BW:sp

11 August 2003

Committee Secretary
Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
Department of the House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

Please find attached a copy on my submission to the Inquiry into Child Custody Arrangements in the Event of Family Separation.

As a Federal Member with a large and diverse electorate I am in regular contact with parents who, for various reasons, have separated and who find the current system to be unfair or too difficult to comprehend. Predominately the contacts are from male constituents.

One would hope that future generations of parents could openly accept fifty percent responsibility for the financial and physical needs of their children. Children's wellbeing needs to be a key responsibility with the proviso that the actions of the Parliament should not add to the angst they suffer in the wake of their parents' separations!

Yours sincerely

Barry Wakelin

BARRY WAKELIN MP

PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

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The Seat of Grey covers 93% of South Australia, including the State electorates of Giles, Frome, Flinders, Stuart and part of Goyder.

INQUIRY INTO CHILD CUSTODY IN THE EVENT OF FAMILY SEPARATION

Submission – by Barry Wakelin MP

11th August 2003

Submission: Inquiry into Child Custody Arrangements in the Event of Family Separation

An experienced Family Court judge once said that many individual cases in the current system will not reach settlement **"until the love of the child exceeds the hatred of the parents for each other"**.

Given both the intractability of child support cases and the wide variety of circumstances that they encompass the key to effective and fair reform of the child support system must be the introduction of a wide-ranging system of compulsory mediation. Already mediation, and associated private agreements, is playing an increasingly important part in dispute resolution for separated families. To further encourage all those parents dealing with child support issues to consider private agreements I propose the strong promotion of private mediation. Such a system is outlined below:

A Universal System of Mediation: an outline

This proposed model for Universal Mediation would have three principal objectives:

(i) greater parental self-reliance;
(ii) tailored individual parenting arrangements; and,
(iii) minimisation of governmental involvement (through the CSA).

The three stages of the model would be:

Stage 1: Initial separation

- to give separated parents the opportunity (perhaps 3 months) to make appropriate decisions in a neutral environment (this might be achieved through loan-based assistance in the short-term).

Stage 2: Permanent separation

- a period of mediation to form the private agreement on financial relations and care arrangements

Stage 3: Variation of Agreement after 12 months or at request of both parents

- such variation would encompass changes in care and changes in income (with a forthright relationship between meeting agreed care access and agreed payments)

The cost of mediation (whether private, privately accredited or public) would be met by both parents on a 50/50 basis. A loan scheme would be made available for low-income parents requiring assistance in the financing of their mediation.

A system of universal mediation would likely be significantly cheaper to Australian taxpayers than the present CSA-dominated system. It is estimated that this financial year the present system will cost taxpayers $258 million, or over $700 for each payer within the system each and every year.

***(a) Given that the best interests of the child are the paramount consideration:**

(i) what other factors should be taken into account in deciding the respective time each parent should spend with their child 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 a court could be rebutted – [* indicates terms of reference]

It should be taken as a fundamental assumption that parents would want (and ought [barring extenuating circumstances]) to spend equal time with their children and provide the resources for the up bringing of their children on an equal basis. In terms of public policy this assumption ought to be used as a starting point from which parents, mediators or courts can negotiate for the distribution of more or less time and resources. As I have noted above universal mediation should be the basis of child support payment determination, not least because the system of family law that is associated with the child support scheme is predicated on the idea that either party can alter a marriage contract. An equality of responsibility for separation ought to mirror an equality of responsibility for the children affected by that separation. This analogy may also work to defuse much of the present angst felt by separated parents, which generally has its origin in the breakdown of the relationship rather than events post-relationship.

Thus all couples contemplating separation would, under a revised system, be expected to accept proportionate responsibility for their children and would be encouraged to think through the implications of their decision to separate. Almost 50% of separated parents already resolve their own parenting situation, without outside assistance (or interference). This phenomenon should be encouraged- government intervention in family relations should be parents' last resort, not their first.

When the CSA does become involved a case officer should be appointed who is dedicated to the assistance of this particular couple. This person would be aware of the family's case history and would seek to develop a relationship of trust between the clients and the CSA. Throughout this period of assistance all effort should be placed into encouraging self-reliance on the part of both parties.

A further reason for equal access is the phenomenon of a totally changed workforce. Today we cannot assume that either parent, father or mother, does not work or have broader career aspirations. In contemporary society all people are expected to work regardless of gender and that is the reality for

the majority. Again the default situation should be that the father and mother each assume responsibility for the care and sustenance of the children for fifty percent of the time.

Of course a parent will always be a parent, even when not living in the family unit. The right of the child to have equal access to both parents is essential. The child should not be used as a bargaining tool between parents. The provisions of the Criminal Code should therefore be the only basis of rebuttal by a court.

The total financial circumstances of the parents must also be taken in to consideration. Both mother and father ought to make a financial commitment to the care of their children – for children are not disposable commodities.

It is a fact that 90% of mothers and 10% of fathers are granted primary care of the children on separation. It is essential that we realise that the answer for parents who separate is not to isolate them further by punitive financial measures and by placing exclusive care with one parent. Neither parent has a monopoly on love and concern. Therefore the Parliament should aim to draft laws that encourage both parents to believe they are important to their child.

Nonetheless a certain amount of flexibility would need to be incorporated into the formula where it is not possible for a parent, either the mother or the father, to care for the child for fifty percent of the time due to employment circumstances – for example where work shifts interfere with stability of the care available to the child. The final decision would then need to take this into consideration in consultation with both parents. Adherence to a rigid formula will not give the best result, rather acceptance of a default 50/50 responsibility and utilisation of mediated negotiation will give the best possible result.

***(ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents – [* indicates terms of reference]**

All children should, wherever possible, be allowed to maintain their normal living circumstances regardless of the breakdown of their parents' relationship. Separation should not lead to children being used as a bargaining tool between emotional and warring parents or lead to the exclusion of normal family contact!

In clear terms contact should be the same for other persons (eg. extended family) as non-separated parents where access is automatic, other than on rebuttal based on the Criminal Code. To conclude, contact with grandparents or other close relatives or friends deemed appropriate by the parents ought to occur in exactly the same way as with non-separated parents.

(b) Whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children. [* indicates terms of reference]

The current application of the formula is one of the most extraordinary intrusions in to the lives of Australian parents ever attempted by government! This intrusion often removes incentives to resolve issues at a difficult and emotional time for the family.

In my role as a Federal Member of Parliament I receive many complaints from separated parents about the unfairness of the present formula. Of course these complaints should not be taken on face value. Family separation is an emotional and disturbing phenomenon and sometimes parents will seek to shift other disputes into the area of child support payments. Nevertheless close examination often reveals that the complaints made are genuine, and that complaints are made by both payers and payees.

The complaints of parents receiving child support payments (the children living with them most of the time) range from underpayments, to irregular payments, to no payments at all, to the difficulty of CSA enforcement of payments. Parents making payments (having limited access rights) regularly complain that the formula takes too much of their income, particularly if they are trying to re-establish themselves and have taken on a new relationship with children. The most prominent case histories that are brought to my attention are where the parent considers they are paying excessively for the child or children but are allowed only limited or no access. In my experience the resultant feelings of despair can be soul destroying and destabilising for many separated parents. These emotions are then transferred to the child or children thereby inflaming the situation even further, and encouraging greater familial alienation.

Thus a fairer formula for determining payments needs to be established. One fairer solution might be that child support payments should be tax deductible to the payee and taxable to the receiver and I commend this measure to the committee as a key recommendation.

The link between payments and access also n eeds to be strengthened. The link should be precise, immediate and contain direct incentives and disincentives to encourage maintenance/adherence to the mediated agreement. The Family Tax Benefit can now be split on the amount of access each parent has, although CSA cannot adjust payments until access is over 1/3 eg 109 nights annually. Legislative changes that would give increments

from 10% were announced in the 2000 budget but were negatived by the Senate during debate on *Child Support Legislation Amendment Act 2001*.

On more administrative matters, the notification process for change of income of payers is too slow and cumbersome. When a payer's income falls the assessment continues at a higher level (even though payments are not made) thereby raising a debt. This debt often continues to grow through the addition of penalties even when payment assessment is reduced. When income increases (the tax assessment is used to determine that increase) the difference in the total income for twelve months and the estimated income is used to assess payments that might have been and raised as an overpayment. If the payer does not immediately pay, penalties are also applied- increasing the debt.

There are also problems with the Child Support Agency itself, in terms of the service that it is able to provide to its clients. For example the allegedly high staff turnover of the Child Support Agency (or lack of administrative competence) does not assist parents who, often already in a distressed state, constantly have to cover the same ground with different staff over and over again. Are adequate case notes available to all CSA staff?

I believe that professional mediation training should be deemed as a mandatory requirement for all CSA casework officers if that is not already the case. I accept that the expectations and demands on CSA staff under the current system are sometimes untenable but that is inherent in a bad system where blame shifting is too often the name of the game!

The need for a stronger more professional proactive government service is clear when fractured lives must be headed back on track at probably the most stressful time in most people's lives.

A specialised small business unit with experts in various areas should be available to clients. Some interpretations of income are just plain wrong. For example a wheat farmer who may be paid by the pools system one year and the next year accepts cash, which results in an assessment of double income in that second year. A CSA employee should not have told the subject of this particular example: "I used to work for the Tax Office – I know what you farmers are like". This is an unprofessional and inflammatory statement. A more sensible approach would be to apply the averaging system to farmers' income. Conversely non-payers need to be dealt with in a strong and effective manner to encourage adherence to agreements.

There is also the perennial problem of violent response. The particularly stressful and alienating experience of family breakdown can produce a violent response in some clients of the CSA. Unfortunately the practical demands on CSA staff often mean that violent responders are given a priority in agency consideration. However this creates a perverse incentive for violent behaviour. This perverse incentive must be eliminated in the interests of staff and other clients.

In conclusion I would observe that child support system clients who are genuinely trying to meet their obligations (as carers and payers) should be acknowledged and rewarded by the system, not penalised by it. And every opportunity and incentive must be encouraged to bring parental mediation to the care of the children!