will still be paid child support from Inland Revenue so that the child always has adequate financial support. Then Inland Revenue chases the paying parent for the arrears.
- A noticeable difference is that child support becomes a whole less personal because payments are simply made to and from the Government (ie Inland Revenue) and that this can be an important issue regarding cases involving domestic violence as the control factor is removed as the custodian parent will still receive payments from Inland Revenue, even if the paying parent stops paying child support.

We are especially attracted to the idea of the government collecting the child support rather than it becoming the responsibility of parents and that payees can plan financially (eg enter into rental agreements loan agreements) as they are assured regular and consistent payments. Most importantly, the children are not negatively impacted whether the payee pays or not.

***Funding for specialist child support lawyers in Women's Legal Services***

This submission highlights the intersection between women and children living in poverty, violence and child support being used as a means to financially control and abuse women post separation. Although a specialised funding program exists for legal assistance via generalist community legal centres and through legal aid commissions, these services do not bring these understandings to their work. We believe having a specialist child support lawyer at each Women's Legal Service would be of enormous benefit to our clients as all their family law matters could be dealt with by the one service.

***That a broad based empirical study be conducted into the financial outcomes of men and women post separation***

As far as we are aware there is no research of this nature that has been conducted in recent history. Research of this nature is essential to inform good policy development. The *Australian Divorce Transitions Project* undertaken by the Australian Institute of Families Studies dealt in some way with the issue but it only considered the issue of the division of matrimonial property. The research needs to consider short and long term outcomes and also encompass income, financial resources and issues about child support.