

# Review of the Family Law System

May 2018

**The National Council**  
& of Single Mothers  
Their Children Inc.

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## Who we are

The National Council of Single Mothers and their Children Incorporated (NCSMC) is an organisation dedicated to single mothers. The Council has become a platform whereby both the community and the Government can communicate; it has led the way in obtaining a range of beneficial outcomes; has actively sought to reduce systemic prejudice; continually challenges existing norms, and over many years has achieved improved opportunities and outcomes for single mother families.

One of our greatest strengths is our expertise and commitment in working with, and for, the advancement of women and children affected by poverty, violence and hardship.

## Review of the Family Law System

The National Council of Single Mothers and their Children Inc welcomes the Attorney General's statement:

*“Despite profound social changes and changes to the needs of families in Australia over the past 40 years, there has not been a comprehensive review of the Family Law Act 1975 (Cth) (the Act) since its commencement in 1976.”*

*“the report was a turning point for society”*

*(Royal Commission, Victoria)*

*Rosie Batty 2017*

This review, and the many that has gone before, has served to increase our determination and commitment to call for a Royal Commission into Family Violence. We agree that the Family Law System has not kept pace with the needs and expectations of contemporary Australia, one such outcome is the entrenched disadvantage is single mother families. In 2016 the ACOSS Poverty Report found that 40% of Australian children living in a sole parent family, now have a childhood which is marked by poverty and for too many families this includes the dark hand of financial abuse. Family Law has either been missing and or inadequate when responding to financial abuse.

Whilst the Courts that hear family matters is a broken and damaged system. It is a Royal Commission that will restore the public's trust, understanding and confidence. The Victorian government has made a commitment to implement 227 of the Royal Commission's recommendations. It remains our steadfast view that a Royal Commission which has capacity to hear from witnesses, such as Victoria which provide a platform for 200. Nothing less than a Royal Commission that has the capacity to provide direction, impetus and a comprehensive overhaul is sufficient.

We cannot enter into yet another year knowing that women and children, who are especially vulnerable, are not protected and can be further harmed by the failing justice system.

Ms Rosie Batty, a tireless domestic violence campaigner and 2015 Australian of the Year, said the report (Victorian Royal Commission) 'was a turning point for society'. The National Council of Single Mothers and their Children Inc are calling for a 'turning point' for women and children nationwide.

In the interim, NCSMC will continue to engage in reviews and our key message is that safety is granted primacy and is elevated above all other considerations.

Our expertise is derived from our own research; collaboration with others and steeped in the rich, but often tragic experience of women, who have sought our service. It is from this unique, but clear vantage point that we present our submission and recommendations.

***We sincerely thank all the women who have trusted us to share their story and have taken the time to complete an emotional survey designed specifically to inform this submission.***

The Recommendations and submission overwhelmingly responds to two key points in the terms of reference:

- i. The paramount importance of protecting the needs of the children of separating families;
- ii. Families with complex needs including where there is family violence.

## Recommendations

1. End the 'presumption of shared care' a finding of the Inquiry Better Family Law System to *Support and Protect those Affected by Family Violence*.
2. Independent Children's Lawyer and the Court appointed Family Consultants/Assessors must meet professional standards, and that there are complaint and review mechanisms along with the process of peer review.
3. Determining a child's best interests, must be defined, measurable and guided by child welfare experts working with appropriate cultural frameworks and considering the many and varied circumstances.
4. The voice of each child affected is heard early in the proceedings, as well as ascertaining their response to proposed outcomes.
5. NCSMC supports the establishment of specialised family violence Courts and while this is occurring Courts must be made safer by abolishing cross-examination by perpetrators, the provision of private interview rooms, that Courts employ the use technology that allows witnesses to give evidence from outside the Courtroom, this would be an important step and deeply welcomed by rural and regional women. Ensure that entry and exit points as well as nearby parking is safe.
6. The Court to determine family violence allegations at the earliest practicable opportunity, so that the Court can make informed decisions regarding parenting and property matters.
7. Abolish private family consultants, to establish agreed fees for family reports, to establish standards and that for children's perspectives to be provided to Courts and that fee waivers are available.
8. Greater measures, legal protection and action needs to be enacted to eliminate the use of Litigation Abuse by preparators.
9. Safety for Self-Litigants. The socio-legal environment which is led by the personnel in the Courts must undergo accredited training in the effects and gendered dynamics of family and intimate partner violence including how it can continue after separation with financial and other forms of control and how all of this can influence self-litigants affected by such violence.
10. Financial Abuse: Protection, education and prosecution regarding financial abuse to be elevated noting that one in six Australian women have experienced financial abuse in an intimate partner relationship ([Australian and New Zealand Journal of Public Health](#), 2017). Most specifically we are seeking the following:
  - 10.1 The review to include broader legal issues that recognise the role of family violence in financial hardship, debt and the accumulation of fines and to make appropriate laws.

- 10.2 Child Support Debt is Financial Abuse. It is a deliberate action to control, abuse and cause financial stress to the receiving parent, which is mostly a mother, the primary carer where the child/children reside. NCSMC seeks lawful access by self-litigants, representatives of litigants, the Australian Tax Office and the Child-Support Agency to recover child-support debt and to prosecute the non-payer.
- 10.3 NCSMC expects that an outcome of the Family Law system review will ensure that Australians who are part of the child-support scheme lodge their taxation return annually and on time. This law must come with appropriate penalties, reporting and policing. It is a recommendation (7) from the child-support review and supported by the Australian government, but no action has occurred. The non-lodgement of tax returns is a deliberate act to control, abuse and cause financial stress post-separation. Please see Helen`s story on page 15.
- 10.4 The Child Support Agency can use a Section 72A notice to gain access to superannuation in very limited circumstances. It is completely inadequate and access to superannuation, where the superannuant has a child-support debt, must be accessible.

## Protecting the needs of the children of separating families

Child safety needs to be paramount in all the deliberations and outcomes within family law system. It is not acceptable for a child to be exposed to unsafe, abusive and/or toxic environments because as a society we have elevated the need for parental contact (usually fathers contact) over the welfare of the child. It is not tolerable to vilify the protective role of mothers in this manner and or to override the need for supervised contact because there is a dearth of services.

Simply and distinctly articulated by Rosie Batty, “You can’t be an abusive man and a good father” the Family Law system must accept this position and not deviate. Much is written about the ‘presumption that it is in the best interests of the child for the child’s parents to have equal shared parental responsibility’ or ‘shared parenting’ as it is commonly known. Shared-Time parenting after separation was an extensive change to the family law system introduced in 2006, empowered through legislation, and remains an ever-present onus for the Courts and socio-legal environment.

The Australian Government invested heavily in expanding family and relationship support services and research, at the same time as it introduced shared-parenting amendments (Smyth 2017) and despite this defining principle in 2014–15, only 12% of children in the general population is in a shared cared arrangement (Smyth 2017)<sup>1</sup>. This presumption is similar to the one that prior to the late 1960’s, said no woman could raise a child on her own (best interests of the child) and saw thousands of women compelled to give their children up for adoption.

The original misgivings held by NCSMC about the external impetus for ‘shared parenting’ was validated and after an extensive Inquiry, the realisation of very real safety concerns for women and children have resulted in both new and currently proposed legislation, giving greater focus to protection. However, remnants of this principle exist and the recent Federal Parliamentary Inquiry into a better Family Law System to support and protect those affected by family violence has made a raft of recommendations including the ‘end of the presumption of shared care’.

The Federal Parliamentary Inquiry into a *Better Family Law System to Support and Protect those Affected by Family Violence* received 126 submissions with a report tabled at the end of 2017. A critical recommendation was to ‘[the end of the presumption of shared care](#)’. It was the concern of the Committee, after their extensive Inquiry, to state that this presumption was ‘improperly relied upon

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<sup>1</sup> Smyth and Chisholm: Shared-Time Parenting After Separation in Australia: Precursors, Prevalence, and Postreform Patterns† Available from: <http://onlinelibrary.wiley.com/doi/10.1111/fcre.12306/full>

such that the safety of children is not being appropriately prioritised in many family law matters'. Rather than the presumption that the parents should have a shared parenting responsibility we suggest the better presumption is that children are entitled to live in a caring and nurturing environment where they are protected from harm and exploitation. If this is the starting point, we believe it will encourage parents to see their responsibility rather than their entitlement and to begin to work together to make this possible. It then also provides a framework for them to address any future difficulties that may arise.

**Recommendation: End the 'presumption of shared care' a finding of the Inquiry Better Family Law System to Support and Protect those Affected by Family Violence.**

### **The Voice of the Child**

The voice of each child affected is heard early in the proceedings, as well as ascertaining their response to proposed outcomes. Due consideration and weight must be given to their views, particularly where these differ from 'expert view' and we recommend a right of appeal for children who are not satisfied with the determination. We also suggest that more creative and child friendly methodologies are employed which could include approaches such as:

- a. Allowing submission of children's drawings and stories.
- b. Engaging skilled play therapists (particularly with young children and those whose disability inhibits their ability to speak) to determine their views on specific questions such as a proposal to live part-time with each parent.
- c. Engagement of a child advocate where there is any sense the child's view varies from the proposals under consideration and that as necessary, each child in the family have an advocate.
- d. Meeting with a child as for example, magistrates currently do, to determine the view and/or best interests of a child in respect to a name change without the consent of the second parent.
- e. Children, particularly teenagers, able to address the panel regardless of the consent of their parents.
- f. Use of video, audio recordings and other technologies that may facilitate the voices of children in a panel hearing.

**Recommendation: The voice of each child affected is heard early in the proceedings, as well as ascertaining their response to proposed outcomes.**

### **Independent Children's Lawyers and Family Consultants/Assessors**

A recurring theme reported to our organisations is the conduct of the Independent Children's Lawyer and the Court appointed Family Consultants or Assessors. We note their highly influential positions in determining parenting outcomes and strongly recommend that both these roles must meet a

professional standard, and that there are complaint and review mechanisms along with the process of peer review. A matter regularly reported to us is that the Independent Children’s Lawyer or Family Consultant, has not met with the child, and/or the time has been insufficient to have formed any valid position. We hear too that the lawyer/consultant has not represented the views of the child or children or, critically, the outcome has decreased the child’s safety and welfare.

Below are direct quotes regarding the lived experience of women and children with the Independent Children’s Lawyer or Family Consultant:

*“My son’s ICL refused to even look at the evidence against my ex-partner instead stating: “you chose to have the child with him”*

*“My children’s lawyer, the Independent one, did not meet with my children but decided that she could speak on their behalf. What the hell is that all about?”*

*“I’m terrified, my children are terrified, what will this process do to us and why won’t the children’s lawyer read the school reports. They have been in school for seven years (in total) and she has seen them less than one hour (three children). Honestly, I need more than one hour to get them up, breakfast and dressed for school, but she feels that she can make a decision. One hour!”*

*“The ICL that I met with shared with me that she barracks for the same football team as my ex! It was as if they were having a beer at the pub, a place where he’s very comfortable. I felt defeated before it started.”*

*“The Family Consultant arrived for my appointment in my ex’s car. They were talking and laughing like buddies and I felt so cheated. The upshot of all this is that the judge ordered me, my toddler and baby to move interstate without any family or emotional support, all because the family consultant told the Court I made up the violence and my ex needs to be near the children. Not even financial help to manage and now the kids are struggling in day-care 11-hour long days because of my work and commute in the city.”*

We draw to the Committee’s attention, the research: *The Independent Children’s Lawyers (ICLs): Who are they really representing?*<sup>2</sup> Their findings echo experiences women have shared with such as:

- Respondents were asked who the ICL met and interviewed. Despite the supposed role of the ICL to determine and advocate for the child’s best interests, only 12% of respondents indicated that the ICL solely met with and interviewed their child or children.
- 30% reported that the ICL did not meet or interview the child but rather met and interviewed the other parent (19%), themselves (7%), or both themselves and the other parent (4%). Another 9% indicated that the ICL met and interviewed the other parent and the child or children and 1% indicated they met and interviewed themselves and their child or children.

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<sup>2</sup> Available at: <http://www.familylawexpress.com.au/family-law-research-journal/wp-content/uploads/2015/10/Neither-Seen-Nor-Heard-Final-Report.pdf>



More astonishingly, only 10% of respondents reported that the ICL met and interviewed all parties, that is, the child or children, themselves and the other parent. But the most inconsonant finding is the indication by 38% of respondents that the ICL did not meet or interview anyone, neither the children, themselves, nor the other parent involved in the proceedings.

Findings of the study conclude that:

- ICLs were regularly and without proper transparency acting in manners inconsistent with their primary responsibility. This report recognises the importance of the principles upon which ICLs are founded and the potential for ICLs to play an important role in Australia's Family Law System and truly act as best interests advocates for children. But this report concludes that current inadequacies in ICL practice undermine these principles and potential, to a point where ICL practice is more damaging than it is supportive.
- It's essential that the shortfalls of the Independent children's lawyers (and Family Consultants or Assessors) are overcome and that the child truly has a chance for their voice, their wishes, their concern and their safety to take central place at a hearing. (Must add reference)

**Recommendation: Independent Children's Lawyers and Family Consultants/Assessors must have regard to the complex nature of determining a child's best interests, that it be defined, measurable and guided by child welfare experts working with appropriate cultural frameworks and considering the many and varied circumstances the Panel may need to consider.**

## Families with complex needs including where there is family violence

### Family Law and the courts are unsafe

The Australian community is starting to learn that 'she can't just leave' and that violence is complex and paralyzing. We are beginning to realise that separation in itself is a highly dangerous time for women and children. There is also a growing awareness that there are dangerous gaps in our crisis response. Women's cries for assistance go unheard, their experiences can be disbelieved or trivialised, and leaving does not equate to safety. The Victorian Royal Commission in its first week of hearings heard that women were fearful of being left homeless, that they did not want to put children through upheaval, the reality and pressures of a lack of money, fears about current and future employment, and fears of being harmed or killed all prevented victims from leaving an abusive relationship. Consequently, women are extremely traumatised before Court is a process, a reality.

NCSMC supports the establishment of specialised family violence Courts and while this is occurring Courts must be made safer such as the provision of private interview rooms, that Courts employ the use technology that allows witnesses to give evidence from outside the Courtroom. This would be an important step and deeply welcomed by rural and regional women. Until the Court environment is a safer place reviews must be taken regarding entry and exit points as well as nearby parking.

*My ex not only got to question me, for 4.5 hrs at our VRO trial (he was self represented), he also made soooooo many applications within the family Court. It got to the point where they told him to stop filing them as they wouldn't hear them, that's how bad it got.*

*I am over 2 years in Court - fled with a suitcase - no money to afford a lawyer. Have been self-representing and trying to settle out of Court, but to no avail. Trial in July 2018. Then after our trial, it started again. We finally got our final orders almost a year later and bam-Notice of Appeal. He would also email constantly and I became so anxious every time I heard my email alert. Complete and utter intimidation, bullying and control, but as long as he spun enough bs and mentioned the kids, the applications were accepted, only to be dismissed when heard and the evidence provided.*

**Recommendation:** NCSMC supports the establishment of specialised family violence Courts and while this is occurring Courts must be made safer; abolish cross-examination by preparators, the provision of private interview rooms, that Courts employ the use technology that allows witnesses to give evidence from outside the Courtroom. This would be an important step and deeply welcomed by rural and regional women. Until the Court environment is a safer place reviews must be taken regarding entry and exit points as well as nearby parking.

## Early and prompt protection

The *Inquiry Better Family Law System to Support and Protect those Affected by Family Violence* and recommends that the Court to determine family violence allegations at the earliest practicable opportunity, so that the Court can make informed decisions regarding parenting and property matters. Early and prompt detection is vital in seeking a safe outcome. NCSMC trusts that this recommendation will be transferred into the family Law review.

**Recommendation:** The Court to determine family violence allegations at the earliest practicable opportunity, so that the Court can make informed decisions regarding parenting and property matters. Access to mediation services be prompt with the first three-visits free.

## Court costs

The *Inquiry Better Family Law System to Support and Protect those Affected by Family Violence* is that the quality and cost of family reports did not escape scrutiny and there are recommendations to abolish private family consultants, to establish agreed fees for family reports, to establish standards and that for children's perspectives to be provided to Courts. These recommendations just seem sensible and practical as the Family Court should not be a pathway into financial hardship. NCSMC trusts that this recommendation will be transferred into the family Law review.

*"Went through Court between 2011 - 2013, after my ex kidnapped my then 2 year old daughter, threatened to kidnap my 5 month old, then threatened to kill us all. Turned up to Court a few times claiming that he just wanted to be a good dad, then missing a heap of Court dates because the judge kept giving him chance after chance. Cost me \$12k and eventually I was granted sole custody."*

*"My ex comes from a very wealthy family and once told one of our friends he would "ruin me". He dragged out Court proceedings (both Divorce and custody) for over 2 and a half years (I'm still paying for this 4 years later), and he and his partner made my life a living hell. All so I wouldn't come out with enough funds to buy a home for my girls and I, even though I'd been paying my own mortgages for 15 years... Financial and litigation abuse is just the same as other abuse."*

*"3 years later.... \$90k later and I'm still trying to move 1hr 30mins drive to be closer to my family!!!"*

**Recommendation:** Abolish private family consultants, to establish agreed fees for family reports, to establish standards and that for children's perspectives to be provided to Courts and that fee waivers are available.

## Litigation Abuse

The Australian and international [bench books](#) alert judicial officers to various forms of systems abuse or abuse of processes that may be used by perpetrators in the course of domestic and family violence related proceedings to reassert their power and control over the victim. Perpetrators of domestic and family violence who seek to control the victim before, during or after separation may make multiple applications and complaints in multiple systems (for example, the Courts, Child Support Agency, Centrelink) in relation to a protection order, breach, parenting, divorce, property, child and welfare support and other matters with the intention of interrupting, deferring, prolonging or dismissing judicial and administrative processes, which may result in depleting the victim's financial resources and emotional wellbeing, and adversely impacting the victim's capacity to maintain employment or to care for children.

**Recommendation: Greater measures, legal protection and action needs to be enacted to eliminate the use of Litigation abuse by preparators**

*"From 2005 until 2014 I never spent a year without being in Court."*

*"If they can't control you one way they will use another...4 years in Court for me, he went through 5 lawyers as they all wanted him to stop and refused to represent him."*

*"5 years later, I've spent over \$80,000 in legal fees so far with a hearing yet to come!!"*

*"FC file opened in 2011. Children's orders were finalised 2014 & I pulled the plug on the property issues in 2016 due to constant non-disclosure. We have had the same with CSA reassessments, then objections, changes of care etc etc. He still hasn't followed final orders re: financial side either."*

*"I'm reading this thread (NCSMC facebook page) on my way to my 28th Court hearing."*

## Financial Abuse

The Australian and New Zealand Journal of Public Health [states](#) that one in six Australian women have experienced financial abuse in an intimate partner relationship. Whilst not having enough money and being financially dependent on someone who controls the finances is a commonly cited reason as to why women stay in an abusive relationship. Economic abuse in the form of financial abuse that affects every single area of a woman and her children's life. It was positive that there are Victorian Royal commission had a focus on these broader legal issues with specific recommendations that recognise the role of family violence in financial hardship, debt and the accumulation of traffic fines.

*"Although my ex isn't my son's father he left me financially struggling with \$15000 of parking/driving fines. He used to hide them from me. When I had them all consolidated the lawyer's leaned on me heavily to plead guilty under some drug law so they would be heard in a special Court. Even on the day I questioned the barrister as I never have or had driven under the influence of ANYTHING. I had proof it wasn't me"*

*but it didn't matter!!! I ended up with \$1000 in fines/Court costs. But more than the money it upsets me that I had a perfect driving history before him and after him. I survived on 1 point for 3 years. I've been told if I want to fight it I will have to go to the county Court. The whole system is flawed especially with family violence. I suppose this is what you pay for when you can't afford to pay \$\$.*"

The Victorian Royal Commission has recommended a range of measures that would mean family violence is specifically recognised as a factor to be considered by energy providers, telecommunications services and the infringements system. It is now incumbent upon the federal government and through these review into the family Law to elevate and recognise the harm and frequency of financial abuse. Financial abuse does not stop at the point of separation. In fact, it can be the point in which post-separation financial abuse commences or escalates, often enabled by Government processes, a lack of concern despite evidence, and or a dearth of adequate laws.

## Child-support

Child Support debt is financial abuse. It is a deliberate action to control, abuse and inflict financial stress to the receiving parent which is mostly a mother, the primary carer where the child/children reside. The 2014 Inquiry provided the following facts.

Child-support Debt as at August 2014:

- \$977 million of the total debt is associated with domestic cases;
- \$388.6 million is associated with international cases;
- \$178.1 million of customer debt is less than 1 year old;
- \$608.9 million is 1 year and 5 years old;
- \$375.2 million is between 5 years and 10 years old; and
- \$203.3 million is older than 10 years.

Most child-support debt is domestic, \$1B plus is less than 10 years old which harms today's child. The National Council of Single Mothers and their Children Inc is clear that the 'stated debt' is airbrushed as it does not account for debt that arise within Private Collect Agreements. Despite several child-support reviews noting this concern and seeking greater accountability it is still assumed that child-support within Private Collect Arrangements is paid on-time and in full. A complete failure noting that 54%<sup>3</sup> of all child support agreements are private collect agreements.

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<sup>3</sup> Associate Professor Kristin Natalier, Dr Kay Cook, Dr Torna Pitman, 2015, *Single mothers' experiences with the DHS-CS 2015*, Flinders University.

*"I am owed approximately \$6,500 in unpaid child support arrears. The pittance I receive every month via the CSA does nothing to reduce this debt. If that amount was for a car loan or a credit card, you'd be expected to pay a lot more in repayments a month to get that debt paid off, not just have it hovering there. I personally hold the CSA partially responsible in enabling my abusive former partner to evade his child support responsibilities. They often accept bogus income estimates from him, further pushing up the debt! Yet when I dare round up the courage to do a change of assessment on him, I'm expected to prove all of my financial business to him, yet the favour is never reciprocated."*

*"My ex owes \$87,708. In child support alone. He has never paid the full amount owing or on time. I contacted CSA but they said there was nothing they could do."*

*\$84,000 in unpaid child support. It's the children that miss out*

*\$148,000 CSA debt over 10 years.*

*"I'm so sick of being told by CSA that I "have to be patient", or I'm "being too pushy by asking for information and updates" He lives it up, you let him get away with it, he hides a redundancy and because you didn't act in time, it's gone, he's not done the right thing for so long and I can barely pay the bills while he spends, shops, smokes, drinks and gambles-but I have to be patient!!!! If I'm not pushy, then who advocates for the rights of my children to be provided for by BOTH Parents??? Is that not my job as their mother?"*

*"I'm owed over \$33 000. I'm over struggling. My children suffer while their fathers live a happy, carefree, without a care in the world for the kids. Enough is enough."*

*"My debt currently sits at over \$14000 and at the current rate of repayment my youngest son who is currently 14, will be 41 by the time it is repaid."*

*"The legislation isn't tough enough on habitual non payers of child support payments as it is, on their children and the way they suffer in this country and it is a true reflection on how our government disrespect children's rights in Australia through their Child Support Agency*

## **Financial Abuse: Non-lodgement of tax returns within the child-support system.**

The 2014 child-support Inquiry found <sup>4</sup> that there were 435,425 child-support customers that had an outstanding tax return. It remains a deep concern that Australians who are customers of the child-support scheme purposely do not lodge a tax return to minimise and or avoid child support payments. The deliberate action is tax evasion and NCSMC are at a loss as to why this practice has been able to flourish for decades, despite continuous evidence regarding the affect.

NCSMC is not alone with our concerns and believe that it's time for action. The Child Support Inquiry (2014) found that there were 435,425 customers with outstanding tax returns<sup>1</sup>. After an extensive Inquiry the Committee recommended (Recommendation 7<sup>5</sup>).

The Committee recommends the Australian Government amend current policy to ensure that the penalties applicable to the non-lodgement or late lodgement of tax returns are enforced for all clients of the Child Support Program. The penalty should allow for defences where the individual has a reasonable excuse for non-lodgement, such as circumstances outside their control. Consideration should also be given to the annual indexation of the penalty. A working group comprising representatives of the Australian Taxation Office, the Department of Social Services and Department of Human Services should be established to recommend the size of the penalty.

The Government responded:

They 'agree in-principle with this recommendation'.

The Government will investigate the best ways to ensure the lodgement of tax returns as part of the support of the Child Support Program. This will include an examination of the way in which the current penalty regime is enforced and how it could be improved, including the regularity of enforcement, and the nature and size of the penalty.

It remains outrageous that the National Council of Single Mothers and their Children Inc still need to lobby and raise an unlawful matter, that with prompt and swift action it could make a resounding difference. We expect that an outcome of these family Law review will be to ensure that Australians who are part of the child-support scheme lodge their return turn annually and on time. This law must come with appropriate penalties, reporting and policing. To illustrate this point, I would like to introduce you to Helen and Gordon. Helen was the victim of domestic violence and Gordon was the perpetrator.

*Helen has a debt of approximately \$7,000 to the State. Gordon, the child's father, had not lodged a tax return in six years. Shortly after the child turned 19 years, Gordon lodged six tax returns at once. It was discovered that Gordon's estimated income as determined by the Child Support Agency was a significant underestimate for five of the six years. Consequently, Helen*

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<sup>4</sup> Department of Human Services, 28 August 2014, Submission 99 - 99.1 Supplementary Submission, *Lodgement Enforcement with the ATO*, Question reference number: 10

<sup>5</sup> Australian Government response to the House of Representatives Standing Committee on Social Policy and Legal Affairs report: August 2016, *From conflict to cooperation – Inquiry into the Child Support Program*

*had received, on paper, 'too much in family payments' for five years and was required to repay that debt. Helen has a low income and due to hardship, she entered a repayment plan, which has increased her financial distress. The tax returns confirmed that Gordon had five years of high income whilst the final tax return was low income as he had 'left his work'. The child-support debt owed to Helen which is in excess of \$35,000, has not been collected and Helen is sceptical her child will benefit, and she believes that there will not be any collection or transfer of that Child Support.*

This vignette demonstrates that six years after leaving an abusive relationship the preparator of Helen's abuse, as sanctioned by Australian laws, can still inflict financial harm. The matter of non-lodgement for tax returns is widespread and has deep ramifications. It erodes the efficacy of the child-support scheme which is based on having a timely and accurate income assessment. It is important to clarify that the individual debts estimated by CSA are only that – an estimate. CSA will accept a verbal estimated income amount (even if it is verbally provided year after year) – with no verification required from employers or in the case of self-employment, the ATO.

*"I'm owed approximately \$10,000 and counting. My ex husband hasn't submitted tax returns for the past 2 years. He sees our children on a regular basis and tells me 'why should I pay you money!!!"*

*"The money that is owed to me may not sound like a lot (roughly \$4000), however, my sons dad hasn't done a Tax return in over 10 years. My son's life and my life has been impacted in the worse way by his choices. 8 to 9 I shared a small bedroom with my son living with my mum in a unit."*

*"\$49,000 and counting. Haven't heard from him in years. He doesn't lodge tax returns. I can only hope it catches up with him."*

*"Over \$39,000. He never lodges tax returns. The one time he did, his returns were garnished, and we were paid a considerable amount against the debt (which at that point was around \$25,000). After that 'lesson', he will never file again, and the debt continues to grow. Why does the ATO not have more power to chase tax evaders?"*

*"I'm owed over \$23000 for two kids. He hasn't done a tax return on over 4 years! Was also working for cash and not declaring it and his boss refused to garnish his wages!"*

## **Superannuation: a legally sanctioned portal to hide financial reserves**

The Child Support Agency can use a Section 72A notice to gain access to superannuation in some limited circumstances. The limitations and challenges associated with accessing superannuation are completely inadequate and the existing laws and rules are out of step with community expectation and desire to protect children from hardship. Currently, superannuation can be accessed on the grounds of 'hardship', and this should extend to the holder's dependent children. The change could promote increased responsibility and payment of child support and it would reduce the need for women who have a child support debt to cash out their superannuation. **The family Law System**



**review should recommend increased powers to access superannuation where Australians have a child-support debt along with family trusts and other portals.**

*“Had to cash all of my Superannuation to provide for my children...didn't know that people with the debt could use the amount of debt to cash out their superannuation under hardship??? That is disgraceful! Talk about double dipping on your own children.”*

*‘Around \$380,000. My ex put all our money into an alleged Trust for the children prior to property settlement. The judge lauded him for this. Being a “responsible and intelligent money manager”. He put his brother’s name as director of the trust, so he could be one step from it. As soon as the matter was out of the Court system he took over management of the trust and bought himself a home and supplemented his income with income from the trust approx \$1.2 million in capital along with his wage which he decreased by 40% with salary packaging eg a fully funded car, daily food allowance, clothing, gym membership, health membership. None of which the CSA would tackle with him.’*

*‘Went to Court, could not access his extremely healthy super - meanwhile I’m owed over \$68,000 and one step away from homelessness.’*

It is Australia’s shame that women return to the place of abuse and to the hands of their abuser because of financial support. Close to 23% of women who completed a national survey faciality by NCSMC indicated that this was their reality, because they cannot afford to seek or stay safe due to an inadequate support system.

Australia can – and needs – to do much better, when women have the chance to see, grasp and hold onto safety there is a real hope. It is our collective role to remove the obstacle, reduce the gaps, challenge the myths, speak out and always respond with facts despite how confronting the reality can be. Above all else we must hear her voice and provide the assistance that will make a difference.

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