

**From:** [REDACTED]  
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**To:** Forbes, Bev (REPS); Committee, FCA (REPS)  
**Subject:** Child Custody Arrangements Inquiry

House of Representatives Standing Committee on Family and Community Affairs	
Submission No:	991
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Secretary:	

[REDACTED]

18-08-2003

**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**  
**Tel: (02) 6277 4566**  
**Fax: (02) 6277 4844**  
**Email: [FCA.REPS@aph.gov.au](mailto:FCA.REPS@aph.gov.au)**



Dear members of the Child Custody Arrangements Inquiry,

I wish to share with you my experience and views in regard to your inquiry.

Having regard to the Government's recent response to the Report of the Family Law Pathways Advisory Group, the committee should inquire into, report on and make recommendations for action:

- (a) Given that the best interests of the child are the paramount consideration:
  - (i) 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
  - (ii) In what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.
- (b) Whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.
- (c) With the committee to **report to the Parliament by 31 December 2003.**

"My son's mother and my "relationship" effectively ended some time before my son was conceived. It was then 3-4 months after conception that I was made aware of the pregnancy. I was present at the birth and maintained a mutual respectful relationship with his mother until she decided to start dating someone in [REDACTED]. My son's mother and I met at high school and maintained a romantic relationship for some 5 years in total. Our entire relationship was in [REDACTED] where my son was conceived and born.

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It became apparent to me that I was being discriminated against as soon as I sought legal advice. I was a young university student, studying engineering at the University [REDACTED]. I sought legal aid by telephone and through a solicitor who did legal aid work. I was advised by every person I spoke to within the legal fraternity that I would not gain the joint custody I so sought. I then requested full custody because it was made blatantly obvious that I would not receive joint custody.

NO legal practitioner would even entertain the idea. My son was 9 months old and still breast-feeding. His mother seemingly a wholesome person and parent. I the father, seemingly a wholesome and caring parent, but because I am Male I was denied by the legal system any attempt to gain joint custody.

I was told by my lawyer (legal aid lawyer, because I had an income of \$0. My parents owned, and continue to own a farm, which prevented me from qualifying for Austudy). To try and get a good child contact deal I attended a Court ordered mediation session. A session I was ordered to attend before I was served with any court documents.

I found at the court ordered mediation that my sons mother already knew the mediator, which alienated me. I also found that my sons mother had not read any of the previous correspondence regarding my proposed child contact. I became very angry at the whole situation and as such felt ever more discriminated against. I made a statement that the process appeared to be unfair, and was told by the mediator that it is not about being fair. Unfortunately, most of the time I tend to think logically and this statement had no logical basis at all. Fortunately I think logically and was able to work out a seemingly good arrangement although I felt very angry and alienated by the whole ordeal.

I gained a court order that stated I was to have child contact for 3 weeks, 4 times per year. In return my son and his mother were granted leave to relocate to [REDACTED], (although I believe they had already done so before the court order was granted).

I received e-mail abuse from his mothers new boyfriend, with statements like "Who are you to see your son, when you're such a bad parent" This abuse came from a man whom I had never met in my life. I became enraged. It is only the fact that there is 200km of water separating me from [REDACTED] that prevented me from doing something that may have been regretful.

I am not apologising for myself, but I feel most people greatly underestimate the amount of emotion involved with children being STOLEN from their parents. Ever time I hear a story when a man comes home, kills his ex-wife and shoots the kids, I have great sympathy for his situation. I believe it is assumed that fathers have no emotional bond with their children, or at least a bond that is not as well developed as it is between the mother and child.

I made an arrangement where by I would get my child contact on the 1st day of each third month starting in January I believe. I did not request any special days such as his birthday, Christmas, my birthday, Easter, etc. I was continually mucked around and then I was informed that all of a sudden his mother could not afford the airfares although she had agreed to the contact arrangements and had signed a court agreement to such effect. She signed the agreement when she was unemployed and single, and now married and in gainful employment. It was and still is my view that the decision by her to relocate to [REDACTED] was a conscious decision that was taken with all the facts and responsibilities associated with such a decision. By signing the court arranged agreement she made a commitment to pay whatever costs ensued, as I would expect to pay if I relocated to another state.

This line of not being able to afford travel for child contact extended to my son being in [REDACTED] for his mother marriage and me being refused child contact. I contacted the [REDACTED] police with letters from her solicitor stating when child contact was arranged for and a copy of the court order. They told me to see a lawyer. I now know they should have told me to see the federal police, who apparently have jurisdiction in these matters. This breach of the court order continued through

numerous months until I was given child contact again.

During the first child contact after a protracted and totally unwarranted delay my son was sick with diarrhoea and vomiting for the first 5 days and on the 6th day I was to collect him for a continuous two weeks. The whole contact period was turning into a disaster, I received a phone calls from his mother earlier in the week changing the hand over point because she herself was too ill. I bent over backwards every time I had child contact to accommodate the variations to the court order that were forced upon me. On the morning that was to start the two week contact period I went to collect my son from his mothers parents house "which is not the nominated change over point in the court order, but I agreed because my son and his mother had been ill. I picked up my son, he started crying, he had apparently been playing with the family pet dog and he probably wasn't happy to be leaving. He called for the dog, obviously tired and still ill.

I put him in his car seat and belted him in. I lived some 50km away from the change over point and he had obviously started to resent spending 2 hours a day for the previous five days in a car travelling, but the situation couldn't be changed because it resulted from a recommendation by the mediator.

I then got into my car and started to reverse down the driveway, my son unlatched his seatbelt. I stopped the car and refastened it. My son started screaming the dogs name. I sat in the back of the car and started to settle him down. Just as I went to get back in the drivers seat, his mother stuck her head out of the house window and my sons cries then changed for his mother, much worse than his cries for the dog. I sat in the back with him for about 10 minutes calming him down. Just as he settled and I opened the door to get back into the drivers seat his mother approached the car and set my son clean off his head, wanting his mother. She was offering a bribe to my son to behave. I have totally different parenting technique than his mother and I certainly don't bribe children to do the right thing.

I asked her to leave three times, by which stage I was no longer able to act rationally and screamed at her to leave, she said NO each time. I was so infuriated that I punched the front passenger side window of the car, smashing it. My son was in the back seat and was unhurt by my actions. I immediately got out of the car without saying anything to anyone one and without any further actions and walked approximately 10km to girlfriends home. When I arrived at my girlfriends place I was still extremely emotional and upset. I telephoned the local [REDACTED] police and requested a police presence to allow me to pick up my son. They refused and told me police were searching for me and as such the police dealing with the matter would contact me. The policeman who had spent 20 minutes driving around looking for me told me that his grandmother had requested I be charged with assaulting my child. I became enraged. I have never so much as smacked my son in his life. I had made complaints to the mediator about his mothers and his mother's husband actions of smacking him for nothing.....just being a 10 month old child. The police officer told me they do not get involved in domestic situations and told me to contact my solicitor.

I had already contacted my solicitor while I waited for the police to contact me. I told the police officer that my solicitor had advised me to go straight back and pick up my son. I again requested for the police escort me to collect my son so that no lies could be told about my actions when I returned. The police again stated that they do no get involved in domestic situations, somehow shrugging off the fact that they were already involved. My mother and my future father in law collected my car because I had left it in her parent's driveway. I was subsequently accused of yelling at her when I picked up my car, but I never returned within 10km of her parent's house after I broke my own car window.

My only correspondence between myself and my sons mother was a single letter from my solicitors requesting I get child contact. After 2 months of no reply I filed for contravention. About 1 or 2 months later I was served with an AVO from a court in [REDACTED]. I had not been to [REDACTED] for over 12 months and had only once visited my son (or his mother) in [REDACTED] without incident.

I was unemployed and requested a video conference with the [REDACTED] court that was hearing the case. I was told they don't have such facilities. I then sought legal aid, and couldn't really get any because I wasn't living in [REDACTED] couldn't afford a lawyer so I represented myself in [REDACTED]. I found the whole proceeding to be an absolute joke. Number 1 on my mind was what sort of system MAKES me, "supposedly" a violent person, fly 200km across water to sit in the same waiting room with the person I am meant to be threatening etc. I told the court attendants at least 8 times that I was from [REDACTED] but I was fobbed off and told to sit down and my hearing would be called soon. My hearing was called just before they recessed for lunch. The magistrate basically said adjourned I said hang on I can't afford to come back, I am from [REDACTED] and I am unemployed.

The magistrate was amazed and said that they can't hear it today because it was only contest mention. I mentioned that I had requested a videoconference and that if I did not attend I would automatically lose and probably lose my security guards license as a result, and handed him a copy of the appropriate [REDACTED] legislation. He basically went away leaving someone who had a temporary AVO against me in the same room with no one else present except her husband. I really began to question how bright an idea that was if I actually was violent. The magistrate came back and said they could hear it after lunch, protesting that he doesn't really understand how a temporary AVO was even granted. Again leaving me in the room alone with her and her husband. I won the case later that day because the Magistrate found that I had absolutely no case to answer and flew directly back to [REDACTED] the following morning.

Again I requested child contact and the reply I got was that I was not going to get child contact unless I did an anger management course and provided them with the certificate, and then it was still at his mothers discretion. I researched the whole thing and found that no one in [REDACTED] does an actual anger management course. I informed the other sides' lawyers of the situation and also told them that they were in contravention of the order. They did nothing.

I was at work on the Sunday before the contest mention for the contravention order on the Monday. I was served with a court form, that my sons mother had applied to change the hearing from [REDACTED]. I turned up at court prepared for court. The judge said he was going to hear the change of hearing place first. I was basically told that because I was only paying \$5 a week child support and that "it is the best interest of the child they are to consider" and it wasn't in the best interest of the child that his mother should pay extra expense to have a contravention order heard in [REDACTED] when she lived in [REDACTED] so my court hearing was moved to [REDACTED]. I explained that I could not afford to travel to [REDACTED] for the hearing. The magistrate told me that he would request that I be granted a video conference. I told the magistrate that I understood the courts were totally autonomous and he could not guarantee I would be given it. He "Noted" at the end of the order that he requested a videoconference. Again I was being discriminated against. I did nothing wrong, broke no laws and I was being penalised.

I directly applied to the [REDACTED] court for a videoconference, and for some reason I was again ordered to go to mediation. I set up the mediation to occur from the [REDACTED] court because that's where I expected to be for the videoconference. On the Friday afternoon before the court hearing on the Monday, I, in [REDACTED] was contacted by the court in [REDACTED] and told that I was unable to get a videoconference. The court attendant advised me that she had organised for me to be represented by a court appointed lawyer and I told her about my mediation which was meant for the same morning and she told me she would get the phone numbers changed.

The court day. I waited until 9:30 for my expected phone call at 9:00, so I rang the court and asked them what was going on with my mediation. The lady had been sitting with my sons mother for the past hour chatting away about the whole thing. So again I was made to feel as though I was

intruding onto their space. The mediator got stuck into me about not being at the phone number she had. I explained my phone call from the Friday before. Basically I was stereotyped and I became angry again (perhaps I am an angry person). I started answering her questions and I was totally confused as to why I had to do mediation when she was the one who contravened the order. Apparently I swore. And she told me she was hanging up on me.

My court appointed "lawyer" did nothing at all much for me. When asked for an adjournment and explained the situation (well that's what I was told) apparently he said it was okay for child contact to be suspended until after the hearing. I got an adjournment, just happened it was for 8 months, in that time I was also ordered to complete a family assessment.

A [REDACTED] court cannot let me do my family assessment in [REDACTED], I had to go back to [REDACTED] to do that. I ended up having to harass the courts and family assessment people because it seemed like it was never going to be done, or heard. All up it took over 12 months to get to a contravention hearing, after applying for one. **No one can explain to me how that is in the best interest of the child.**

I went and looked for a lawyer in Melbourne. Although I could not afford a lawyer, I believe it is in the best interest of my son to have contact with me.

I rang what seemed like 50 lawyers all of which didn't want the case. The only lawyer I found willing to take it on wanted \$4400, before they even read any of my case. He told me to do an anger management course and I told him I had already looked into it and no one in [REDACTED] does one. He passed this on to her solicitors, who gave me two people who they said did courses on anger management.

I went to these people and got letters from them stating that they did not do anger management courses but only anger management counselling. I had already offered to do anger management counselling through [REDACTED] Veterans Counselling Service, but was told I need to do a course. I sent a copy of the letters from the two organisations stipulated by her, back to my lawyer. Although I had paid over \$4,400 I did not hear anything from my lawyer for all but the last two weeks of the 8 months adjournment. Then he wanted to know what I wanted so I sat down and typed about 4 pages of what I expected from the court hearing. I heard nothing more.

The day before I flew to [REDACTED] for the hearing I was asked by my lawyer if I had completed the anger management course. I told him that I had sent him the letters etc. He said he didn't get them, so I had to go back to both the organisations and organise a copy of the earlier letters. When I got to [REDACTED] and gave him the letters he said he already had a copy of them, that I had sent him months earlier. I then explained what I wanted again but obviously he had not read the information that I sent him. We went into the courtroom, my lawyer purgered himself and told the judge that we were close to an agreement.

Up until this point no agreement had been mentioned to me. We went downstairs where my solicitor and barrister layed into me saying that I was going to lose, I was an angry person and this Judge doesn't like angry men who don't pay child support. I felt that the anger claim was unsubstantiated and I was paying child support at the child support formula assessment. I was then bombarded, saying how I had to give them something to work with, my barrister got up and left the room and my lawyer got in my face and said that if we don't make an agreement they are going home. Here I am after giving this man another \$2200 (for the barrister) on top of the \$4400, being demanded to change my position.

After an hour or two, maybe more, we reached an agreement (under duress) where I was to pay for the cost of all child contact and child contact was reduced to 10 days 4 times a year. I told my lawyer from the start I could not read his hand writing particularly well because I am dyslexic and under that pressure situation I could not read a word. He read the agreement to me and I directly

stated I don't think what was stated was actually 10 days he read it again and said "no it is 10". It is in fact 9 days. It was noted to the court that 50% of child contact costs were to come off airfares by way of a corresponding reduction in my child support. Again I stipulated to my lawyers that I have had "Noted to the court" written before and it basically means nothing. They agreed.

I applied to the CSA for the cost of child contact to be counted against my child support. They said it has to be greater than 5% of my assessed amount. I then sent them a letter proving that information. They said they can not take my sister's airfare into account as an escort for the four year old because it is not directly related to child contact. They also could not take bedding and vehicle costs directly associated with child contact.

My son is 4 years old and it is illegal for a 4 year old to fly unaccompanied on an aeroplane in Australia, yet somehow they found that my sister's airfare was not a direct cost attributed to child contact. It should be noted that my sister acts as an escort because my son's mother refuses to escort him at her cost as provided for in the court order. No one has explained to me yet how this is so. I have been informed that the cost of travelling two hundred kilometres to collect my son from the airport is not a cost of contact either yet part of the criteria for determining child support costs for the custodial parent is the provision of transport. Apparently bedding can't be counted either. We will deal with the CSA shortly.

My conclusion of the Australian Legal system. I have read the entire family law act personally and find no correlation between the laws and the courts or the wider legal system. Every lawyer I have dealt with has lied to me on all the points of law, and they have all been family law specialists. Judges do not seem able to interpret the law in any fair and equitable way, shape or form.

I challenge anyone to explain to me how anyone can represent themselves in the family court (probably any court in Australia), who is not themselves a lawyer and expect to get a fair hearing.

All judges were once lawyers. If everyone in Australia represents themselves as they are constitutionally entitled to (I have read the entire Australian Constitution but more on that later), who would the judges be? They can't be glorified lawyers if there are none. I believe that Judges in principal should not be ex lawyers because the current situation clouds their judgement especially in lieu of the four lawyers who have represented me being totally inept and not knowing or representing the actual laws to me or on my behalf. It is a lawyer's job to explain to the judge the law, and how it is interpreted in this particular situation. Therefore a judge need not know the law at all. Therefore why does the Australian system use the tainted and biased opinion of a judge? Judges obviously need to be educated people so why isn't there a university degree in being a judge, therefore removing the requirement to be a lawyer who eventually brown noses enough to become a judge.

Conversely if you have judges who need to know the law fully etc as Lawyers are supposed to, why aren't lawyers the judges and people simply put the "facts" in front of them with no mention of law, because the judge already knows the laws and it's interpretation. Surely a legal system must be one or the other, not some huge money making exercise. \$4,400 for 3-4 hours is a lot of money.

I am now starting to have doubts about "the best interest of the child". I am some ones child.

Australia is quite right in demanding the protection of children. But it is a terribly flawed concept to protect children at the detriment of an adult. To explain I tend to take things to an extreme but people can relate and see the right answer easily at extremes.

I believe that it is discriminatory to treat anyone better than anyone else for any reason. This is even defined in law, as is age discrimination. Surely it is illegal to be prejudice against me in favour of a child, simply because they are a child but this is allowed to occur. I am not a stupid person, I do understand that children deserve a fair chance in life. But it is a contradiction to give them a fair chance in life, but only until they reach adulthood.

We must provide a fair chance for everyone. Male, female, adult and child alike. The right of a

child cannot be greater than the right of an adult. The child and the adult are the same person, simply in a slightly different stage of life. They are the same entity. I think to illustrate this most parents would sacrifice a lot for their child to have a fair go. I do not think that many parents would sacrifice the same amount if they believe that their child will also have to make the same sacrifices all over again, and again for every generation. This is where I feel we are now. I must sacrifice for my child, okay no problem, by why should I sacrifice for my child when there is a great change he is going to have to sacrifice as well. We make sacrifices for our children's sake not for the sake of sacrifice alone, but because we believe the reward is greater than the cost. Ultimately we would prefer that our sacrifices would result in our children not needing to make similar sacrifices.

Now for the CSA. Put simply the CSA lies.

This is a page taken directly from the CSA web site

## Vision, purpose, objectives and service standards

### CSA's vision

'That all Australian parents meet their child support responsibilities.'

### CSA's purpose

'Continue to shape and support delivery of Australia's Child Support System, by building strong government and community alliances and supporting parents to meet their responsibilities.'

### CSA's objectives

The Child Support Agency has a number of objectives:

- children of separated parents receive the financial support that both their parents are responsible for providing;
- payments of child support are made in a regular and timely manner;
- the level of financial support provided by parents is in accordance with their capacity to pay;
- those parents who regularly pay or receive child support through CSA assessment and collection are encouraged to move into private payment or self administration so that, over time, the bulk of child support within the community is transferred without CSA intervention;
- CSA continues to provide a safety net for people whose private or self-administration arrangements break down.

As far as possible in the pursuit of these objectives, the privacy of all parties is maintained.

### CSA service standards

SERVICE	TARGET
Your child support application will be electronically registered with us within 21 days of lodgement	90%
Your child support application (prior to electronic) will be registered with us within 21 days of lodgement	80%
We will decrease the amount of time it takes to get the first payment to new clients	Decrease in average number of days from lodgement to disbursement
We will respond to you by phone or letter within 28 days	85%
We will provide high quality advice and answer your telephone call within 2 minutes	90%
Your Change of Assessment conference will be scheduled within 90 days of application	90%
We will make any changes required within 21 days of your Change of Assessment conference	95%

This particular page makes me very angry.

This statement for example,

- children of separated parents receive the financial support that both their parents are responsible for providing;

The CSA has no legislation for it to ensure that the custodial parent pay any form of financial support for the child at all. In fact I believe that it is impossible for a lot of them to demonstrate that they provide any support let alone 50%. Based on the maximum child support payment requirement how does anyone pay \$40,000 after tax for one child per year. No one can. But that's what the formula tells us is happening. In fact it is \$40,000 a year if the child is 1 year old. Outrageous, but obviously not to the Australian parliament.

Child Support calculator maximum child support for one parent per annum.

CHILD SUPPORT      Annual    = \$19288  
    Weekly = \$369.65

This amount of money is required to be paid by the non custodial parent, therefore the custodial parent should also demonstrate that they are paying \$19288 per annum to meet the above statement.

Now the next statement baffles me beyond belief.

- the level of financial support provided by parents is in accordance with their capacity to pay;

Number one question here. How does my ability to pay increase when I have more children? It doesn't of course, but the amount I need to pay increases therefore this is obviously a lie.

Number two. If I am already paying child support to my ability to pay, how can I pay back amounts from change of assessments as well? It isn't possible to pay more than my ability to pay but the CSA demands that I do. Obviously my welfare comes a long second to my child's.

And as for their lies about statistics. If they can boast about these seemingly high performance percentages it should be legislated that they also provide percentages for the amount of telephone calls where they do not provide quality advice and service. They should provide a performance percentage of letters they never respond to, or change of assessments that never make it to interview.

I currently pay 140% child support. That's without including my change of assessment amount that I have to pay back. How?

CHILD SUPPORT Annual    = \$4983

Then I am forced to pay \$100 per month more for back amounts. To make matters worse, in response to a direct question about back payments I was informed by CSA that I would never be required to pay any back payments. I asked the question when I was first employed as a trainee, being paid \$18,000 per year whilst travelling 100km per day to and from work. I was worse off than being unemployed when CSA made a change of assessment saying I had to pay \$2000 back amount, even though I did the right thing and asked them before I took the job how much extra money I would need to pay, they told me none, it is based on last years taxable income. I told them straight out, if I take this job I cannot afford to pay back pay because I need to travel 100km per day to work. They said that I wouldn't have to pay any more than the \$260 per annum. I asked the same question 3 or 4 times and got the same answer. I am still paying off the debt this lie created. I am still stereotyped because of this. In fact I am still accumulating late payment penalties because of



this.

I hate the CSA because of what they did to me then and unfortunately the damage caused can never be repaired. The CSA causes me to suffer endless sleepless nights.

I was generally a good sleeper. The only times I cannot sleep at night is when I am laying in bed with thoughts of the CSA or family law court doing laps around my head.

I have a current court order that states. My son's mother has the day-to-day care and responsibility of my son. I have long-term care and responsibility of my son. I have to this day never found anyone who will let me exercise my long-term care and responsibility of my child.

But my major problem is why do I still have day-to-day financial obligation for my child when every other parental obligation has been stripped (stolen) from me? All parenting books talk about the cost and rewards of parenting. I have not seen any written about the rewards of being a parent who only pays child support and pays thousands of dollars per year for plane tickets and pays even more because for the 40 days a year I have him when he needs food, accommodation, etc. But his mother does not pay me child support during these times.

Back to my child support amount

$\$4,983 + \$1,200 = \$6,183$  per annum. Now assuming this is 50% as it ought to be

$\$6,183 * 2 = \$12,366$

I have my son for 40 days per annum (11%)

His mother has him for 325 (89%)

His mother receives  $\$12,366$  (for 89% of the year)

Therefore my son costs 38.05 per day when he is in his mothers care.

He therefore costs the same amount of money (or more) when he is in my care.

$38.05 * 40 = 1,522$

I pay for airfares =  $\$600 * 4 = \$2,400$

I pay for my 4 year old child  $\$2,400 + \$1,522 + \$4,983 + \$1,200 = \$10,105$

Now my accountant hasn't got back to me about tax, but I assume I will get \$0 in Family tax benefits and if I do I will get bugger all. Somehow the governments proposed legislation about family tax benefits is based on something other than who actually pays for the child. I actually believe that my sons mothers husband is probably receiving a family tax benefit even though I am paying 100% of all the costs for my child, not just the 50% I am obligated to pay.

If anyone protests that \$10,105 is not enough money for a 4 year old child and actually expect me to believe it costs \$20,210 to raise a 4 year old, better remember that after Tax, HECS, Child Support my annual salary was less than \$25,000. Out of which I paid \$4000 in child contact expenses which leaves me with \$21,000 for myself, an adult to live on. The result is that I receive only \$790 more per annum than the legislation states that my son should receive, although it is 99% assured that I am the only one providing financial support for my child. How is this equitable?

I find it hard to believe the CSA statement, "the formula takes into account child contact up to 30%".

21/08/2003

It can't, just with the figures shown above. But lets quickly look at someone with the average weekly full time wage, paying child support on one child, and has 29% child contact, and compare them to the same person with no child contact. Assuming again both parents have a 50% financial obligation.

Annual income of paying parent \$38,000  
CHILD SUPPORT Annual = \$4,623

Amount per month formula says a child requires = \$9,246 for the custodial parent  
For 260 days = \$35.56 per day.

$35.56 * 105 = \$3,733$

A person with 29% child contact pays  $3,733 + 4,623 = 8,356$

As you can clearly see a parent with 29% child contact is paying \$3,733 a year more than the same person with no child contact. In fact they are paying nearly twice as much as the resident parent.

Nearly twice as much as the resident parent, without further costs of airfares etc, to make child contact possible. This is what the Australian government has already taken into consideration within the formula?

The problem is when someone has child contact they are still paying for the child to be maintained at the other house and paying for it when they have them. It becomes greatly magnified by the fact the other parent doesn't pay a cent for any of the child contact time. Basically the system is set up so that people can not afford child contact. This is actually against UN resolutions, the rights of a child. The child's right to know and be cared for both parents.

As you can see by this very simple and easy demonstration, a parent who has child contact can pay up to 182% of the child support formulated amount. The fact that a child does not cost \$9,246 further compounds the situation. I only 3 years ago was unemployed and as such I earned 8,000 for the financial year. I was a 22 year old adult and this is the money that the Australian government gave me to live. You can not ever convince me that a child needs more money than the youth allowance. That said, No parent should be paying any more than 50% of the youth allowance rate. = 42.50 per week. This is an annual amount of \$2,210. This is obviously realistic figure as this is what the government gives to children under 18 year old children living at home when their parents are unemployed.

Looking at this web site reminds me of another point. Why do single parents get \$406.40? Youth allowance and the same parent but partnered get \$340.60, this is staggering if both parents are on youth allowance the household gets \$135 a week less. And people wonder why there are so many single parents when you receive so much more money if you split up. It also troubles me that when I was unemployed I payed \$5 per week Child Support. Why doesn't the custodial parents benefit go down by the same amount? But instead they get an increase! This is discrimination.

I am so discriminated against by you the Australian government. HECS, Child Support and Tax all taken as a percentage of my before tax income. I understand my obligation to pay back HECS, but surely my ability to pay child support is reduced by paying \$2000 a year HECS? Surely a HECS dept which is taken out before I get paid has to reduce the amount of child support I can pay! You talk about ability to pay. When I can afford an extra \$2,000 out of my taxable income how come everyone else can't? I am being decremented against. If I can afford to pay child support then the other parent should pay as well and the amount of family tax benefit should increase by that \$5.

I am still to this day waiting for my 50% of the money a parent gets for having a child. I believe \$600 or \$900 dollars or something. I had a child. I paid for a car seat, a cot, a highchair, and I am waiting for my money for having a child. I believe it was sent to the other parent. This is theft. They are only 50% of the parents.

This argument of course isn't only about me. Every 3 month when I have to afford airline tickets it affects my son. I have telephone child contact with my son every Thursday at 7:00pm. I am a shift worker working three shifts therefore I find it hard to get into a routine when 1 week I am at work, another week I finished work at 8am so I am asleep, the next week I have off so I am generally at my parents helping them on the farm, and on the final week I knock off work at 4pm and am home.

When I speak to my son on the phone and he asks me to come and pick him up, I really struggle to find a reason why I can not. He does not understand. The first time he asked me he had just turned 3 and his mother (and the legal system) had stopped me seeing him for 12 months, and I know the reason why I can't, it's because his mother wouldn't let me. I know I can't tell him that but it is hard not to. To protect my son from the truth that his mother doesn't want me to see him, I end up looking like I don't want to see him. It is wrong. What answer is in the best interest of the child? The truth, his mother is stopping me seeing him or the lie that his "new daddy" doesn't want to see him? (I don't tell him I don't want to see him but his mother and her husband both work day jobs during the week and he obviously doesn't believe me when he asks if I can pick him up on the weekend and I say I can't I am working) Yes and it hurts me, all thought I doesn't do anything, but when my son started calling me his new daddy after his mother stopped me seeing him for 12 months hurts. I am not his new daddy.

I have heard a lot of arguments about why it isn't a good idea for the assumption of joint custody, but none of them seem overly valid.

Me my number 1 issue with the current system. I agree all parents have an obligation to care for their child. There are obviously issues within that

- The woman has sole discrimination on weather a child is born or not (termination). If the father of the foetus wants the child and the mother does not, why is the man discriminated against? Where by if the woman does not want the child she can have the pregnancy aborted? This argument is fought on the grounds of the woman's body. But in truth it discriminates against men, removing their choice but still providing the choice to a woman.
- Planned pregnancy's such as planned by both parents. And then there are a lot of situations where the woman plans the pregnancy and simply gets pregnant (accidentally). Where both parents plan the pregnancy it is obvious that 50:50 obligation to care for the child (note care, not pay). And perhaps this becomes easy to designate.

For me it makes sense to say. Every parent has an obligation to care for his or her child (note care, not pay).

- I don't want to care for my child(ren), I pay the current formula based child support.
- I have been found unable to care for my child, my 50% share is give to the State, as in cases where both or the custodial parent is found to be unable to care for the child.
- If the legal system takes away my obligations to care for my child that also includes the obligation for pay for my child.
- If one parent moves away making dual custody problematic it must be broken down further
- Never lived close to each other in the first place (one night stand etc)
- Never lived close to each other (long distance relationship)
- Lived close but moved away because
- Wanted to – conscious decision

- Needed to – health reasons, or a valid reason for the child to move ie education.

If a parent moves away because they make a conscious decision to do so, say they find a new partner somewhere else, just want to move, etc. and the UN human rights allows that person to do so, it also must realise that the person moving

- Takes child(ren) with them
- Leaves child(ren)

In the case where they take the child they are saying, I can care for this child buy myself. Therefore reducing the obligation of the other parent.

Leaves the child behind, the person is in part saying, you care for my child, I will pay you for it, therefore pays the current calculated child support amount.

I have no dough that the current child support amount is a punishment against fathers who left their wives and children. (Back when the CSA was formed)

Unfortunately society has changed dramatically since that time. 10% of mothers worked then 60% work now. 90% of CSA cases where men leaving the family now probably under 50%

I was fortunate I was not married or in a common law marriage. But I find it grotesque that divorce courts give the matrimonial house to the wife, for "the kids" which is certainly child support and then seeks the same amount of child support as someone who did not give away 100% of there 1/2 of a house.

I have heard the requests to the Child support agency for them to release the data on termination of child support due to deaths. I believe this is covering up a major issue amongst child support payers.

Child support appears to be unjust and never ending. I myself look at another 15 years and get somewhat depressed. Parents in day to day care and responsibility don't look at it like that because they are receiving the benefits of having a child. This is completely absent from the formula. The formula does not look at the cost benefit equation of having children at all. Therefore when you take away the benefits and are left with minimum 50% - 180% of the costs of a child, it becomes over whelming. The child support system is full of easy fixes and lie. I don't trust any system where you have to first complain to the CSA and the ombudsman's only advice is to complain to the CSA's complaint department. Then spend thousands of dollars going back to court. Do you honestly expect me to take the issue to court knowing full well some judge is going to say I only pay \$514 per month child support and that it is not in the child's best interest to have the mother travel to Tasmania, and make me pay even more ridiculous amount of money just on Travel. Which I can not claim back under child maintenance, even though I had a court order and to get it enforced I have to go to court. Your legal system makes me feel ill every time I think about it. I am so discriminated against. I do nothing wrong and I have to fork out bucket loads of money, I am pushed beyond my breaking point and then accused of being Violent by people who don't seem to understand what violent is. I have done anger management and as far as I can tell I was extremely angry and I believe I was deliberately pushed there by the system, ie her solicitor told her it would be a lot easier to stop me seeing my son if you got a AVO against him. The fact that I am not violent doesn't stop them, push him to the limit and then blame him for being angry. I don't know how the system works when they can blatantly strive to make me angry but when I get angry I am in the wrong. I am 6"2 and 150kg, by any standards I am a strong man. If I was a violent person even a little violent there would be fare more than a single broken window I have to answer for in the 10 years I have know my son's mother.

Looking back it become obvious the system has built itself into a wheel to make lawyers money. The fact Judges are lawyers simply makes it easier to keep the wheels turning.

In short it can be considered no different to prejudice to make/expect a parent to pay more than 50% of the minimum cost of the child (it is impossible for anyone to estimate how much an individual will spend, particularly as circumstances change). It is also wrong that a parent be made/expected to have any child contact and the amount of child maintenance not be reduced to cover both the increased cost to the non-resident parent and the reduced cost of the resident parent.

Arguments that the resident parent has ongoing costs such as housing, is directly balanced by the non-resident parent's ongoing cost of housing if they have child contact overnight. The current formula does not take into account that many of the costs associated with the resident parent are also just as relevant and can be the same for the non resident parent, such as housing, bedding, toy's and computers. Most of these expenses do not substantially decrease simply because they are not in use for the same percentage of time.

I do not comprehend why anyone who cares for their child 50% of the time or more pays any child support what so ever. A parent has the obligation to care for the child. It is discrimination against the parent with the higher income, I can find no reasonable grounds based on logic that explains why a parent should pay money, after they have already filled their obligation as a parent.

Child support must be based on the age of the child. I hear the CSA say that the formula is based so that the costs even out over the long term. When you look at the Australian bureau of statistics and see 0% of fathers under 24 have child custody and very low percentage of fathers have child custody for children under 8. In comparison nearly all fathers who have child custody have custody of teenage children. This relates to the father paying child support at a higher rate than the actual cost when the children are young. The father then paying a much greater rate when he has custody when the children are older. It appears that the legal and child support systems are not actually concerned with the best interest of the child, instead the best interest of the mother.

A simple way of looking at child support.

A 2-year-old child costs \$3000 per annum (for arguments sake)  
A 12-year-old child costs \$5000 per annum (for arguments sake)

Both parents share parentage 50:50  
Both parents must then share the obligation to care for the child 50:50

A parent on unemployment benefits (youth allowance, pension etc) has their single or partnered rate of the benefit reduced by \$5.

The government then subsidises the total cost of the child for that parent – the \$5 per week the parent already payed in reduced benefit (Parents can afford the \$5 because the non-resident parent can afford it already).

The amount the government would subsidise is \$1240 for a 2-year-old child and \$2240 for a 12-year-old child. If both parents are unemployed the government subsidies is obviously \$2480 for a 2-year-old child and \$4480 for a 12-year-old child.

A simple way would be to pay 20% maintaining the current 120% of the pension rate as the minimum \$260 per annum if you are employed. That figure may need some review as pensioners live on 100% but get many necessary items, electricity etc discounted, this would probably account for the entire 10%, and not taking into any account the added expenses of working. So perhaps a 120% of the pension rate.

With a cap of \$1,500 for a 2 year old child and 2,500 for a 12 year old child minus the family Tax benefit. This would mean that each parent if they payed the full amount of child maintenance would

owe \$1,350 for a 2-year-old child and \$2,250 12-year-old child, if the family tax benefit was 10%.

This means relatively low incomes pay the total amount of child support due, this will reduce the governments costs by encouraging people to work, by giving people who earn the average wage a realistic figure to pay, and an actual benefit from working harder or longer hours by keeping the additional money. In fact the percentage of Child support above the safety figure could be set at  $\frac{3}{4}$  of the average wage. Meaning people who earn the average wage are not paying any child support on the last  $\frac{1}{4}$  of their pay. Greatly increasing their expendable income.

Expendable income is the motivation to work. At the moment a lot of fathers feel and rightly so that they can live on unemployment benefits with little or no change in their expendable income after tax and child support takes giant slabs of their income, but does not give them any benefits such as lower pharmaceutical, eligibility for rent assistance, eligibility for housing commission houses etc. A point seem lost in the current system.

I am not 100% on what the laws are currently about child support payers who have one child to one parent and another to another parent, but it is discrimination to treat that person any differently a person who those children where to the same parent. It does not matter if I have 2 children from one relationship, or 1 child from each of two relationships. It is obvious that the costs are actually increased as apposed to both children living in two households instead of each child living in separate households, this difference needs to be made up by the Australian government. We have laws and social beliefs that allow for these circumstances to exist therefore we as a society must take responsibility for the cost of that luxury.

In my proposed system child support is paid regardless of weather the non custodial parent is paying it or not. This can only be the fair and just outcome for the child and the custodial parent. The amount of child support is not related to the income of either parent, but to real costs. If either parent is unable to afford the child maintenance the government provides it. This system can not prejudice anyone. Each parent pays the same amount of money to provide for the basic needs of the child. Any addition money spent can be claimed for family tax benefit with receipts, with the normal tax return for rental property scrutiny.

It seems important now to emphasis, a parent has an obligation to care for the basic needs of a child. A parent does not have an obligation to provide a new \$80 Sony Playsation game a week and new \$300 Nike shoes or \$500 sports jacket.

A parent has the obligation to provide:

- Satisfactory accommodation, inc. bedding etc
- Nutritional, clean, appropriate food (not Scotch fillet or Mc Donalds)
- Water
- Facility's and materials for personal hygiene
- Appropriate clothing (appropriate for climate and for schooling. Not new, brand-name, 50 different out fits etc.)
- Education (through public education system)
- Safety
- Opportunity to socialise (local kids, not with the French amboceptor)
- Sport and recreation (kicking a ball at the park, not sky diving)

It is questionable as to how to balance the payments as a parent's income increases above the protected income

At this point I may remind the committee of other factors related directly to your inquiry.

Extracts from Convention on rights of the child.

"

## **Convention on the Rights of the Child**

**Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989**

**entry into force 2 September 1990, in accordance with article 49**

### ***Preamble***

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,  
Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,  
Recognizing 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,

### **PART I**

#### ***Article 2***

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

#### ***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.

#### ***Article 4***

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

#### ***Article 5***

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the

exercise by the child of the rights recognized in the present Convention.

#### **Article 7**

as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

#### **Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

3. the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests

#### **Article 10**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country.

#### **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### **Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.



#### **Article 14**

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

#### **Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

#### **Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

#### **Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

#### **Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

#### **Article 27**

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

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 programmes, 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.

**Article 29**

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

**Article 31**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

**Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

**Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

**Article 37**

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily

**Article 38**

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

**Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

**Article 1**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth

or other status.

**Article 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law.

**Article 8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 10**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

**Article 12**

No one shall be subjected to arbitrary interference with his privacy,

**Article 13**

2. Everyone has the right to leave any country, including his own, and to return to his country.

**Article 16**

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 17**

2. No one shall be arbitrarily deprived of his property.

**Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23**

2. Everyone, without any discrimination, has the right to equal pay for equal work.

**Article 25**

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26**

3. Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.

**Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally**

**Adopted by General Assembly resolution 41/85 of 3 December 1986**

**Article 3**

The first priority for a child is to be cared for by his or her own parents.

"

An extract from the family law act

"

**FAMILY LAW ACT 1975**

**- SECT 70NO**

**Sentences of imprisonment**

(8)

To avoid doubt, the serving by a person of a period of imprisonment under a sentence imposed on the person under paragraph 70NJ(3)(e) for failure to make a payment under a child maintenance order does not affect the person's liability to make the payment.

## **FAMILY LAW ACT 1975**

### **- SECT 66J**

#### **Matters to be taken into account in considering financial support**

##### **necessary for maintenance of child**

(1)

(b)

the proper needs of the child (this is expanded on in subsection (2)); and

(2)

In taking into account the proper needs of the child the court:

(a)

must have regard to:

(i)

the age of the child; and

(ii)

the manner in which the child is being, and in which the parents expected the child to be, educated or trained; and

(b)

may have regard, to the extent to which the court considers appropriate in the circumstances of the case, to any relevant findings of published research in relation to the maintenance of children.

## **FAMILY LAW ACT 1975**

### **- SECT 66C**

#### **Principles—parents have primary duty to maintain**

(1)

The parents of a child have, subject to this Division, the primary duty to maintain the child.

## **FAMILY LAW ACT 1975**

## **- SECT 66B**

### **Objects**

(1)

The principal object of this Division is to ensure that children receive a proper level of financial support from their parents.

(2)

(a)

that children have their proper needs met from reasonable and adequate shares in the income, earning capacity, property and financial resources of both of their parents; and

(b)

that parents share equitably in the support of their children.

## **FAMILY LAW ACT 1975**

### **- SECT 63DA**

### **Explanation by person advising or assisting in the making of a parenting plan**

(1)

If a person who is a family and child counsellor, a family and child mediator or a legal practitioner gives advice or assistance to people in connection with the making by them of a parenting plan, the person must explain to them, in language likely to be readily understood by them:

(a)

the obligations that the plan creates; and

(b)

the consequences that may follow if either of them fails to comply with any of those obligations; and

(c)

the availability of programs to help people who experience difficulties in complying with a parenting plan.

## **FAMILY LAW ACT 1975**

## **- SECT 63H**

### **Court's powers to set aside, discharge, vary, suspend or revive registered parenting plans**

(1)

(a)

that the concurrence of a party was obtained by fraud, duress or undue influence; or

(b)

that the parties want the plan set aside; or

(c)

that it is in the best interests of a child to set aside the plan.

(1)(c), the best interests of the child concerned are the paramount consideration.

## **FAMILY LAW ACT 1975**

### **- SECT 63E**

#### **Registration in a court**

(2)

(i)

a statement, in relation to each party, that is to the effect that the party has been provided with independent legal advice as to the meaning and effect of the plan and that is signed by the practitioner who provided that advice; or

## **FAMILY LAW ACT 1975**

### **- SECT 63H**

#### **Court's powers to set aside, discharge, vary, suspend or revive registered parenting plans**

(1)

The court in which a parenting plan is registered under section 63E may set aside the plan, and its registration, if the court is satisfied:

(a)

that the concurrence of a party was obtained by fraud, duress or undue influence; or

(b)

that the parties want the plan set aside; or

## **FAMILY LAW ACT 1975**

### **- SECT 68F**

#### **How a court determines what is in a child's best interests**

(2)

The court must consider:

(c)

the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from:

(i)

either of his or her parents; or

(d)

the practical difficulty and expense of a child having contact with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents on a regular basis;

whether it would be preferable to make the order that would be least likely to lead to the institution of further proceedings in relation to the child;

"

As can clearly be seen by my experience, the legal system and the law are not even close to similar.

An extract from the Australian Constitution

"

## **Commonwealth of Australia Constitution Act**

### **Part V - Powers of the Parliament**



(xxii. ) **Divorce and matrimonial causes**; and in relation thereto, **parental rights**, and the **custody and guardianship of infants**:

(xxxii. ) The **acquisition of property** on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:

### **Chapter III - The Judicature**

75. In all matters -

(iv.) Between States, or between residents of different States, or between a State and a resident of another State:

the High Court shall have original jurisdiction.

76. The Parliament may make laws conferring original jurisdiction on the High Court in any matter -

"

As can be clearly seen the Australian parliament has no powers to make legislation regarding the "best interest of the child". It does however have powers to make laws regarding parental right, custody and guardianship of infants.

It is very difficult to see where the power for the parliament to institute child support legislation arises from.

The Australian constitution does not mention any power of the Parliament to enforce an obligation of a parent. In fact it does not mention obligation of a parent anywhere. I find it difficult to imagine how the Australian government has used an imaginary set of obligations as a parent, ones that increase with an increase in income. As discussed earlier a parent has an obligation to care for his or her child. The obligation being moral does not increase or decrease with income. I have not heard of any imprisonments for parents who fail to buy a child McDonalds or fail to buy their child a \$300 pair of shoes. If spending 18% of ones income on one child was an obligation people would and should be charged for paying less. The fact is the Australian government failed to identify the actual obligations of a parent and base child support on meeting that obligation (50% of the total parental obligation).

The fictional ways the Australian government used the price people do, and are prepared to pay to establish an actual cost for the obligation is misguided. The Australian parliament is always trying to encourage people to save money, through investments etc. Yet seems to base it's child support formula on people who spend 100% of there income. It also failed to consider cost of living differences across the country when enforce child support for people in the highest cost of living state and giving the money to a parent in the lowest cost of living state and vice versa. This is of course wrong, as the 18% that leaves one state is not the same "real money" in another.

When I agreed to the relocation of my son to Victoria, it was under duress as I was told I would not have any chance in court. It was also on my presumption that if child contact was prevented the courts could and would make her move back to Tasmania. I now know that it is not in the power of the court to make anyone move. This of course is why my sons mother agreed to the child contact knowing full well once she had relocated she could stop the child contact and make me pay for child contact. This is how the Australian Parliament and legal system treats the family, and the right of the child to know and be cared for by both his or her parents.

Given that the best interests of the child are the paramount consideration, why doesn't the court make my sons mother relocate to Tasmania to aid in child contact, in fact to aid in joint custody?

My father saw my son twice between the ages of 1 and 4years. My mother saw him rarely, yet his maternal grand parents saw him every 3 months even when contact with me, his father was prevented.

I believe that in any situation where a parent has there obligation to care for the child removed, they should no longer be obligated for child support, as their obligation has been removed by the state. If for instance my sons mother moves to Victoria, she removed my obligation, by assuming it herself.

If a parent chooses not to care for the child, for what ever reason, child support is due, at the rate of obligation, plus a penalty amount because the parent is removing the child's right to be cared for by both parents. I believe the current child support formula is at an appropriate penalty rate.

To set myself clear finally in brief:

- Child support at the current formula rate is excessive, it makes it cost inhibitive to maintain any reasonable amount of child contact
- Child support not being reduced pro-rata for child contact is prejudice
- Child support amount should be pro-rata. (50:50 no one pays as both parents have met their obligations as parents).
- Paying child support after caring for the child 50% is prejudice
- A parent should not pay the child support amount when they are not in a situation (mental, physical, imprisonment etc) to care for the child themselves
- The current CSA formula is excessive and a penalty on non-custodial parents
- A new CSA amount is required for the actual things parents are "Obligated" to spend on raising a child and then divided by 2, (to account for a 50:50 parental obligation)
- A parents obligation can not increase with salary, (the amount of government subsidisation reduces with an increase of income).
- Parents who "choose" not to care for their child, must pay child support (This should be at a penalty rate such as the current child support formula. All monies over the child support amount will be put in trust for the child, as this money if for the loss of the right to know and be cared for by both parents, not for the resident parent to spend. This trust can be used to counselling for the child, otherwise is left in trust until the child is 18years old.
- Parents who are prevented from caring for their child for any reason, have had their obligation removed and therefore are not required to pay child support.
- All grand parent should automatically be given 10 days and nights per annum child contact, unless it is proven to be detrimental to the child, on grounds of abuse. Or decline the opportunity. This amount will be taken out of the respective parents joint custody time, or out of the residents parents time. (I do not know how this would affect child support, perhaps a day/night reduction in child support at a pro-rata amount).
- Child contact costs should be met by both parents 50:50
- Unless a parent relocates more than 50km to the detriment of aiding child contact. They shall pay any/all additional (to the original) costs. (moving 30km away but moving 10km closer to the closest airport, may not be considered detrimental, when child contact is facilitated by air travel)
- If joint custody is not possible due to location (at conception/knowledge of the pregnancy). The child support rate should be determined by a parents obligated costs, minus pro rata child contact.
- On the death or incapacitation of a parent, to parent, it is automatic that the other parent assumes full care and responsibility for the child.
- Parents that are unable to pay the full child support amount will have their amount subsidised by the government.
- All children a 1-year old are given joint custody. (to allow for breast feeding arrangements etc.)
- Both parents are aloud paternity or maternity leave, only allowing it for one parent, is prejudice.
- Every resident parent should receive the full child support amount, either from the non-resident parent or from the government or government subsidy.

There are so many issues related to this inquiry. I have but touched on a few. [REDACTED]