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Secretary:

National Network of Women's Legal Services

**Submission to the Parliamentary Inquiry into Joint
Residence Arrangements in the Event of Family
Separation**

14 August 2003

We write on behalf of the National Network of Women's Legal Services (NNWLS), a national group of Community Legal Centres specialising in women's legal issues. It is comprised of the following agencies, some of which have been operating for over 20 years:

- Women's Legal Services located in each capital city in each State and Territory;
- Indigenous Women's Legal Services;
- Domestic Violence Legal Services;
- Rural Women's Outreach workers located at 9 generalist Community Legal Centres

Women's Legal Services offer free legal advice, information, representation and legal education for women, providing assistance to about 23,000 women across Australia. We target disadvantaged women including women from non-English speaking backgrounds, rural women, women with disabilities and indigenous women. As a consequence, the NNWLS has developed an expertise in family law, violence against women and the legal aid system, as it affects women.

The submission is divided into two parts:

1. Context for this submission - the realities
2. Responding to the Terms of Reference

To discuss this submission further please contact Catherine Carney or Pia van de Zandt on behalf of the National Network of Women's Legal Services on 02-9749 7700 or Womens_NSW@fcl.fl.asn.au

1. Context for this submission - the realities

Since the announcement of the Inquiry there has been considerable discussion in the media about a presumption of joint residence. We, the NNWLS are concerned that many commentators have reported inaccuracies about aspects of the family law system. In order to correct these and to contextualise our submission we have summarised relevant Australian research which highlights the realities for Australian mothers and their children.

Families arrange post-separation care of children in various ways

A large majority of men who are separated (64%) have contact with their children¹ and almost three quarters of these men have children staying overnight with them.² There is no Australian research showing why more contact does not occur. However, a recent study on contact arrangements shows that 25% of resident mothers believed that there was not enough contact³, suggesting that, where fathers have good relationships with the children, mothers are keen for contact to occur.

Family Court data reveals that the rate at which fathers are awarded residence of their children is increasing. Outcomes of residence orders made in the Family Court for 2000-2001 show that 70% of residence orders are made in favour of the mother and 20% of orders for residence are made in favour of the father. In the mid 1990s only 15% of residence orders favoured the father. These statistics include orders made by consent as well as orders made as a result of contested hearings.⁴ In looking at outcomes for fathers of contested residence applications, two studies in the Family Court in 1983 and 1994 showed that fathers were successful in 31% of cases.⁵ In a smaller analysis conducted in 2000, fathers were successful in 40% of contested residence applications.⁶

Shared residence is the least common post-separation arrangement with only 3% of children from separated families in 'shared care' arrangements in 1997.⁷ Less than 4% of parents registered with the Child Support Agency last year had equal (or near equal) care of their children.⁸

US studies have shown that where shared residence couples make these arrangements they do so voluntarily, often without legal assistance and irrespective of legislative provisions. These

¹ Australian Bureau of Statistics, Family Characteristics Survey 1997, Cat No 4442.0, AGPS, Canberra; See also Smyth B and Parkinson P; 'When the difference is night and day: Insights from HILDA into patterns of parent-child contact after separation', Paper presented at the 8th Australian Institute of Family Studies Conference, March. 2003, page 7 available at <http://www.aifs.org/institute/pubs/papers/smyth3.pdf>.

² see Parkinson and Smyth above note 1 at page 9

³ see Parkinson and Smyth above note 1 at page 11

⁴ Residence Order Outcomes 1994/1995 – 2000-2001: Family Court data available on line at www.familycourt.gov.au/court/html/statistics.html

⁵ See Bordow, S; 'Defended cases in the Family Court of Australia: Factors influencing the outcome', Australian Journal of Family Law, volume 8, No 3, pp 252 - 263

⁶ Moloney, L; 'Do fathers 'win' or do mothers 'lose'? A preliminary analysis of a random sample of parenting judgements in the Family Court of Australia', Presentation to Australian Institute of Family Studies, September 2000

⁷ Australian Bureau of Statistics; Family Characteristics Survey, Ct 4442.0, AGPS, Canberra. 1997.

⁸ Attorney General's Department; Child Support Scheme Facts and Figures, 2001-02, Canberra, 2003.

studies have also shown that relationship between shared residence parents is commonly characterised by cooperation between the parties and low conflict prior to and during separation.⁹

Research with children in the UK undertaken by Carol Smart has shown that, for children living in two homes, they had 'emotional and psychological space' to traverse as well as physical space.¹⁰ The research showed that shared care was more likely to be organized to suit parents than to suit children. It found that the majority of children in shared residence knew how important the equal apportionment of time was for their parents. The study showed that children often carry the burden of shared care and found it emotionally straining to upset the balance between their parents. Children felt responsible for ensuring 'fairness' between their parents and in fact put their own interests below the interest of their parents for shared care. The research argues that being shared on a fifty-fifty basis can become 'uniquely oppressive' for some children.¹¹

There is to date no Australian research looking at predictors of successful shared residence arrangements in separated families. Little is known about parents who opt for shared care of their children, how these arrangements are structured, how well the arrangements 'work' and the effect of these arrangements on children.

Women do most of the domestic work in relationships prior to separation

It is clear from the most recent Time Use surveys that women in relationships still do the bulk of caring for children and domestic work: 90% of women and 63% of men spent time on housework such as cooking, laundry and cleaning. Where child care was noted as a person's main activity, women spent twice as long as men caring for children and were more likely than men to provide direct care that included feeding, washing and dressing.

Single mothers are poor

Of single parent families, 75% - 85% are headed by single mothers.¹² Being the resident mother of children is still the most likely predictor of poverty in Australia. Research over the past two decades has consistently shown that women are more likely to experience financial hardship following marital dissolution.¹³ In a 1993 study, husbands surveyed three years following their marital breakdown had returned to income levels equivalent to pre-separation while wives'

⁹ Bauserman, R; 'Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review', *Journal of Family Psychology*, 2002, volume 16, no1, 91-102 at page 99. See also Rhoades, H, Graycar, R and Harrison M; 'The first years of the Family Law Reform Act 1995', *Family Matters* No 58, Autumn, 2001 page 80 available at <http://www.aifs.org.au/institute/pubs/fm2001/fm58/hr.pdf>

¹⁰ Smart, C., 'Children's Voices' Paper presented at the 25th Anniversary Conference of the Family Court of Australia, July, 2001, available at <http://familycourt.gov.au/papers/html/smart.html>.

¹¹ Smart C; 'From Children's Shoes to Children's Voices' *Family Court Review*, volume 40, No 3 July 2002, pp 307 - 319 at page 314.

¹² Australian Bureau of Statistics, *Labour Force Status and Other Characteristics of Families, Australia*, Cat No 6224.0, AGPS, Canberra, 2000.

¹³ See R Weston, 'Changes in Household Income Circumstances', in P McDonald (ed), *Settling Up: Property and Income Distribution on Divorce in Australia*, Australian Institute of Family Studies (1986) 100; R Weston, 'Income Circumstances of Parents and Children: A Longitudinal View', in K Funder, M Harrison and R Weston (eds), *Settling Down: Pathways of Parents After Divorce*, Australian Institute of Family Studies (1993) 135.

income levels had dropped by 26%.¹⁴ More recent studies have revealed a statistically significant relationship between gender and financial living standards after divorce.¹⁵

Research has also shown that the degree of financial disadvantage experienced by women post-separation may be exacerbated by a number of factors; spousal violence,¹⁶ division of marital property,¹⁷ lower rates of employment¹⁸ and lower earning capacity¹⁹.

Many women are victims of violence

Data from a 1996 Australian Bureau of Statistics national benchmark study showed that 23 % of women who have ever been married or in a defacto relationship had experienced violence in that relationship. This means that one in five Australian women have experienced family violence by their current or former partner representing a total of 1.4 million women.²⁰

There is now a significant body of research that demonstrates that there is a high incidence of domestic violence in cases going to the Family Court²¹ and that domestic violence against women continues after separation. A 2002 study found that of the 35 resident mothers, 86% described violence during contact changeover or contact visits.²² It is not surprising that violence and abuse is more prevalent in families who separate, than in families who remain together.

¹⁴ Settling Down: Pathways of Parents After Divorce, above note 13 at p 137.

¹⁵ RWeston and B Smyth, 'Financial Living Standards After Divorce' (2000) 55 Family Matters 11.

¹⁶ Women experiencing spousal violence were considerably more likely than women who experience no violence to have financially disadvantaged household incomes. Further, studies showed that women experiencing spousal violence are more likely to receive a minority share of property following divorce.: See G Sheehan and B Smyth, 'Spousal Violence and Post-Separation Financial Outcomes' (2000) 14 Australian Family Law Journal 102

¹⁷ The financial burden of separation on women who have taken time out of paid work to care for children is not always reflected in a distribution of property that is sufficiently in their favour - M Harrison, K Funder and P McDonald, 'Principles, Practice and Problems in Property and Income Transfers', in K Funder, M Harrison and R Weston (eds), Settling Down: Pathways of Parents After Divorce, Australian Institute of Family Studies (1993) 192, 194.

¹⁸ In June 2001, only 21% of female lone parents were employed full-time and many are unemployed, Australian Bureau of Statistics, Year Book Australia 2002, Cat No 1301.0, 2002. Further the employment rate of lone mothers with dependant children is considerably below that of couple mothers, Australian Bureau of Statistics, Labour Force Status and Other Characteristics of Families, Australia, Cat No. 6224.0, 2000.

¹⁹ Women may have a weaker position in, and attachment to, the labour market, often due to the roles adopted during marriage that can involve substantial costs for their career development. They typically have a lower earning capacity than similarly aged men. See K Funder, 'Work and the Marriage Partnership', in P McDonald (ed), Settling Up: Property and Income Distribution on Divorce in Australia, Australian Institute of Family Studies (1986) 65;

²⁰ ABS; Women's Safety Australia, Canberra 2000, Catalogue No 4108.9 at page 51 and see Table 6.5 at page 53.

²¹ Hunter R "Family Law Case Profiles" Justice Research Centre, June 1999 at p. 186

²² Kaye M, Stubbs J and Tomie J; Negotiating child residence and contact arrangements against a background of domestic violence, Working Paper No 4, 2003, Family Law and Social Policy Research Unit, Griffith University, p36. Available on line at <http://www.gu.edu.au/centre/flru/>.

2. Responding to the Terms of Reference

(a) (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;

The National Network of Women's Legal Services is strongly opposed to a legal presumption of joint residence for separating families for the reasons listed below.

The current legislative framework is appropriate and sufficient

We submit that the legislative framework and family law system already encourages parents to share duties and responsibilities for their children's care. It already encourages and supports shared residence arrangements if it is in the best interests of the child.

In section 60B(2) the *Family Law Act* sets out four clear principles about parenting of children namely

- children have a right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
- children have a right of contact, on a regular basis, with both their parents, and with other people significant to their care, welfare and development; and
- parents share duties and responsibilities concerning the care, welfare and development of their children; and
- parents should agree about the future parenting of their children.

Further the Act provides in section 61C(1) that each parent has parental responsibility for their child and that this is not affected by parental separation (section 61C(2)). For about 95% of families the Court is not involved in deciding on parenting arrangements. When the Court is approached to make a decision about residence by way of an application from the parties they are bound by section 65E of the Act to look at the best interests of the child as the paramount consideration. In deciding on parenting orders, the Court must also consider a number of other factors listed in section 68F such as:

- any expressed wishes of the children (depending on the child's maturity or level of understanding)
- the nature of the relationship of the child with each parent
- the likely effect of any changes in the child's circumstances (status quo)
- the practical difficulty and expense of a child having contact with a parent
- the capacity of each parent to provide for the needs of the child
- the child's maturity, sex and background
- the need to protect the child from physical or psychological harm
- the attitude to the child and to the responsibilities of parenthood
- any family violence order that applies to the child or a member of the child's family

The Act stipulates that children have a right to know and be cared for by both parents and have regular contact with both parents. There are severe penalties for non-compliance with parenting orders and the Family Court does not tolerate contravention of its parenting orders.

A presumption displaces the best interests principle

The Family Court's role is to keep the children's best interests paramount to any decision irrespective of the wishes, threats, and feelings of parents. A legal presumption of joint residence privileges the rights of parents over the rights of children by overriding the paramouncy of the child's best interests. A legal presumption would displace this principle and legislative reform of this kind would offend international instruments such as the UN Convention on the Rights of the Child, which, in Article 3 (1), states that:

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.

It represents a dangerous shift in social policy for *all* Australian families

A presumption of joint residence represents a dangerous and dramatic policy shift in the government's social policy that is not evidence-based. It offers a simplistic, 'one-size-fits-all' solution to families who are complex, have a multitude of needs and patterns and operate in a variety of ways.

Many men already participate actively in their children's lives after separation. Similarly many mothers wish to share parenting duties and responsibilities cooperatively with fathers who were significantly involved with their children prior to separation. In these families neither fathers nor mothers need the law to tell them to do this.

A legal presumption reduces families abilities to make their own decisions about parenting arrangements depending on children's needs, parent capacities, geographical distance between them, parent's work patterns, second families, finances and housing.

Imposing shared residence after separation does not reflect current caring practices in coupled families where mothers are still predominantly the primary carers of children and undertake most of the domestic work. Shared residence would mean post-separation arrangements for many families would be significantly different from pre-separation arrangements.

Reforms in family law do not just effect separating couples. Reforms impact on familial relationships in the broader sense providing strong social messages about the division of labour in families and parents rights over their children.²³ Enacting a legal presumption of joint residence provides a clear statement about how the Government sees families working after separation. However at the same time the Government has provided financial incentives through Centrelink Family Tax Benefits for parents to stay at home to raise their children. These incentives are predominantly taken up by mothers who sacrifice careers to care for children and undertake unpaid housework. On the one hand governments encourage women to stay home to

²³ Graycar, R; 'Law Reform by Frozen Chook: Family Law Reform for the New Millenium' (2000) 24 Melbourne University Law Review 737.

care for children and then on the other are hand they seem to support a presumption of shared residence following separation.

Such a dramatic shift in policy ignores the evidence from research that shared residence works for some families where there has been a history of cooperation, a history of shared care pre-separation and where parents voluntarily enter these arrangements irrespective of the law.

Listing domestic violence and child abuse as circumstances of rebuttal would not be enough to protect women and children

If there is a presumption of joint residence or equal time with each parent, many mothers who are the victims of violence or who children who have been abused will be forced to litigate in the Family Court to rebut the presumption. Many women will be ineligible for Legal Aid if they are employed (part-time or full time) or have substantial assets. Being employed, however, will not mean that they have funds to litigate. Further, the inclusion of a legislative presumption will mean that women eligible on means tests may still find it difficult to pass a merits test to obtain a grant of Legal Aid if they are seeking to rebut a presumption of joint residence.

There is a risk is that women who are victims of domestic violence or who have children who have been abused may be forced into joint residence arrangements because they have been denied Legal Aid or they cannot otherwise afford a private solicitor. They may not able to represent themselves in Court because they are fearful or face additional barriers because they have disabilities or come from non-English speaking backgrounds.

This will place women and children who are victims of violence at increased risk of further violence. The presumption will force some children to live with violent fathers and will force more mothers to have to regularly negotiate with and be in the presence of violent ex-partners. It will also provide a dangerous tool for abusive and vexatious men who wish to control their women partners after separation.

It will lead to an increase in litigation

There will be an increase in litigation as parents who do not want shared residence will need to go to court. Given the lack of legal aid funding, many people will self-represent, increasing delays and stretching the limited resources of the Family Court and Federal Magistrates Service.

It may lead parties to re-open finalised cases in the belief that a joint residence presumption law will bring them a different outcome. Community agencies are already reporting contact from women whose former partners are threatening to take them to court, or back to court, to get new arrangements for the children.

Financial snapshots

The snapshots are based on a scenario common to many Women's Legal Services.²⁴ They illustrate the effect of a legal presumption of shared residence on the financial circumstances of the parties. As research set out earlier in this submission showed, being a single mother is already the strongest indicator of poverty. Forcing mothers into a shared residence arrangement, particularly mothers who have been primary carers of their children, will only increase their poverty and the poverty of their children.

The scenarios show that a presumption of joint residence will force a single mother even further into poverty and into a rented home. In particular the scenarios highlight a number of serious concerns:

- Mother will receive \$66 less per week than Father where both parents have residence of the children for 7/14 days
- Mother loses \$65 per week and \$22,000 of marital property (10%) in shared residence arrangements compared with having residence of the children
- If children move back to Mother's home several months after separation in spite of shared residence presumption, Father's income is higher than Mother's even though she is supporting 3 children.

These scenarios are based on an amicable separation, where there is no history of violence, where the father earns a reasonable wage and where he is prepared to fully meet his child support obligations. As the research set out earlier in this submission shows this is very often not the case. Therefore for many Australian single mothers the financial snapshot will in fact be worse.

Mother and Father have been married for 14 years. They have three children aged 12,7,4 years. Mother worked as a nurse's assistant at marriage but gave up her career to become a home maker and primary carer of the children. Father earns \$55,000 per annum and is sole wage earner.

The family receive minimum Family Tax Benefit (Pt A) \$40.74 per fortnight. Mother also receives Family Tax Benefit Part B (as she earns less than \$2,000) of \$108.78 per fortnight as her youngest child is under 5.

The family home is jointly owned and valued at \$300,000 with a mortgage of \$80,000. Therefore there is \$220,000 equity in the home.

The couple separate amicably.

²⁴ Figures are based on communications with Child Support Agency and NSW Welfare Rights Centre. Figures based on Centrelink payments table from July 2003 – September 2003

Scenario 1 – A common post separation arrangement

The separated couple negotiate consent orders in mediation that are registered with the Family Court. Children reside with Mother. Father has contact every Wednesday overnight and every second weekend from Saturday to Sunday. The father has unlimited telephone contact and is very involved in the children's life, their sport and other hobbies and school activities.

The couple also negotiate a property settlement by consent whereby Mother in lieu of future needs gets 60% of the marital property and Father receives 40% share. The home and mortgage is transferred to the Mother's name and she pays out \$88,000 to Father.

Father lives in temporary rented accommodation and pays \$200 per week rent. He eventually buys another property. His cash payout from the property settlement and wage secures a mortgage for the balance of the purchase price of the new property. Father's child support liability is calculated at 32% of assessable income for 3 children.

As the children grow up, Mother begins part time work moving to full time work as the youngest begins into high school.

Financial Snapshot – Mother

Mother receives Parenting Payment (single) of \$440.30 per fortnight

Mother receives Family Tax Benefit (Part A)(\$426.44 x 80% care of children) = \$341.15 per fortnight

Mother receives Family Tax Benefit (Part B) = \$112 per fortnight

Mother receives \$262.67 per week child support

Mother pays mortgage repayments of \$250 per week

Income after housing payments for Mother and 3 children = \$459.39per week

Financial Snapshot - Father

Father pays mortgage repayments of \$250 per week

Father pays \$262.67 per week child support for 3 children

Father receives base rate of Family Tax Benefit (Part A) \$126 per fortnight

Father receives \$787 after tax wage per week

Income after housing payments for Father living alone = \$337.33 per week

Scenario 2 – A legal presumption of joint residence

Shared residence is reluctantly imposed on Mother and Father by way of a legal presumption. There are no circumstances of rebuttal. Both parents are very involved in the children's lives, their sport and other hobbies and school activities. Children live with Father Sunday to Wednesday and then with Mother from Thursday to Sunday of each week.

The couple negotiate a property settlement by consent whereby Mother and Father split marital property 50% each. Mother cannot afford to stay in the home, pay out Father or pay for the total mortgage. The home and mortgage are transferred to the Father and he pays out \$110,000 to the Mother. Difficult for Mother to find 20 hour per week job structured around school hours. Mother cannot buy another home even with a cash payout because she cannot secure a mortgage in her own name with limited income. She uses pay out to buy furniture and a new car and invests balance of (\$80,000) in term deposit. Father continues in full time employment and paternal grandmother looks after the children each day after school until Father gets home.

Financial snapshot – Mother

Mother will still be entitled to Parenting Payment (Single) but receives less Family Tax Benefit as a result of shared care arrangement. Mother's child support liability is nil as her income does not reach above exempted income.

Mother receives Parenting Payment (Single) of \$440.30 per fortnight
Mother receives only 50% of Family Tax Benefit (Part A) = \$213.22 per fortnight
Mother receives rental assistance through FTB = \$123.76 per fortnight
Mother receives 50% of Family Tax Benefit (Part B) = \$56 per fortnight
Mother receives interest from investment (\$80,000 x 4.5% pa) = \$69.23 per week
Mother receives \$163 per week in Child Support
Mother pays \$250 rent per week

Income after housing payments for Mother and 3 children 7/14 days = \$398.87 per week

Financial snapshot – Father

Father assessed for child support liability. Exempted income of \$12,315 considered and, for shared care arrangements, the exempted income is raised several thousand dollars for each child in his shared care. The child support assessment rate is also reduced for shared care arrangements from 32% to 24%.

Father receives after tax wage of \$787 per week
Father receives base rate of Family Tax Benefit (Part A) = \$126 per fortnight
Father receives 50% of Family Tax Benefit Part B = \$56 per fortnight
Father pays \$163 per week in child support payments to the Mother
Father pays \$250 per week in mortgage repayments

Income after housing payments for Father and 3 children 7/14 days = \$465 per week

Scenario 3 – Children living back with mother six months after separation

Several months after separation during which the children have lived in a shared residence arrangement, all the children eventually float back to Mother's home. They indicate a preference to stay at Mother's home as she has always been primary carer. Mother undertakes most of unpaid caring work – buying uniforms, ironing, helping with homework, helping at the school and fixing clothes. As child support assessment is strictly calculated according to Family Court Orders she is not able to have her Child Support payments increased. Mother would need to relitigate to have Family Court consent orders changed to reflect the reality so that Child Support liability and Centrelink assessment can be changed. Mother would have to show exceptional circumstances and financial hardship to get property orders set aside under s79A of the Family Law Act which heavily restricts altering of property orders. In any event she has no money to begin a new Family Court application and a legal presumption of joint residence may render her ineligible on merit grounds for a grant of Legal Aid. Mother and 3 children live on less income than Father living alone.

Financial snapshot – Mother

Mother will still be entitled to Parenting Payment (Single) but receives less Family Tax Benefit as a result of shared care arrangement. Mother's child support liability is nil as her income does not reach above exempted income.

Mother receives Parenting Payment (Single) of \$440.30 per fortnight
Mother receives only 50% of Family Tax Benefit (Part A) = \$213.22 per fortnight
Mother receives rental assistance through FTB = \$123.76 per fortnight
Mother receives 50% of Family Tax Benefit (Part B) = \$56 per fortnight
Mother receives interest from investment (\$80,000 x 4.5% pa) = \$69.23 per week
Mother receives \$163 per week in Child Support
Mother pays \$250 rent per week

Income after housing payments for Mother and 3 children = \$398.87 per week

Financial snapshot – Father

Father assessed for child support liability. Exempted income of \$12,315 considered and, for shared care arrangements, the exempted income is raised several thousand dollars for each child in his shared care. The child support assessment rate is also reduced for shared care arrangements from 32% to 24%.

Father receives after tax wage of \$787 per week
Father receives base rate of Family Tax Benefit (Part A) = \$126 per fortnight
Father receives 50% of Family Tax Benefit Part B = \$56 per fortnight
Father pays \$163 per week in child support payments to the Mother
Father pays \$250 per week in mortgage repayments

Income after housing payments for Father living alone = \$465 per week

(a) (ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

Section 65C of the *Family Law Act* already provides for parties interested in the care, welfare and development of children, such as grandparents to apply for parenting orders. As such we are opposed to further changes in this area. Such applications would be subject to the same considerations listed in 68F of the *Family Law Act* in determining parenting orders. These factors are sufficient and cover a wide range of important issues which need to be considered in deciding on contact between children and other persons such as grandparents. We therefore see no reason for amendments to this section.

(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

We believe that the existing child support formula is fair in relation to care of the children. We strongly oppose any legislative connection being made between contact and child support.

Rather than considering the fairness child support formula, we believe there are more urgent issues that need to be addressed in relation to child support namely:

- a) Timeliness of payments
- b) Enforcement of debts
- c) Amount of payments

(a) Timeliness of payments

A 1992 survey found that over half of children received no child support payments from the non-resident parent. In 2000, a survey conducted of Child Support Agency (CSA) clients revealed that only 28% of payees reported always receiving payments on time, while 40% reported that payment was never received.²⁵

CSA National Debt Recovery Data has revealed that 66% of payers did not make a payment in June 2000, and in consideration that a significant proportion made the payment in arrears, the amount of clients making their payments in full and on time may be less.²⁶

(b) Enforcement of debts

Total child support debt grew at an average rate of 7% in the four years to June 2001, to a total of \$670 million.²⁷ The age of child support debt increased over this period²⁸, and the percentage of

²⁵ Tammy Wolffs and Leife Shallcross, 'Low Income Parents Paying Child Support: Evaluation of the Introduction of a \$260 Minimum Child Support Assessment' (2000) 57 Family Matters 26.

²⁶ Tammy Wolffs and Leife Shallcross, 'Low Income Parents Paying Child Support: Evaluation of the Introduction of a \$260 Minimum Child Support Assessment' (2000) 57 Family Matters 26, 29.

²⁷ Australian National Audit Office, Client Service in the Child Support Agency Follow-up Audit, Audit Report No 7, 2002-03, 126.

payers with child support debts rose from 56% to 74% in 2001.²⁹ This has negative implications for its recoverability. In short, total child support debt is high in dollar value, with a significant proportion of debt being unrecoverable because of its size, age, and the limited financial capacity of many debtors.

The CSA is increasingly not using its extensive powers to adequately enforce child support assessments against payers, failing to collect \$669.7 million in 2000-2001. The debts written off by the CSA in this period rose by 27% to \$74 million.³⁰ When the CSA decides not to pursue a debt, resident parents are advised of this but they cannot enforce the liability privately as the debt is due to the Commonwealth. Although the write-off is temporary and the debts can be re-raised where debtor circumstances change, there is no mechanism for these write-off decisions to be reviewed periodically, making them effectively permanent. We argue that the CSA could take a more active role in addressing child support non-compliance among payers.

(c) Amount of payments

Money received in child support offsets government benefits, with payments of more than the minimum rate Family Tax Benefit reduced in proportion to the maintenance received. Child support is based on the principle of capacity to pay, therefore where the non-resident parent does not have the capacity to pay, the amount of child support actually received may be low or non-existent, increasing cost pressures on the resident parent.

Child support payments also represent private income transfers that reduce the pressure on the government social security system. In the period of 1999-2001, savings in government outlays were reduced from \$425 million to \$380.4 million.³¹ Given the pressures for further increases in government benefits in the next few decades,³² the CSA must look to increasing its collection rate if government social security expenditure is to be contained.

²⁸ Australian National Audit Office, Client Service in the Child Support Agency Follow-up Audit, Audit Report No 7, 2002-03, 127.

²⁹ This can partly be attributed to a legislative change in 1999 which introduced a minimum child support liability of \$260 per annum for all payers unless the liability was assessed as nil.

³⁰ Attorney General's Department, Child Support Scheme Facts and Figures 2000-2001, 2002.

³¹ Attorney General's Department, Child Support Scheme Facts and Figures 2000-2001, 2002, 33.

³² For example due to continued ageing of the population and adverse labour market trends.