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1 July 2014

Committee Secretary  
House of Representatives Standing Committee on Social Policy and Legal  
Affairs  
P.O Box 6021  
Parliament House  
Canberra ACT 2600

Dear Committee Secretary

### **Parliamentary Inquiry into the Child Support System**

1. The Barwon Community Legal Service (BCLS) thanks the House of Representatives Standing Committee on Social Policy and Legal Affairs for the opportunity to provide a submission into the Parliamentary Inquiry into the Child Support System.
2. Our Service is funded by the Commonwealth Government to provide a range of child support services to parents, in addition to this we are funded to assist people with Centrelink and family assistance issues, and we also receive funding to work collaboratively with the Geelong Family Relationships Centre, in the provision of legal information and advice to separated parents. Our Child Support Lawyer Geordie Konieczka also chairs the Victorian Community Legal Service Child Support Working Group.
3. We have elected to make submissions on the following issues outlined by the Committee's Terms of Reference:
  - a. Methods used by Child Support to collect payments in arrears and manage overpayments
  - b. Assessing the methodology for calculating payments and the adequacy of current compliance and enforcement powers for the management of child support payments
  - c. The alignment of child support and family assistance frameworks.

#### **Methods used by Child Support to collect payments in arrears and manage overpayments**

4. Many times arrears accrue as a result of parents electing to lodge estimates of earnings, which, when eventually reconciled, prove to be

incorrect. We assist many payees at our Service who are in this predicament.

5. The Child Support Agency (CSA) is able to accept clients lodging an 'Estimate of Earnings' whereby a parent can apply to have their assessment or notional assessment based on their expected income for a year of income, or for part of a year of income (sections 60 and 62A) At present, there is no requirement for individuals to provide evidence of their earnings when lodging an estimate, although CSA 'may' request this information. Even where a person has a history of under-estimating, CSA can, and does, simply accept a new estimate of earnings without proof of income.
6. According to the Child Support (Assessment) Act s 60(7), a parent makes an income estimate election to the Registrar, but the Act is silent on the mode of election (i.e. phone call, electronic lodgement, etc.). The Act also does not specify the requirement to provide any proof of the estimate, such as having to provide the previous year's tax assessment or proof of current earnings.
7. Further, there is currently no requirement by the CSA for parents to complete their tax returns in a timely manner to allow for their income to be reconciled against their estimate. This often results in receiving parents not receiving the correct payment, sometimes for years on end where tax returns aren't submitted according to Australian Tax Office (ATO) timeframes.
8. Even where tax returns are submitted, there is nothing stopping the paying parent from doing exactly the same thing in the next financial year, i.e. lodging another low estimate which is in place for the whole of the next year. Although CSA can fine parents for significantly underestimating their earnings (s64AA), this does not help the receiving parent as the fine is payable to the CSA and not to the receiving parent.
9. Also, the ATO generally only imposes a fine on a late return if the tax return results in the tax payer owing the ATO money. This exposes a loophole for those who do not wish to disclose their income to have it reconciled with their CSA estimate. We have brought up this issue at our State Child Support Stakeholder meetings run by the CSA. Basically the response given was that the lodgment of tax returns is not the responsibility of CSA, and although they 'may' recommend that parents with arrears have their tax returns looked at by the ATO, this is not mandatory by either department.
10. We feel that as CSA and the ATO need to work more closely together to enforce the lodgment of tax returns for CSA customers. This will minimise the impact of both arrears amounts and overpayments as they

will be confined to the one financial year, and not turn into huge debts which become more and more difficult to collect as time goes on. This is especially so when the paying parent loses their job or their circumstances change significantly.

11. CSA take a particularly lax approach to the collection of arrears. They prefer to discuss the arrears with the payer, in an attempt to get them to pay the debt off in small installments, rather than issuing third party notices or intercepting money in bank accounts quickly. This does not work that well in many cases, and often results in the debt accumulating or not reducing due to the addition of late payment penalties.

### ***Recommendations***

12. That parents lodging estimates of earnings be required to submit proof in support of their estimate, such as current pay slips, bank statements or support of their incomes
13. That parents who wish to lodge estimates, complete their tax returns within 3 months of the end of the financial year in order for CSA to reconcile their payments. This would minimise the accumulation of arrears over many tax periods as is currently the case.
14. That the CSA revert back to a provisional income if the estimating parent has not completed their tax returns in the given timeframe, until such time as their tax return is lodged.
15. Where parents fall into arrears, CSA should give the payer a short timeframe to pay the debt. If the payer chooses not to do so, CSA should take enforcement action immediately. This would send a strong message to parents who are intentionally not paying their child support in full and on time. We feel that parents who don't pay their child support in full and on time are fully aware that CSA will not enforce the collection for a long time, thereby resulting in many children not receiving enough money for their support.

### **Assessing the methodology for calculating payments and the adequacy of current compliance and enforcement powers for the management of child support payments.**

16. The main area in which we see problems in the assessment of child support, is for self employed workers or those working for family and friends. We have many clients who come to see us stating that the other parent has a lovely house, has a great car and goes on overseas holidays all the time. Despite this, many are only paying small amounts of child support and minimizing their income for tax purposes, either by

maximizing their allowable tax deductions, putting money in their partner's name or working for cash.

17. Often when clients come to see us they have been separated for some time, and are therefore not privy to where the other parent banks their money, or who manages their financial affairs. This makes it particularly difficult for them to provide information to CSA about the other parent. CSA refuse to 'go on fishing expeditions' to educate themselves on the paying parent's current financial circumstances and currently the CSA is not required to conduct any inquiries or investigations in making administrative assessments (ss29, 66D) . The *Child Support (Assessment) Act* provides that the CSA may, but is not required to, conduct inquiries and investigations in making determinations about changes to child support assessments ('departure' determinations).
18. CSA will often just send a payee new paperwork advising that the payer has applied for a change of assessment and that their income has gone down. The payer has generally not been made to provide evidence of this, and it is then incumbent upon the payee to object to the change and go through the objections process.

### ***Recommendations***

19. Where parents are self employed or employed by family members, CSA should use the 'average weekly earnings' statistical data, for the particular industry in which the payer works (provided by the Australian Bureau of Statistics), as the minimum amount from which to calculate their child support income. It should then be incumbent upon the paying parent to show why this amount is not accurate and why this amount should be reduced. CSA should also insist upon paying parents providing their BAS statements and pay slips quarterly to ensure that the amounts at which they are being assessed take into account any deductions which they are claiming, which should rightly be taken onto account in the assessment.
20. CSA should also insist upon seeing paperwork to justify changes to the administrative assessments instead of just accepting a parent's say so in reducing their income for child support purposes. This would reduce the amount of unfair objections that the payee has to lodge and makes the payer responsible for justifying the change.
21. Further, CSA should insist upon seeing separation certificates when payers state that they have 'lost their job' as this is often used as a tactic by paying parents to go back to a minimal assessment, even when this is not justified.

### **The alignment of child support and family assistance frameworks**

22. Mothers are required to take reasonable maintenance action for a child if they are entitled to apply for Centrelink maintenance for the child and the Secretary considers that it is reasonable that they should take this action. They are given 13 weeks in which to apply. If the mother does not meet this requirement, only the base rate of Family Tax Benefit Part A is payable in respect of the child (*A New Tax System (Family Assistance) Act 1999 Schedule 1 Clause 10*).
23. Our service assists many women in making Court applications for paternity testing in order for them to maintain their right to receive Centrelink income. In many situations the person nominated as the father refuses to participate in paternity testing and is intentionally evasive and avoids service of documents. This places the mother in the position of having to jump through many hoops in order for the Courts to Order that the testing occur, and secondly for the Court to find that the nominated person is the father of the child.
24. During this time, the mother can apply for an extension of time to pursue child support, usually for 99 days. Once the Court application has been made, and the person is found to be the father, the Court will make an order under s106A of the Child Support Registration and Collection Act 1988. Once this is made, CSA can assess the father from the date that the mother applied for child support against him. The creation of an arrears amount payable by the father, then generally results in an overpayment of Family Tax Benefit Part A, that the mother is then forced to pay back (whether or not she receives the arrears).

### **Recommendations**

25. We believe that this process could be streamlined far more easily by giving the nominated father a choice as to whether he a) accepts that he is the father, or b) participates in paternity testing (where the person, if found to be the father, is then billed for half the cost of the testing unless he is in receipt of Centrelink income). This would quickly disprove that he is the father and would assist mothers, many of whom are already finding single parenthood quite difficult. We feel that the mothers should not have to go through all of the steps involved in applying for funding to pay for the testing, and secondly in making the Court application and appearing at Court (often many times before the matter is resolved). In situations where CSA can prove that they have made the nominated father aware of their choices, and he has elected not to participate within a timely manner, CSA should then be entitled to make an administrative



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finding that he is the father, as he has been given the opportunity to disprove this, and has elected not to.

26. In relation to the paternity testing, we feel that the cost could be negotiated by tender between CSA and the various providers authorized by the Family Law Regulations, and administered by a small section within the CSA. In situations where finding the nominated father is difficult or CSA have been unable to locate them, then Services such as our own could step in to assist the mother in making an application to Court for substituted service of the documentation.

27. In relation to the reconciliation of the Family Tax Benefit Part A, we believe that Centrelink should be entitled to collect the amount of the overpayment directly from the repayment of the arrears (but keeping the current assessed amount as directly going to the mother). This could be achieved by CSA and Centrelink communicating the overpayment amount, and setting up a system whereby this amount is directly paid back to Centrelink, and before it reaches the payee, to make it easier to administer and collect. It would also take the stress away from the receiving parent.

If you would like to discuss any aspects of this submission, please contact me

Yours Faithfully

*Dated 1 July 2014*

Geordie Konieczka  
Solicitor  
Barwon Community Legal Service