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Mr D W Brown
366 Como Parade West
Parkdale Vic 3195
17 October 2003

Ms J George
Member for Throsby
Fax 02 4262 6155

Committee Secretary
Standing Committee on Family and Community Affairs
House of Representatives
Parliament House
CANBERRA ACT 2600
Fax: 61 2 6277 4844

House of Representatives Standing Committe on Family and Community Affairs
Supp.
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Secretary:

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Dear Ms George,

I noticed during the Geelong hearing into shared parenting & child support reform that you commented upon the lack of objective advice regarding the true cost of caring for children:

> *Ms GEORGE-Thank you for your submission. I think it is a quality submission that has to inform where we go from here. The cost of raising children has been mentioned a couple of times today. I cannot get anyone to tell me objectively what the cost is and what the formula is based on. Do you have any evidence or submissions? You can take it on notice. If you can tell me on what basis the cost of raising a child has been predicated in this formula, I would be interested.*

Later in proceedings, during open forum, a member of the public and a family law barrister attempted to respond:

> *Ms Boymal-My name is Anna Boymal. I am a family law barrister. I am also a separated mother of three children. I have a couple of matters that need clarification for the committee. The child representative is not a representative of the court, it is an independently appointed solicitor whose role is to act in the best interests of the child. The age 12 is a myth; there is no magic age. That is all set out in case law and the Family Law Act. The cost of children is firmly set out in the Lee and Lovering Scales-the costs of transport, accommodation, health and all those issues, which do not seem to be taken into account with the child support assessment formula. Perhaps the old system needs to be revisited. But I think what has changed since the old system is an understanding of the quantum of maintenance that is needed.*

Unfortunately, Ms Boymal's professional advice is a classic example of how wrong the professionals are in this area of the law. The statement by Ms Boymal is typical of the bad advice given to litigants as well as politicians.

- The Lee and Lovering scales are outdated, inaccurate, based on US studies, over-inflated against inflation and no longer can be relied upon as accurate examples of modern spending patterns.
  - I have a letter from CSA letter dated 19 December 2001, acknowledging:
    "The cost of children was also taken into account as research suggests that the child support formula requires paying parents on higher incomes to provide more financial support than the total costs of their children."
- CSA have confirmed as true (letter dated 3/5/2002):

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"That the Senate Joint Select Committee 1994 recommendation 116 was that the Minister for Social Security commissions an independent study into the costs of children to enable a critical evaluation of the current child support formula percentages."

"That the Government response to recommendation 116 was: "The Department of Social Security commissioned the Social Policy Research Centre at the University of New South Wales in 1995 to undertake costs of children research as part of a larger research project on indicative 'budget standards' for different households. The Social Policy Research Centre is contracted to produce a final report on its research by the end of 1997. It is expected that the report will be publicly available in early 1998."

"That the BSU report was published in March 1998."

"That Senior Case Officers who make Change of Assessment determinations can refer to other information to guide them in determining what reasonable expenses for children are. The Lee, Lovering and Saunders (BSU) studies are reproduced in the CCH Handbook and are therefore available for the Senior Case Officer to consult. The CSA regards the Lee study as a guide. The CSA regards the BSU study as a guide."

- The Joint Select Committee in 1994 identified that the Lee was not an accurate study into the cost of caring for children. **Note pages 295 – 303 of the JSC report as recorded in Hansard - findings 220 – 222 of the Senate Committee as follows:**

> 220 The Joint Committee considers that the formula percentages recommended by the Child Support Consultative Group (Consultative Group) are arbitrary and simply represent the Consultative Group's judgement of the appropriate balance points for the Child Support Scheme. It is this Joint Committee's task to assess whether the original balance points are still appropriate. The Joint Committee considers that these balance points must be assessed against the objectives of the Scheme and the Scheme's impact upon the relative disposable incomes of its clients as a whole. The formula percentages are only one factor in this assessment.
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> 221 Research into the costs of children relied on by the Consultative Group may not have been representative of Australian conditions. Whilst this research may have only been used as a starting point, the Joint Committee considers it essential to ensure that this starting point is valid in Australian circumstances. The Joint Committee notes that the major Australian studies in this area, Lee and Lovering, not only produce widely divergent results but are also dated and possibly misleading. Whilst the equivalence scale approach used in the Lee study appears to be the preferred method internally, the Joint Committee has difficulties with both its assumptions and the wide variation in results produced by the studies using this approach. In particular, the Lee study's results in a number of categories appear to be excessive and difficult to justify.
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> 222 The Joint Committee recognises that recent reliable Australian research into the costs of children is essential to ensure that the current formula percentages are validly underpinned. In the absence of this research the Joint Committee is left with no choice but to accept the current formula percentages despite the Joint Committee's view that these percentages are arbitrary. Consequently, the Joint Committee considers that the Minister for Social Security should commission an independent study into the costs of children to enable a critical evaluation of the current formula percentages. *(Price et al – Joint Select Committee on Certain Family Law Issues)*

- CSA claim that the reason they have not implemented child support assessments in accordance with costs of caring for children as determined in the BSU study is "the Government has been unsuccessful in seeking to amend the legislation in regard to the formula." However, this is a deliberate obfuscation of the issue. CSA are aware that the formula exceeds the cost of caring for children and that this is

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hidden spousal maintenance which is not provided for in the child support (Assessment) Act 1989. However, they continue to knowingly apply a formula they are aware is wrong when it exceeds the cost of caring for children. This represents a blatant act of negligence and their charter particularly when the outcome is determined as a result of CSA's discretionary COAT determinations rather than the legislated formula.

- CSA have refused to answer the question "Does CSA regard the BSU study as "proven" for purposes of assessing child support? CSA avoided the question by stating the study is regarded as a guide. This is an insufficient answer designed to deliberately avoid the legal issue of whether the study is "proven" in accordance with the Child Support (Assessment) Act 1989.
- CSA have also not answered my questions asking: "What does CSA regard as the cost of caring for 2 male children aged 14 & 15 under the Lee study?" "What does CSA regard as the cost of caring for 2 male children aged 14 & 15 under the BSU study?"

Unfortunately, efforts by Mens Rights groups to get the BSU study recognised by the Family Court of Australia have been frustrated by judicial activism since the BSU study was published. Should you query a family law practitioner in this regard you will find that the Family Court has not recognised the BSU study and equally has not ruled it not a proven study. The Court has merely ignored the matter for 5 years.

The Court's abuse of judicial process has allowed CSA to operate as if the Lee study (no-one uses the Lovering study any more) as an effective cap for child support assessments. Unfortunately, the Lee study is excessive through deliberate over inflation over a course of 15 years.

The hidden agenda operating behind the FCA abuse of process and CSA abuse of power appears to be a political objective to base child support assessments upon a capacity to pay or income sharing rather than capping child support at the true (and lower) cost of caring for the children.

It would appear the FCA and CSA have conspired to achieve a political objective rather than operate independently and with impartiality. Well at least the FCA has this requirement.

Yours Faithfully,

D W Brown

Distribution List (ex attachments)

- The Hon Lawrence J Anthony, Min Children & Youth Affairs, Fax (02) 6273 4152
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- Ms A Corcoran MP Fax 03 5995 2909