John Flanagan,
Deputy Registered Officer,

28 May 2013.

Committee Secretary,
House of Representatives Standing Committee on Social Policy and Legal Affairs,
PO Box 6021,
Parliament House.
CANBERRA. ACT. 2600.
Phone: (02) 6277 2223

Dear Sir

Parliamentary Inquiry into the Child Support Program.

We thank the Standing Committee for allowing us to present our submission to the inquiry into the Child Support Programme.

Our submission can be summarized by stating that the fundamental culture of the Child Support Programme needs to be fixed. This is before any review of the functioning of the child support system can be carried out.

Should this first step not be taken, then any reforms made to the child support formula will be ineffective.

1. **The Culture of the Child Support Programme needs to be Fixed.**

On the 15 June 1215, King John of England pressed his royal seal to the Magna Carta. The result was that the king was bound by the law. This is rather than the king being above the law. This is what is meant in the phrase “the rule of law”. This simply means that all authority comes from the law itself.

However the Child Support Programme and its 4,000 employees see themselves as being above the law.

This is the cause of the poor culture of the Child Support Programme and its employees.

This comment is supported by the following two (2) examples from the current child support legislation.

(a) Section 98H of the *Child Support (Assessment) Act 1989*:

During a departure application, the Senior Case Officer may admit anything he or she pleases. There are no rules of evidence when it comes to child support decisions.

Section 98H of the *Child Support (Assessment) Act 1989* states that:

> ***Procedure for dealing with an application***.
>
> *(1) In making a decision under this Division in relation to an application, the Registrar:*
>
> ……
>
> *(b) may, but is not required to, conduct any inquiry or investigation into the matter.*
>
> ……
>
> *(4) Any hearing before the Registrar, and any inquiry or investigation carried out by the Registrar, is to be carried out as the Registrar thinks fit and the Registrar is not bound by any rules of evidence.*

The decision made by the Senior Case Officer can be reviewed through an internal review process. However this review is still subject to this Section 98H regarding no rules of evidence.

(b). Section 103N of the *Child Support (Registration and Collection) Act 1988*.

The Social Security Appeals Tribunal is the next avenue that can be used to review a decision made by the Senior Case Officer from the Child Support Programme.

The members of Social Security Appeals Tribunal are similarly not governed by the rules of evidence. Normally the review is heard by one (1) member rather than the customary three (3) members. Perhaps this is for reasons of expediency. This is not known. However it is known that many of the members of the Tribunal are often ex-Child Support Programme employees. They would no doubt be familiar with the previous Section 98H .

Section 103N of the *Child Support (Registration and Collection) Act 1988* states that:

> ***Hearing procedure.***
>
> *(1) The SSAT, in reviewing a decision under this Part:*
>
> *(a) is not bound by legal technicalities, legal forms or rules of evidence; and*
>
> *(b) is to act as speedily as a proper consideration of the review allows; and*

> *(2) The SSAT may inform itself on any matter relevant to a review of a decision in any manner it considers appropriate.*
>
> *Note: The SSAT Principle Member may give directions as to the procedure to be followed in connection with reviews (see section 103ZA).*

As a result, both the Senior Case Officer of the Child Support Programme and the members of Social Security Appeals Tribunal have more power than a judge.

This is because judges are governed by the rules of evidence contained in the Commonwealth *Evidence Act 1995*.

There is then no appeal to a court of law from a decision made by the member(s) of the Social Security Appeals Tribunal. That is, unless there has been an error of law.

It is almost impossible to overturn a departure application decision made by the Child Support Programme on the basis of the Senior Case Officer in the Child Support Programme having not followed evidence in the original hearing.

This comment is supported by a decision by a Federal Magistrate in Laurie & Child Support Registrar and Filho [2009] FMCAfam 721 (10 July 2009). This decision affirmed that this was the case.

It is noted that the Laurie decision was then unsuccessfully taken to the Full Court of the Family Court and then to the High Court of Australia.

In the Full Court of the Family Court, the Laurie decision was affirmed in Laurie & Child Support Registrar [2009] FamCAFC 183 (12 October 2009).

In the High Court, the Laurie decision was then further affirmed twice; once in GL v Child Support Registrar [2010] HCATrans 102 (23 April 2010) and again in GL v Child Support Registrar & Anor [2010] HCASL 232 (30 September 2010).

The issue of the lack of rules of evidence is very important in "*capacity to earn*" decisions

Alby Schultz, the previous MP for Hume, spoke about the effect of "*capacity to earn*" decisions in Parliament on 12 October 2006. An excerpt from Alby Schutz's concluding remarks is below:-

> *In closing on that point, the capacity to earn issue — because of the way it is applied and the anguish that it is causing through the mental, social and economic pressures it places unfairly on individuals—is, I believe, because it is the only government agency in the country that practises it, unconstitutional...."*

As a result, there is an underlying culture in that the employees in the Child Support Programme (and members of the SSAT with regard to child support matters) act as though they are above the law.

There has to be a change in the culture of child support administration. This is a fundamental prerequisite to any legislative changes such as the items listed below.

2. <u>The Child Support Legislation Needs to be Fixed</u>.

Once the culture is fixed, it is submitted that we would then require a minimum of six (6) legislative changes to the child support system.

These changes are listed below:

(a) Implementation of a rebuttable presumption of Equal Time Shared Parenting. This would be assisted by the removal of the family violence provisions added to the *Family Law Act 1975* in 2012.

(b) The payee should pay the tax on child support payments and not the payer. That is, the current situation should be reversed.

(c) Overtime pay should be excluded from child support calculations.

(d) A fairer cap on maximum income should be used to determine child support payments; we would suggest that this figure should be set at about $40,000 per annum (Currently this is calculated at 2.5 x MTAWE. In 2014, this figure was 2.5 times $70,569 or $176,423 per annum).

(e) The payer should not be penalized if the payee chooses not to work when that payee has the ability to do so.

(f) Court-ordered custody arrangements should determine child support payments - not "*word-of-mouth*" claims by the payee – as it is now.

Once the culture is fixed as outlined in item 1 above, it is submitted that these six (6) legislative changes should be then implemented as soon as possible.

This would then provide a direct incentive to the payer and an indirect incentive to the payee to make a new system work for the benefit of everyone.

Thanking you,

Yours faithfully,

John Flanagan,
Deputy Registered Officer,
Non-Custodial Parents Party (Equal Parenting).
http://www.equalparenting.org.au