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Committee Secretary,
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Dear Sir/Madam,

I write in response to your request for submissions on the subject of Child Custody Arrangements which was drawn to my attention by my local member Ken Ticehurst in an article in our local paper. I write firstly as the deserted and now non-residential (non custodial) father of my two sons [redacted] and [redacted], date of separation [redacted] decree absolute [redacted] and secondly as a serving parish minister of the Presbyterian Church with resultant pastoral contact with children, parents and families, many of whom are separated, divorced, contesting custody and CSA matters.

Before I proceed, let me also express my thanks to the Government and whichever of its Committees amended the regulations regarding Family Tax payments that recognised that non-custodial parents did in fact and in law still have dependant children.

In relation to your terms of reference I make the following Submissions:-

A) Regarding parental contact after separation and divorce.

i) Some Background comments:

Firstly the obvious, the Family Court is only involved where parents are unable to reach a mutually acceptable agreement, at which times the Family Court has the unenviable task of imposing an arrangement which one or both parties will be unhappy with.

Without going into undue detail, in my case the Family Court processes have worked relatively well as I know have residential contact with both my two sons for half school holidays plus every second weekend, however this is dependant on my ex wife and I continuing to reside within 160km. If either party move outside that distance, school term contact reduces to one weekend per month and in effect would probably be one weekend per term as being a parish minister, I work Sundays.

These orders were only achieved after a series of Court Hearings which at times were extremely acrimonious and extremely costly in time, (final orders were gained in 1997 after 3 years of hearings) emotional stress and financial hardship. Reasonable contact orders were only obtained after the Federal Government signed the International Rights of Children Treaty which amongst other things declares that children have the right of continued contact with both biological parents even after separation and divorce, which the Family Court was obligated to acknowledge and to a certain extent enforce.

Throughout the Court process, I was made aware by my own experience, by my solicitor and others working in or with the system, that the fact that I was the father and not the mother of the children meant that I was fighting an uphill battle. Claims made by my now ex wife were accepted as gospel truth even when evidence was produced that proved her claims to be false. (For example, my ex wife claimed to have been separated from [redacted], when she actually left the marriage on [redacted]). In contrast any claims I made were either ignored or at least viewed with considerable scepticism even when backed up with hard evidence.

It was also apparent that some at least of the officiating Judges/ Magistrates and Registrars were biased. The advice I was give was always seek a female Judge as males invariably rule in favour of

the mother. Having had one registrar respond to one of the submissions by my solicitor [redacted] is trying to pull himself up by his jockstrap", I would submit that there is such bias.

ii) Submission:

a) In relation to the two issues relating to contact in your terms of reference. While the ideal situation for parents and particularly fathers after separation would be for residency of children to be equally shared, in reality when all factors are considered, this is probably unfeasible in most cases. Children, like adults need security and a regular routine if they are to do well. Children living with mum one week and then dad the next or some similar arrangement is I would suggest unhelpful, unhealthy and extremely disruptive for the children concerned as they in effect have to live two lives, one when with mum and another when with dad and effectively end up living out of a suitcase or with two complete sets of clothing, two sets of rules etc.

Regular contact with both parents is vital but I would submit that a reasonably scenario for the children is the more usual current arrangement where the non-residential parent has the children at weekends and for extended periods during the school holidays, at least up till children turn 12 when their wishes should be given priority.

Having said that, one issue that does need to be addressed is the perceived and I would argue actual bias within the Family Court in favour of women and mothers and against men and fathers in the vast majority of cases, and certainly including my own, and a number of which I am aware of as a parish minister.

Statistics are an unhelpful guide, as because of the perceived bias, the tendency is for many men to walk away or give up rather than go through the trauma of contesting matters through the court. While it is true that, at least in recent years, fathers have been winning more cases, the truth still remains that relatively few cases actually come to court, largely because fathers find it easier to walk away which has a diabolic emotional effect on their children and especially on their sons. (if Dad loved me, why did he walk away?" is cry I have heard on more than one occasion).

The second issue I would raise here, is the common practice, usually by mothers, of deliberately relocating themselves and their children so as to abrogate contact orders.

For example when my wife deserted the marriage she relocated firstly from [redacted] then [redacted] to [redacted], then [redacted] to [redacted] before thankfully being relocated against her will by the Education Department to [redacted] An attempt in the Family Court to prevent her relocation from [redacted] to [redacted] (50 miles west of [redacted] 500km west of [redacted] being rejected out of hand with the rude statement indicated earlier. My request had been that my by then ex wife be restricted to moving within 160km of [redacted] which would allow me to continue the contact I had with my sons while they were in [redacted] The result was that I was restricted contact of to half school holidays and one weekend per school term (such weekends perforce spent in motels)

Thirdly, the Family Law Act currently fails to require both parents to contribute equably to travel time and costs of contact, especially when parents live considerable distances apart. For example in the 8 years since separation I have been forced to do something like 80-90% of the driving required for me to see my children, my ex wife refusing to provide anything but the smallest of concessions in regard to sharing the travel (I currently do 9 hours driving every second weekend to have weekend contact)

b) With regard to court ordered contact with other persons, and especially grandparents.

This is an area neglected by the Family Court and one that needs to be addressed.

I would submit, that provided, evidence can be given that grandparents have had significant contact with their grandchildren prior to the breakdown of the marriage that this should be continued and especially so in families whose culture is one where contact with extended families is considered the norm. While normally this is usually provided (as in my case) by the respective parent ensuring his or her children have appropriate contact with members of their extended family, it is reasonable I believe to actually have provision for the Family Court to actually specify this or even declare that

there is to be a presumption of continued contact. Especially as Court orders often omit this simply because it is overlooked and then it is not feasible to go back a add further orders.

As a parish minister, I am involved with several grandparents and other extended family who are deeply grieved not only by the breakdown of a child's marriage but also because they are currently prevented from seeing or even contacting their beloved grandchildren, especially for birthdays and Christmas etc..

B) in regard to the Child Support Formula regarding care of and contact with dependant children.

I would make a number of points and Submissions:

1) **One of the greatest failing of the Child Support Formula and arrangements is that it makes virtually NO reference or provision for actual contact with children**

As a non custodial father who is required quite rightly to make ongoing financial provision for the care of his beloved children, **the fact that there is NO obligation laid on the custodial (residential) parent when receiving Child Support Payments to make any effort to facilitate or abide by Contact orders has been and to a certain extent still is a major criticism of the system.**

A custodial parent (usually the mother) can make gaining contact with the children by the non-custodial parent almost impossible, deliberately flouting orders, failing to send appropriate or sufficient clothing or shoes etc. etc. and any attempt by the paying parent to use CSA payments as an incentive or as a bargaining tool is thwarted by the CSA system which requires payment of assessed liability even if the residential parent is breaching every contact order made by the court or previously agreed in a parenting agreement.

Even seeking financial restitution of having to buy extra clothes etc. by making a claim for via CSA for support made in other ways usually resulted in the claim being rejected when the other party refused to agree. The system being that unless both parties accepted that the claim was valid it was rejected (I do understand that this situation has changed over the last few years, but this certainly was the case back in 1994 and following).

2) Unlike what is now the case through the Family Tax Office, parents who have residential contact for less than 30% of nights are considered to have no contact and effectively no allowance is made for the actual level or cost of contact in the formulas. I **do accept however that for the system to be workable, some level needs to be set as the cut off, however I would question whether the current 30% of nights is fair and equable.**

3) I would also submit that the current income cut off for the payee below which the payee is deemed to have no CSA assessable income is too high as it meant that my ex wife could work as a high school teacher and earn more than I do as a parish minister without affecting my liability to her.

One result of this is to make true the common perception that separation was financially advantageous if one was the custodial parent. (i.e. better off separated than married).

4) While I am happy to be able to say that currently, my ex wife and I have a CSA registered agreement for Child Support which both of us are content with, **this was not always the case and after several encounters with the CSA Review Office and Procedure, I must submit that overall it was a traumatic and unhelpful and on one occasion a grossly unfair procedure** where I ended up being assessed to make an annual payment of just under $6,000 when my gross income was under $20K. A figure that even my ex wife finally accepted as unreasonable and which was subsequently reduced to a more appropriate figure.

As with the Family Court, a major problem being that claims made by the mother were taken as fact and any claim made by me regarded as false. Further, should I disagree with a CSA ruling, the only solution was to take the matter up with the Family Court with my ex wife as the defendant, not the CSA who had, I believed, erred

I must admit though that appeals to the Ombudsman and on another issue the Privacy Commissioner did gain a measure of justice, and I was told certain CSA procedures were tightened up and adjusted as a result.

5) From my parish work, **I am also aware that there is a major inconsistency with the CSA and how it works**. I am very aware of a number of case where payers are able to manipulate their finances so as to avoid paying what should be their CSA liability. In one case, the ex wife who has custody of 4 of the couples 6 children is assessed as having a CSA liability despite the fact that he ex husband not only earns more but pays nothing by clever arrangement of finances and I am told, by making false declarations to the CSA. The response of the CSA being, in that case, that it is the mothers responsibility to pursue the matter through the Courts.

Surely their is a case to be made for some form of further appeal, perhaps to an administrative tribunal, when the fault is perceived to be with the CSA or the CSA Review Board

Summary regarding CSA matters:

I believe the actual formulas as regards percentage of income etc. determined by number of dependant children is in most cases quite adequate and fair to both payer and payee and that there is provision for other factors to be taken into consideration, for example, in may case the provision of rent free accommodation.

However in particular, of the above **three matters do need to be urgently addressed**,

1) the lack of a link between payments and the residential parent's compliance with contact orders, one possible solution might be that moneys be collected from the payer, but withheld from any payee who is in demonstrated (to the CSA) breach of contact orders (court ordered or registered) and only paid when verification of contact is provided. (With appropriate financial penalties for false claims etc.)

2)the relative ease with which payers and especially those who are self employed or in business to **so manipulate their finances that they effectively abrogate their financial liability** with regard to their children, and

3) Giving those who object to a CSA Review Board decision the option, at least in certain cases where the allegations is that the matter has not been correctly assessed etc. an alternative to having to take their ex spouse through the Family Court, perhaps **by allowing appeal to the Administrative Appeals tribunal or some similar body**