

***“The careless crisis”
Child rights in Australia***

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

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The National Council of Single Mothers and their Children Inc welcomes the opportunity to engage with the Australian Human Rights Commission on child rights in Australia. It remains our view that Australia cannot report in a meaningful manner on the “state of the child” when there is an absence of national-wide targets and strategies that, at a minimum, seeks to uphold the Convention on the Rights of the Child. Our engagement, raising our concerns, is imbedded in the hope that the plight of children in struggling sole parent families will be better understood and that it will result in progressive changes. This submission speaks to the effect of decisions and policies and the accumulative affect when there are no such national strategies or targets. It is our view that this is a ‘careless crisis’, and it has concerning outcomes. Notwithstanding this, the matters that we identify can also be rectified, and we offer solutions. Our submission speaks to the following articles:

The Right to Social Security

Article 26

- 1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.*

Article 27

- 1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*

The Right to Safety

Article 3

- 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
- 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*

The Right to Child Support

Article 27

- 2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.*
- 3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to*

implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.

4. *States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.*

A National Child-Antipoverty Strategy

Australian children have the right to access social security, and at a level that prevents the child from experiencing the harsh reality and the consequences of living in poverty. This expectation speaks directly to Preamble of the Convention on the Rights of the Child.

‘Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding’.

The National Council of Single Mothers and their Children Inc believes that Australia has abrogated their responsibility to children, especially children residing in sole parent households. The last time that Australia elevated child poverty as a national issue was in the late 1980’s. The key learning from this policy decision was the ability to reduce poverty in a prompt and effective manner. The national focus to reduce child poverty resulted in a reduction of child poverty by [30%](#) in five years. Since this period, child poverty has not gained the attention or priority of Australia. Australia is bereft of a National Child Antipoverty Strategy. There are no set targets, there are no measurements of where poverty is entrenched, and/or the deprivation that is experienced by children as a direct consequence of living in poverty. NCSMC endorses the inclusion of a Human Rights Compatibility Statement that accompanies new Legislation. However, until this statement is prepared by an independent body the robustness of this statement remains questionable.

The rights of the child to Social Security

Every day we see first-hand the positives when the system works as a safety net and the horror when children fall through the growing holes. Low income, sole parent families have borne the brunt of harsh cuts in successive budgets, they are now living with the consequence of not accessing the Parenting Payment Single if the youngest child is eight years or older, including women affected by domestic violence. The findings of the [ACOSS Poverty Report \(2016\)](#) is disturbing, but for NCMSC it was predictable. The report found that child poverty is on the rise with 731,300 children under the age of 15, which equates to 17.4% of all Australian children living below the poverty line.

Our greatest alarm is for sole parent families as the report found that 40% of children who reside in a sole parent family will have a childhood in poverty. The vast majority ([83%](#)), of one parent families with children or dependent students were headed by a single mother are over-represented on the ‘loss side’ of the ledger. It’s important to note that child poverty has increased despite 25 years of economic growth, thus indicating a failure in our policy settings.

[Research](#) by the Australian National University Centre for Social Research and Methods has examined the cumulative impacts of cuts made since 2005. The ‘Welfare-to-Work’ program reforms main policy was to move single parents from the Parenting Payment to the Newstart

Allowance. This change meant a lower payment rate and a lower rate of indexation where the youngest child was 8 years of age or older.

- A family with no private income and two children over the age of 8: policy changes since 2005 have left them around \$5,750 a year worse off or about 17.2% by 2018.
- A single parent who works three days per week on the minimum wage will be \$6,391 worse off, or 14.8%.

Overall, due to lower government benefits and lower payment indexation many single parent families are considerably worse off as a direct result of policy change enacted by various governments since 2005. The modelling used a rental amount of \$250 per week (a very conservative amount). The task for women to enter paid work and to grind a way out of poverty is severely hampered due to Government decisions. It is parents in employment that are the most financially disadvantaged by these 'reforms', as revealed by the ANU modelling. Financial returns from paid work are much less on Newstart due to lower thresholds, for example a sole parent with three children can earn and retain \$118.00 per week on Parenting Payment Single but when on Newstart it reduces to \$52 per week. In evidence presented to the Joint Parliament Human Rights Committee the National Welfare Rights stated that a mother working 15 hours per week on the minimum wage would need to work 28 hours per week to retain the same earnings once forced across to Newstart. In the most report analysis of from the [ABS](#) they found that employment of parents in one parent families generally increased with the age of the youngest dependant, from 40% (youngest dependant under 5 years) to 72% (youngest dependant 15–24 years old). This again illustrates the foolishness to deny access to the Parenting Payment once the child is eight years old. The previous eligibility requirements of access until 16 years is more aligned to the reality of undertaking paid work whilst meeting the demands of sole parenting.

In 2012 the Joint Parliamentary Committee on Human Rights recommended a review in 12 months, but at the time of writing this submission such a review is still to occur. The National Council of Single Mothers and their Children Inc have lodged an Individual Complaint of the Optional Protocol of the United Nations Convention on the Elimination of All Forms of Discrimination against Women. To the best of our knowledge it is the **first Individual Compliant made by an Australian Victim**. In January 2018, the United Nations contacted the National Council of Single Mothers and their Children Inc and informed them that the complaint had been registered and that they are writing to the State.

Single mother families affected by domestic violence do not have an exemption and are forced to survive on Newstart if their youngest child is older than 8 years. In May 2017 NCMSC wrote a submission to the [Parliamentary inquiry into a better family law system to support and protect those affected by family violence](#). This engagement included a national online survey known as *Domestic Violence and Economic Security*. The survey found that 22% of respondents had returned to their place of abuse and to the hands of their abuser because they did not have access to adequate financial support.

8 years is too young: It is important to note that each Australian State and Territory have differing child protection laws and they are complex. There's no one law in Australia that says at what age you can or can't leave your child home alone. In Queensland if a parent/guardian left a child under 12 years of age for an 'unreasonable time' without supervision a misdemeanor could have been committed. However, the Legislation also states that whether the time is unreasonable depends on all the relevant circumstances. Elsewhere in Australia, the law says you're legally obliged to make sure that your child is properly looked after. Parents are expected to provide food, clothing, a place to live, safety and supervision. Single Parents, mostly women, cannot reconcile the Government's Welfare to Work Legislation with the state and territory child protection system.

The National Council of Single Mothers and their Children Inc strongly urges the Australian Human Rights Commission to use its mechanisms to strongly raise this concern and to seek a remedy. Ongoing reports and surveys show alarming consequences for children. The most recent report that NCSMC commented on was the 'Report – Rumbling tummies: Child hunger in Australia'. This report found that one in five Australian households with children under the age of 15 have experienced food insecurity over the last 12 months.

Child Support: The child's right to financial support from both parents

Child Support has the potential to increase economic resilience for a sole parent family and contribute to the essentials for children. In 2014 the child-support program underwent a review and this submission refers to the published findings. The Department of Human Services informed the Inquiry that there were around 1.3 million parents involved in the Scheme and that in 2012-13, the Scheme covered about 1.1 million children. It also stated that younger children (693,000 aged 0-12 years) than older children (393,000 aged 13 or older) were part of the scheme¹. These figures appear consistent as current statistics. The Department of Human Services in its [2015-16 Annual report](#) stated that it had 'worked with separated parents to transfer \$3.5 billion to support approximately 1.2 million children'. This signals the importance of a scheme as it touches close to a quarter of Australian children (under 18 years) thus indicating that if the scheme was working as intended, Australian children would be the beneficiaries.

Non-compliance

Department of Human Services in their submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs outlined the child-support owed to children 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 between 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 years².

It is important to note that commentators do not accept the stated debt figures as correct and describe the statistics as '*air brushed*'. The department only records and reports on the

¹ Department of Social Services and Department of Human Services, July 2014 Submission 99 p 6, Parliamentary Inquiry into the Child Support Program

² Department of Human Services, Supplementary Submission (99 - 99.1) Child Support Programme Parliamentary Inquiry into the Child Support Program,

debts that arise from a Child Support Collect agreement - which is 46% of their cases, and not debt from Private Collect (54%)³ as the Department *assumes* that payments within Private Collect are transferred in full-and-on time. A proposition which is without any fact and is refuted based upon NCSMC research, academic research and the findings from the Inquiry.

The National Council of Single Mothers and their Children Inc are deeply dismayed that after four decades of operation the child-support scheme has failed to operate 'in the best interest of the child' and that the level of child-support debt is completely unsatisfactory. A corrective a much-needed change would be the implementation of State-guaranteed child-support. The Child Support Agency could then ensure that the enforceable Child Support liability is paid to the payee whilst they collect the payments from the payer. Resultant in a payment that would occur on time and in full irrespective of the payer's approach. This would immediately remove the financial impact of non-payment, late or sporadic payments upon the resident mother and their children. Furthermore, it would sever the use of Child Support as an avenue to practice abusive and controlling behaviour. We note that mothers who have left violent men state that Child Support debt can be an intended outcome from abusive and controlling ex-partners, as a community we are starting to realise the breadth and effect of financial abuse.

This policy was a recommendation from the Inquiry and can be found in the Committee's report, 'From conflict to cooperation – Inquiry into the Child Support Program'. The Committee recommends that the Australian Government:

- examine the social and economic impacts in other jurisdictions of a limited child support guarantee system, conduct modelling to assess if there is capacity to apply such a limited guarantee to the Australian context, and then consider the feasibility of conducting a trial of a limited guarantee for either vulnerable families or for a random sample of Child Support Program clients). [Recommendation 25](#) (pg 14)

Australia is still to ratify the Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance. This convention provides procedures for applications seeking:

- The establishment of maintenance obligations;
- The recognition, enforcement and modification of maintenance obligations decision;

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

- Gives effect to Article 27(4) of the UN Convention on the Rights of the Child.⁴

The National Council of Single Mothers and their Children Inc urges the Australian Human Rights Commission to request that Australia signs the Hague Convention (2007) and seeks a trial of 'State Guaranteed child-support' noting that the current process is failing Australian children.

⁴ Maja Groff, 1st of May 2018, *The Hague 2007 Child Support Convention*, Hague Conference on Private International Law.

The Right to Safety

Child safety and well-being needs to be paramount in all the deliberations and outcomes within family law and the socio-legal environment. 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 acceptable to vilify the protective role of mothers in this manner. Furthermore, and in the circumstances that “supervised contact” is identified to be in the “child’s best interest”, it is not acceptable to override the need for ‘supervised contact’ because there is a dearth of contact services.

Simply and distinctly articulated by Rosie Batty, “You can’t be an abusive man and a good father”. 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 the 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). 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 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. The National Council of Single Mothers and their Children Inc support the

recommendation to end the 'presumption of shared care' and that children safety be granted primacy in all child custody findings and deliberations.

This position has further been validated through [Interviews](#) with children and young people whose fathers use violence which was undertaken by the University of Melbourne's Research Alliance to End Violence Against Women and their Children ([MAEVe](#))

“There is an assumption that a man who uses family violence can still be a valuable father, but the evidence doesn't support that and this study doesn't support that”.

The National Council of Single Mothers and their Children Inc has recently completed a submission to the Family Law System and listed a raft of recommendations including our unequivocal support for a Royal Commission as led by Bravehearts. Notwithstanding this position, an immediate and progressive outcome would be the abolishment of the 'presumption of shared care' in practice, in law and in principle. It was and will remain a dangerous precedent to elevate parental contact over the physical; the emotional, and the well-being of the child.

The National Council of Single Mothers and their Children Inc urges the Australian Human Rights Commission to consider the Inquiry into a *Better Family Law System to Support and Protect those Affected by Family Violence* and support the recommendation to 'the end of the presumption of shared care'.