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Secretary:

NCSMC

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

Please find attached a response to the question on notice to NCSMC at the Adelaide hearings of the inquiry.

NCSMC argued to the inquiry that increasing fathers' direct participation in parenting after separation can best be achieved by promoting more involvement in direct parenting by fathers in couple families. NCSMC further argued that the necessary social change could best be achieved by removing barriers to paternal participation in the unpaid direct care of children, in preference to legislation imposing a particular model of parenting practices on families.

Mr Price sought more information on how barriers to paternal participation in the unpaid direct care of children might be removed. The attached submission proposes some policy directions to this end.

NCSMC thanks the committee for the opportunity to appear but notes that the level of noise, antagonism and intimidation of witnesses by members of the audience was upsetting and inhibiting. In addition, overt hostility expressed toward the organisation by a committee member was intimidating and unfair.

Yours faithfully

Dr Elspeth McInnes

Removing barriers to paternal participation in the unpaid direct care of children.

Policy Options to promote paternal participation in the unpaid direct care of children are predicated on the proposition that sharing care of children in couple families will produce greater sharing of care of children of separated parents.

The current and historical gender division of labour which has located men as primary breadwinners and women as primary domestic care providers has been a significant restriction on men's availability to participate in caring for children. Whilst most mothers return to the paid workforce as their children grow older, many opt for part-time employment which enables them to be responsive to family needs, whilst the father continues full-time workforce involvement. Changing social practices to support men to choose to do half the unpaid domestic work in families and to share the paid work sacrifices to attend to school drop-off and pick-up, child illness or crisis require attention to the barriers restricting couples' choices to more evenly share earning and parenting work.

NCSMC assumes that couples will make the best arrangements to suit their particular circumstances in arranging their gender division of earning and parenting work when barriers restricting their choices are minimised. The following policy proposals address the interface between earning and parenting with the objective of facilitating the dual roles of worker and parent for both fathers and mothers before and after separation. Further recommendations address the social security system and shared care, as well as parental skills, planning parental responsibilities and supporting children's safety. The policy areas covered include:

- Family friendly workplaces
- Work and family transitions
- Child care support
- Family support
- Income support
- Child support
- Parenting Education
- Responsibility for Children
- Children's Safety

Family Friendly Workplace Policies

Paid paternity leave within the early weeks

Rationale: Paternity leave is important to families, as well as paid maternity leave. A great deal of bonding between infants and parents occurs in the first six weeks. This is a time when the mother is establishing breastfeeding, recovering from the birth and learning the baby's needs. Paternal support at this time supports the mother's recovery and the establishment of breastfeeding. Fathers also need to spend time bonding with

their baby and learning how to care for their baby. Fathers are great at soothing, cuddling, rocking, patting, bathing, walking with the baby and feeding the baby if it is bottle fed. Fathers' contribution to house-cleaning, washing, shopping, cooking, gardening and caring for siblings, pets and elderly parents also helps mother and baby to rest and recover from the birth. If fathers are not employed at the time of the birth they should also be able to take at least two weeks paid paternity leave from Newstart activity obligations.

Access to Parental Flexibility Package featuring

Up to six months unpaid leave within the first 12 months

Option to work part-time

Option to work flexible hours

Option to access extra holiday leave through reduced pay averaged across the year

Access to two weeks unpaid parental leave per annum

Rationale: Children's needs create care demands which require additional flexibility to enable workers to meet the dual demands of home and work. Both mothers and fathers benefit from having access to flexibility to enable them to be responsive to their child's needs whilst maintaining employment.

Access to Child-Friendly Workplaces

Child -friendly workplaces include facilities to cater for parents and children.

These may include a safe space for children to read, watch TV, play quiet games and rest if parents need to bring their child to the workplace.

A room for breast-feeding / bottle-feeding would also feature a nappy change table, nappy disposal bin, comfortable chairs, a sink, fridge and microwave to enable parents of young infants to meet their needs in the workplace.

Child-friendly workplaces also enable parents to speak by phone to their children whilst they are at work if the need arises.

On-site quality affordable childcare is also a supportive resource for parents to maintain workforce participation.

Rationale: Children should be able to safely attend their parents' workplace if the need arises. This need can arise when alternative care arrangements unexpectedly break down, when a child is excluded from care/school due to illness, when a parent is unexpectedly required to attend the workplace or when children are visiting and the parent cannot arrange alternative care during work hours.

Actively Pursue Gender Equity in the Workplace

Rationale: A gender analysis of current patterns of employment, pay rates and other workforce conditions in Australia reveals that men are employed in a wider range of jobs, occupy the majority of highly paid leadership positions and generally receive higher pay and better conditions for similar work when compared to women. This gendered disparity of men's advantage in the labour market is a significant factor inhibiting men's choices to undertake unpaid domestic and parenting work. When couples consider how to meet the family's income needs and provide optimum parenting support to children, men's higher earning capacity becomes a significant consideration which constrains men's opportunities to freely choose to work less and

parent more. When women are, on average, able to achieve similar earnings profiles to men, there will be less pressure on men to sacrifice opportunities to undertake unpaid domestic work.

Work and Family Transition Policies

Parents who withdraw from the workforce to undertake unpaid direct care of children should have access to funded retraining support.

Rationale: Parents who leave the workforce for an extended period (3 or more years) should qualify for retraining subsidies. A key impediment to men's take-up of unpaid parenting work is the loss of earnings, career opportunities and skills which result from withdrawing from the workforce or reducing workforce participation to meet family needs. Women have long experienced the costs of loss of income and career opportunities by choosing to have children, whilst men have experienced the costs of restrictions on parenting of prioritising earnings and career. Women who leave the paid workforce to have a child face extended exclusion from the workforce if they go on to have a second or third child (necessary if the falling fertility rate is to change).

A policy response to support parenting and earnings aspirations is to recognise foregone earnings and skills by funding support for retraining or tertiary education, via guaranteed funded or additionally subsidised places in vocational or higher education. Such support for retraining would recognise and value unpaid parenting work and enable parents to re-enter the workforce with relevant skills.

Child Care Support Policies

Child care needs to be easily accessible, high quality, affordable, flexible and cater for children from birth through the primary years.

Rationale: Current child care policies have enabled many families to combine caring for children with meeting work, study, health and other family commitments while their children are cared for. Many parents are however reporting difficulty in getting a child care place and in affording a child care place. In addition poor pay and conditions limit the number and quality of child care workers and these aspects in turn impact on the quality of care provided. Parents sharing care of a child before and after separation need to be able to gain access to quality care services

Family support Policies

Family support policies should offer the same level of financial support to couple families within similar income levels, regardless of how earning and parenting work is divided between parents.

Rationale: Family support policies need to support parents' choices around the distribution of earning and unpaid care roles. Current Family Tax Benefit policy penalises couple families if both parents are in the paid workforce. Currently the Baby Bonus and Family Tax Benefit B provide the highest returns to single income couple families with children aged 0-5. The withdrawal rates of these two payments are so high if both parents undertake paid work that the family loses money unless both parents are

high income earners. The practical effect of the eligibility criteria for the Baby Bonus and FTB B is to force one parent to work longer hours to increase family income, in preference to sharing the earnings activity with the other parent. In most families it is fathers who stay in the workforce because they usually attract a higher hourly rate of pay and can pursue higher earning career options compared to mothers. Mothers' withdrawal from paid work to give birth and their role in breastfeeding also tends to establish patterns of maternal care for children, which when combined with the financial penalties of current family support payments if they return to work, tend to underpin a pattern of lower father involvement in direct care provision.

Family Tax Benefit payments to children of separated parents who share care need to be increased to reflect the increased costs of establishing and maintaining two households for the child.

Rationale: The proportionate distribution of Family Tax Benefit payments, which was introduced in 2000, has reduced the adequacy of FTB payments to children living in more than one household. Children living in two households cost more to support but neither household can receive a full family assistance entitlement. The costs of sharing care indicate a need for a 20 percent increase in FTB payments for children in each household. When care is between 30-70 percent in each household, payment rates for Family Tax Benefit A and B should be increased by 40 percent overall for each child and proportionately distributed to reflect the limits on parental earnings, and the higher needs of the child and costs of providing care across two households.

Parents providing 70-100% care are typically meeting ongoing costs, such as education, health, clothing and recreation needs, for the child and should receive 100% of FTB payments, whilst low-income contact parents with 10-29% care should be able to claim a Contact Allowance to meet the costs of contact. This would increase the adequacy of family support and reduce parental conflict when children live across two households.

Separated parents claiming Family Tax Benefit should be required to prospectively register the share care pattern and have it accepted by Centrelink and the other parent if they intend to claim FTB through the tax system.

Rationale: Currently there are three methods of claiming Family Tax Benefit. 1. Fortnightly through Centrelink (compulsory for parents receiving income support) 2. Fortnightly through the PAYG system and 3. Retrospectively via their tax return. Problems arise when the FTB proportions of care claimed by parents exceed 100% with respect to a child. This results in disputes and debts creating acrimony between parents and hardship for the debt-affected households. The Commonwealth Ombudsman has recommended that parents intending to claim FTB should be required to prospectively register their share of care in advance of payment to minimise the risk of debts and to avoid exacerbating parental conflict. This is a good idea.

The Family Tax Benefit taper rate on child support received should be reduced from 50 cents to 30 cents in the dollar.

Rationale: Other taper rates applied to the Family Tax Benefit are applied at 30 cents in the dollar. The cumulative effect of both child support receipts and income effectively

taxes the Family Tax Benefit at 80 cents in the dollar. Consistency across taper rates and increased support for children living across two households would improve children's financial support in separated families and simplify administration of payments.

Income Support Policies

Substantial care of a child (for example 40% or more) needs to be recognised in income support structures such that each parent can claim a Parenting Payment when care is substantially shared.

Rationale: Currently Parenting Payment can only be claimed by one parent of a child and the other parent is forced to claim Newstart which is a smaller payment, with a higher taper rate and a high level of mutual obligation activities and a harsher compliance regime. The conditions of Newstart are inconsistent with the care needs of children and expose the parent to a high risk of being breached if they cannot comply with onerous activity requirements and care for their child. Recognition of shared parenting would enable each parent providing unpaid direct care of a child for more than 40% of time to claim Parenting Payment.

Child Support Policies

Where care is shared, percentages of payer contact used to calculate changes in the formula should not fall below the current definition of substantial care.

Rationale: Parents providing 70% or more care experience little or no proportionate reduction in costs when the child is in the care of the other parent and usually meet the child's ongoing health, education, clothing and sporting costs.

A process needs to be developed to ensure that parents sharing care can plan how the costs of children living across two households are distributed.

Rationale: Parents sharing care of children also need to fairly share the costs. If a child is half-time in the care of each parent, which parent buys the child's school shoes and why? Currently Family Tax Benefit payments are divided and child support is reduced on the assumption that expenditure matches the physical location of the child, however there is no way to determine this expenditure pattern applies. The later section on parental responsibility addresses some of these issues.

The payee's level of income should not limit the other parent's obligation to support their child according to their own income status.

Rationale: The earnings of one parent should not justify child support reductions for the other parent as it does not change the parents' obligation to support their child.

The threshold of the maintenance income test should be increased by 50 percent.

Rationale: Children should derive greater benefit from the money paid in child support.

Parenting Education

Parenting and family life education courses should be developed and universally available in multimedia forms, (including resources for minority community cultures) to inform parents about child development, child health and nutrition, children and family relationships, and positive parenting. Such resources for parents should be targeted to different stages of children's development from infancy through to emerging adulthood.

Rationale: Information and education resources can assist parents' sense of competency and ability to identify and respond appropriately to children's needs. Many couples are unprepared for the demands of newborn infants and unaware of the impact a new person in the world will have on their relationship. Toddlers, pre-school, the junior primary and late primary years, adolescence and young adulthood all bring their own parenting challenges, yet many parents have little formal information about children's developmental capacities and learning tasks, children's changing nutrition and health care needs, or the relationship skills that children are working out across their family and school and friendships as they move toward adulthood. Parents and children benefit by providing information about children and about being a parent across different stages of the child's development. Parents who feel under-informed and overwhelmed in their parenting can gain confidence and skills.

Responsibility for Children after Separation

Legal Language describing post-separation parenting arrangements should focus on the distribution of parenting responsibilities rather than rights, and emphasise that parents have responsibilities to children, but children are not responsible for their parents.

Rationale: The legal terminology describing post-separation parenting arrangements has changed in Australia from 'custody' and 'access' to 'residence' and 'contact' to reduce perceptions of ownership of children. The variations in the legal meaning of the term 'custody' in jurisdictions across the globe has been highlighted in the current inquiry. The relationship between notions of parental rights and children's rights has however remained problematic and potentially in conflict when the exercise of parental 'rights' results in adverse outcomes for children. With this in mind it might be worth revisiting legal terminology to focus on responsibility ahead of rights.

By foregrounding responsibility, agreements or decisions about post-separation parenting arrangements can be made with regard to a child's best interests against the factors detailed in Section 68F of the Family Law Act, to determine how the **responsibilities** for the children are to be distributed between separated parents. This refocuses attention to

the obligations of parents, rather than competing 'rights' between parents and children. Further, focusing attention on the responsibilities of parents assists parents to clarify that children are entitled to the support and care of their parents, not vice versa. In the context of moves to promote a greater sharing of parental responsibility, a further dimension of this argument is to address the risk of neither parent assuming responsibility for key aspects of the child's life because the child is only with them part of the time. For example, a health problem like asthma could remain untreated if each parent left it to the other to seek medical support, or when prescriptions or medications were left at the other house. Specific agreement on responsibility for the provision of medical care would support the child's needs being met despite variations in living arrangements.

Categories of responsibility may include:

Financial support – funding housing, clothing, feeding, medical care, education, transport, recreation, culture and sport.

Physical support – providing housing, clean clothing, personal care and grooming, feeding, medical care, transport

Emotional support – being available for listening, loving, encouraging, sharing, supporting, discussing, joking, reacting, enjoying, grieving, celebrating, communicating

Education support – selecting schools, managing enrolment, transport to and from, attendance, equipment, uniforms, stationary, homework, parent-teacher relationships

Social and Recreation support – linking with other members of the family and community and participating in shared events, participation in sport and recreation clubs and societies, engagement with performing and visual arts, exposure to a wide variety of educative experiences and events.

Agreements or decisions about arrangements for children after parental separation could then focus on how parents will share the responsibilities for their children and plan for how the children's needs will be met. Plans have to be workable in practice, otherwise they will fail.

For example, if a parent seeking 50 percent care lives 40 kilometers from the child's school and has no private vehicle it would be extremely difficult for the child to attend their school and for that parent to undertake responsibility to get the child to their school on time and to pick the child up on a regular basis. Under a 'rights' framework the parent's 'right' to half a child could over-ride the child's opportunity for continuity of education. Viewed from a 'responsibility' framework the parent would need to demonstrate how they could satisfactorily meet their responsibility to support the child's education needs.

Responsibilities can be shared, or rest with the parent who has physical care of the child at the time, or be primarily undertaken by one parent. In the example of medical care, one parent may undertake to ensure that the child attends the same doctor, and that medication will be doubled up across each household, or alternatively that medication would always travel with the child.

If a parent does not in practice exercise the responsibilities to which they have agreed, then the agreement or orders need to be able to be varied by default to reflect the actual exercise of responsibility.

Rationale: A key issue is that post-separation parenting agreements or decisions should place the onus on parents to meet their responsibilities and recognize that if a parent does not in practice take up the responsibilities to which they had agreed, then the agreement or orders need to be varied to reflect the actual changes in responsibility. For example, a parent who sought an agreement or orders to undertake 40 percent of care for the child on a regular basis, and who then actually only provided 15 percent of care on an irregular basis should not be entitled to an automatic continuation of the terms of the agreement. After lapsing in their agreed responsibility for a defined period, the agreement or order should be able to be procedurally changed to reflect the actual distribution of responsibility and require a formal renegotiation and agreement or determination process to change it.

Division of a child across households is different from distributing responsibility for meeting a child's needs. Where parents accept responsibility for an aspect of the child's needs, but are unable or unwilling to meet their responsibilities, there should be non-adversarial opportunities to alter the arrangements to reflect each parents' practical capacities to meet their responsibilities. Where a child's safety is at risk, family law processes should prioritise and streamline avenues to secure and support the child's safety.

Children's Safety

The factors considered in determining a child's best interests should prioritise children's safety as a threshold value of her/his best interests.

Rationale: Family Court research has repeatedly identified that cases with the longest litigation profiles and the highest conflict tend to be those in which there are allegations of violence or abuse which have never been satisfactorily dealt with. Currently there is no priority weighting given to factors to be considered in determining a child's best interests as detailed in Section 68F. This enables factors other than children's safety from harm to be prioritized by judges in making orders in cases where violence or abuse has been raised as an issue. NCSMC considers that children need to be confident of their human rights to safety before other needs can be met. Parties to proceedings who are found, on the balance of probabilities to have used violence or abuse, should have to demonstrate how they would safeguard children's safety whilst undertaking parenting responsibilities

The recommendations of the Family Law Council to establish a child protection unit within the family law system to investigate and inform the court on matters affecting children's safety should be implemented forthwith.

Rationale: The Family Law Council has identified that the processes for protecting children within the family law system are flawed and leave affected children exposed to serious violence and abuse. Prompt effective attention to children's safety should reduce

the duration and frequency of litigation. Such a system would assist targets of violence and abuse to achieve safety and assist those wrongly accused of violence to refute the allegations. The focus of system responses should be on supporting the safety of children and their family members.

Cases involving allegations of violence and abuse should have access to services and personnel with specific skills in identifying and managing violence and abuse to ensure the safety of all parties and to reduce opportunities for escalating violence.

Rationale: Many of the personnel and services responding to family breakdown have not been trained to identify or respond to domestic violence and child protection concerns, limiting their capacity to respond effectively and subjecting targets of violence to systems abuse and to further risk.