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Committee Secretary  
House of Representatives Standing Committee on Social Policy and Legal Affairs  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

### The Parliamentary Enquiry into the Child Support Program

## Social Policy and Legal Affairs

### Submission

A submission is made as invited. This submission addresses questions of:

- Whether the Child Support system is sufficiently flexible to accommodate varying circumstances
- Whether the Child Support system is adequately linked to decisions of Family Law Courts
- Whether the Child Support system adequately manages high conflict couples
- The effectiveness of mediation and conciliation
- Any need for specialised processes and supports

Apology: This submission is prepared while I am out of Australia and do not have access to my usual office facilities.

### Flexibility of Child Support system

The current Child Support system does not adequately provide for the needs of separated parents in the following categories:

- One parent has a significant mental health condition that results in their being a vulnerable witness who feels very pressured if they know their evidence will distress another party
- High conflict couples where one parent is motivated to change access arrangements that have been endorsed by a Family Law Court by arguing changed circumstances, where the parent's primary consideration is to maximise their own income through Centrelink benefits or to pressure their ex-partner to pay an increased rate of child maintenance.

Parents with a mental illness that leaves the person vulnerable to ongoing stress are susceptible to being exploited under the current child support system, if their ex-partner decides to follow a

punitive approach, or if their ex-partner aims to maximise their personal income rather than to function in the best interests of their child. It is possible for a skilled assessor to identify parents who are motivated by financial considerations rather than by the best interests of their child. It is beneficial for assessors who assess complex families to meet high standards of accountability, rather than to continue to permit assessment reports on complex topics to remain highly confidential.

A new system of professional accountability would move away from one current practice where a family lawyer issues a subpoena to obtain the confidential file of a therapist, towards another common practice where a family lawyer writes to the therapist asking for answers to set questions.

One proposal is for Family Law Courts to introduce a quality assurance system for professional reports that are submitted to the court.

The current Child Support system does not receive clear information about parents in the categories of being a vulnerable witness or having a mental health condition. While the concept of a vulnerable witness has been clearly and adequately defined in criminal law, the concept does not yet appear to be widely applied in civil matters.

### **Linkages between Child Support & Family Law Courts**

The Child Support system does not appear to receive information from Family Law Courts on a routine basis. Part of the problem is that Family Law Courts commonly impose a high standard of confidentiality on professional assessment reports, preventing people who are subject to orders from passing on a copy of the order that applies to them. The emphasis on confidentiality prevents assessments that have been accepted by family law courts from being passed on to other relevant services such as Child Support services.

Family consultants who currently provide assessments for family law courts do not routinely address matters that are relevant to the Child Support system. It is not routine for family consultants to address the mental health status of separating parents, or the level of conflict between parents using definitions that are accepted by family law courts, or to identify specific coercive tactics that are used in high conflict families.

There is scope to change assessment procedures for parents who are in the category of being a vulnerable witness, or when a Family Law Court has identified a couple as being a high conflict couple.

### **High conflict couples**

Couples who engage in continuing high conflict are commonly very aware of the financial implications of access arrangements, and are motivated to change access arrangements for their own financial benefit. Debates to change access arrangements can be continued through the Child Support system.

Some high conflict couples adjust their claims for access time to fit criteria set by the Child Support system, drawing attention to the fact that Family Law Courts and the Child Support system vary in the boundaries set between levels of access. Some members of high conflict couples agitate to

have their children for a substantial period of time to maximise payments to themselves, although this is not always in the best interests of children.

There are examples of grandparents who provide significant support for their grandchildren because of parental conditions such as persistent drug use and mental health conditions, where the Child Support system provides funds to the parent rather than to the grandparent who provides substantial care. Grandparents may be afraid to inform Child Support services about the reality of access arrangements, for fear of upsetting the birth parent, or from a concern they may not be believed or that they have no right to payments.

I see clients where an ex-partner continually disputes details of access both to distress their ex, and to minimise their own financial outgoings, and continues this until their child reaches the age of 18 years.

### **Effectiveness of mediation and conciliation**

Mediation and conciliation provide an effective means of identifying high conflict couples, but are less effective in resolving tensions between high conflict couples especially when one parent has a mental health condition.

There is scope to add additional measures for both vulnerable witnesses and high conflict couples, by encouraging therapy that is provided by practitioners who are skilled both in providing therapy for complex family situations and in following family court principles. Family courts might issue an interim order for a period of several months to allow disputing parents to attempt to resolve their differences on a voluntary basis before going to trial. These therapists might be encouraged to provide reports to family courts that both describe issues and make recommendations. If these therapists are registered, then they will be motivated to function at a high professional standard and to avoid mishaps that can arise when roles of therapists and forensic assessors become confused.

### **Need for Specialised Processes and Supports**

This submission argues that there is a need for additional processes and supports for families when issues of a vulnerable witness or high conflict arise.

In both situations the following changes are recommended:

- Family court processes be empowered to refer disputing parents to therapists who have been identified as having appropriate skills to provide assessments and therapy aimed at minimising ongoing disputes, and to make recommendations to family courts
- The Child Support system receive copies of assessments that have been accepted by family law courts and decisions about access times
- That any argument made to the Child Support system that there has been a significant change in circumstances be referred for assessment by a skilled practitioner, who is well briefed on legal standards about significant changes in circumstances.

Sincerely,

Dr Don Tustin

Clinical Director

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