



## **Proposed amendments to the Family Law Act 1975 to respond to family violence**

19<sup>th</sup> January 2017

Dear Reviewers

The Council of Single Mothers and their Children Victoria (CSMC) has a deep interest in the proposed changes to the Family Law Act 1975, but unfortunately, limited ability to respond in detail in the given timeframe. We therefore limit our submission to information about us, and principles for consideration.

We trust you will consider our submission

Yours faithfully

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Available: Monday – Thursday

## **About CSMC**

CSMC is a member based community organisation that has worked for 47 years to improve the lives of single mother families in Victoria and across Australia. With 2,500 members and over 2000 individual contacts to our information and referral line last year from single mothers, we work to give single mothers a voice to the issues that affect them and their children.

CSMC formed the National Council of Single Mothers and their Children (NCSMC) as an overarching national voice for the then increasing State and Territory groups. CSMC is now the sole State group and we continue to work closely with NCSMC

## **Principles for consideration**

### **1. Judicial education**

CSMC welcomes initiatives to educate judicial officers on issues relating to family and domestic violence and their impact on Family Law processes and judgements. Judicial training and the production of the National Family and Domestic Violence Bench Book are great additions to a system that seeks to make the best possible decisions. We note below areas of social misconception that underpin family violence particularly as it continues after separation and recommend their inclusion in judicial education.

#### **1.1. Single mothers & poverty**

Women become single mothers for many reasons with domestic violence and marital breakdown high among them. Many single mothers in receipt of government benefits have experienced violence and relationship breakdown.<sup>i</sup>

Women who have experienced domestic violence are more likely to experience financial abuse and child support non-compliance. The violence continues through financial abuse and includes constant battles in the Family Court that impede the mothers' ability to work and find stable housing, and prolongs the burden of costs and emotional investment. Increasing evidence from a range of sources<sup>ii</sup> shows that it is poverty and the low economic status of single mothers that creates disadvantage for them and their children, not the fact they are parenting alone. The recent ACOSS report<sup>iii</sup> notes that forty per cent of the children living in

poverty in Australia are in single mother families. We fear that unwittingly Family Court practices and judgements may have been contributing to this state of poverty through not recognizing the realities of the experiences and lives of many single mother families and through enabling repetitive and drawn-out cases without regard to the relative imbalances of social and financial power between the parties.

**CSMC recommends the links between continuing family violence and poverty are included in judicial education programs and taken into account in court practices and judgements.**

**We support proposed change to strengthen the family law courts' powers to 'summarily dismiss' unmeritorious applications that are expressions of continuing family violence and trauma.**

## 1.2. Child support

Evidence demonstrates that significant numbers of fathers are not paying reasonable child support, and that where mothers have to seek an exemption from securing child support payments in order to ensure the safety of themselves and their children, they are further financially disadvantaged. CSMC notes the perverse incentive this provides for violent partners to escape financial responsibilities for their children<sup>iv</sup>.

Child support continues to be a battleground between disputing parents. CSMC believes it is important to Australia's future to ensure that all children, regardless of their parent's circumstances, have a fair start in life. Evidence from every country in the world demonstrates that the conditions under which women are able to raise their children are critical to the life outcomes for each child and thus, to the social and economic outcomes for the country.<sup>v</sup>

CSMC concerns in respect of child support include:

- The national unpaid child support debt currently sits at around \$1.5billion without accounting for unpaid money in private collection arrangements
- Current assessments do not reflect the real costs of raising a child [food, clothing, housing, education and social inclusion activities (such as sport)], and loopholes allow self-employed parents to minimise income and reduce their child support
- Late payment and non-payment of child support penalise the carer parent receiving Centrelink payments more than they penalise the paying parent

- Failure of non-custodial parents to financially support their children pushes single parent families into poverty
- Family violence increases the risk of poverty for women and their children.

**CSMC recommends the Family Law Court consider regular, timely child support payments as being in the best interests of the child and support this through practices and judgements.**

## 2. Strengthening protection against family violence

Family violence is one of the leading contributors to women's experience of becoming a single parent. While many mothers separating from their children's fathers welcome shared parenting arrangements, for the women and children who have experienced any degree of violence, such a prospect can be horrifying. CSMC contends that there should be no presumption of shared parental responsibility. The clarification post the 2011 reforms (prioritising the safety of children by giving greater weight to protection from harm in determining a child's best interests than to a child's right to meaningful involvement with both parents after separation) must be evident in every judgement. We want to see each case assessed on individual circumstances with the sole primary consideration being what is in the best interest of the child.

The journey to achieving the best possible relationships for the child with both parents is one fraught with challenges and misunderstandings. The *Family Law Reform Act 1995*, the 2006 reforms, and the *Family Law Legislation Amendment (Family Violence) Act 2011* have all attempted to achieve balance. What judicial officers, often do not appear recognise, is that all laws and amendments result from social mores and lobbying. Prior to the Family Law in Australia, a woman had little chance of contesting custody should she leave her husband, even in extreme cases of violence. Feminists led the push that resulted in the Family Law Act. Men's groups lobbied to have greater control and custody and now, with the death of children after parenting arrangements failed, we have the beginning recognition of the impact and potential long term and fatal consequences of family violence and the importance of genuinely seeking the best interests for the child both in the short and longer term. Too often, decisions to award custody or shared parenting rights to violent fathers based on enabling a longer-term relationship have scarred the child for life or in some cases, led to their death. CSMC notes

that in some cases, 'expert witnesses' testimony has been directly implicated in these decisions.

**In order to ensure safety of children, CSMC recommends that:**

- **In every instance where violence is alleged, a child advocate is appointed and that advocate be able to demonstrate expertise in family and domestic violence and communicating with children.**
- **Where violence has been present, that parent must not be allowed near the child unsupervised until and unless, there have been marked, sustained and verifiable changes to their behaviour.**
- **Where the Court calls expert witnesses, that they demonstrate current expertise in assessing family and domestic violence, the impacts of trauma on victims and children and in communicating with children.**
- **The court support child protection orders and welcome child protection officers contributions.**
- **Judicial officers be educated to listen respectfully and take into account, the views of all parties.**
- **Judicial officers be educated about the effects of trauma on the differing presentation styles of victims (usually but not always women), children and perpetrators.**

**CSMC supports proposed changes to:**

- **Criminalise breaches of personal protection injunctions and to**
- **Allow judges greater flexibility in explaining their decisions to children.**

### 3. Other

#### 3.1. State and Territory courts

CSMC does not have the expertise to comment on this. Insofar as this change may increase access, reduce waiting times and improve safety for all parties, we would support it. A critical factor will be sufficient high quality training for all the judicial officers to ensure they bring the best possible effect to practices and judgements and sufficient resources to enable and support good practice.

#### 3.2. Conjugal rights

CSMC supports the proposal to repeal the provision in the Family Law Act that allows courts to make an order relieving a party to a marriage from an obligation to perform marital services or render conjugal rights. While we were surprised to see it still in the law, we note that with many people from many cultures making up the Australian population, there may be some women and men who would see this provision as implying these concepts are valid in Australian law.

### References

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<sup>i</sup> Tanya Corrie 2016: Economic Security for Survivors of Domestic and Family Violence: Understanding and measuring the impact. Good Shepherd, August 2016 Available at: [https://www.goodshep.org.au/media/1421/financial-security-for-survivors-of-domestic-and-family-violence\\_march2016.pdf](https://www.goodshep.org.au/media/1421/financial-security-for-survivors-of-domestic-and-family-violence_march2016.pdf)

<sup>ii</sup> HILDA 2016: The Household, Income and Labour Dynamics in Australia Survey: Selected Findings from Waves 1 to 14. Available at: [https://www.melbourneinstitute.com/downloads/hilda/Stat\\_Report/statreport\\_2016.pdf](https://www.melbourneinstitute.com/downloads/hilda/Stat_Report/statreport_2016.pdf)

Save the Children 2016: State of Australia's mothers Available at: [https://www.savethechildren.org.au/\\_data/assets/pdf\\_file/0007/143863/SOAM\\_report\\_2016.pdf](https://www.savethechildren.org.au/_data/assets/pdf_file/0007/143863/SOAM_report_2016.pdf)

<sup>iii</sup> ACOSS 2016: Poverty report Available at: <http://www.acoss.org.au/wp-content/uploads/2016/10/Poverty-in-Australia-2016.pdf>

<sup>iv</sup> Patrick, Cook & Taket, 2007: Multiple Barriers to Obtaining Child Support: Experiences of Women Leaving Violent Partners Available at: <https://dro.deakin.edu.au/eserv/DU:30007714/cook-multiplebarrierstoobtaining-2007.pdf>

<sup>v</sup> Sir Michael Marmot 2010: Fair Society, Healthy Lives: a review. Available at: <http://www.instituteofhealthequity.org/projects/fair-society-healthy-lives-the-marmot-review>