

House of Representatives Standing Committee  
on Family and Community Affairs

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Submission to the Standing Committee on Family and Community Affairs

Inquiry into child custody arrangements in the event of family separation.

I present a submission to this inquiry.

Bearing in mind that the interests of the children are the paramount consideration:

My focus is point (B) of the terms of reference  
'Whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

My submission seeks to be objective, however I have used personal examples to demonstrate the issues and used observations and details provided to me in my research.

My key point is, however, that parents are not purely financial objects, but very important in developing the children we bring into society. Impediments continue to frustrate any meaningful relationships that ensure both parents contribute to a well-rounded view on life for our children. This is even more important after a separation occurs.

These impediments are financial, social, the way the laws are administered and the government child support payment scheme. There is a lack of sympathetic support, before, during and after separation.

The impact of separation is a major issue, affecting 1 in 10 Australians. (Source: Australian National Audit Office 2002 Report on the Child Support Agency)

Just like smoking, the difficulty in making change is that we count the hard dollars and taxes in the present, ignoring the cost to the community such as health and lost income taxes, in the long run. Lives are not lived one financial year after another.

Most parents are in most cases good parents to their children but can no longer live with each other. Not as many in the media, the legal system, and self

centred men and women interest groups (parents groups who are not interested in the children but themselves) would have us believe.

As a consequence, single families and especially non-resident parents (both men and women) are stereotyped as being different. In many instances both resident and non-resident parents are ostracised by their former friends and in many cases some of their families.

One question you may have for me. Why did I not seek to be the resident parent? The advice of my solicitor was that my chances of gaining residency were slim. One of the reasons she sighted was that as I am in full time work it goes against me.

In the Family Court, the vast majority of decisions are made in favour of the maternal parent.

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## **In summary**

My submission highlights the following headline subjects, discussed in detail later in this document.

### Laws and Rules

In Australia, we are bound by many laws and rules. Although many of these have direct impact, they do not unnecessarily interfere with us getting on with our lives.

### Child Support Formula

Imagine if you will, the government sets a law which says that anyone with the letter "E" in their name must pay 27% of their gross income to a fund. All those affected are distressed, while those that don't have to pay continue their lives in unaffected by and in most cases unaware of this law.

### Child Support Payments

With a Child Support assessment, the payer has no say in how the funds transferred are spent; the CSA has no power to check how they are spent.

### Applying for Child Support

An extract from the CSA fact sheet

*""When parents separate, they need to make financial arrangements for their children."*

### Legislation

In 2000, an Amendment Bill for Child Support was presented to the Parliament but many of the changes were rejected in the Senate.

### Change of Assessment (CoA)

I am assessed on my taxable income. I can apply for a CoA for a number of reasons, including a reduction in my current income estimate. However, to be successful, this reduction has to be a minimum of 15%.

### Depression

In the short period (2 ½ years) I have been a "client" of the CSA, I have lodged 3 CoA and responded to 2. In September 2001, I received a decision on one, a response to a CoA lodged by my ex wife.

### Government Agencies

There is inconsistency in the various agencies which provide financial support.

### Proposal

- Background
- Proposal and other considerations

### Conclusion

It is important that Child Support be put in perspective. It is not just about the financial aspects, but if the terms of reference of this committee are to be considered, it is what is the best interest of the children. That is ensuring input by both parents into the well being of the children.

## The Details

### Laws and Rules

In Australia, we are bound by many laws and rules. Although many of these have direct impact, they do not unnecessarily interfere with us getting on with our lives.

For example we have laws and rules on the speed we can travel on our roads. In the main, most Australians not only abide with them, they subconsciously act on them, as they are reasonable.

No one can contemplate separation, divorce and the impact this will have on their lives and their children. It is not as if this is a rare occurrence in Australia today. But the impacts are depressing if not deadly. While not abdicating my own responsibility to ensure the wellbeing of my children is paramount, some in the legal profession and some one-eyed minority interest groups have created a monster.

You can't expect to be treated as number one all the time, especially when the children come along. If anything, the main reason for marriage failure is complacency (I am guilty of this) but it's a partnership. It's important to make each other feel important, make them number one lots of times, be there when the other partner is down and ignore the minor issues you have, communicate, and most importantly, focus on the partnership of life. But being treated as number 4 all the time, and just the provider of the finances, things give.

In September 2000, with my marriage dead, I entered a new world. All avenues to reconciliation had closed and I couldn't turn back. I didn't expect the way forward to be easy. The first change was engaging legal advice and action in respect of the separation, property, and of course, the best interests of the children.

This was a time of great distress to my ex wife, the children and to me. It was a great unknown. Fortunately in some senses, I only attended court once. But it was stressful all the same.

It was the receipt of a letter from the Child Support Agency (CSA) which has caused me significant distress and continues today.

Prior to a separation, people manage their financial arrangements. The bureaucratic power of this agency and its administration of the scheme remain

truly remote from most Australians. In the first instance, there is the minefield of laws and regulations to be interpreted, all without assistance, and only through personal research. Secondly, there is dealing with the general staff of the agency. This includes the significant time taken to obtain responses (90 days for a Change of Assessment), the lack of a single ongoing contact, the loss of documents and inconsistency in advice and decisions.

### Child Support Formula

- Imagine if you will, the government sets a law which says that anyone with the letter "E" in their name must pay 27% of their gross income to a fund. All those affected are distressed, while those that don't have to pay continue their lives in unaffected by and in most cases unaware of this law.

This is exactly what happened with the enacting of the Child Support Act 1989. It was based on the recommendations of a panel including a number of community groups and was responsible for defining a formula based assessment. This panel was not without dissenting voices.

No one is able to explain how the Child Support formula is derived.

How do you arrive at a percentage rate of gross income as being a reasonable amount to provide funds for support of the children?

In every situation of separation, the circumstances, financial (property, other assets and income) and the children's welfare are unique. In many cases, a formula is an easy fix and avoids the minor differences and disputes. However, it does not allow flexibility where circumstances become significant.

- In its recent audit of the CSA, The Australian National Audit Office (ANA) reported that the average payment was \$1500 per child per annum. This is less than what I pay per month.

On one hand, the effect of a percentage-based formula provides nominal support where the payer is a below average income earner. However, it is quite right for me not to pursue this line, as I have no value to add to this part of the discussion.

However, in circumstances similar to mine, the payment made is not purely child support but a transfer of funds to the payee.

This is exemplified by a loan enquiry made by a friend also paying child support and on similar income to myself. She completed an online enquiry calculation to

ascertain the amount she could borrow. She included the amount of support paid. By changing the inputs from no dependents plus child support to 2 dependents and no child support, her borrowing capacity increased nearly 50%. I subsequently researched this and found that anyone earning just over the average income could borrow the same amount in either of the two scenarios. However, as income increases above average, the borrowing capacity decreases significantly.

What consideration is given to the financial situation of the payee?

- At the time of the separation, my ex wife was in paid employment, but left work shortly afterwards as she was by then receiving Child Support of \$22,000 from me, \$11,000 from Centrelink, \$2,000+ from Family Assistance Office (FAO). However, no consideration is given to the fact that she owns her home and has no mortgage or rent commitments and has significant funds in the bank. Effectively, this is equivalent of an income of \$60,000+ pa. The children do not attend private school or have significant sporting or other activities.

It wouldn't be fair to say my ex wife doesn't work, being the resident parent. Yet the children do not require full time care being teenagers. However, the Child Support payments and Family Tax benefits have created a disincentive to return to work. Even then, the payee can earn up to \$40,000 before any adjustment is allowed to payer's Child Support assessments.

I have to rent a 2-bedroom unit, although the second room is only used every second weekend. I also have to provide meals, laundry, bedding, occasional entertainment, travelling and holiday expenses for the children. However, these aren't considered necessary personal expenses.

- The formula appears to be based on an "income sharing" model which presumes what the needs of the children might be, instead of examining what the actual needs of the children are.

#### Child Support Payments

With a Child Support assessment, the payer has no say in how the funds transferred are spent; the CSA has no power to check how they are spent. In one instance I am aware of, the payee uses the Child Support payment to finance an investment property and none of the funds are used for the children.

My children do not attend private school. My [REDACTED] daughter has attempted the selective school exams. My ex wife wants me to share the additional school costs of \$300 pa Vis the local high school fees of \$100pa. Yet she has sufficient funds to purchase my daughter a mobile phone. I don't want an itemised account. But I resent that I am requested to pay more funds. My ex wife has suggested that if I don't pay, it is a reason for not accepting a place at the selective school.

As a parent, I have all the financial obligations, but no rights in how the funds are spent in my children's wellbeing. I am still responsible for their actions.

### Applying for Child Support

An extract from the CSA fact sheet

***"When parents separate, they need to make financial arrangements for their children."***

When parents separate, they need to make financial arrangements for their children. How they do this depends on when they separated and when their children were born.

#### **Children born or parents separated on or after 1 October 1989**

If one of your children was born on or after 1 October 1989 or you separated after that date, you can agree on how much child support will be paid and ask the Child Support Agency (CSA) to register this as a child support agreement OR

You can ask CSA to use a formula to work out how much child support should be paid.

**Please note:** if you receive a Family Assistance Office (FAO) payment at more than the base rate of Family Tax Benefit, the FAO has special rules that may affect your child support and FAO payments. Please check with the FAO on 136 150 or CSA on 131 272 about these rules."

- On phoning the CSA, the announcer asks, "if you haven't applied for Child Support and would like to do so please press..."  
The wording is such that the caller would think they are applying for a 'grant' or benefit. As a "client", I see this statement as an insult.
- In completing an application for Child Support, it makes no request for details of the payee's financial situation or assets.
- This document is not verified or sent to the payer for response.
- It does not ask if there is a proposed or established agreement between the parents.



- The fact sheet states that "you can agree on how much child support will be paid" but in the Note "if you receive a FAO payment at more than the base rate of Family Tax Benefit, the FAO has special rules that may affect your child support". This effectively rules out any mutual agreement that is below the formula based assessment.

I am not about putting the burden of my circumstances on the community. However, the FAO payment creates a disincentive to work. In addition, it forestalls the payee re-entering the workplace until later in life, after child support finishes, with lost skills and with the high probability that the payee will rely on Government benefits. Catch 22!

### Legislation

In 2000, an Amendment Bill for Child Support was presented to the Parliament but many of the changes were rejected in the Senate.

The supporting document presented to the members and senators contained factual errors and misleading statements. It also highlighted that input from groups involved in the recommendations successfully manipulated the process to ensure rejection of equitable change.

- **Errors and Misleading**

On page 3 of the Bill Digest I found on the APH.gov.au website for the Child Support Amendment 2000 (no2)

*'... an amount is deducted for the living expenses of that parent (CSA = payer) ...'*  
it goes on to state

*'if there is one child, the person pays 18% of their remaining income in child support and retains 82%. If there are 2 children, the person pays 27% ... and retains 63%....'*

Misleading - Nowhere in the document does it state or approximate the amount deducted. Therefore how can members and senators give adequate consideration be given to whether the formula is a valid measure?

This amount is 110% of the single unemployment benefit. This amount doesn't even cover the rent for a modest caravan park accommodation in any major Australian city.

Misleading - The payer does not retain 82% or 73%. The child support is calculated on pre tax dollars, but paid from after tax dollars. Also, the rates of support have not changed since 1988, yet tax bracket creep is not considered.

After adjustment for the exempt income component, after tax I retain less than 40% to meet accommodation, food, clothing, transport and health before I can maintain a relationship with the children.

Since the inception of the scheme, there has been no change to the support rates.

In this time payers have proportionally paid more because of Tax creep.

GST overall impact, even after changes in tax rates.

Child Support CAP being a multiplier factor of 2.5 times Average Weekly Earnings (AWE). In 2 years, the cap has increased 12%. The Consumer Price Index (CPI) is currently at 2%pa.

- Adjusting my current income to 1989 values, my income would be above the cap. Today it is well within inside the cap.

Inaccuracy - In the example of 2 children, 27% and 63% does not add up to 100%.

Given the volume of reading and assessment required to make a valid judgement, misleading details and inaccuracies have in part impacted on attempts to provide some relief and reform of the legislation.

- Interest Groups

In respect of various interest groups, it is important to remove negative and non-substantial input. When a recommendation for change is put down or these groups question reform recommendations "for fathers to see their children", this alienates the many mothers who are also payers of child support. This highlights the bias of the group. This is putting men as all bad and women as all good. This is definitely not the case. In most cases, they are good parents to their children but the parents can no longer live with each other. It is these self-interest groups and the media headlines tainting everyone with the same brush.

The committee must give due consideration and discount negative and self-interest input. It needs to consider the majority issues rather than the extreme views.

### Change of Assessment (CoA)

I am assessed on my taxable income. I can apply for a CoA for a number of reasons, including a reduction in my current income estimate. However, to be successful, this reduction has to be a minimum of 15%. Yet on the other hand, if my income increases by just \$1, I have to pay 27% additional support plus tax @ 48%. This is a disincentive for payers earn additional income and impacts on work performance.

### Depression

In the short period (2 ½ years) I have been a "client" of the CSA, I have lodged 3 CoA and responded to 2. In September 2001, I received a decision on one, a response to a CoA lodged by my ex wife.

A 'client' is defined as a person using the services of a professional; a customer. I have no option in being a 'client' of the CSA.

In a prior CoA in February 2001, the Senior Case Officer (SCO) reduced my assessment for the whole of the assessment period (until Jan 02) because of a loan for household goods (fridge, bed (self and children), washing machine, lounge furniture). The loan was deemed necessary by the SCO for me to re establish myself in rented accommodation. Further, the Officer used section 73 of the Act, which acknowledges that a future event might occur, but for the purposes of the decision, is deemed not to occur. This event was the sale of the marital home.

My ex wife did not object to this decision within the 28 days allowed. Further, all the reasons in the Sep 01 CoA lodged by my ex wife were refused. It was the SCO's decision to overturn the Feb 01 ruling.

Subsequent requests to overturn this decision have advised me that decisions are made based on Part 6b of the Act. But reading it, it only refers to sending the decision. The SCO must use the Act as a guide, therefore including Sect 73 in the decision process. My only recourse is to the court to highlight this flaw, at significant expense. And then, ensuring I have interpreted the Act effectively.

My first reaction to the decision, was intense depression. That weekend, I sat on a cliff ledge, contemplating jumping. On the following Monday, unable to attend work, I visited my doctor, who registered me on a course of anti depressants (Zoloft) and registered me on a 3 month associated course of action and support.

Additionally, my performance at work deteriorated, and at year-end appraisal, I received the worst rating ever. ("Needs improvement" - some but all objectives and competencies achieved; some specific improvement required to achieve the level of performance required for the role).

My Senior Manager commented - "As highlighted at half year, [REDACTED] performance this year has been well below his best due to the impact of personal issues he has struggled to get on top of". This was reasonable coming from someone who has no concept of separation, divorce, and loss of reasonable access to the children. Fortunately, my Senior Manager is responsive and willing to discuss. Within reason, I can discuss these issues as I need and he will give me assistance and advice to enable me to maintain my sanity in the work environment.

I responded to the decision with an objection, highlighting from the start the physical sickness, depression and suicidal feeling I had. I advised the CSA that I had attended my doctor and had taken time off work.

The CSA responded "[REDACTED] believes the current level of child support payments are affecting his health and job performance"

And

"He also indicates that the increase is affecting his performance at work". This is the only acknowledgment of my illness in 6 pages rejecting my objection.

Minister Larry Anthony's statements regarding the CSA's lack of response, sympathy and assistance to 'clients' reporting these issues, prompted the Prime Minister's call for this committee of inquiry,

This highlights the CSA is about transferring monies based on the Act and nothing else matters. The CSA never provided support, assistance or simply compassion.

Additionally, the CSA advise that all decisions are based on Part 6 of the Act. But in the minefield of interpreting the Act, this is just about sending a decision. My claim that the original decision had used section 73 (Part 5) is discounted as a reason for review and my only recourse is to the courts. This contrary to the recent ANA audit of the CSA report, which highlighted the fact that decisions were inconsistent and required a review process.

As a result, I have a "debt" of \$1400 (which I am progressively paying off). My alternative would require me to spend significant \$ with a solicitor and barrister to confirm my view in the Family Court, bearing in mind the minefield of the Act and subsequent Amendments. Like all parents, I would like to spend my money on my children.

### Government Agencies

There is inconsistency in the various agencies which provide financial support. The FAO, which administers the Family Tax Benefits (FTA and FTB), allows for these benefits to be shared between the parents if the children spend more than 10% of their time with the non-resident parent. The Child Support scheme will only allow a reduction in support if this time is 30%.

### Proposal

- Background
- During my separation, and with advice from solicitors, a proposed agreement for support, property and the children was discussed and developed with input from my ex wife. At the time we lived in [REDACTED] NSW. The proposal would allow my ex wife and the children to remain in our near unencumbered home until the children had completed secondary education, and would allow them to stay in the area they had lived in all their lives. It would allow the children to stay at their schools, maintain contact with their friends and importantly, minimise the trauma of relocation. I would provide the financial support for education, the household bills and other expenses of about \$16,000 (or 20% of my income) as my ex wife was in paid employment. The property would be sold at a later stage.

I lay blame for this proposal being rejected in this instance on the solicitor advising my ex wife, to sell up, apply for the formula based child payment and 100% of the property proceeds, without consideration of the consequences, especially on the children.

The ex wife purchased a house freehold in [REDACTED], 70kms away from me. On average, it takes 3 hours on a return trip [REDACTED]. Attending school activities or doctors is near impossible, even allowing for time off work.

- The ABC's 7:30 Report, in bringing attention to the Committee's investigations, presented 2 insights to the issue of the best interests of the children.

The first highlighted a successful 50/50 contact arrangement for the child. The parents have made significant sacrifice to achieve this. This included living in the same area so as to minimise the impact on the child's schooling and maintenance of her contact with father and mother and friends.

Ask yourselves this. Why is this not happening in the majority of situations? What are the impediments stopping this happening?

The second highlighted the fact that some parents abuse their children and will use the system to have access to continue this.

Today, these cases represent extremes. What we want is more of the first and none of the second.

On the one hand, achieving the 50/50 contact is admirable and very desirable. The major impediment is the legal system.

The second case is obviously an unacceptable situation, and is not a symptom of separated parents only. It happens in 'nuclear' families also.

The issue is that with most separations, the parents want to do their best for the children, they love them and want to be there for their children, guiding them as they grow.

The reported situations don't give justice to the vast majority of Australians: fathers, mothers and the children, wanting to get on with their lives and contribute to the benefit of the children.

- I feel that the proposed agreement and nearby relocation were closer to a reasonable outcome for all concerned, especially the children.

Some would consider that I would be the beneficiary of this agreement. I ask you to consider who are the beneficiaries of the current situation.

Not the children, being 70 kms away.

Not the ex wife, who is now dependant on child support payments and government benefits.

Not me, unable to actively participate in my children's lives.

- Proposal and other considerations
- In the Family Court's facts sheets, it encourages parties to come to agreement. Only when this cannot be achieved, will the court make rulings. This must become the last resort, not a tool to achieve an outcome. The present use of the court system is actually causing more distress and embitterment to the parties involved, especially the children.

It must promote the idea of mutual agreement. It must provide the means to negotiate, give the agreement a trial period and only then if it fails, the court intervenes.

- If tax rates are flat, then application of a flat Child support rate is a starting point, but only after the reasonable costs of child support are considered.
- If tax rates are regressive, then a flat rate is inequitable.
- If one government agency applies a 10% contact rate before adjustment, then this should be applied uniformly. Centrelink apply a 10% for FTB v CSA at 30%. It is not reasonable to respond that this is the flaw of the legislation. Legislation should be consistent.
- If a parent has no contact, then no adjustment should be made. Where a parent has contact and therefore has at a bare minimum, reasonable expenditure to accommodate and feed the children, adjustment should be made. These are currently seen as not necessary non-resident parent expenses. Yet support of the children is not purely financial, but also requires effective relationships for the children with both parents.
- What consideration is made to location? Rental costs are considerably higher in Sydney than Brisbane for example.
- How often is the scheme reviewed? Who is on the panel? Where is the transparency in the scheme, such that clients are aware that a review is proceeding, that submissions can be made, that other persons or groups submissions can be commented on?
- The formula may remove the need to bring the parents together to come to an agreement, where the support amount is nominal. However, because there is a formula which defines the \$, any reasonable outcome taking into account

the real needs of the children and the income and/or assets of the resident parent, is overlooked. The average amount paid in support is \$1500pa - less than what I pay in a month. The vast majority of payers must therefore be paying little more than the minimum amount of \$260. This is the reason why the CSA reports that most clients are happy with the formula driven assessment method.

Source: National Audit Office Audit of the CSA 2002

Equation - 660000 payers (990,000 children) transferring \$1.4b equals \$2250 per payer or an average income of \$21,000, well below the AWE. Given the AWE is \$45,000 and based on 1.5 children, the formula would equate to \$7700pa. Therefore for every AWE payer, there are 2.7 payers paying the little more than the minimum (or 70+%).

- There is no obligation on the payee to show that the child support payment is expended on the children. I don't expect an itemised or justified account, but the Agency does not require any details of what the funds are being used for. The payee can gamble these funds away or use them to finance the purchase of an investment. There needs to be some accountability.

(While we don't enjoy paying taxes, we can see that our taxes are being expended on the community, eg. roads, hospitals, schools. We may not agree with the allocations, but if we couldn't see where our taxes were going or being used for purposes the community didn't agree with, the government would be voted out of office).

- A CSA brochure states that when separation occurs, 'parents need to ensure financial arrangements are made'. There is no description as to what these arrangements are, as the agency is purely a collection agency based on a formula, not a 'support' agency. Any reasonable person would agree these support arrangements are about the provision of accommodation, education, food, clothing, health and well being of the children.

The CSA needs to be renamed Child Support Payments Agency, as this is what is. Otherwise, its charter must be redefined to provide "support" to its clients.

- Where a non-resident parent has a dependant child with a new partner, only a flat rate adjustment is made, irrespective of the income of the payer. Therefore, at higher levels of income, the payee of the former relationship receives significant support for those children over the other child/ren of the payer. This highlights the flaw in using a percentage driven formula.



- Where both parents has one of the children as a dependant, the scheme allows for each parent to be a payer and payee. If one parent earns no income and therefore pays no support to the other, but the other parent earns income and pays 17% support, please examine how this is equitable that one child 'receives' more support than the other does. In my case, this would be a difference of \$8000.
- Base financial child support upon the actual needs of the child, not the theoretical needs of a statistical average child. Each situation is different, and it should produce different results.
- Finally, recognise that the primary value of child support payers who want to contribute to the life experiences of the their children (both men and women) are as parents, not just as financial objects. If there is one clear need today, it is for the non-resident parent and payer to be closer to their children. They are as irreplaceable in the lives of the children as the resident parent is.

#### Conclusion

It is important that Child Support be put in perspective. It is not just about the financial aspects, but if the terms of reference of this committee are to be considered, it is what is the best interest of the children. That is ensuring input by both parents into the well being of the children.