Thank you for your reply to confirm my submission having been received by the Senate

It has occurred to me since then that Senators may not in fact be conversant with the "law" on these matters so I think it may be helpful if I was to add some details of Authorities on this matter in the High Court. To avoid confusion I have simply added this to the end of the submission sent, so please treat this submission as replacing the former.

Dear Senators,

The CSScheme was devised in 1987 at the same time as child maintenance was moved from Part VIII to Part VII of the FLAct

The provisions for both "stages" [see Gyselman] are basically the same, once a court is involved, with the exception being that stage 2 was to have a PROSPECTIVE formula [see Beck], the result of which under Part 5 of CSAAct was to BECOME the assessment, but only to the extent it was not challenged in court

The new amendments to start 1 Jan 2007 have essentially REMOVED the jurisdiction of courts from making such a discretional "departure from admin assessment", and have introduced yet another admin process of SSAT. It would seem that it is contrary to the Constitution to actually block access to a court. You can see by comparison to Savery 1990 and Kness 2002 that Kay J tracks the ever increasing admin complexity of a departure, per:

> *22. One passing comment and final matter is that this whole process contained in the legislation appears to be **amazingly cumbersome** and may have the effect of **grinding** the parties down to a point where they find the whole exercise **overwhelming**. It is dealing with the day to day needs of people to survive economically. It is dealing with the needs of the parent who has the care of the children to provide for the children. It is dealing with the strained financial circumstances of the other parent who is often trying to set up a new household and has to stretch funds which previously were available for one household to meet the needs of two. In many cases there is no capital ba*se and no savings to draw upon.

Admittedly the amendment removes Part 6B but simply adds MORE totally useless steps compared to the simple court process as per Savery, Perryman etc. before Part 6A in 1992. But as I say, even in Kness case one COULD get to a court.

It would be far smarter to simply repeal Part 6A, after all what Nicholson CJ [as he then was] was complaining about in Beck was not ENOUGH people going to court, hence suggesting an ADVISORY step to allow the CSR to help people understand their options in a court, and Parliament heeded that with Part 6A.

Of course all the trouble started in 1992 when the CSR did NOT heed that Part 6A was advisory only [see Butler & Man, Luton].

Even simpler is to repeal the CSAAct, whereby the FLAct totally covers any maintenance matter without one more piece of legislation required [ie the REASON that backup was done in 1987].

Furthermore figures from even the most ardent supporters of the CSScheme say the CSScheme has **halved** the average support from $60 per week per child to still less than $30.

The CSScheme was a brave idea but just a scheme - it failed and needs to be repealed as was intended IF it failed.

[added submission from here]

For those not familiar with the law, I will add some details, particularly Harris & Caladine [1991] in the HCA. In a dissenting judgment Brennan J [as he then was] "gave a spray to the sausage factory at FCA" [to paraphrase his words]. In reference to a "performance report" on the FCA by Fogarty J [as he then was], Brennan J said

> *22 [...]*
>
> *Noting that there is a changed **perception** as to the effect of divorce on the status of the parties, his Honour suggests that the determination of the 40,000 applications for divorce each year - mostly undefended and "dealt with routinely in the matter of a **few minutes each**" - might be dealt with by non-judicial officers. It seems that the pressures on the Family Court are such that there is **no time to pay more than lip service to the lofty rhetoric of s.43 of the Act**. That is the section which speaks of the need to preserve and protect the institution of marriage as the union of a man and a woman to the exclusion of all others voluntarily entered into for life (par.(a)) and the need to give the **widest possible protection and assistance to the family** as the natural and fundamental group unit of society, particularly while it is responsible for the care and education of dependent children (par.(b)).*
>
> *23. It is a matter of public notoriety that the Family Court has frequently been embarrassed by a failure of government to provide the resources needed to perform the vast functions expected of the Court under the Act. But the **Constitution does not bend to the exigencies of a budget** and, if the humanly important problems of familial relations create a mass of controversies justiciable before the Family Court, Justices must be found to hear and determine them.*

His Honour was speaking of what Michael Watt [now Watt J] went on in 1994 to describe to the Joint Select Committee as "House & Garden" being the process **prior** to what Brennan described as "a few minutes each" as the consent order goes under the Rubber Stamp of the Registrar of the FCA. House & Garden is a "legal" battle in the lawyers' offices where Watt stated to an amazed Roger Price MP "$20,000 per combatant wouldn't even touch the sides".

Then because Brennan J was ignored and House & Garden flourished, the next appointment at the "Lake Burley Boatshed" was Harrington & Lowe where Kirby J spoke of the Harris & Caladine "pre conditions" [per Gaudron J] with what in my view [and Kirby J agrees with me] was the most important 2 liner since Winston Churchill's, regarding the Battle of Britain

> *Depart from those **pre-conditions** and neither statute nor a rule of court may sustain what is done*
>
> ***for it is forbidden by the Constitution**.*

To understand "pre-conditions", the first part of the 2 liner was:

> *That question now falls for decision. It was not submitted that Harris v Caladine resolved the controversies of this appeal. But the answers must be given with a clear understanding of the importance of the **pre-conditions** established by this Court for the constitutional validity of the **delegation to registrars** of the Family Court of what would otherwise be **judicial functions**.*

So the pre-conditions question was if a Registrar of the FCA could make a consent order. The majority decision in Harris said **only under the direct supervision of a judge**.

To return to child support, the CSR has taken it upon himself to thumb his nose at the CSAAct and make Part 6A an **executive** function, albeit there is **no head of power** to do anything but make an **advisory** determination [same as Privacy Commissioner]. However any payer with IQ greater than 25 was able to just thumb HIS nose at the CSR and seek relief in a court.

Once in court the applicant was free to follow the invitation from Kay J in Savery, using s 117(2)(c)(i), [or what Walters FM calls The BSU Polemic], per:

> *Accordingly I leave open for discussion what to do in a **future** case where the application of the formula will lead to a result that will **more than adequately provide** for the proper needs of the child, having regard to the child's age and other factors relating to its particular needs.*

The government saw [but did not say] this as a "floodgates" situation where if one CSPayer **achieved justice per the act** then others would follow and extreme measures were taken, starting with the FCA

being induced [as part of a "departure" deal for Nicholson CJ] to make a Practice Direction to **close the doors of the FCA** to child support departure applications by 2003

But by 2004 the FMS had reached its tether [if you will] in rejecting the argument and Rimmer FM in desperation in Swiatek actually **said** the banned words in judgment "I am not allowed to open the floodgates"

Retribution was swift as in Shock & Awe and RimmerGate was formulated and the job given to a shady lady called Ginger Snatch who leaked to the media a ridiculous story of "plagiarism" by Her Honour. The Attorney General and Pascoe CFM flagged their part by not defending her [as normal] but confirming she had a rare secret wimmins disease and had to "lie down" during hearings and that she would be put out to graze on $130,000 pa and her judgments should be considered "unsafe".

Thus Swiatek was disposed of, going forward. But all in all RimmerGate was a great laugh, particularly where, as I interpret these cases, Walters FM found it would be intellectually dishonest of him to not judge that the alter ego of a used car yard could not "do blow jobs on blokes", whereas Rimmer FM did not "plagiarise" that judgment but remained silent as to if the alter ego of the Exchange Hotel might "do blow jobs on blokes". One might wonder why such cases were not just left to the Sex Commissioner, if indeed child support cases are to be denied access to the FMS.

Then, 3 months back you were hoodwinked into passing amendments to s 117 of the CSAAct [never mentioned by the good Professor Parky] so you may be asking in retrospect why you were asked to do that when you are **now** being asked to block the use of the courts **altogether** [*inter alia* under s 117].

The reason is that the Kangaroo Court under Part 6A refers the CSR to the self same s 117 but the leading case of Gyselman says what the CSR [the COAT] does under Part 6A is not legal [and Kirby J recently agreed by *obiter* in Luton]. Therefore the old maxim applies, if you cant overturn an authority you amend the legislation and trump up a **new** authority. So in effect you were asked to throw Gyselman overboard [and I think you Senators know all about those things - lol !!]. We have yet to see the "new" Gyselman but we at least know who will be the presiding FM [but for "Kafkaesque security reasons" I can't say].

So make no mistake Senators this is Howard's Final Solution you are being asked to pass through the Senate. For you students of Nuremberg, you will understand that those executed and sterilised in the late 1930s did in fact have access to a court. Yes, it was a Kangaroo Court where, like the COAT, the [template] judgments were decided **before** the hearing even started, but it **was** a court.

If you pass this Final Solution then even those CSPayers who have had the strength to avoid suicide [at the rate of 3 per day] will how be rethinking their strategy, being denied access to justice in the same court that welcomes "boat people" and drug runners with open arms.

Regards,

Brian Hogan