



WOMEN'S LEGAL SERVICES NSW

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**Incorporating  
Domestic Violence Legal Service  
Indigenous Women's Legal Program**

13 June 2014

Committee Secretary  
House of Representatives Standing Committee on Social Policy and Legal Affairs  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Committee Secretary,

### **Parliamentary Inquiry into the Child Support System**

1. Women's Legal Services NSW (WLS NSW) thanks the House of Representatives Standing Committee on Social Policy and Legal Affairs for the opportunity to provide a submission into the Parliamentary Inquiry into the Child Support system.
2. We have organised our submission around two of the issues outlined by the Committee's Terms of Reference:
  - How the scheme could provide better outcomes for 'high conflict' families; and
  - The effectiveness of mediation and counselling arrangements as part of family assistance frameworks.
3. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.

### **How the scheme could provide better outcomes for 'high conflict' families**

4. WLS NSW notes with concern that the Committee's Terms of Reference make no explicit mention of either domestic or family violence, and how the Child Support system could provide better outcomes for victims of violence post-separation. We are very concerned for the potential for 'high conflict families' and families where domestic and family violence is present to be considered under the same rubric.



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5. Greater recognition should be given to the means by which the Child Support system may be used as a tool of 'systems abuse' by perpetrators of family violence. This involves better training for frontline staff on the dynamics and complexities of domestic violence, and the means by which perpetrators may attempt to use with the Child Support system in order to perpetuate abuse and harassment of their ex-partner after a relationship has ended.
6. Frontline Child Support workers require discrete training to identify domestic violence. In WLS NSW's experience, clients will rarely call for assistance and self-identify as a victim. Rather, workers must be aware that when clients report factors such as: their ex-partner controlling their money during a relationship; a lack of awareness of how much money their ex-partner earns; and concern that their ex-partner has refused to support them financially; that these may all be factors that indicate the presence of domestic violence in a relationship.
7. Given the relative under-reporting of domestic violence to the Police, with the right training, Child Support workers could be well-placed to identify domestic and family violence and refer victims to other forms of support and assistance that they may require. A report of violence to a government agency such as the Child Support may also assist victims of violence in engaging alternate forms of financial support, such as through victims compensation schemes.<sup>1</sup>
8. WLS NSW believes that Child Support workers should be given specific training enabling them to screen for domestic and family violence in all matters. Child Support workers should also be required to note indicators of domestic and family violence on a client's Child Support Record.
9. WLS NSW is concerned that there are currently no limits to the number of times a perpetrator of violence can re-engage their victim through appeals of decisions in the Child Support System. Persistent use of mechanisms such as objections, Changes of Assessment, appeals to the Social Security Appeals Tribunal and appeals to the Federal Circuit Court may each be mechanisms for persistent abuse and harassment of domestic violence victims. WLS NSW recognises that the preservation of rights to challenge administrative decisions is important. Nevertheless, it is crucial that decision makers at every stage of the process are cognisant of any domestic violence identified by frontline staff, and where persistent challenges are present, turn their minds to the possibility of vexatious appeals.
10. WLS NSW also supports a legislative change to provide that 'the best interests of the child' be the paramount consideration when making child support decisions. This would bring child support laws into a consistent broad policy framework with family law and other laws affecting children; and appropriately provide a focus on best outcomes for children.

### **Recommendations**

1. A policy should be developed that supports frontline Child Support workers to conduct mandatory screening for domestic and family violence in all cases, and to record domestic and family violence on clients' child support records.
2. The Child Support legislation should be amended to provide for the best interest of the child to be the paramount consideration in child support decisions.

11. WLS NSW's experience with clients engaging the Child Support system through Centrelink

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<sup>1</sup> See, for example, s 39(2) of the *Victims Rights and Support Act 2013* (NSW) which requires a report of violence to

also supports the need for better training for both Centrelink frontline staff and social workers to identify domestic and family violence.

12. As well as the considerations outlined above, early identification by Centrelink frontline staff and social workers is important so that victims of violence are informed at the first possible opportunity of their option to seek an exemption from 'reasonable maintenance action' requirements. Ordinarily, where clients are in receipt of Family Tax Benefits for their children, they are not eligible to receive a higher amount than the base rate where they are entitled to claim maintenance from their ex-partner.<sup>2</sup> Two exemptions to the requirement to claim maintenance are if the client fears 'that if they take action for child support the payer will react violently towards them or their family' and 'where seeking child support may have a harmful or disruptive effect on them or the payer'.<sup>3</sup> In WLS NSW's experience, many clients and caseworkers are unaware of these exemptions, even after having had appointments with Centrelink social workers.
13. Mechanisms must be put in place to prevent Family Tax Benefits being adversely affected where no maintenance action has been taken and no exemption has been applied for. An example of how this might operate is that in cases where no maintenance action had been taken, but a family violence exemption was later identified, the payee could receive a back-payment for the entitlements they would have been able to claim had an exemption been sought and granted earlier (i.e. their full Family Tax Rate benefit). Such a mechanism would be an appropriate way of acknowledging that there are a variety of reasons that victims of violence may not have been aware of and applied for an exemption at the earliest possible opportunity.
14. Outstanding national child support arrears continue to be a huge problem. Enforcement action in 'Agency Collect' cases by Child Support is inconsistent and the statistics on amounts of arrears owed under 'Private Collect' cases are for the most part an unknown large quantity. Consideration should be given to implementing more stringent methods of collection to ensure timely and adequate financial support for children is paid.
15. As WLS NSW understands it, in New Zealand any child support paid by the paying parent is paid to the Government to help cover what the payee parent receives in government benefits. For New Zealand payees on government benefits, New Zealand Inland Revenue will top-up payees when payers are in default in paying child support. Where the paying parent does not pay the assessed child support amount, the payee parent will still be paid child support from Inland Revenue so that the child always has adequate financial support. Inland Revenue then seeks to enforce the payment of arrears. In Australia, consideration should be given to prioritising payments for the adequate financial support of children, even if the payer parent is in default of payments.
16. Early identification of domestic and family violence is also important so that better advice can be given to victims of violence on the implications of nominating either 'Private Collect' or 'Agency Collect' for Child Support payments after an assessment has been completed. WLS NSW acknowledges that 'Private Collect' may be an appropriate option for individuals who separate amicably, in that it provides for greater flexibility in the ways that payment is made between parents. However, victims of violence who are payees may face considerable pressure or threats from their ex-partner to nominate 'Private Collect' as their payment option. In these cases, victims of violence may be left with less than adequate financial support from their ex-partner, and face financial and emotional difficulties in pursuing private enforcement action.

<sup>2</sup> Schedule 1 cl 10 *A New Tax System (Family Assistance) Act 1999* (Cth).

<sup>3</sup> Australian Government, *Family Assistance Guide* (Version 1.169, released 12 May 2014) Pt 3.1.5.70.

17. Centrelink should actively encourage clients to seek legal advice at the earliest possible opportunity, to assist them in determining whether 'Private Collect' or 'Agency Collect' may better suit their particular circumstances.

### **Recommendations**

3. That Centrelink staff and social workers be appropriately trained in screening for domestic and family violence in Child Support cases.
4. In policies affecting 'Private Collect' and 'Agency Collect' cases, the impact on victims of violence be considered and prioritised.
5. That an investigation into the viability of adopting other jurisdictions methods of collection/payment of child support be conducted and considered for application in Australia (for example, the New Zealand approach).

### **The effectiveness of mediation and counselling arrangements as part of family assistance frameworks**

18. WLS NSW notes that there has been a range of past recommendations made with respect to greater involvement of Family Relationship Centres (FRCs) in child support matters. In particular, WLS NSW notes that the 2005 report of the Ministerial Taskforce on Child Support recommended that 'The Child Support Agency should have a discretion to encourage parties to change of assessment applications to negotiate the issues through a Family Relationship Centre or other mediation or counselling organisation, prior to determining the application.'<sup>4</sup> We further note Professor Patrick Parkinson's recommendation that the Committee chairing the current Inquiry should consider '[t]he use of FRCs to sort out child support problems in high conflict families'<sup>5</sup>.
19. As noted above, WLS NSW is concerned for the potential for 'high conflict families' and families where domestic and family violence is present to be considered under the same rubric. WLS NSW is firmly of the position that before FRCs (or other mediation or counselling organisations) are engaged as an agency involved in Child Support decisions, a number of discrete protections need to be put in place to protect victims of family violence.
20. First, WLS NSW believes that any FRC mediation concerning Child Support assessments should be legally assisted. In WLS NSW's experience, some FRCs routinely ask parents to sign 'good faith agreements' in relation to principles discussed in family law mediations. Without legal advice, such clients may be unaware that signing such agreements may have the effect of turning them into Parenting Plan, or, in the case of Child Support, a Limited Child Support Agreement, that could be registered with the Child Support Agency.
21. WLS NSW further notes that if Family Relationship Centres are asked to extend their work in the area of child support that they be sufficiently resourced to do this, including but not limited to Family Dispute Relationship Practitioners (FDRPs) being given significant training on the law, administrative processes and policies governing Child Support before any proposed mediation processes in Child Support begin.

<sup>4</sup> Ministerial Taskforce on Child Support, *In the Best Interests of Children – Reforming the Child Support Scheme* (May 2005) Recommendation 19.6.

<sup>5</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs, Inquiry into the Child Support System, *Submission on Inquiry into Child Support* (Submission 2, Professor Patrick Parkinson) p 1.

**Recommendations**

6. That all child support mediations through the FRCs or other counselling services be legally assisted via a specialised process of mediation involving risk assessment screening, support and legal advice/representation.
7. That prior to any child support mediations taking place, all FDRPs be given comprehensive training in the law, administrative processes and policies governing Child Support.

**Australian Law Reform Commission inquiry into family violence and commonwealth laws.**

22. We note that the ALRC inquired into the Child Support system as part of its inquiry into family violence and commonwealth laws<sup>6</sup>. We refer the Parliamentary Inquiry to the Final Report in relation to child support and family violence and urge the current Inquiry to be informed by this previous work and its recommendations.

If you would like to discuss any aspect of this submission, please contact me on (02) 8745 6900.

Yours faithfully,

**Women's Legal Services NSW**

Janet Loughman  
Principal Solicitor

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<sup>6</sup> Family Violence and Commonwealth Laws – Improving Legal Frameworks (ALRC) Report 117, 2012.