

The Secretary  
House Standing Committee on Social Policy and Legal Affairs  
Inquiry into the Child Support Program  
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Dear Sir/Madam

## **House Standing Committee on Social Policy and Legal Affairs Parliamentary Inquiry into the Child Support Program**

The Lone Fathers Association (Australia) Inc makes the following submission to the House Standing Committee on Social Policy and Legal Affairs' Parliamentary Inquiry into the Child Support Program.

The submission has been prepared at short notice, and it may be necessary to submit further material as the Inquiry proceeds.

### **Involvement by the LFAA in the development of the Child Support Scheme**

The original Australian Child Support Scheme was introduced in 1989. I, as National President of the LFAA, was one of six consultants who designed the Scheme under the chairmanship of Justice John Fogarty. Other consultants in the design of the Scheme included Diana Bryant, a barrister at that time and now the Chief Judge of the Family Court of Australia,

Following on the design of the scheme, I was asked by the then Labor Social Security Minister Mr Brian Howe (later Deputy Prime Minister) to act as a consultant assisting the Government in implementing the Scheme in Australia. Mr Howe stated I was the only father in Australia known at the time to have had sole custody of four young children.

Mr Howe commissioned me to travel around Australia for the following 18 months running workshops and explaining the new Child support Scheme to organisations, groups, and the public. I covered all capital cities and nearly all major towns.

The Australian Scheme was designed using American models - principally the Wisconsin and Colorado Schemes. But as years went by the Australian scheme was modified with many amendments, as some people saw it as being harsh and unfair.

A Parliamentary Inquiry into the Scheme was held in 1994. Roger Price, a Labor MP, chaired the Inquiry, which recommended many excellent and very fair changes.

Prime Minister Paul Keating prevented the changes from taking place, stating that his government would lose the female vote and the elections if they were allowed to become law. Mr Price and many other Australians were deeply disappointed at this failure to take advantage of the available opportunities.

After the subsequent change of government, Prime Minister John Howard resolved to have a Parliamentary Inquiry into the scheme in 2004. I was personally asked by Mr Howard to be a member of the Steering Committee guiding the work of the Ministerial Task Force.

I accepted, and suggested a number of far reaching recommendations which were agreed by the Task Force. Professor Patrick Parkinson, Task Force chairperson, reported that the LFAA had been instrumental in helping the Task Force, drawing on our knowledge of the Child Support scheme over many years.

I was subsequently asked by Minister Mal Brough to repeat the same exercise that I had carried out for Brian Howe. So again I spent another 18 months travelling Australia running workshops and educating people on the scheme and the new changes. The LFAA was also given funding for the Peak Body office that we currently operate.

## **The 2007-2011 reforms to the Child Support Scheme**

### ***2007-2008 – improvements***

The 2007-2008 reforms to the Child Support Scheme arising out of the work of the Task Force represented a major improvement on the previous scheme. Prominent amongst those improvements were the move to equal treatment of resident and non-resident parents with regard to the self support component of income, recognition that the proportion of income spent on children varies with income level, and more equitable handling of the situation with regard to the children of second families.

As indicated above, the reforms drew extensively on analysis done by the LFAA and other single parents' groups.

### ***2010-2011 – controversial changes***

There were, however, some further amendments to the scheme, passed by the Government of the day, which were more controversial and have caused a number of major problems.

The further amendments made by the Government to the scheme included provisions introduced in 2010 which have the effect, in some circumstances, of allowing the CSA to ignore court orders designed to penalise denial of access, and to increase child support assessments as a result.

Amendments in family law introduced in 2011 have had the effect of encouraging divorcing parents to make false or exaggerated accusations of domestic violence against their ex partners with a view to reducing or eliminating custody and access. The LFAA warned the Parliament in 2011 that the above legislation would prevent many children from benefiting from contact with a loving parent, and would in some cases lead to parental suicides. That warning has subsequently been borne out by events.

The LFAA wishes to put forward some practical suggestions about the establishment of an administrative mechanism which would go a long way towards solving the above problems. These suggestions form a key focus of our submission.

### **The parallel issues of child contact and child financial support**

Historically, in Australia, two key problems of law enforcement have arisen in the aftermath of divorce. These are (1) non-payment of child support (usually, but not always, by dads) and (2) denial of access (usually, but not always, by mums). The first of these relates to financial support of children and the second to children's emotional and developmental support. Both problems arose basically because the family law system as a whole lacked the resources and determination to follow up on the decisions made by the courts in these two areas.

The problem of enforcing child (financial) support has now to a large extent been solved through the establishment of a large and well-resourced administrative machine and strong supporting legislation.

There has, however, been *no corresponding administrative mechanism* established to deal with the denial of access problem and provide a proper balance in the family system as a whole.

A significant cultural change has been occurring since 2006 as a result of which Australians are increasingly accepting that shared parenting is a new norm. The number of cases of access denial continues, however, to be high, with the result that hundreds of thousands of children continue to miss out on the love and guidance of one of their parents (usually the dad).

The issues being raised in the present Inquiry relating to compliance, flexibility, alignment (of child support) with other family assistance, linkages, and outcomes must therefore be examined in the context of child contact as well as child financial support.

## Identification of issues

The above issues have been analysed and discussed by the LFAA and other single parents' groups over many years via conferences, workshops, newsletters, and the Internet.

As examples, the LFAA National President in September 2012 gave presentations as a guest speaker on child support and related family law matters to Parents Without Partners Conferences in Tasmania (2012), at Tullabudgera, (2013), and at Adelaide (2014), and to the LFA Adelaide Branch (2014), and other Branches.

Key issues discussed at those Conferences included:

- Denial of parental/child access, misuse of domestic violence laws, and single parent suicides
- Cost of keeping a child
- CSA overriding court orders
- CSA decisions made without full information
- CSA Case Manager attitudes
- Not being able to talk to a CSA supervisor, and being told after providing information orally that no taped record had been kept
- Closure of CSA outlets
- Complaints about the SSAT.

As Conference attendees saw it, problems had arisen as a result of inability or failure of the family courts to enforce their own orders, exacerbated by poorly designed provisions on domestic violence in Commonwealth legislation, and the absence of adequate administrative support.

In spite of arguments to the contrary, the amount of access by a parent to his/her children and the amount of child support paid by that parent are, in practice, linked. The less access there is the more child support is required to be paid by the parent. This needs to be recognised as a fundamental feature of the child support scheme under current arrangements.

The failure on the part of the family courts to enforce their own orders on access (in sharp contrast to child support) is, as indicated above, due to a large extent to the lack of any effective administrative structure to enable follow up and correct breaches.

The rights of the children to know the love and guidance of both of their parents are in many cases ignored, with serious consequences for the future lives of the children.

Although the Commonwealth Government funds both the Family Court and the Child Support Agency, these two government bodies work against each other as far as enforcement of access orders is concerned.

Both the Chief Justice of the Family Court and the Chief Federal Magistrate in discussions with the LFAA have made it clear that the CSA is not empowered to

overrule court orders. To the extent that the CSA is expressing a contrary opinion to clients, it is therefore providing incorrect advice.

After a period of 14 weeks with no access allowed, the CSA increases the child support assessment. This puts heavy pressure on the parent who is paying child support and also has commitments to pay for legal assistance to enforce the access order. The Government excuses its inaction in the case by asserting that it cannot interfere with court decisions, while at the same time hounding the payer to pay more, often with threats.

The problem has been exacerbated by the 2010 legislation designed to introduce greater uniformity in administration between Centrelink and the CSA.

Many people at the (PWP) Conferences above believed that through inappropriate legislation the Government is supporting a serious form of child abuse, given that (in the vast majority of cases) children denied contact with a loving parent would have greatly benefited from that contact..

## **An LFAA proposal for reform of law relating to access**

### **Policy deliberations**

A legal Forum was held in about 2008, attended by both the Law Council of Australia and the then Attorney General, at which issues relating to denial of access were discussed.

Little of value appears to have resulted over succeeding years from those discussions.

To improve the lives of the children affected by access denial much remains to be done, as progress in recent times has been at a snail's pace.

The LFAA has, however, been heartened by a recent commitment from the current Attorney General to the passing of legislation which will strongly discourage denial of access in defiance of court orders. The LFAA has further been heartened by information from the Attorney's office that work on that task has been under way for several months.

Given its role as an advocate for single dads and their children, the LFAA wishes to contribute to this process by suggesting what should be done to solve this serious problem for Australian families.

### **The proposal**

Having studied the Family Law Council's reports entitled "Child contact orders: enforcement and penalties, June 1998" and "Improving post parenting order processes, October 2007" and the report by the House of Representatives Standing Committee on Family and Community Affairs entitled "Every picture tells a story, December 2003", in the context of the LFAA's own ideas on the subject, and noted the results of LFAA discussions with the Federal Magistrate's Court/Federal Circuit

Court and the CSA, the LFAA puts forward the following detailed proposal for a mechanism to deal effectively with the enforcement of access orders.

### **Essential elements in an improved system**

Essential elements in a system for dealing with the enforcement of child contact orders should include the following.

### **A Child Orders Enforcement Agency (COEA)**

A Child Orders Enforcement Agency should be established, in accordance with earlier recommendations by:

the LFAA, in evidence to the House of Representatives Standing Committee Inquiry in 2003 to the effect that:

“An effective administrative mechanism for enforcing court orders is essential to restore balance in a system which rigidly enforces child financial support obligations, in part for the benefit of residential parents (and with draconian child support percentages in some cases), but effectively ignores enforcement of contact orders designed to provide for the emotional support and guidance of their children by non-residential parents”, and

a similar recommendation by the Family Law Council in October 2007 that:

“The Government establish a child orders enforcement agency, or in the alternative that the government provide additional specified funding to enable the State and Territory legal aid commissions to assist parents to bring applications about serious contravention to parenting orders before the family courts”.

### **Top-level structure of the COEA**

A senior legal person with appropriate qualifications and personal attributes and skills should be appointed as Chief Executive to head up the COEA. The COEA, although very much smaller than the CSA, should in principle have the same status.

The CEO COEA should be supported in his/her administrative and decision-making roles by a senior psychologist and a senior counsellor/social worker, and other support staff as necessary.

### **What the Child Orders Enforcement Agency (COEA) would do**

Where a complaint has been received that, in defiance of court orders, access is not being provided, or not been provided on a satisfactory basis, the COEA would examine and evaluate the case and provide prompt advice to the Federal Circuit Court (or in some cases Magistrate’s Court) dealing with the case.

In order to make maximum use of the staff and other resources available within the Australian Public Service, the COEA could be established initially as a semi-autonomous area within the Department of Human Services, alongside the Child Support Agency (CSA), and subsequently, if necessary “hived off” as an independent area when it was firmly established. During the early stages, existing staff from the Department of Human Services engaged in investigation could be seconded to duties in the COEA area. This would create a capability for establishing as a matter of fact whether access has or has not been provided in accordance with court orders.

### **Views of the Law Council of Australia**

The Law Council of Australia has suggested that access issues where there clearly is a recalcitrant party are relatively easy to deal with, and the “difficult” cases are the complex, confused, borderline, ambiguous cases. The former group of cases would be the main area of operation of the COEA.

The Law Council sees merit in courts being able to draw on the knowledge and expertise of the CSA in relation to access ordered and access actually provided in particular cases, but has expressed some reservations about the adequacy of the information available to the CSA in some other cases.

The Council has pointed out that under the Australian system there would need to be a sufficient formal recording of proceedings to provide a proper basis for any subsequent appeals against decisions reached.

### **COEA data base**

In order to carry out its functions, the COEA would compile and maintain a database on amounts of access time specified in court orders and parenting agreements and amounts provided in cases where there was a major dispute. It would organise this information in a way which would permit it to provide useful advice to any enforcement process that might be required.

### **Auxiliary role for the CSA**

The CSA has in informal discussions with the LFAA referred to the considerable amount of information that they hold in relation to court-ordered access and access being provided, and suggested that they would, in principle, be able to assist in cases particularly where there is non-compliance with payments, bearing in mind their responsibilities for transfer of child support.

### **Powers of the Courts**

The then Chief Federal Magistrate, now Chief Judge of the Federal Circuit Court, has suggested in informal discussions with the LFAA that the Court needs additional powers in order to be able to effectively deal with cases of non-compliance with child access orders.

These additional powers could include a new type of order called a Contact Order, which would provide for the immediate return of a child in cases of unilateral

withdrawal (without consent or court authorisation) of a child by one parent from the care of the other. The return of the child should be assisted, if necessary in extreme cases, by the police, and there should in any case be a review of the matter by the judge or magistrate within two weeks.

Funding should be provided to ensure that in future higher priority is given in the courts to the enforcement of contact orders. In this context, lessons should be learnt from the example of States and Territories which have appointed Magistrates to deal exclusively with domestic violence cases in order to ensure that these cases are dealt with promptly and effectively.

### **Family Court of Australia**

The “wild card” in the above, which has the potential to make the system work indifferently, is the Family Court of Australia. There may be a need to provide strong legislative guidance to the Court and monitor any aberrant judgments on its part.

### **The Danish system – how to enforce court orders speedily, inexpensively, and effectively**

Of other countries’ systems examined, one in particular that appears to work particularly effectively is the system employed in Denmark. Although the Danish experience might not be able to be directly translated to Australia, because of constitutional differences, there are many features from the Danish system which could in practice be adopted here. These features, with appropriate modifications, could be combined with the COEA model described above.

The Danish experience demonstrates that informal processes that are:

- prompt,
- office-based rather than court based,
- involve minimal paper work, and
- without cost to the parties,

work best in this area.

Determinations in relation to contact (as well as determinations of child support, etc.) made by County Government Offices in Denmark are enforced by a special court, which can levy fines of several hundred dollars *on each occasion* where an order has not been complied with after a warning. Counselling is made available to the parents, and usually problems (such as those based on a misunderstanding of the orders) are resolved without the need for penalties.

The use of *on-the-spot fines* in Denmark is probably the most important single difference between Australian and Danish practice, as the fines have immediate effect, are readily repeatable, and (like the Child Support system in Australia) provide a *direct and speedy financial link* between default and corresponding penalty.



The adoption of a similar model in Australia, employing the COEA as both administrative backup and “prosecutor” before the court, would provide a necessary balance in relation to the operations of the CSA.

The arrangements for dealing with failure to make access available would have many features which are already familiar in the system for dealing with failure to make payments of child support.

For example, on-the-spot fines for access denials would correspond to the financial penalties levied by the CSA for late payments of child support. Also, the cost of enforcing orders would be lifted from the shoulders of the parent who is entitled to the access, just as now the cost of enforcing payment of child support is borne by the taxpayer rather than the parent who is the recipient of that support.

The COEA could effectively make determinations in many cases, as the CSA does.

It would be expected that the Australian Federal Circuit Court would in a great majority of cases accept the advice put forward by the COEA.

The above suggestions would, to an extent, follow the *spirit* of recommendations made by the House of Representatives Standing Committee in 2003 in relation to a proposed “Families Tribunal”, given that they would involve close consultation between legally qualified persons, psychologists, and social workers. As such, they could be expected to attract strong community support. They would also at the same time provide a firm legal and constitutional basis for the proposed arrangements.

### **Others involved**

The legal profession has since 2006 been subcontracting more dispute resolution tasks to “outside” services.

Family consultants or other similar advisers from a similar or related background can be used to assist the courts in deciding access matters, and this already happens in many cases.

Federal courts pass responsibility for the enforcement of their decisions on to federal officers, including the federal police, but those tasks can be subcontracted if necessary to State police, e.g. in the more remote regions. The effectiveness of subcontracting of this kind has been mixed, with State police being very helpful in some cases but less so or not at all in others.

### **An integrated system**

The above proposal draws together and integrates what appear to be the best ideas which have been put forward over the last five years for an overall system which would effectively enforce child support orders.

## **Suicides by CSA clients**

The CSA has a difficult role to play in being a debt collection agency while also at the same time having a duty of care towards the people it is dealing with. That role is made more difficult by controversial legislation passed in 2010 by the previous Government putting the CSA in conflict with the family law courts in relation to enforcement of court orders.

The following information on issues surrounding suicides of single parents is accordingly provided as part of the present submission.

### **Coronial inquiries**

Coronial inquiries are held in cases where a person dies unexpectedly and the cause of death is unknown or the death occurs in a violent or unnatural manner.

Suspected suicides are therefore inquired into. Findings in such cases may indicate that the death was due to natural causes, or an accident, or the result of an assault, or suicide, or that it was an “event of unknown intention”.

### **Number of suicides**

Male suicides in Australia are three to four times as numerous as female suicides. According to the ABS, total figures for Intentional self harm for Australia for 2011 were 1,726 males and 546 females.

### **“Events of unknown intention”**

ABS figures for “Events of unknown intention” for Australia for 2011 were 321 males and 149 females.

Some of these cases may actually be suicides but a coronial finding to that effect was not made because (1) it was considered difficult to determine the facts with certainty and/or (2) there was a coronial sensitivity to the effect on the deceased person’s family of such a finding. In some cases a coronial finding of “accidental” may have been made and in others the finding may have been left open.

There is anecdotal evidence that some motor vehicle crashes (e.g., incident occurring on a straight stretch of road with the vehicle colliding with the only tree for miles) have been suicides. It is possible that the number of such cases is not as large as previously thought, as the ABS figures for Motor vehicle crash “events of unknown intention” for Australia for 2011 indicate the deaths of only 9 males and 4 females.

There are, however, many cases of death by hanging and death by poison, including drugs.

### **Recent changes to coding procedures**

With regard to “Events of unknown intention”, under new coding guidelines introduced in recent years deaths may now be coded to Suicide where the mechanism of death indicated a possible suicide and the coroner does not specifically state the “intent” as accidental or assault.

See “National Coronial Information System (NCIS)” below.

### **Impact of the Child Support Scheme on CSA clients**

To make realistic estimates of the impact of the CSS on the rates of suicide of CSA clients, it is necessary to understand the demographics of the population that is likely to be affected and the extent to which CSA clients differ from the average for the population generally. The best estimate that we can make at the present time is that approximately 300 male clients of the CSA take their own lives per annum. This is a conservative estimate.

Corresponding figures for suicides by women who are clients of the CSA have not been calculated at this stage, but are likely to be less than a quarter of the male figure.

### **National Coronial Information System**

A National Coronial Information System (NCIS) is available to the ABS as an information base for the assessment and recording of causes of death in coronial cases. The NCIS supplements data from coronial findings.

In order to obtain details of causes of deaths by violence of CSA clients, so as to be able to confirm (or otherwise) the accuracy of our estimate of the number of suicides, it would be necessary to carry out a study of information held in the NCIS. The study would employ a properly drawn sample of cases, and its scope would need to cover more than just the coroners’ findings and opinions on cases. It may be possible for the study to be carried out by the AIFS. Such a study would help to further refine assessments of whether deaths were accidental or the result of intent.

### **The CSA’s duty of care to its clients**

#### **Policy issues**

Questions arise as to how much the CSA knows about the suicides of its clients, and the actions it undertakes in relation to this knowledge.

As part of this, some major policy questions arise as follows:

conflicts between the CSA’s policies and approaches and those of the other government agencies with which the CSA necessarily interacts, e.g., the Family Court

duty of care and risk assessment

training of CSA staff

funding of necessary CSA activities

understanding of men's issues

progress on CSA improvements

CSA accountability

suicide reduction targets.

**Codes of behaviour for government officers dealing with potentially suicidal clients**

The following requirements for government officers dealing with potentially suicidal clients have been put forward by the New South Wales (2010) and Queensland Governments (2008).

**New South Wales Department of Health, "NSW Suicide Prevention Strategy, 2010–2015, A whole of government strategy promoting a whole of community approach", September 2010**

"The NSW Suicide Prevention Strategy 2010-2015 was developed through extensive consultation and collaboration between the NSW Government and a wide range of stakeholders, including through two forums on the development of the Strategy in July and October 2009 attended by consumers, families and carers, non government organisations, service providers and academics.

"Suicide is an issue for the whole community and, while this strategy specifically sets out the strategic directions for the NSW Government over the next five years, non government organisations play a key role in suicide prevention activities and we must work together to ensure a shared approach to this important work. The NSW Government acknowledges that building stronger partnerships between government and non government organisations is critical to supporting those at risk of and impacted by suicide. By developing a shared approach to suicide prevention we will be able to support individuals and communities to build resilience and encourage social connectedness, promoting positive mental health and wellbeing.

"The NSW Government also recognises the significant achievements of the non government sector in suicide prevention to date. This Strategy sets out how the NSW Government will address suicide prevention over the next five years, however, it is also intended that the Strategy will provide a platform for greater collaboration with the non-government sector in the field."

**Queensland Government Department of Communities, "Responding to people at risk of suicide, How can you and your organisation help?", October 2008**

"How can you help someone who is at risk?

Ask the person directly if they are considering suicide.

Let the person know that you care about them.

Assure them that they are not alone.

Take them seriously.

Talk honestly and liberally about suicide.

Really listen, let them express their feelings.

Discuss ways to help them, and possible warning signs.

Support them while they access professional help.

Make the person feel that there is hope of things getting better.

Remove any objects that could be classified as dangerous, and therefore able to be used to cause harm.

Referring to professional counselling:

Obtain consent from the person and involve them as much as possible in the treatment planning process.

Collect information to make the referral.

Decide on the appropriate referral agency.

Make the referral.

Follow-up to ensure the appointment occurred.

(To the above could be added Avoid unnecessary harassment which is likely to create or exacerbate severe stress.)

Limited confidentiality. If a person is suicidal there should never be absolute confidentiality. There is a duty of care to prevent a possible suicide or attempt to self-harm. It is necessary to seek permission from the client to disclose their information. However, if this is rejected one may need to breach their confidentiality to comply with duty of care.”

There is a question as to whether a suitable set of guidelines, covering at least the key points above, has been prescribed for the Child Support Agency, and the extent to which those guidelines are being followed.

## **Domestic violence legislation**

### **Discrimination under the Australian system**

Australia needs to have a Child Support Scheme that is recognised as fair and non discriminatory towards either parent. Unfortunately this is not the case with the Australian Child Support Scheme at present.

2011 legislation which greatly over-extended the definition of domestic violence now provides a strong incentive to lie in order to obtain an advantage in divorce settlements. As explained above, this has major implications, in practice, for both access and child support.

The 2011 family violence legislation is one of the most destructive pieces of legislation passed in recent times. It is very one-sided and has caused some good innocent men to feel there was no help for them, that the system had failed them, and all they had left was to take their own life to ease their pain.

The Government was warned that this would happen. I told them, as the spokesperson and National Welfare Officer for the two largest Single Parent organisations in Australia, PWP and LFAA. These organisations, comprising 60% women and 40% men, have been in operation in Australia for 46 and 40 years, respectively, helping both parents in relationship and marriage breakdown. The Government chose to ignore the experts and go along with advice received from those who had a vested interest in seeing discriminatory legislation.

Under the 2011 legislation one only has to be accused of domestic violence and one is guilty. Not innocent until proven guilty, but guilty on accusation, in many cases lies, and even when the accused after a year or more is found to be innocent of the accusation there is no punishment imposed on the person making the false accusation. (This is to our knowledge the only law in Australia where one is assumed guilty even before any court is involved.). The magistrate gives the man supervised access, and orders mediation. The cost of these two, which he has to pay, is in most cases out of his reach when added to the cost of the child support. Fairness and justice in these cases requires that there should be a reduction in the child support amount until the matter is finalised.

The police are even talking out against the legislation in question, stating they have to go out and in many cases find that the accused is actually the victim. However, if it is the dad he still has to leave the family home, as the police are told they have to protect the mother and the child at all times, not the father and the child. Police are being put into a no win situation. The mother may have initiated the conflict, or may be affected by drugs; it is, however, the father that is told to leave.

Many payee parents are now using this discriminatory piece of legislation to gain more child support from the payer, because child support is calculated, in part, on time spent with the children. This means the less opportunity the payers get to spend time with their children the more they pay. So when they are forced out of the home, and cannot see their children, even if they have court orders stating they have equal

shared care, substantial time, or every second weekend and half school holidays, the other parent refuses to allow the children to go to the other parent for access. After 14 weeks pass the CSA can and does raise the child support payments from the paying parent to almost double in some cases.

The Australian Government and especially the previous Government spent hundreds of thousands and probably millions of taxpayers' money (illegally) advertising 'no violence against women and children'.

I asked Ministers on many occasions to include no violence against men as well as no violence against women and children in these publicity campaigns. They refused, using the claim that only men are violent, and refused to listen to the real figures of violence for men and women against each other. They deliberately ignored anti-discrimination law outlawing discrimination on the grounds of gender.

All the above-mentioned helps to increase the child support obligations borne by the payer.

It is easy for the system and disaffected people to blame the workers who work in the Child Support Offices, but in most cases it is not the Child Support Officers' fault. It is the fault of the amended legislation that they are bound to work under and enforce. There are many wonderful and caring officers and many who work there also paying child support for their children, and they have to bear the anger and frustration of the clients they deal with.

I have had many meetings over the last 27 years with Ministers, Senators and MPs over the Australian Child Support Scheme, telling them about the problems and requesting changes. Matters did improve, especially under John Howard who had the wisdom to bring in Shared Responsibility/ Shared Care which made the Child Support Scheme fairer. However, the recent discriminatory amendments from 2011 have destroyed fairness and caused considerable hardship.

The LFAA warned the Parliament in 2011 that this would be the result if the legislation was passed. As the LFAA said at the time:

"Our groups oppose the bill in the shape it is in. We have had a long study of it. We have looked at most researchers and most researchers' submissions are, we believe, a ploy to overturn the shared care laws of 2006 ...

"We believe that this bill will do nothing but make more single parents in Australia. That will be a burden on the taxpayer. Without going through all of the individual parts of it, it has the emphasis that there is to be no blame. People can just accuse each other and that will cause a violence order, police will come and one person will be thrown out of the house, mainly the dad as it is now, and there will be another broken family. That is how we look at it and that is what we are warning you people will happen. We ask you to look at this seriously.

"The Family Law Act has been going for 40 years and there is no enforcement of orders to the other person. There are nearly 1 million children in Australia

today who have no contact with their father even though 670,000 of them, we have been able to find out, have court orders. The other person just denies those orders. That is what is causing a lot of the family violence, especially in broken situations where we have a court that makes orders but has no mechanism to enforce the orders.

“... In any situation in Australia where there is a dispute in the family, the police will come. In most cases it is accusations alone. As the courts will tell you, they are working all day long throwing orders out. There is a lot of violence, but the majority of them get thrown out as without foundation. This bill is virtually saying there does not have to be proof; it is accusation alone. You have only to feel threatened; whether it is the mum or the dad, they will be able to use that as an excuse to say, 'I want to get out of the marriage.' We should rather be educating more people to go to mediation and that before this happens rather than have one person thrown out of the house.

“... in the last three months we have dealt with 2,211 cases, mainly because people cannot see their children. Child support issues and that do not come into violence in family much; it is mainly about being able to see the children ... We are saying to you people: please do not pass this bill in its present state. ... because none of us want to see an increased cost to the taxpayer from single parents, and this is what will happen ...

“As the two biggest single parent groups in Australia, with an estimated membership of about 30,000, we say to you people: please send this bill back and tell them to put in controlled violence, if you like, because that is what denial of access is—controlled violence. That has never been mentioned here or in any other areas of violence.”

This plea was ignored by the Government of the day. That Government has a lot to answer for in allowing this legislation to be passed through the Parliament. If the situation is not corrected there will be many more men who will suffer the same fate.

## **Other child support issues**

### **Some facts of life**

There will always be a minority of payers amongst both men and women who will never believe they have a moral and binding obligation to help support their children.

There is also a minority of receiving parents who believe they have a right to purchase cigarettes, alcohol and/or other addictive substances, and/or gamble their child support.

Others believe they can just decide to throw their job in, and become unemployed knowing their child support will rise if they are employed.

Nevertheless in an administrative sense the operation of the scheme can in some respects be very effective. At the 2012 Fathers, Families and Children's Coalition Conference in Los Angeles USA, I spoke on the Australian Child Support Scheme



and the Australian Family Law Act. The delegates were very surprised when I told them of Australia's 92% collection rate.

### **The formula**

Child support rates continue to be very high in some income ranges, particularly the upper middle income range.

It is time for a further look to be taken at the implicit formula which lies behind the calculation of child support payment rates, from the point of view of:

- limiting the very high effective tax rates which come into play when tax and child support payments are added together at some levels of gross income, and
- collecting information and carrying out investigations of the extent to which receipts of child support are actually spent on the children for whose benefit they have been received.

### **Nights v days**

Many miners and shift workers have to work long hours including day shifts, but are punished with higher child support because the CSA does not recognise days spent with the children on the same level as nights. I was requested to go to the mines and give advice to their workers on this issue. Both I and my National Secretary travelled to Mooranbah and Goonayella mines and ran night-time v day-time meetings. The problem of daytime access not being acknowledged the same as night time was their greatest problem. I reported back our findings to the Minister and the Department, but this does not appear to have produced an improvement.

There would be advantage in the CSA providing more transparent information about the proportion of successful applications, and the criteria used in making such decisions. For example, in cases where an application based on days criteria would lead to a "regular care" result but an application based on nights criteria would fall short of such a determination.

### **Three-year moratorium on child support payments out of extra overtime earnings**

The current legislative provision which allows a moratorium on part of child support payments for the first three years (so that the non-resident parent can re-establish himself or herself after divorce) is ineffective compared with the more liberal arrangement originally proposed by the Ministerial Task Force which advised the Government. The relative ineffectiveness of the present arrangement is caused in part by aligning the child support and family assistance frameworks by limiting the allowed reduction of adjusted taxable income to 30%.

To take the case of a payer who is paying child support on his or her yearly income of, say, \$75,000 and has no other income from a second job or overtime work, but needs to be able to purchase a home so that he or she can have his or her children on

access visits. If he or she takes up a second job or starts doing overtime it should be excluded for some years from being counted for the purpose of child support.

The Taskforce agreed that this should be allowed for five years. But the Government changed that to three years. This largely defeated the purpose of the provision.

### **Handling of appeals**

There appears to be over-representation of ex-CSA personnel on the SSAT. This is contrary to the intention at the setting up of the SSAT, which was to employ independent persons not necessarily coming from an “expert” background.

### **Under- and over-payments**

Inaccurate calculations of child support liability leading to overpayments of child support can occur as a result of one or other of the parents failing to provide prompt advice about changes to circumstances. This needs to be drawn to clients’ attention, as and where appropriate.

Complaints are frequently made that different CSA officers give conflicting advice in response to questions.

Clients object to the arrangement that late payment penalties are paid into Consolidated Revenue rather than being disbursed to the payee parent.

Clients need to be routinely informed about possible rights to compensation where they incur significant costs as a result of incorrect advice or damaging and inappropriate actions by the CSA.

### **CSA decisions made without full and fair access to information**

The CSA sometimes prepares new assessments without using information of the same quality for both parents.

If the payee has not lodged a tax return the CSA may make a seriously incorrect estimate on the basis of the payee’s advice of how much they earn.

The above situation arises from a failure to take adequate steps to check the accuracy of the information being supplied by the respondent parent. This results from a failure to follow up effectively on the collection of the relevant tax returns. The LFAA believes that both parents should be required to provide their tax returns, or (at least) have their income deemed at a realistic level.

Seriously incorrect assessments arising because an up-to-date taxation return is available for one parent but not the other will result in child support being demanded at unfair levels.

### **Falsification of birthdates**

There have been cases where the CSA has falsified children's birthdates, under an agreement between Australia and New Zealand, so that they can collect child support. The CSA has not been able to provide an adequate reason for this act of falsification, which should not be permitted.

### **CSA Case Manager attitudes**

Some CSA clients were highly critical of the attitude of Case Officers' towards them. One payer said "The CSA talks down to you as if you were nothing, and they do not wish to listen to reason".

CSA clients stated that when they submit a letter of complaint the matter is handled by the same case officer, and they just end up with the same result as before. A view was expressed that complaining is a waste of time. One man stated that he had notified the Brisbane office about his ex-partner's declaration that she had no job or wage, although she was working five days a week and Saturday morning, and the CSA did nothing to resolve the matter.

Some payers said that they found that the case officer who answered the phone was not interested in what they were trying to explain - for example, that their ex-partner had provided false information about their income, the address of their workplace, and/or even the name of their employer. The CSA officer had been brusque, made remarks like "We cannot do anything about that, and you should be happy to pay extra for your kids", and refused to let them talk to a supervisor.

The issue has also been raised at numerous other LFA and PWP meetings. The LFA has raised the issue at (CSN SEG) stakeholders meetings, and the Chair and other officers at those meetings have repeatedly stated that it is the right of CSA clients to speak to a supervisor if they feel that they are not getting anywhere with the CSA case officer – but the problem remains.

Training of (some) CSA staff has apparently not been fully effective in conveying the message that the vast majority of CSA's clients are hard-working, responsibly-minded people who love their children, and that all CSA clients must be treated with respect. Training should address both staff attitudes and their level of understanding of the technical and policy aspects of the legislation they are helping to administer.

Failure on the part of the CSA's staff to act in a respectful way towards the CSA's clients can easily lead to a loss of confidence on the part of the clients in the Child Support Agency and the fairness of the Child Support Scheme.

### **Staff training**

The question arises as to the measures which are in place to evaluate the effectiveness of CSA staff training by measuring the transference of skills learned by staff into the workplace.

A question also arises as to what is being done to recruit more staff with experience and qualifications in client service oriented disciplines in changing a predominantly tax and finance oriented staff culture?

The question may be raised as to whether there is an explicit CSA code of conduct in relation to dealing with clients – and, if so, how this fits with the general Public Service code of conduct.

There have been complaints that when clients wished to take up a matter with a senior case manager the manager in question has not made themselves available

Case officers should exercise caution in handling recorded telephone conversations and avoid inappropriate remarks, especially at the end of conversations.

There are frequent problems as a result of non-resident parents not being warned that informal arrangements for payment of (what they intend as) child support may not be recognised as such by the CSA if the payee decides to claim the payment as a “gift”.

### **Alignment of child support and family assistance frameworks**

Difficulties arising from the integration of the Departments of Human Services and DSS should be identified and resolved.

### **Better outcomes for high conflict families**

The CSA undertook costly research some years ago to identify parents who receive business income and minimise their child support liabilities. The parents who were followed up as a result included only one female client. Information should be made available giving an up to date picture of where that aspect of the CSA’s activities now stands.

Statistics should be compiled and made available on the number of cases where there is a history or risk of domestic violence and/or child abuse, and the way in which these cases are dealt with by the CSA.

The LFAA urges the Committee in its deliberations to give close consideration to the above matters. The LFAA will be pleased to provide further information and commentary if the Committee wishes.

Yours sincerely

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