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INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT OF FAMILY SEPARATION.

Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
Canberra ACT 2600
Australia

Dear Committee

Given that the best interests of the child are the paramount consideration, the following 7 page submission addresses the stated Terms of Reference, viz,

a) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and
b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

In appreciation of your considered response.

Yours sincerely,

V. McEwan

Valdamar McEwan

27th July, 2003

Problems with the Child Support Scheme & the Connection of the Family Law Court & Family Law

The current government and opposition did not fully address the 1994 Joint Select Committee (JSC) Report on the Child Support Scheme. It has been a long eight years and still no major changes to the Child Support Scheme.

I am a contact parent who has a responsibility to support my 4 children and seek fairness for myself and the children in the daily running of our lives. Since my marriage breakdown occurred in 1995 I have met many people in similar situations and the anger and frustration has increased.

In the current care arrangements for child support, the paying parent (contact parent) pays by the formula for 365 days in the year. Most contact parents who have maintained a relationship with their children and support them in raising the children do not have any recognition in the current child support formula. Eg: -Every second weekend and half of all school holidays, which equates to 3 months of the year. The formula only starts to recognise care of children after 15 weeks and 5 days which equates to 110 nights to be acknowledged for the care of children. The contact parent has an exempted income amount in supporting oneself which is set too low to meet the current living standards if you are working and providing care for your children under the current format.

The child support exempted income amount for paying parents was increased by the current government by 10%, rather than 20%, as recommended by the JSC in 1994. Therefore, the current government has not fulfilled the JSC recommendation no.123. Both government and opposition did not fully address that report. In Hansard, 25 March 1997, Mr Latham (ALP) said..."By quoting the self-support components of the single pension rate, the child support formula fails to truly reflect the additional costs of employment which are carried out by employed non-custodial (contact parents) and the additional fringe benefits available to pensioners." The government and opposition should consider ongoing issues and adjust as required. Government bodies, advisers, information and lobby groups who are not directly affected by paying child support, don't fully understand issues raised.

The CSA and other government departments are too slow in addressing new issues that are relevant to today's needs. The Child Support Regional Ministerial Officers are a tool for the politicians to do nothing for parents. Politicians are simply passing on to the Regional Ministerial Officers, who lead into the void of CSA administration and achieve nothing for the paying parent ie. parent-politician-CSA-parent.

The self-support (exempted income) amount of $12,315 for the year of 2003-04 is not keeping up with government policy. The consultative committee who structured the formula, came up with the self support amount but did not take in the fact that tax would have to be paid on this amount. Sole parents on the pension do not pay tax and gain estimated fringe benefits of approx. $4,000 above the pension rate. These fringe benefits

are much needed for sole pensioners. However, the child support formula fails to truly reflect the additional cost of employment, which is carried out by employed non-custodial (contact) parents also caring for their children. This is the real cost of living in the workforce.

Here are some other examples that are not recognised by the Family Court or Child Support Agency Senior Case Officers (SCO). I find that SCO decisions are highly arbitrary and a large number of precedent cases are out-dated. The CSA does not carry out current policy of parliament on items such as :-

1. Fuel costs – with the high cost of fuel and GST the current self support income is not sufficient to cover the cost of travel to work and an added cost to enable contact in periods when the children are in your care. This may qualify for a change of assessment but it does not necessarily mean special circumstances. The administrative costs to government would be reduced on the change of assessment process and less wasting of time by the CSA, inconveniencing work arrangements and preparation of documents, if the self-support income were raised by another 10%. {As recommended by the JSC.} This may also stop the disincentive of men throwing in their jobs and cut down on dole payments by government.
2. Private Health Insurance – The Lifetime Health Cover Policy, which is now in force, means that anyone over the age of 30 who did not take out private health insurance will pay a 2% penalty per year for the rest of their life. No allowance was given in the cost of living for people paying child support. It does not constitute a change of assessment under special circumstances in any of the reasons. The SCO dismisses this as not a legitimate expense. The CSA Senior Case Officer regarded this as not necessary to be in a health fund. If I didn't take out private health insurance at the commencement of the year 2000 and left it to now, to 2003, my premium would have risen **to 34% above the original rate of joining the Lifetime Health Cover policy.** Medicare does not cover all medical services eg. Dental, eyewear & ambulance. Therefore the non-custodial struggles with the added expense to his/her budget. During the marriage in 1986 the family had joined a private health scheme to give the family the best care. When separation occurred and the calculation of the CSA formula of 34%, the family health cover was reduced because of CSA and other commitments to ancillaries cover only. In an earlier child support review the (SCO) quoted "I do not consider it is necessary for him to maintain private medical insurance, at least not to the extent that the premiums he pays should have primacy over his legal duty to support his children." At this time there was no LifeTime Cover Policy in place. These decisions by people in the government departments are not working in the best interest of children or for torn families. The exempted income must be adjusted to match current government policies and relieve the separated families with quality health care cover.
3. Superannuation – in recent years superannuation has become more prevalent and was made compulsory in 1992 by the Labor Government. Does the Federal Government have a policy on superannuation? What is a suitable or reasonable amount or percentage for one to pay? In a CSA review the SCO would not allow my super contributions to be a legitimate part of my total weekly expenses to be offset against the assessed child support paid. What criteria does an SCO or judge use in a decision

of a parent to contribute to superannuation after marriage breakdown and how does this differ from contributions made in an intact family situation? In a letter from the Minister for Community Services, dated 15 December 1999, Mr Anthony wrote..."The child support legislation makes no specific reference to the level of superannuation contributions made by parents." In 1997 under "What's New What's Different" the CSA never produced any guidelines on superannuation and the new appeal process is wasteful to the parents and taxpayers. The Family Court is very keen to find out your financial statement on super and divide it accordingly without delay. But after settlement you are not allowed to prepare for your retirement whilst child support is to be paid. To the CSA guidelines and the SCO opinion it is not a priority to pay superannuation when paying child support. This I find extraordinary because when in an intact or married family government policy doesn't interfere in family finances on superannuation.

4. **FOOD AND CARE COSTS.**

Children must be fed and given a healthy diet. After providing a home for you and the children the ongoing of care when excising contact has an enormous cost factor which at present is not considered as necessary. A good example is the formula doesn't recognise care until 110 nights is reached. The 110 nights, hence, becomes substantial care and recognition of care is taken into account. The problem with the formula is that when you have less than 110 nights you still have to provide the home and food and other activities that the children are accustomed to when in your care. It was highlighted that on 11th June 1996 the Family Law Reform Act changed the projective of parenting in divorce proceedings and that both parents have equal responsibilities which it refers to in Children part V11 60{B}{2}. It is again highlighted by the Change of Assessment that you cannot claim food or entertainment costs in particular **REASONS 1,2&7 for the care of your children.** In reason 7 in the guidelines, it does allow reasonable costs of food, **but it does not allow other essentials such as children's extra food, travel costs, for sports each week, music lessons, scouting, hobbies outside school activities and costs of gifts {birthday, Christmas} which children anticipate with glee.**

The Senior Case Officers in the guidelines have discretional powers that can destroy a parent and the family when not acknowledging the contact with the children and the amount of costs.

As CSA policy states if food and entertainment costs are already taken into the formula percentages why are contact parents paying for 365 days per year? One would argue that there is an ongoing cost to the carer parent when the children are not in their care, but the contact parent still has to provide a home for the children when not exercising contact.

This has been proven by the number of complaints and inquires since the inception of the scheme .One should look no further than the JSC of 1994, which received 6197 submissions. Of all the163 recommendations of the JSC one can look no further than the top FIVE ISSUES from the JSC page 588.

1. Formula is too harsh.
2. Communication problems with CSA.
3. Formula fails to adequately recognise NCP'S (**Contact parent**) costs on access visits
4. CSA enforcement action in respect of child liability is unsatisfactory.
   (I believe that the CSA collection rate is 87% successful a big improvement to when it Started).
5. Formula should be calculated on an after tax rather than before tax income basis.

In January 2002 the CSA asked for stakeholders to partake in a conference with the Australian National Audit Office "Performance Audit Services Group 2". Results of Audit Report No.7 2002-2003 were released on 16 September 2002. It is interesting to see the findings of that report highlight the trouble with CSA Change of Assessment Notices of Decision. (See Recommendation No.2 – to which the CSA AGREED in their response)
The stakeholders are still waiting for changes.

Other important issues for Contact Parents are: -

- **Re-Accommodation problems.**

Another interesting aspect in providing for your family is re-establishing a home for yourself and the children. I found it very difficult in borrowing money from financial institutions and was shocked to apply to the department of public housing for accommodation to which I was unsuccessful. Here are some examples, which occurred to me and probably to many contact parents in similar situations. I received a sum of $34,000 after property settlement in 1996, which I needed for a home for my 4 children and myself. In doing so I approached banks and building societies and presented my **1995/6** income of $30,000 for an application for a housing loan. With an income of $30,000 and a secured job of 16yrs I had an approved borrowing capacity of $70,000 and repayments of $120 per week for payments. The financial institution asked what commitments do you have? I am supporting my children with child support of $138 per week. **On recalculating and assessing the home loan repayment structure to my despair, the maximum and princely sum for a home loan was $2,800.**
An interesting scenario, that if I was still married the financial institution would have given the **full loan approval**. I found that this occurred with a number of financial institutions. {Copies can be supplied if requested by the committee.}
Another disturbing twist for accommodation for myself and the children was that private rent where we lived for all our lives was more expensive than the home loan. (Copies of realestate agent's documentation can be supplied to the committee if required}. The Department of Social Security was not an option for relief because my income was too high for qualification on rent assistance and that I did not have the children in my full time care **and was never advised that you could receive part of the Family Allowance. It wasn't until 1998 I could claim an entitlement to Family Allowance.**

Many surveys conducted over the years, ranging from the Joint Select Committee survey in 1994, to the 'Development of Indicative Budget Standards Research Paper No.74' by the University of NSW, to the Murray Woods research (1999), **to the excellent Henman & Mitchell research of 2000 have found that a contact parent's costs on access are**

far greater than have been previously assumed. How can contact parents give the required parenting skills as listed in the book "Me and my Kids", with the child support formula **in its present format.**

At a recent Lone Fathers Association Conference, Mr Bruce Smythe from the Australian Institute of Family Studies spoke of a research project to be conducted on the financial costs of contact entitled "To what extent does contact improve the amount and regularity of Child Support Payments?" It was asked of Mr Smythe that unfortunately previous AIFS studies e.g. the Divorce Transitions Project , had not covered all contingencies applying to both resident and contact parents. For example, in the Divorce Transitions Project, "...the study had not taken into account the costs involved for men in setting up a new house after they divorced.." (Daily Telegraph 23/1/01). **With all the evidence of a troubled Child Support system and the withdrawal of the Government's Child Support Legislation Amendment Bill No.2 of 2000, political parties continue to act unreasonably towards the interests of the parents – especially the contact parents!**

In a submission to the Minister for Children and Youth Affairs entitled "Reform to the Child Support Scheme – A Proposal" from the Newcastle Lone Fathers Association , it was asked whether the 'legislature had given consideration to the merits of increasing the paying parent's exempted income amount by the **JSC recommendation of 20%?'** A further suggestion could be to look at **a Child Support Rebate Payment** system.

Since the inception of the Family Law Act 1975 and the no-fault clause, the rate of divorce has risen to 47% of all marriages (Bureau of Stats). With the help of government departments such as Centrelink and the CSA, the Family Court is waivering in favour of who has the children. The submission "Family Breakdown Service Providers – Bad Legislation, Poor Administration or Both" written by Robert Logue of the Lone Fathers Association, highlights the lack of co-ordination of the principal service providers, as was pointed out by the Family Law Pathways Advisory Group in their report entitled 'Out of the Maze'. Has the Government followed up on this?

Statistics, from the JSC (26/5/92) submission no.5787 of the Family Court Research & Evaluation Unit – titled "Men and Divorce", show that the decision to separate was made by the wife in 64% of cases. More recent research shows that 83% of marriages and relationships are ended on the initiative of the female (Australian Institute of Family Studies 1999). If these figures are true and correct, our Australian families are in deep trouble. Family Law and Child Support legislation is not serving the best interests of children or parents, particularly contact (non-custodial) parents.

The following examples show that decisions lean towards the parent who has residency of the children rather than working from a perception that **both parents share the care,** welfare and development of the children:-
(A) Property settlement – the percentage given for the children's benefit is not fully recognised by the court authorities at the time of property settlement. It was revealed by the JSC of 1994 in s.79 (4)(g) of the Act that parents have been duped in not being

allowed to off-set child support for this provision. The JSC recommendation no.153 has never been addressed in a formal response.
(B) Access orders – have rarely been acted upon in addressing non-compliance (s.112AD). Why don't the Family Court authorities obey the Family Law Act of 1975? The Family Law Reform Act of 1995 has an emphasis on the children but authorities still disregard s.60B.
(C) Mandatory mediation – before going to court would save a lot of time, energy and costs to both parents. The actions of both parents would benefit the children without having frivolous and lengthy litigation costs that only benefit the legal warriors. This mandatory mediation has not been formally addressed in parliament.
(D) Centrelink Family Assistance Officers tend to disregard Family Court Orders and over-rule specific legislation with policy guidelines, very often to the detriment of contact parents and therefore **the children!**
(E) Centrelink payments to non-residential parents (Contact parents) ceases at the age of sixteen, in most cases the child is paid Youth Allowance. The contact parent does not receive any benefits in **SHARED CARE ARRANGEMENTS AFTER THE AGE OF SIXTEEN BECAUSE THE FAMILY ASSISTANCE OFFICE DOES NOT GIVE THE CONTACT PARENT ANY FAMILY TAX BENEFIT PART A & PART B. NO FINANCIAL RELIEF IS GIVEN TO THE PAYING PARENT WHO IS PAYING CHILD SUPPORT WHEN THEY ARE IN THE CONTACT PARENTS CARE TIME.**

The current and previous government has recognised and given help to families. It has helped the intact families with Family Tax Benefit, a spousal rebate, the baby bonus and in some cases the first homebuyers grant. All these benefits which are needed for our families are a cost to the taxpayer. The families that have dissolved for whatever reason have to struggle to the every day needs in support of our children. The contact parent only receives assistance with a proportion of the Family Tax Benefit after 10% of minimum care in shared parenting. **Please consider the adjustment to the child support formula and recognise that the children have the support of both parents and that the control of children is to share the skills of joint parenting.**
The points raised emphasise a nerve-wracking experience and contribute absolutely nothing to the health and peace of mind of the contributing contact parent. As a consequence more and more contact parents (mainly fathers) are facing breakdowns, bankruptcy, suicide and loss of access to their children. Children must not be deprived of a parent's care, nor a parent of their children's company because of CSA, Centrelink and Family Court judgement. Please consider these issues to bring about a fair system to **all** current and future families.

Yours truly,

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27th July 2003.

REFERENCES

a) Child Support Scheme Joint Select Committee on Certain Family Law Issues Recommendations and Conclusions November 1994.

b) Logue R. Reform to the Child Support Scheme: A Proposal on behalf of Newcastle Lone Fathers Association 10 July 2001

c) Logue R. Family Breakdown Service Providers - Bad Legislation, Poor Administration or Both 10 December 2001

d) McEwan V. A Child Support Rebate Payment on behalf of Newcastle Lone Fathers Association 3 November 11, 2002

e) Australian National Audit Office Client Service in the Child Support Agency Follow-up Audit Audit Report No.7 2002-2003

f) 'Me and my Kids' published by Family Court, CSA and FACS CSA 1115-8.2002 (released September 2002)