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The Family Law Amendment Bill 2024

The Non-Payment of Child Support as a Form of Economic Abuse Working Group (**Working Group**) is a national alliance of women's legal, financial counselling and economic rights organisations working to lift the national conversation on non-payment of child support as economic abuse. Our collective work arises out of and refers to Women's Legal Services Australia (**WLSA**) recent research paper 'Non-Payment of Child Support as Economic Abuse of Women and Children: A Literature Review' (2024) (**WLSA Child Support Literature Review**).¹

The non-payment, underpayment, delayed payment of child support and failure to pay shared costs (**various non-payment**) is a common act of family violence post-separation which brings with it a long tail of consequences for both women and children. This country has a national child support debt which nears \$2 billion.² This is evidence enough of the ease with which this form of economic abuse is perpetrated. A national response to economic abuse must be prioritised in both conversation and solution to create safer and more equitable outcomes for women and their children.

Women are often not able to safely challenge various non-payment. This is because it is underscored with risk. There are inherent and onerous complexities, administrative burdens and risk of harm for those who attempt to challenge various non-payment. The proof of failure to pay is mostly always their responsibility and often the methods of various non-payment are legal (e.g. reduction of taxable income, cash in hand work). This brings significant and often untenable risks to both mother and children, and leaves victim-survivors accepting long-term financial strain. The legal costs of challenging non-payment often also outweigh any likely financial benefit.

Women often also do not challenge various unfair orders. Again, this is because of fear of the perpetrator and the need to prioritise the children's wellbeing.

As noted in the 2017 Federal Inquiry into how Australia's family law system can better support and protect those affected by family violence, when assets are divided, those who have experienced family violence are more likely to accept unfair property settlements.³ We find this across various settlements and consent agreements. Our clients speak regularly of the unfair orders they have accepted to avoid further violence and aggression. We are aware of women who have agreed to a 50:50 split of parenting costs despite earning 5 times less income. These costs agreements last for years, and when coupled with various non-payment, have a significant impact on their financial security.

¹ Women's Legal Services Australia, 'Non-Payment of Child Support as Economic Abuse: A Literature Review', May 2024 <[Womens-Legal-Services-Australia-Child-Support-Literature-Review-May-2024.pdf \(wlsa.org.au\)](#)>.

² '\$1.69' billion cited in Department of Social Services submission to the Senate Poverty Inquiry, February 2023 and 'Child support failure costs children and Budget', *National Council for Single Mothers and their Children and Anti-Poverty Week* (Media Statement, 18 August 2022) <<https://antipovertyweek.org.au/wp-content/uploads/2022/08/20220818-Child-Support-failure-costs-children-and-Budget.pdf>>.

³ House of Representatives Standing Committee on Social Policy and Legal Affairs (2017), *A better family law system to support and protect those affected by family violence – Recommendations for an accessible, equitable and responsive family law system which better prioritises safety of those affected by family violence*, Commonwealth of Australia, p. 160 <[A better family law system to support and protect those affected by family violence \(aph.gov.au\)](#)>.

Even when child support is paid, women are also subject to outdated child support calculations. The Average Male Weekly Earnings have not kept up with inflation and the calculations do not reflect the cost of raising children. The limits on child support calculations impact women who will receive the bare minimum (if they are paid child support at all). This is coupled with the fact that children are living at home for longer, the economic environment is fraught, and children will seek ongoing financial support from the emotionally available parent. Children who have grown up witnessing economic abuse know better than to seek financial support from those who have perpetrated economic abuse against their mother. Often our clients will speak to their desperate need to find extra money to enable their children to realise their lives as their children will never receive that support from their father. This trajectory of life-long financial adversity is thus carried by mothers and children alike.

Comments on the Bill

The Working Group is relieved to read the recognition of non-payment of child support as a form of economic abuse of women and their children in the proposed *Family Law Amendment Bill 2024 (Cth)*.⁴ We are encouraged by the amendments in the Bill that will require the court to consider the economic impact of family violence as part of their assessment of current and future circumstances when dividing property and finances.⁵ This considers the financial realities of violence that does not end when the relationship does. It is often further embedded.

In particular, we are encouraged to see the inclusion of:

- **New paragraph section 4AB(2A)(b):** unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or the family member's child (including at a time when the family member is entirely or predominantly dependent on the person for financial support).

As the Explanatory Memorandum explains "...the unreasonable withholding of financial support that is needed to meet the reasonable living expenses of the family member, or the family member's child might constitute economic or financial abuse. **This could include the persistent non-payment of child support.**"⁶

- **New paragraph section 79(5):** For the purposes of subparagraph (3)(b)(ii), the court is to take into account the following considerations, so far as they are relevant:
 - (a) the effect of any family violence, to which one party to the marriage has subjected or exposed the other party, on the current and future circumstances of the other party, including on any of the matters mentioned elsewhere in this subsection;
 - ...
 - (f) the extent to which either party to the marriage has the care of a child of the marriage who has not attained the age of 18 years, including the need of either party to provide appropriate housing for such a child;

⁴ *Family Law Amendment Bill 2024 (Cth)*, section 4AB(2A).

⁵ Explanatory Memorandum, *Family Law Amendment Bill 2024 (Cth)*, Schedule 1 – Property reforms, Part 1 – Property Framework, Division 1 – Main property framework amendments, Item 3 – after subsection 79(4), paragraph 78.

⁶ *Ibid* and Explanatory Memorandum, *Family Law Amendment Bill 2024 (Cth)*, Schedule 1 – Property reforms, Part 1 – Property Framework, Division 1 – Main property framework amendments, Item 3 – after subsection 4AB(2), paragraph 19.

(g) commitments of each of the parties to the marriage that are necessary to enable the party to support themselves and any child or other person that the party has a duty to maintain.

We also welcome the inclusion of a new definition of ‘companion animal’ in sub-section 4(1) of the *Family Law Act* and inclusions of sub-sections 79(6) and 79(7)(d)-(h). In particular, sub-section 79(7)(g) is explained in the Explanatory Memorandum as “demonstrated ability ... to financially support and care for the companion animal in the future.”⁷ We understand this to be the lived experience of many women post-separation who are not paid child support. This was exemplified in a case illustration in the WLSA Child Support Literature Review.⁸ For children, animals are critical support systems, particularly post-separation but they are often left as the mother’s financial burden.

Conclusion

The Working Group is encouraged to read the referencing to non-payment of child support and recognition of long-term financial strain on victim-survivors across the amendments. These changes should prompt our institutions (finance, accounting, legal and government) to acknowledge the likelihood of various non-payment behaviours perpetrated via their systems, and actively work to interrupt and remedy this abuse.

Turning a blind eye to the systems that enable various non-payment behaviours allows the weaponisation of institutional systems to persist. We must be alert to the fact that violence does not end at the breakdown of the relationship, and in fact economic abuse may increase when the partnered relationship has formally ended. Particularly economic abuse via various non-payment.

This submission is supported by organisations represented by the logos below, as well as a range of individual advocates including those with lived experience.

Kind regards

Dr Jennie Gray
(on behalf of)

Non Payment of Child Support as a Form of Economic Abuse Working Group



⁷ Explanatory Memorandum, Family Law Amendment Bill 2024 (Cth), Schedule 1 – Property reforms, Part 1 – Property Framework, Division 1 – Main property framework amendments, Item 3 – after subsection 79(4), paragraph 109.

⁸ Women’s Legal Services Australia, ‘Non-Payment of Child Support as Economic Abuse: A Literature Review’, May 2024, p. 24 <[Womens-Legal-Services-Australia-Child-Support-Literature-Review-May-2024.pdf \(wlsa.org.au\)](https://www.womens-legal-services-australia.org.au/child-support-literature-review-may-2024.pdf)>.