

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 744

Date Received: 13-8-03

Secretary:

House of Representatives Standing Committee on Family and Community Affairs

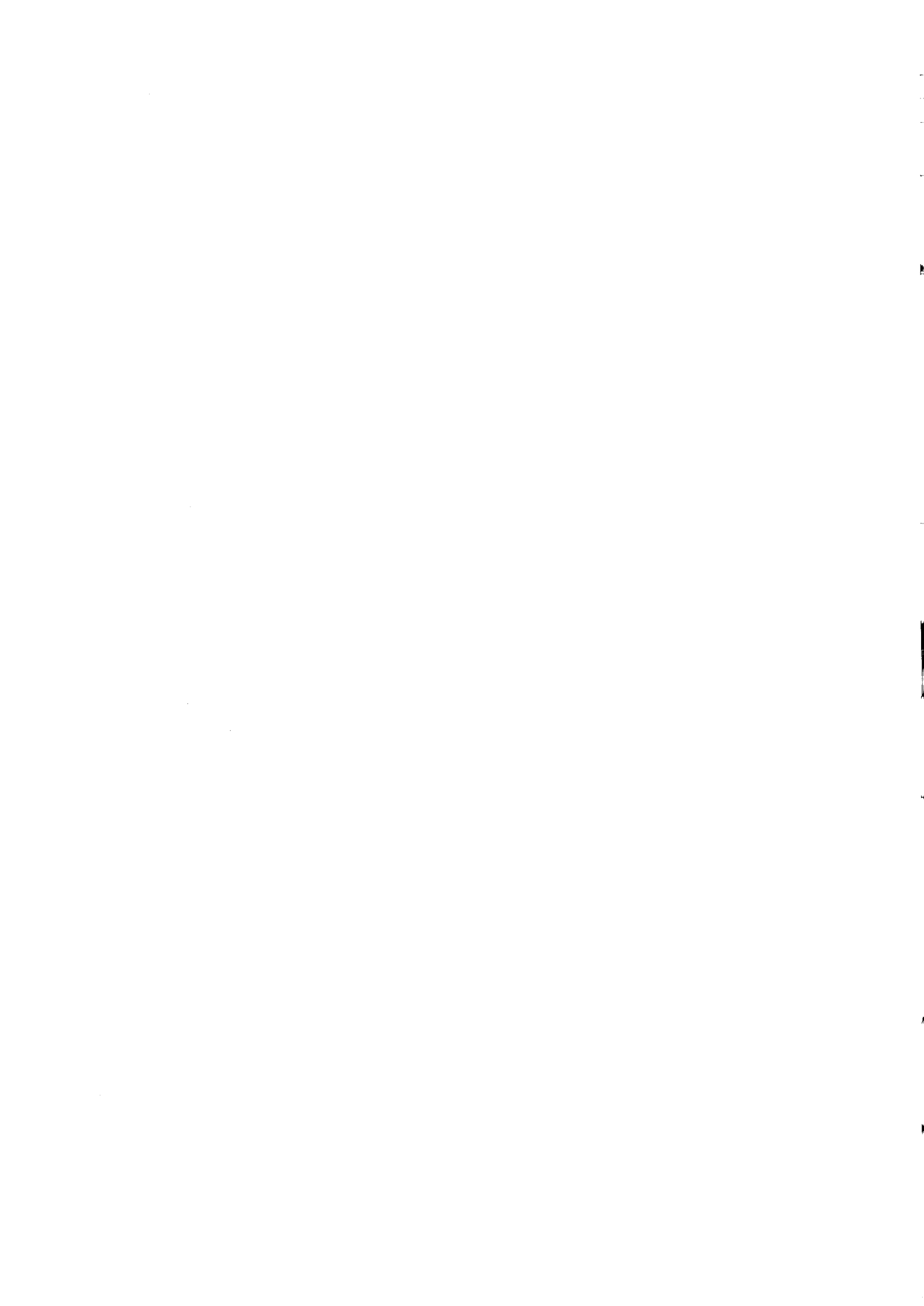
**Inquiry into child custody arrangements in the event of
family separation**

Submission by

**The Australian Council of Social Service
(ACOSS)**



August, 2003



Introduction

Families, in all their diversity, remain the key social unit in our society and play a critical role in supporting the well being of their individual members as well as contributing to the life of the wider community.

Family separation can therefore place great strains on family members and place them at risk of poverty and disadvantage.

ACOSS is the peak council of the community services and welfare sector which provides many of the supports and services for families. ACOSS is also the national voice for the needs of people affected by poverty and inequality. For both these reasons, ACOSS has an interest in ensuring that public policies and legislation nurture, protect and support families, particularly where they are at risk of poverty and exclusion.

This submission deals briefly with each of the three terms of reference. The submission is guided by the principle that the best interests of the child is the paramount consideration in matters concerning the custody of children and that legislation, policy and practice should be unequivocally directed to this end. This includes recognising that sharing the care of a child across two households costs more in total than raising a child in one household. It is also important to maximise opportunities for informed choice and consent between parents and limit over-regulation and interference in people's parenting roles. Our recommendations under Part 3 below are based on the principle that these additional costs should be offset for separated parents who share the care of their children – whether the decision is freely chosen or imposed.

Part 1 – Presumption of equal time

Given that the best interests of the child are the paramount consideration 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.

Most couples decide what is to happen to their children after separation without relying on the courts at all. Of the couples who do file proceedings in the Family Court, about 95% reach agreement before a judge imposes a decision.¹

The people directly affected by the proposals foreshadowed in the terms of reference therefore represent a small minority of separated families, although such a 'presumption' would form part of the background to

¹ Family Court of Australia, *Step to Step Guide to Proceeding in the Family Court*, <http://www.familycourt.gov.au/guide/html/agreement.html>

many of the disputes that come to the Family Court but which do not necessarily proceed to a judge-determined order.

The small minority of cases that will be directly affected however, are generally those characterised by the highest levels of interpersonal difficulty.

The following extract illustrates the nature of many family disputes which we think is important to bear in mind when considering legislative presumptions of the kind proposed.

*'There is no simple and easy way to deal with all family disputes. Such disputes can be exacerbated by immature or short-lived relationships, lack of trust between the parties, controlling or violent behaviour, psychiatric or substance abuse problems or partisan involvement of relatives or friends. Some small number of cases may 'require therapeutic intervention' rather than court attention. Family courts deal with the social and emotional problems of poor and dysfunctional families -- problems which cannot be solved by the judicial system alone. As one judge described the most difficult cases "The families are frequently dysfunctional, the matters are virtually beyond satisfactory solution and are questions of where the least harm is likely to be done." Relevant facts in family disputes frequently span many years, are easily placed in issue, easily disputed and often incapable of external ratification. The legal and emotional facets of the dispute may be difficult to separate. The disputes change in the course of, and following, litigation, as parties find new partners, change residence and the children assert their views. There is none of the finality associated with litigation in other jurisdictions.'*²

In this context, it is not surprising that orders of the Family Court are often accompanied by disappointment, resentment and anger, nor that the Family Court sometimes gets things wrong in contexts that are rarely straight-forward. The aim of family law reform should be to minimise these difficulties and risks as far as possible.

When considered against this aim, ACOSS considers that the introduction of a rebuttable presumption that the children of separated parents should spend equal time with each parent (the 'proposed presumption') will actually increase the difficulties and risks already faced by all involved.

Aside from philosophical objections to imposing rigid and mandated models on the day to day lives of families and applying those requirements selectively to a particular group of children and parents, there are serious practical problems with the proposed presumption:

- The broad concept of shared parenting is generally at odds with the type of parents who litigate;

² ALRC, *Managing Justice: A review of the federal civil justice system*, ALRC Report No 89

- Rigid prescriptive interpretations of shared parenting are likely to diminish any possibility of reaching flexible and workable shared care arrangements which can work in the real world and will also contribute to increased litigation and tension as parents seek to vary unworkable orders;
- Imposed shared custody of children when parents do not agree, do not co-operate or where there is hostility and violence exposes children and parents to continuing conflict and harm;
- Qualifying the paramount consideration of what is in the best interests of the child with a presumed level parental right of contact exposes children to higher risks of abuse and neglect;
- Expectations would be raised that courts will make 50/50 residence orders and result in increased levels of resentment, disappointment and anger when courts decide in the circumstance of an individual case not to split residence equally or at all;
- The financial risks for separated families will be increased as the current structure of family payments already fails to deal adequately with the costs of shared care arrangements; and
- The stability of care and residence associated with optimum child development could be undermined.

Best interests of the child

ACOSS believes that the best interests of the child should remain the paramount consideration in deciding residence and contact arrangements for the children of separated parents and that this is best achieved when each child is entitled to unique consideration of their interests and circumstances, free of any rigid or unrealistic legislative presumptions as to the structure of residence and contact arrangements.

Recommendation 1

The best interests of the child should remain the paramount consideration in family court decisions affecting children, unfettered by the competing concept of parental rights.

Recommendation 2

The need to ensure the safety of children should be included in s60B of the Family Law Act, as a principle underlying the objects of the Act. An understanding of the deleterious effects of domestic violence on children is an essential part of the background knowledge a decision maker must bring to bear on deciding a child's 'best interests.' This should involve moving the caution in s 68K, that the court not make an order that exposes a child to an unacceptable risk of family violence, to more prominent place in the Act, specifically to s 60B.

Defining shared parental responsibility

Research suggests that the meaning of 'shared' parental responsibility in the current Family Law Act has not been spelt out and that this has

created uncertainty and confusion about the state of the law.³ There have been multiple conflicting interpretations of the current statutory scheme by lawyers, judges, counsellors, parents and Centrelink staff. Some non-resident parents believe that a 'shared parenting regime' provides them with 'rights' to be consulted about day to day decisions affecting the child. The concept of shared parenting has also led some parents to believe that the law requires the children to live half the time with each parent. The lack of clarity in the legislation has thus provided fresh ground for disputes between some parents.

Recommendation 3

The Family Law Act should be amended to clarify what is meant by 'shared parental responsibility' (s60B(2)(c)) and to make it clear that there is no presumption of shared residence. The Act should also specify that there is no particular duty of consultation (with the other parent or parents) when exercising day to day parental responsibility.

Gender bias in court decisions

There is research to suggest that presumptions about gender are an important aspect of judicial thinking in closely contested parenting disputes.⁴

Recommendation 4

More comprehensive research should be commissioned on the impact of gender bias in family court decisions and gender education programs for lawyers and judges strengthened.

Legal representation of parties to family court proceedings

The Australian Law Reform Commission found that consensual resolution was more likely to be achieved if both parties were represented at the various stages through the Family Court processes, including mediation. Lawyer-led negotiation appeared a significant factor encouraging settlement. Unrepresented parties were more likely to withdraw, cease defending or have their cases determined following a hearing. They were much less successful in brokering a consent outcome and frequently said that 'frustration with the process' was the main reason they withdrew or settled their cases.⁵

³ Helen Rhoades, H, Reg Graycar, R and Harrison, M, *The Family Law Act 1995: The First Three Years*, <http://www.familycourt.gov.au/papers/html/fla1.html>

⁴ Moloney, L, 'Do Fathers 'Win' or Do Mothers 'Lose'? A Preliminary Analysis of Closely Contested Parenting Judgments in the Family Court of Australia', *International Journal of Law Policy and the Family*, Volume 15, Issue 3, pp. 363-396.

⁵ ALRC, *Managing Justice: A review of the federal civil justice system*, ALRC Report No 89

Recommendation 5

The recommendations of the ALRC Report relating to access to legal representation in family law matters should be fully implemented .

Family violence

Recommendation 6

The recommendations of the Family Law Council 2002 on Child Protection should be implemented and a Family Violence Unit established within the Family Law system to investigate and inform the court on family violence issues in cases where violence is an issue.

Part 2 – Contact orders with other persons

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

The Family Law Act already enables parents to make arrangements for their children by consent. Grandparents are already enabled to make applications under family law for contact with grandchildren. Grandparents and parents can also make arrangements by consent. There is no need for legislative change.

Part 3 – Child support formula

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

Child support and family law

ACOSS supports the principle that child support and family law issues must be separate. This is the best way of ensuring that the focus of child contact and care arrangements are in the best interests of the child, unclouded by a parental focus on the dollar outcomes of particular arrangements. While it is a basic tenet of the Child Support Scheme (CSS) that the issues of contact and child support are separate, this line has been blurred in recent amendments to the Child Support (Assessment) Act, most particularly in relation to the capacity for a parent to pay child support according to the "lawful" rather than the actual care of a child.

The existing child support formula imposes modest requirements on payer parents after allowing for a self-support component and capping the income to be considered. This basic formula should be maintained for although it does not reflect the actual costs of raising children, child support makes a valued contribution, which, when it is paid, reduces

child poverty and improves outcomes for children of separated parents. The percentages of payer contact used to calculate changes in the formula should not fall below the current definition of substantial care (between 30% and 40% or lower than 30% if parents agree there is substantial care) as otherwise as there is no proportionate reduction in costs to the primary carer parent.

Since the implementation of the CSS there have been regular and strongly voiced complaints about the manner in which the child support formula operates to the detriment of paying parents. In particular, there have been regular complaints that there is inadequate recognition in existing child support formulas of the costs associated with having contact with children and the view is often heard that "child support should not be paid if there is no contact."

There will always be strong complaints regarding the child support formulas from those that have to pay, but this must be viewed in the context of general anger and disappointment that people who make these complaints feel about the breakdown of their relationships. In this context it is most important that the Government hold the line on the existing child support formulas. A parent has a responsibility to support their child's development regardless of their own disappointments, circumstances of needs and, where they are able, to provide financial aid.

It is important to note that there have already been at least three inquiries into the CSS and amendments to the child support formulas that have substantially altered the balance between carer and paying parents to the benefit of paying parents. Recent amendments include the lowering of the disregarded income amount for carer parents; the introduction of the capacity for the lawful rather than the actual care of children to be reflected in child support formulas and the ability for a paying parent to seek a reduction in child support when s/he has a second job to support a subsequent family.

Recommendation 7

The child support formula percentages should be maintained.

Recommendation 8

To simplify means tests and taper rates across the family payments and child support system, the maintenance income test threshold for child support should be lifted to the same threshold as applies to Parenting Payment (Single) and the maintenance income test taper rate for Parenting Payment and Child Support should be reduced to 25 cents in the dollar, in line with ACOSS Budget Priorities Statement recommendations. ⁶

⁶ ACOSS, *Piecing it Together, Federal Budget Priorities Statement 2003-2004*, ACOSS 2003

The family payments system for separated parents

Inadequate family assistance payments are a major direct cause of child poverty in wealthy countries. The Committee's attention is drawn to the attached ACOSS paper, *Flaws in the New Family Payments System for Separated Parents*, which analyses the problems with family payments for separated parents and their children and provides a number of recommendations for improving the system.

In addition to the recommendations in the attached paper, ACOSS makes the following comments and recommendations.

Access to Parenting Payment

Under present social security legislation, a child can only be dependent upon one person at a time and this effectively restricts eligibility for Parenting Payment to only one parent. This means that separated parents in very similar circumstances can be treated inequitably and results in a significant number of appeals to Centrelink and tribunals over the issue of parental responsibility (which is exacerbated by the lack of clarity in the Act) and contributes to unnecessary disputes between parents.

Recommendation 9

Parents (and others) who provide a substantial amount of care to their children should be able to access Parenting Payment on an equitable basis.

Sole Parent supplement

Recommendation 10

A Sole Parent Supplement should be introduced to address the additional costs of raising a child alone, along with a Shared Care Supplement to address the additional costs of raising a child in more than one household. The maximum rates for these payments should be based on thorough research into differences in the essential living costs of sole parent families, couple families, and families sharing care of a child. As a first step towards recognising the costs of sole parenthood in a more consistent way, the maximum rate of Family Tax Benefit (Part B) for sole parent families with older children should be raised to that for single income families with a child under five years.

Family Tax Benefit

Since the introduction of Family Tax Benefit, a parent can retrospectively claim entitlement to FTB at the time a tax return is lodged. Where this happens, a debt to the other parent can result and this debt to the Commonwealth can be higher than the value of the entitlement of the other parent.

Recommendation 11

Parents who claim FTB under the shared care rules should not be able to claim retrospectively. The retrospective claiming of FTB generally should be reviewed.

Recommendation 12

Parents who wish to claim FTB at the end of the financial year due to shared care should be required to register their intention to claim and have it accepted by Centrelink at the beginning of the relevant tax year

Recommendation 13

The amount of debt as a result of shared care should be limited to the entitlement of the other parent.



Flaws in the New Family Payments System for Separated Parents

Introduction

The family payment system introduced in July 2000 under the *A New Tax System (Family Assistance) Act 1999* restructured 10 payments and tax rebates into two payments: Family Tax Benefit (FTB) Part A and Part B.

This paper examines three main areas of risk for children of separated parents arising from the changes. These are:

1. Increased administrative complexity and risk of debts.
2. Increased poverty in residence parent households due to reduced entitlements.
3. Increased conflict between separated parents arising from the reduction in family payments to residence parents when the children see their contact parent for more than 10% of a period.

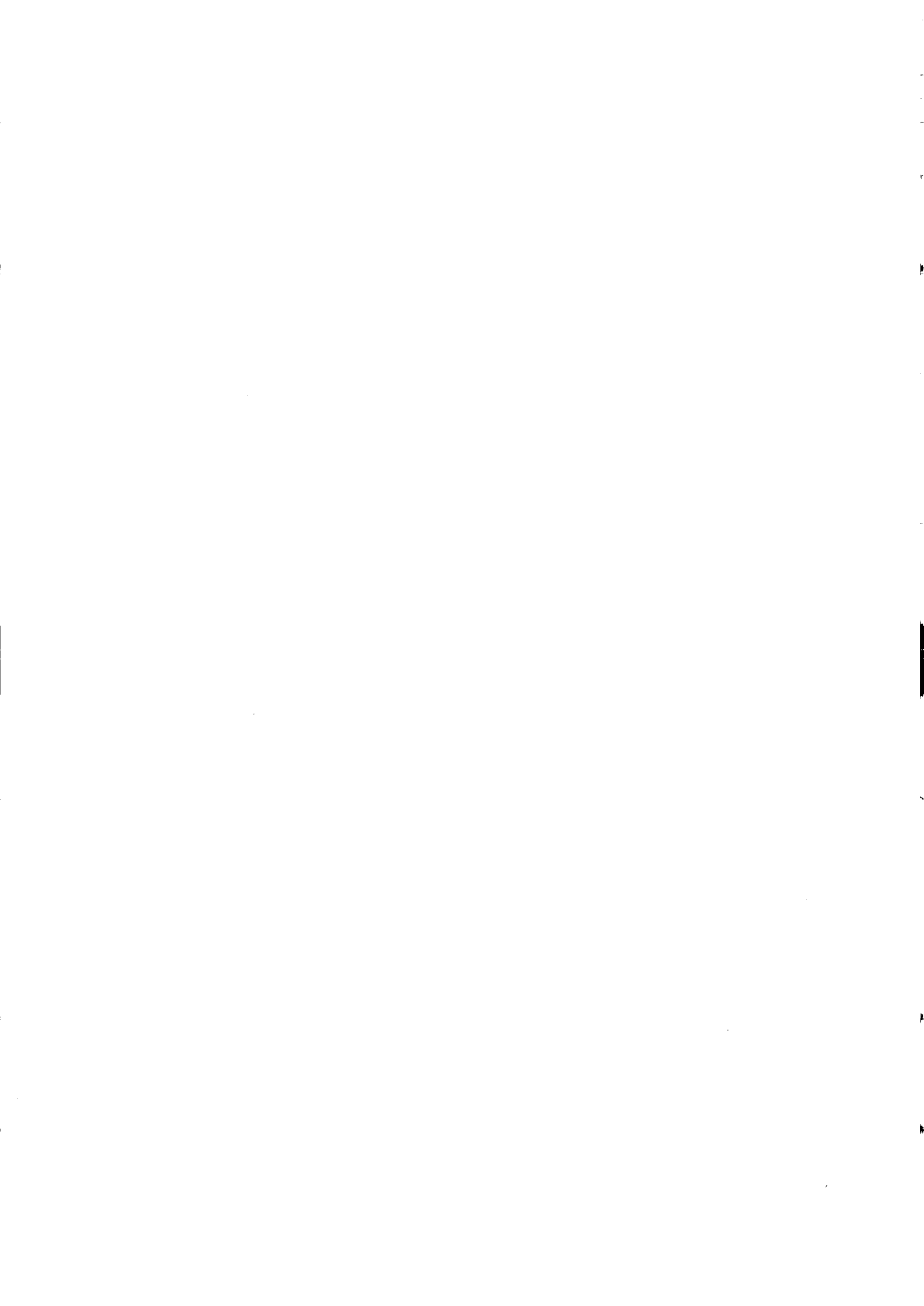
As a result of its analysis, ACOSS calls on the Government to closely examine and review the impact of FTB splitting arrangements on income levels for residence parents to ensure that they do not disadvantage children of separated parents. It is recommended that the Government:

- Pay 100% of FTB payments to residence parents with 70% or more care of a child.
- Introduce a form of Contact Allowance to assist low income contact parents with 10-29% contact.
- Review FTB claiming structures to minimise the opportunity for debt creation and reinstate a margin of error for income estimation of at least 10%.

The first part of this paper details the structure and operation of the mechanisms for splitting FTB between separated parents. Key risk areas, with adverse consequences for children of separated parents living on low incomes, are then discussed, followed by a series of proposed policy responses to address these problems. Information used in this paper comes from the Family Assistance Guide located at www.facs.gov.au

ACOSS INFO 308 — 4 October 2001 — ISBN 0 85871 428 0 — ISSN 1442 486 X

Australian Council of Social Service
Locked Bag 4777 Strawberry Hills NSW 2012
Ph [02] 9310 4844 Fax [02] 9310 4822
www.acoss.org.au





Provisions of the new legislation

The new family payment legislation reduced 10 family payments to two from July 1 2000.¹ FTB A is paid on a per child basis to help with the cost of raising children.² The payment is not subject to an assets test, but is subject to a Care Test³, a Maintenance Income Test⁴ and an Earned Income Test⁵.

FTB B is paid on a per family basis to assist single income families with the costs of parenting and is not subject to an income test if there is only one earner in the family.⁶ The payment is however subject to the Care Test, and, like FTB A, can be divided proportionately between separated parents above a 10% care threshold.

The restructuring of the FTB payment system reduced the number of payments, however ACOSS is concerned that the introduction of a Care Test for separated parents, the abolition of a margin of error for income estimation, and the change in claiming methods has created new risks of debt creation. The following section focuses on these administrative issues.

Claiming Family Tax Benefit

A risk of debt creation, for residence parents in particular, arises through the two different methods available to claim a portion of a FTB payment. The payment can be claimed either as a fortnightly **installment** claim through the Centrelink system or as a **past period** lump sum claim through the Australian Taxation Office (ATO). Claimants through the tax system have a further option to reduce their tax withholding in anticipation of their end of year FTB lump sum entitlement. The Family Assistance Office (FAO) processes claims for FTB payments.

Recipients of Centrelink payments are required to claim FTB payments by installment through the Centrelink system. FTB claimants who do not receive income support may choose to receive payments by installment or through the tax system and the FAO. The FTB payments for a child will thus commonly be claimed fortnightly by residence parents through the income support system and retrospectively by employed contact parents through the tax system.

¹ FTB A replaced Minimum Family Allowance, Family Allowance, Family Tax Payment Part A and Family Tax Assistance Part A. FTB B replaced Basic Parenting Payment, Guardian Allowance, Family Tax Payment Part B, Dependent Spouse Rebate for couple parents, Sole Parent Rebate for sole parents and Family Tax Assistance Part B. Guardian Allowance was paid to sole parents to assist with the costs of raising children alone and could not be paid to both separated parents.

² From July 1 2001, FTB A maximum payment for a child under 13 was \$122.92 per fortnight, or \$3,204.70 per year. A child aged between 13-15 is paid \$155.82 per fortnight or \$4062.45 per year.

³ Under the Care Test, the residence parent's entitlement is reduced by the percentage of time the child sees the other parent above a ten percent threshold.

⁴ Maintenance or child support payments to a residence parent reduces FTB A payments by 50 cents in the dollar above a threshold of \$1,062.15 per year.

⁵ The payment is reduced by 30 cents for every dollar earned over \$29,857 per year to a base rate of \$39.48 per fortnight or \$1,029.30 per year.

⁶ As at July 1 2001 FTB B is paid at \$105.56 per fortnight or \$2,752.10 per year if the youngest child is under 5 and \$73.64 or \$1,919.90 per year for children aged over 5.



Parents who estimate their income face risks of debt due to the abolition of a 10% margin of error for family payment income estimation.

The different methods and timing of claiming and distributing payments also increase the risk of debts for residence parents if they claim more than the percentage of care than they are deemed to be entitled to after the contact parent submits a claim for payment through the taxation system at the end of the year. Residence parents who are deemed to have been overpaid by claiming greater than their correct percentage of care have to repay the debt⁷, as well as adjusting to a continued reduced entitlement based on the pattern of care.

Patterns of Care

Claimants have to establish a pattern of care for a particular assessment period to determine the percentage of time each adult cares for the child. A pattern of care can be established by the Family Assistance Office (FAO) accepting the care percentages agreed on by the parents. Where the parents do not agree, the FAO may decide on the parents' respective care percentages according to any available parenting plans or court orders or other evidence. Where there is no agreement and there is conflicting evidence, registered parenting plans or court orders are the primary documents used for assessment. Where the court order is the principal or only evidence of care arrangements, variations from it will not ordinarily result in a change of the percentage of payment without the agreement of the other parent.

Minor variations to the pattern of care do not affect payment of FTB. If the variations in the care arrangements become a regular occurrence, the person must notify the FAO and a new determination of the percentage of FTB payable must be made. Residence parents who provide care for the child when contact is not taken as specified in the court orders or agreement risk still being paid a reduced percentage of payment based on the court order or agreement whilst providing care for the child.

When care of a child is transferred from one parent to another and the new primary carer submits a claim, the FAO is required to confirm the situation with the original or losing carer within 14 days. If there is a dispute about the pattern of care at this time a review may be undertaken and the FAO may have to recover any FTB that should not have been received.

When there is a discrepancy between the care arrangements and each party presents documentation supporting conflicting positions, the FAO decides the care percentages based on its adjudication on the available evidence.⁸

⁷ The Government's waiver of up to \$1,000 debt recovery on FTB overpayments for the 2000-2001 financial year assisted many families, however the issue of widespread debt creation has not been resolved in the longer term.

⁸ The Family Assistance Guide at www.facs.gov.au lists the following as evidence a customer may provide: confirmation of playgroup, kindergarten or school enrolment, attendance or membership of local organisations or activities, receipts for expenses incurred while the child was in care; confirmation from close family friends or relatives; confirmation from professional members of the community who have regular contact with the family, such as teachers, police, ministers of religion, accountants, lawyers or doctors, and social worker reports, especially in cases where there may be a fear of violence if the other parent is contacted; or records from Centrelink or other government departments which may confirm present or previous patterns of care, such as information about past shared family payments which may be relevant to the current situation



Estimated Number of Families Potentially Affected by the Care Test

In 1997 (ABS 1999 Cat. No. 4119.0):

- 21% of Australian children (978 400) from 597 500 families had a natural parent living elsewhere.
- Of these, 146 800 were couple families and 450 700 were one parent families.
- Nine out of 10 children lived with their mothers after separation.
- Two thirds of the children of separated parents saw their contact parent at least once every six months, and 41% saw their contact parent at least once a fortnight.

These figures suggest that 40%, or around 239 000 resident parent families currently have post separation care arrangements where care is shared above the 10% threshold and who are therefore subject to a reduced entitlement. A further 20% or 119 500 residence parent families may be subject to a reduced entitlement, depending on the frequency of contact.

The reduction in amounts of FTB payments for residence parent households carries risks of increased poverty in these families. The next section focuses on these concerns.

Financial Impact

Comparative Economic Status of Single Residence Parents and Contact Parents

Single mother households face higher risks of poverty than other family type supporting dependent children.

In 1997 (ABS 1999 Cat. No. 4119.0):

- 65% of one parent families (292 955) relied on government benefits for more than half of their family income;
- 44% of one parent families received cash child support; and
- 55% of one parent families were in the lowest 40% of income earners compared to 9% of couple families.

Child Support 1998-99 data comparing median incomes of payers (contact parents) and payees (residence parents) identifies that 'payer median taxable incomes'⁹ (\$28 069) are significantly greater than the median taxable income of payees (\$16 784)' (Child Support Agency 1999, 20).

⁹ These are taxable income amounts, not gross income.



The research paper *Financial Living Standards After Divorce: A Recent Snapshot*, identified that 3% of employed contact parents had incomes below the Henderson Poverty Line (before child support was deducted). After paying child support this figure increased to 7%. In contrast, 24% of employed residence parents had incomes below the Henderson Poverty Line before child support was paid. After child support was received this figure reduced to 10%. Seventy-eight percent of residence parents who were dependent on income support had incomes below the Henderson Poverty Line before child support was paid. After child support was received this figure reduced to 50% (Smyth and Weston 2000).

The research evidence from the ABS, the Australian Institute of Family Studies and the Child Support Agency uniformly indicates that residence parent families are much more likely to be living on low incomes than are contact parents. FTB payments are thus more likely to be needed to avoid severe poverty in residence parent families than in contact parent families. Reductions in income in residence parent families will also have a greater effect on children than reductions in contact parent income because the residence parent is responsible for the children's overall costs.

Estimated Amounts of FTB Redistribution Under the Care Test

Anecdotal data suggests that a common pattern of contact in separated families, for the non residence parent, is for every second weekend and half the school holidays (around 22% of nights per year). On this basis Table 2 illustrates the fortnightly and annual amounts of reduced FTB payments per child arising from a 22% arrangement.

Table 1: Impact of 22 per cent care on FTB entitlement for residence parent

Payment/ age of child	\$ per fortnight*	Minus 22%	Equals balance	\$ per annum	Minus 22%	Equals balance
FTB A < 13	116.20	25.56	90.64	3,029.50	666.49	2,363.01
FTB A 13-15	147.28	32.40	114.88	3,839.80	844.76	2,995.04
FTB B** <5	99.82	21.96	77.86	2,602.45	572.54	2,029.91
FTB B**5-15	69.58	15.31	54.27	1,814.05	399.09	1,414.96

* Rates for 20 March to 30 June 2001 are used as the impact of debts is likely to occur at the end of this financial year and the rates post 1 July 2001 are not yet known at the time of writing.

** FTB B is per family not per child.

If a residence parent incurs an FTB overpayment debt following a retrospective claim by the contact parent which is upheld, the residence parent's FTB payments by installment are reduced to reflect the ongoing percentage of care and to recover the debt.

Impact on Residence Parents of July 2000 changes to Family Payments

The issue of adequacy of income levels is clearly seen in a comparison of entitlement between the new and old system and in the impact on the income of residence parents of splitting FTB.

Table 2: Impact on FTB income of 22% contact for a sole parent with one child under 5 years

Pre July 2000	Payments pf	Post July 2000*	Payments pf
Parenting Payment	372.00	Parenting Payment	402.00
Family Allowance	101.60	FTB A	116.20
Guardian Allowance	37.40	FTB B	<u>99.82</u>
Family Tax A	7.70		
Family Tax B	<u>19.24</u>		
Total	537.94	Total	618.02
		Minus 22% FTBA & B	47.52
			570.05
		Minus Repayments	51.80
		FTB**	
		Total	518.25

- The most current rates (20 March to 30 June 2001) are used as the impact of debts is likely to occur at the end of this financial year and the rates post 1 July 2001 are not yet known at the time of writing.

** Although repayment rates will vary, \$51.80 is taken from an actual case and is given to illustrate the potential impact of debt repayment.

Without FTB splitting the parent would receive \$402 per fortnight parenting payment and \$332.22 in FTB payments for the two children per fortnight, a family income of \$734.22 with full time care of the children. With 22% FTB splitting the family's entitlement to FTB is \$129.57 per week and weekly income drops to around \$331. When repayments are taken into account, weekly income drops further. FaCS research into budget standards and the costs of children in December 1998 (pre GST) nominated \$447 per week as a low cost level of necessary expenditure for a privately renting mother of two children aged three and six (Henman 2000: 95).

Under the new rules if one parent is ineligible to claim their entitlement because of the income test, their FTB portion is retained by the government, thereby creating savings for the government on family payments. It is currently illegal for parents to have an agreement that only one will make a claim regardless of the amount of shared care. However a measure announced in the 2001 Federal budget¹⁰ will enable a parent to relinquish his/her entitlement thus enabling the other to claim 100% of the FTB, subject to eligibility. This measure does not remove the risk of poverty for residence parents but places their share of family payment entitlements subject to the grace and favour of their ex partner. The waiver mechanism is not therefore an effective, desirable or practical solution to the policy issues raised by splitting family payments.

¹⁰ Applied from 1 July 2000.



Paying contact parents a proportion of FTB comes at a direct cost to residence parents. Much of the increase in payments on July 1 2000 reflects indexation and the 4% GST compensation which is all but eliminated by the impact of FTB splitting on residence parents. As illustrated in Table 1, including debt repayment means that income falls to below July 2000 levels. The costs of raising children do not fall significantly because a contact parent has care of the children every second weekend and half the school holidays.

Costs of Children

ACOSS is concerned that proportionate splitting of FTB does not fairly recognise the distribution of costs to parents of children in separated families. There is no mechanism to redistribute the costs of children along with the proportionate redistribution of FTB payments.

Henman and Mitchell 2001 (forthcoming) show that children living in two households cost more than children living in one household as they require a place to sleep, and often, also, clothing and possessions at each home. The research paper, *'The Behaviour and Expenditure of non resident parents during contact visits'* by Murray Woods and Associates (1999) recognises that contact parents incur costs during contact, however it does not examine whether there is any related reduction in costs to residence parents arising from contact. Contact parents typically incur costs for transport, housing, recreation, food and personal possessions when children visit them for contact (Murray Woods and Associates 1999). ACOSS recognises the financial difficulties faced by low income contact parents in maintaining contact with their child/ren and supports the need for payments to enable low income contact parents to afford to see their children.

The costs involved in caring for a child by the primary caregiver parent, which include foregone earnings, housing, clothing, education, health care, structured recreation, toys and books, are not reduced when the contact parent has weekend care of the child/ren. In the example of weekend soccer, the primary caregiver may pay for enrolment, insurance, uniforms, equipment and training costs, whilst the contact parent may take the child to the match, incurring only transport and food costs for the day. The primary caregiver typically has care of the child/ren during the working/school week and bears the costs of transport and childcare associated with these activities which are not imposed on contact parents who see their children on holidays and some weekends.

Moreover, Available data from Murray Woods and Associates 1999 suggests that 100% of FTB payments for a child living with both parents in one household should be increased by around 20% to properly reflect the higher costs parents incur when children live across two households.

Discrimination against Children whose Parents have Separated

The changes to FTB payments discriminate against children of separated families, relative to children still living with both their parents. When the contact parent's income is above the cut off point for FTB payments the child loses access to the percentage of FTB the primary caregiver living on a low income would previously have received in full.



The proposed waiver will overcome this problem for separated parents with amicable relations but will potentially be used as a bargaining tool where parents are in dispute. The redistribution of FTB payments from a 10% minimum Care Test has undermined any financial benefits arising from the easing of the income test and payment increases to sole parents, which accompanied the New Tax System. As noted above, sole parent families remain at most risk of poverty.

Poverty Risks and the Changes to FTB Arrangements

FTB, like the payments it replaces, is paid to assist parents with the costs of raising their children. However from 1 July 2000 the policy emphasis shifted away from relieving child poverty and providing the most support to families living on the lowest incomes. The reduction in taper rates, the increase in the income test threshold and increased cut off points, the abolition of an assets test on FTB A, and the splitting of FTB payments above a 10% contact care threshold allows more people on higher incomes to gain access to payments. At the same time it reduces the proportion of payments paid to low income households which are mainly reliant on income support.

The government has argued that it is only fair and reasonable that separated parents who share the care of their children should be eligible for assistance to help with the costs of providing that care. ACOSS agrees with that position but disagrees that it should be at the cost of the residence parent. The Government argues that the apportionment of FTB between sharing parents according to the respective percentages of care they provide is the most equitable way of providing this assistance and recognising the costs incurred by each parent in the care of their children.

These arguments do not take account of the anti poverty role of payments to low income families to support their children. ACOSS is concerned that the introduction of the 10% care threshold for splitting FTB payments was not supported by prior income modeling demonstrating the effects of FTB redistribution on low income single parents. Nor do sole parent families obtain the same economies of scale as couple families and their low income means that they can afford to spend proportionately less on raising their children than better off families.

In addition, under the recent changes, single residence parents have also lost access to the Guardian Allowance which was paid to recognise the higher costs of caring for children without a resident partner.

As shown in the preceding analysis, the impact of shared care provisions suggests that the restructuring of family payments for children of separated parents has increased the risk of deeper, more widespread poverty for children living with a single parent.

Disincentives for co operative post separation parenting

The creation of proportionate relationships between contact with children and percentages of FTB payments from a lower threshold creates disincentives for co operative, flexible post separation parenting arrangements.



Positive outcomes for children of separated parents are associated with flexible co operative arrangements (Amato 1993, Byas 2000, Dickenson *et al.* 1999) whereas negative outcomes are associated with conflict, violence and poverty (Behrens 1996, Indermaur 2001, Rendell et al. 2000). Any policy which reduces low income family support and which increases the risks of tension, dispute and violence in separated families therefore also increases the risks of adverse outcomes for children of separated parents.

There are four main disincentives for co operative post separation parenting resulting from these changes:

1. The primary caregiver parent loses income when the contact parent sees the children. Primary caregiver parents who have foregone earning opportunities to raise children often become wholly dependent on income support payments after separation. The high risks of poverty associated with reliance on income support provide a deterrent to the residence parent to enter a liberal shared care arrangement, when this arrangement would result in them receiving less financial assistance. Residence parents can end up paying contact parents more in FTB percentage payments for care of children than they would pay for an equivalent period of care in subsidised child care.
2. There is less scope for flexibility in post separation parenting arrangements. The official pattern of care under a shared care arrangement must be lodged with the FAO and this can only change if a new court order or agreement is made. If there are changes to the pattern of care, the FAO is to be notified within 14 days. Because the pattern of care can only be officially changed after a new court order or agreement, a disincentive for flexible, co operative care arrangements results between parents due to the lack of timely, flexible financial redistribution available to both parties.
3. There is a high risk of loss of financial support accessible to children of separated parents when the contact parent does not adhere to the amount of care specified in the pattern of care registered with the FAO. The resident parent still loses a percentage of FTB when contact is not made and retains the continuing cost of care for the child on reduced entitlement. Further, the contact parent can receive FTB payments for contact which is not made. When the contact parent does not make contact as specified, the resident parent has to prove retrospectively that contact did not take place. In order to receive full FTB the resident parent would have to seek a court order reflecting the absence of contact. However Family Law legislation and practice does not support reductions in contact when the contact parent does not attend to see the child.
4. Increased risks of conflict arising from linking child contact and child payments create particular concerns for primary caregivers and their children who have fled domestic violence. One in four marriages break down because of abuse issues, and in *de facto* relationships the rate of violence is even higher (ABS 1996, Walkout and Hughes 1999). Recent research has identified that up to one in four young people have witnessed violence against their mother or stepmother (Indermaur 2001) and that child contact often provides an avenue for continued abuse (Rendell et al. 2000).



FTB Splitting and the Legal System

The administration of FTB splitting relies heavily on a functional accessible family law system. Claimants of FTB require court orders or agreements to support their claims and any changes to post separation parenting arrangements require court orders or agreements.

Obtaining court orders in the Federal Magistrates Court or the Family Court is often a costly, stressful and lengthy process, which increases hostility between parents. However parents without court orders can take the children from their usual place of residence without agreement and claim FTB payments. Parents without court orders can deny the other parent any access to the child and force them to apply for court orders. The need to substantiate FTB claims through court orders provides parents with additional impetus to seek court orders, thereby increasing demands on legal aid, the Federal Magistrates Court and the Family Court. The legalist basis of FTB splitting may have the effect of increasing recourse to litigation by separating parents.

Costs associated with legal action impose additional financial burdens on low income earners. When applicants or respondents are unable to access legal aid they may be forced to represent themselves in court, thereby increasing inefficiencies. Survivors of domestic violence who are forced to represent themselves experience great difficulties in providing effective self representation in a dispute with their ex partner (FLC 2000).

Court orders may also not be suitable for ready interpretation by Centrelink workers. A court order which provides for contact as agreed by the parties provides little guidance in the event of dispute, forcing one or other of the parties to return to court for a less flexible order. Court action typically increases hostility between parents (Byas 2000). Increased conflict between parents has an adverse impact on children's well being. Attention also needs to be placed on the training and ability of Centrelink staff to correctly read and identify court orders to ensure that they are not out-of-date or have been superceded.

Conclusion and Recommendations

The introduction of a Care Test on FTB payments to separated parents from a 10% care threshold was intended to recognise the costs incurred by contact parents when they see their children and therefore to also act as a financial incentive to contact parents to maintain a relationship with their children.

Whilst ACOSS recognises the need for policies to support contact parents' relationships with their children, a wider goal is to improve the well being of children of separated parents. It is therefore equally important to avoid policy directions which impose greater financial or emotional burdens on separated parents. It is adversarial to create benefits to contact parents at the direct expense of residence parents, particularly where the financial penalties of contact reduce single parents' capacity to provide adequate support for their children.



Already there are reports of a rapid increase in severe financial distress in single parent households arising from FTB splitting. The policy of FTB splitting from a 10% threshold has created three risk areas for adverse outcomes:

1. Increased administrative complexity and risk of debts.
2. Increased poverty in residence parent households due to reduced entitlements.
3. Increased conflict between separated parents arising from the reduction in family payments to residence parents when the children see their contact parent for more than 10% of a period.

ACOSS considers that the adverse outcomes arising from FTB splitting indicate the need for a different approach which provides support for the costs of contact for low income contact parents, but which enables children in single parent families to receive their full FTB entitlement, regardless of whether or not they see their other parent.

Payment of a Contact Allowance to low income contact parents would meet the policy goals of supporting contact parents' capacity to see their children and recognising the additional costs incurred during contact, without increasing poverty in residence parent households and removing financial considerations from child contact arrangements. The re establishment of the separation between child payments and child contact would enable parents to prioritize their child's interests instead of financial consequences.

In summary, ACOSS recommends

1. That FTB A and B payments be paid in full to primary caregivers with between 70 - 100% care of a child, with additional components to recognise additional dependent children (such as under Youth Allowance).
2. That consideration be given to a form of Contact Allowance payable at a percentage of current FTB rates to low income contact parents with 10-29% contact.
3. That where eligible separated parents share care of a child between 30-69%, the Contact Allowance is shared proportionately along with FTB payments.
4. That the Government introduces further personalised communication and education strategies around the FTB and shared care arrangements.
5. That the Government reviews FTB claiming structures to minimise the opportunity for debt creation, including reinstating a margin of error for income estimation of at least 10%, and that rates of FTB debt recovery not cause undue hardship to claimants.
6. In keeping with the promise made by Government at the time of introduction, examine and review the impact of using whole of year income to assess eligibility for FTB payments to ensure that it does not disadvantage FTB recipients.
7. That the Government examine and review the impact of FTB splitting arrangements on income levels for residence parents.



References

- Amato, P., (1993), 'Contact with Non custodial Fathers and Children's Wellbeing', *Family Matters*, 36: 32-34.
- Australian Bureau of Statistics, (1996), *Women's Safety Australia*, Catalogue Number 4128.0, Canberra, AGPS.
- Australian Bureau of Statistics, (1999), *Children, Australia: A Social Report*, Catalogue Number 4119.0, Canberra, AGPS.
- Behrens J (1996) 'Shared Parenting Possibilities and Realities', *Alternative Law Journal*, 21: 213.
- Byas, A., (2000), 'Post-separation Parenting - what's law got to do with it?' *7th AIFS Conference*, Sydney, 24-26 July.
- Child Support Agency, (1999), *Child Support Scheme Facts and Figures 1998-99*, FaCS.
- Department of Family and Community Services (2001) *Family Assistance Guide*, www.facs.gov.au.
- Dickenson, J., Heyworth, C., Plunkett, D. and Wilson, K., (1999), 'Sharing the care of children post separation: family dynamics and labour force capacity', *Family Strengths Conference*, University of Newcastle, November.
- Family Law Council (2000) *Litigants in Person*, Canberra, AGPS.
- Henman, P. and Mitchell, K. (2001) 'Estimating the Costs of Contact for Non resident Parents: a budget standards approach', *Journal of Social Policy* (forthcoming).
- Indermaur, D., (2001), *Young Australians and Domestic Violence*, Trends and Issues Paper No. 195, Canberra, Australian Institute of Criminology.
- Kruk, E., (1993), *Divorce and Disengagement: Patterns of Fatherhood Within and Beyond Marriage*, Halifax, Fernwood.
- Murray Woods & Associates, (1999), 'The Behavior and Expenditure of non resident parents during contact visits', FaCS Policy Research Paper no. 75, ACT.
- Rendell, K., Rathus, Z. and Lynch, A., (2000), *An unacceptable risk: A Report on child contact arrangements where there is violence in the family*, Brisbane, Women's Legal Service.
- Smyth, B., and Weston, R., (2000), *Financial Living Standards after Divorce: A Recent Snapshot*, Research Paper Number 23, Melbourne. Australian Institute of Family Studies.
- Wolcott, I. and Hughes, J., (1999), *Towards Understanding the Reasons for Divorce*, Working Paper 20, Melbourne, Australian Institute of Family Studies.

Appendix 1

The following information may be of interest but has not been directly referred to in the text.

Table A.1: Child Support Changes Under ANTS. A comparison of old and new family payments

New Payment Under ANTS	The Old Payment Structure	
	Old Social Security Payments	Tax Concessions
FTB Part A	Minimum Family Allowance Family Allowance Family Tax Payment Part A	Family Tax Assistance Part A
FTB Part B	Basic Parenting Payment Guardian Allowance Family Tax Payment Part B	Dependent Spouse Rebate Sole Parent Rebate Family Tax Assistance Part B
CHILD CARE BENEFIT	Childcare Cash Rebate Child Care Assistance	

Source: 'Making the Tax Package Fairer', ACOSS)

Note: Sole Parents weren't eligible for the Dependent Spouse Rebate or Basic Parenting Payment.

- FTB A assists with the costs of raising children, as did the payments it is replacing.
- FTB B assists where one (or the only) parent has left work to care for a child/ren.
- Child Care Benefit assists families with the cost associated with child care, as did the payments it is replacing.

Nights in care versus hours of care

Generally a pattern of care is based on the number of nights in an assessment period where an individual has the overnight care of an FTB child. A person with the overnight care of a child is regarded as having had care of the child for that day. There may be some occasions where only counting the nights in care does not accurately reflect the caring arrangements for the child. In this case, the actual number of hours of care may be calculated for each carer in determining the pattern of care and then converted into days in care (Family Assistance Guide www.facs.gov.au).

Income Test on FTB A

In the July 1 changes the income test for FTB A was raised from \$24 350 to \$28 200 before maximum payment is tapered down. The taper rate was reduced from 50c to 30c for every dollar earned over the income test maximum payment threshold. The income threshold before FTB A cuts out was raised from \$67 134 (+ \$3 359 for each additional child) to \$73 000 (+ \$3 000 for each additional child).



It is important to note that the threshold of \$28 200 doesn't increase with additional child/ren, yet the maximum income one can earn before FTB A cuts out does increase if there are additional child/ren.

For contact parents the threshold for FTB A is increased by 50% of any child support paid. If the contact parent pays \$6 000 per annum child support, the free area increases by \$3 000 i.e. to \$31 200 then the 30c taper cuts in until the percentage of full FTB disappears or reduces to under the minimum rate.

Asset tests that were applicable under Family Allowance were abolished with the introduction of FTB A.

Both of these latter aspects increase benefits to higher income earners compared to the pre 1 July 2000 period.

Income Test on FTB B

FTB Part B is paid where one (or the only) parent has left work to care for a child/ren. The payment structure has collapsed the previous policy distinction between single parent families and couple families in which only one parent is in the workforce, although these types of families have markedly different socio economic profiles. The income test in couple families allows a non working partner in a couple parent family to earn \$1 616 pa and receive full payment. Payment tapers out at \$0.30 for every dollar over this up to \$10 500 for a family with a child under five years (was \$6 090 under the older system).

Receipt of FTB B for sole parents is not subject to an income test.

Maintenance Income Test for FTB A

Claimants for FTB A and B are required to take reasonable steps to obtain child maintenance. FTB A payments are reduced by 50c in the dollar for every child maintenance dollar received above the single parent maintenance income free area of \$38.74 pf until the base rate of FTB A is reached (\$37.38 pf).