

Issues	
<i>Please indicate which issues from the committee's Terms of Reference are relevant to your submission</i>	
a. ongoing issues and further improvements relating to the interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions, including: <ul style="list-style-type: none"> i. the process, and evidential and legal standards and onuses of proof, in relation to the granting of domestic violence orders and apprehended violence orders, and ii. the visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings; 	<input type="checkbox"/> Yes <input type="checkbox"/> No
b. the appropriateness of family court powers to ensure parties in family law proceedings provide truthful and complete evidence, and the ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders;	<input type="checkbox"/> Yes <input type="checkbox"/> No
c. beyond the proposed merger of the Family Court and the Federal Circuit Court any other reform that may be needed to the family law and the current structure of the Family Court and the Federal Circuit Court;	<input type="checkbox"/> Yes <input type="checkbox"/> No
d. the financial costs to families of family law proceedings, and options to reduce the financial impact, with particular focus on those instances where legal fees incurred by parties are disproportionate to the total property pool in dispute or are disproportionate to the objective level of complexity of parenting issues, and with consideration being given amongst other things to banning 'disappointment fees', and: <ul style="list-style-type: none"> i. capping total fees by reference to the total pool of assets in dispute, or any other regulatory option to prevent disproportionate legal fees being charged in family law matters, and ii. any mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings; 	<input type="checkbox"/> Yes <input type="checkbox"/> No
e. the effectiveness of the delivery of family law support services and family dispute resolution processes;	<input type="checkbox"/> Yes <input type="checkbox"/> No
f. the impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings;	<input type="checkbox"/> Yes <input type="checkbox"/> No
g. any issues arising for grandparent carers in family law matters and family law court proceedings;	<input type="checkbox"/> Yes <input type="checkbox"/> No
h. any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes, including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts, and family dispute resolution practitioners;	<input type="checkbox"/> Yes <input type="checkbox"/> No
i. any improvements to the interaction between the family law system and the child support system;	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
j. the potential usage of pre-nuptial agreements and their enforceability to minimise future property disputes; and	<input type="checkbox"/> Yes <input type="checkbox"/> No
k. any related matters	<input type="checkbox"/> Yes <input type="checkbox"/> No

What Australia's child support expert says

It seems that I might be Australia's leading expert on Issue (i): any improvements to the interaction between the family law system and the child support system.

I manage a popular forum (childdupportaustralia.com/csa-complaints-forum) where people write in with their child support and family law problems. I respond to most participants with individual comments and advice. The forum is wide-ranging and includes all different types of child support payers and recipients, as well as many partners.

It's worthwhile noting that I am a former policy strategist and advisor with the Australian Government. The purpose of this submission is to offer the Committee Secretariat and the Committee the same sort of high-level policy advice that I used to provide to Cabinet Ministers and the Prime Minister in Cabinet Briefs.

This contribution is based not just on personal experience but also on the experiences of hundreds of other people. Crucially, it is also informed by extensive policy research and analysis.

Reforming child support

You could almost guarantee the success of the Inquiry if the Secretariat and the Committee can be receptive and responsive to this submission. It points to genuine reform solutions that could help many Australian parents and children.

The submission is about reforming the child support system. You may be surprised at how easily major reforms could be achieved. The Inquiry provides an opportunity to really get the ball rolling on improving child support and, through this, getting better family law results.

Please go to childdupportaustralia.com and view the video at the top of the home page. As the page states, "We challenge you to watch the video and not conclude by the end of it that the formula should be changed!" Fixing the child support formula is not the only reform canvassed.

Why child support reform matters

I've helped managed a major Australian Government review in the past. When, during the Inquiry, everyone starts scratching around for good policy ideas, please hold this submission up. It would be surprising if you have many better ideas in front of you. It should be remembered that the Australian Government has full control of the child support system. That can't really be said for family law, where reform looks difficult.

And I think the link between child support and family law is underplayed in the Inquiry Terms of Reference. Beneath most family law disputes on parenting matters, there are dark financial incentives at work that come from the child support system.

Reform proposals

Please see this video for a clear explanation of what this submission is proposing:

<https://www.youtube.com/watch?v=nZWGPtP-pgM>

The proposals are to: (a) introduce the "Extra Care" child support formula (b) only recognise care levels that are above those given by a parenting order if the applicant can demonstrate that the other parent is refusing to provide care and (c) have automatic income settings for parents who are not providing appropriate income information.

Proposed solutions

Please indicate any proposed solutions you may have that correspond to the committee's Terms of Reference

- a. ongoing issues and further improvements relating to the interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions, including:
 - i. the process, and evidential and legal standards and onuses of proof, in relation to the granting of domestic violence orders and apprehended violence orders, and*
 - ii. the visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings;**
- b. the appropriateness of family court powers to ensure parties in family law proceedings provide truthful and complete evidence, and the ability of the court to make orders for non-compliance and the efficacy of the enforcement of such orders;*
- c. beyond the proposed merger of the Family Court and the Federal Circuit Court any other reform that may be needed to the family law and the current structure of the Family Court and the Federal Circuit Court;*
- d. the financial costs to families of family law proceedings, and options to reduce the financial impact, with particular focus on those instances where legal fees incurred by parties are disproportionate to the total property pool in dispute or are disproportionate to the objective level of complexity of parenting issues, and with consideration being given amongst other things to banning 'disappointment fees', and:
 - i. capping total fees by reference to the total pool of assets in dispute, or any other regulatory option to prevent disproportionate legal fees being charged in family law matters, and*
 - ii. any mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings;**
- e. the effectiveness of the delivery of family law support services and family dispute resolution processes;*

f. the impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings;

g. any issues arising for grandparent carers in family law matters and family law court proceedings;

h. any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes, including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts, and family dispute resolution practitioners;

i. any improvements to the interaction between the family law system and the child support system;

See <https://childdupportaustralia.com/>

The child support policy proposals are detailed on the webpage and in the video embedded on the page. These include (a) introducing the “Extra Care” child support formula (b) only recognising care levels that are above those given by a parenting order if the applicant can demonstrate that the other parent is refusing to provide care and (c) having automatic income settings for parents who are not providing appropriate income information.

Child support: the key reform opportunity

You can have a child support system where parents are not incentivised to fight over custody. The current system is based on the sharing of each other's incomes. It's about the worst design one could come up with if the goal was to get parents to cooperate.

Child Support Australia has created a new formula that would work far better. We've also done the analysis and simulations to prove it.

"Extra Care" Child Support Formula: Transcript

Australia's child support scheme has a lot to answer for. It has created wars between separated and divorced parents. The fallout is evident in bitter family law disputes and repeated violations of court orders for parenting time.

The child support scheme pits parents against one another. Incomes are pooled and then divided based on care time. And the cost of children is almost always inflated.

The result is a race to the bottom. Each parent can get the upper hand on their ex by getting their income down and the amount of parenting time up. It's a lose-lose formula for Aussie kids. They often end up spending too much time in low-income households.

But it doesn't have to be this way. Child Support Australia has been advocating for a formula and system change for some time. We've looked at the maths of the current scheme in great depth. It doesn't add up. We can easily do much better.

Let's see exactly how Australia's child support system can be reformed. We'll build a new child support formula in this video, the "Pay for Extra Care" formula. And we'll also explain what else can be done to get separated parents cooperating.

The current scheme stinks

Let's be clear about the current situation. Australia's child support scheme is a big stinking pile of manure. We've revealed the massive flaws before. There is a series of individual case simulations that show how the scheme routinely produces distorted, unfair assessments (see the link below the video). We've responded to hundreds of inquiries from payers and receivers who can't see the sense in what the system is doing to them, their children, their partners or other loved ones. We've also exposed the many mathematical flaws with the formula in detail.

As explained in the videos, *How Child Support Works in Australia* and *Australia's Child Support Formula: 3 Major Flaws*, the scheme is terrible fundamentally from being built on dodgy foundations. The starting assumption is that child support should reanimate the economic circumstances of an intact family. A noble ambition maybe, but also an awful foundation for the scheme.

People need to understand that the state of parents being permanently apart is a reality for many people. Why do we have to refer back to the hypothetical imagining of parents having stayed together?

Separated or divorced parents are different from an intact couple. They live apart. They may have new partners and new offspring or step-children. They don't share common financial goals. There's a good chance that they rarely speak to one another. And yet the current scheme opts to bind them together financially through a combined income approach.

Under the current scheme, each parent is not just responsible for providing for the children as they obviously should, but also for the other parent. Consequently, the scheme creates a race to the bottom. Bad behaviours, such as not working or alienating the other parent from their children, routinely produce child support assessments that advantage offenders at the expense of their ex's.

Despite its massive flaws, there seems little point in tinkering with the current scheme. How do you tinker with a pile of manure and turn it into something beautiful? You can't.

But you can successfully plant a rose on top of a stench-filled pile. So let's go for a new creation, a new child support system. It can be nourished by the excremental learnings from what has happened in the past.

Let's get started with introducing a new system. By applying the following three principles, we can create a new child support formula – one that would work far better and be much fairer.

Principle 1: 50:50 care is fair

The “50:50 care is fair” principle is crucial for reforming the child support system. It says that child support is not needed, and therefore should be dispensed with, when each parent has the children or child half the time.

While the principle has broad significance, let's just focus on 50:50 care cases for the moment. In these cases, by definition each parent is doing their fair share in terms of physically providing care. Each parent is contributing about the same in terms of making their time available for parenting. And each parent is making a similar contribution in terms of providing a home, meals, discipline, activities, entertainment, etc.

50:50 care can also be considered naturally fair in financial terms. We know that parents with higher incomes tend to spend more on their children. So, in a 50:50 care situation, the parent with the higher income would normally spend more. That happens without the need for forced payments. For example, a higher income parent might provide a nicer home, buy a good computer, and take the kids on more expensive holidays.

So why is the “50:50 care is fair” principle crucial for child support reform? The answer is that it simplifies everything. You can have an easily understood, effective child support formula if you apply the principle. It provides a solid anchor point for the formula and helps give clarity about what child support is for. The approach also has

some nice mathematical properties that we'll use later.

Problems start occurring as soon as you deviate from the principle. If child support must be paid when care is 50:50, what exactly are the payments for? They're obviously not compensation for one parent providing more care since care is evenly split. And they're not compensation for higher costs, unless it's the parent with the lower income who makes the payments.

When care is 50:50, any automatic child support payments are just a kind of income redistribution. It's taking from higher earners to give to lower earners for the sake of it. The payments aren't for the kids because the paying parent is just as likely to spend the money on the kids as the receiving parent. In effect, the payments are only there to try to balance living standards between parents – without boosting living standards for children.

While some people seem to favour transferring wealth at every opportunity, I'm sorry to say to those people that child support is not the place for it. In practical terms, you can't have a simple, effective child support system that involves naked wealth transfer.

Trying to manage everyone's incomes complicates an already difficult task. Not only do the objectives of the system become compromised and clouded, but the maths of calculating support is made complex. And there are massive incentive problems as well that we'll get to later.

Principle 2: Let receivers earn

The second principle, "let receivers earn", helps demonstrate why child support reform must include the first principle that "50:50 care is fair". These two important principles depend on one another.

The "let receivers earn" principle says that child support payments should not depend on how much or how little the receiving parent earns. The receiving parent should be free to earn as much as they can without any kind of child support penalty.

Who is the "receiving parent"? Using the "50:50 care is fair" principle, the receiving parent must be the parent who provides the majority of care.

It's only by applying the "50:50 care is fair" principle that can we define a receiving parent in this simple way. And that then allows us to use just one parent's income in the formula.

The "let receivers earn" principle is extremely effective at simplifying child support. By

removing one parent's income from the equation, you get a cleaner formula. You also dramatically reduce admin costs for the Government and parents. And, I can tell you based on feedback, the hassles, complaints and grief for parents would be reduced enormously as well. No more worries about what the receiving parent might be doing to avoid work and lower their taxable income.

Allowing receivers to freely earn is an attractive idea and, frankly, there are no other good alternatives.

The original version of Australia's child support system had this property. Part of the reason why Australia brought the income of receiving parents into the system is that some paying parents made complaints. They whinged that receiving parents weren't making a financial contribution. Unfortunately for all concerned, those lobbyists didn't think beyond the short-sighted goal of grabbing money off hard-working majority-care parents.

Parents with majority care often already face significant financial disincentives that discourage them from working. If they work more, they have to pay more tax, government benefits are withdrawn and they need to look at paying for things such as after-school care. The last thing that should be imposed on them is further discouragement in the form of reduced child support.

It seems like the people who wanted to penalise receivers for earning income didn't know what they were doing. We've ended up with a system where children are too often being looked after by sole parents who stay at home collecting welfare and child support.

Payers as a group probably haven't saved a single cent from bringing everybody's income into the system. And they have ended up seeing their children less. That's the result of encouraging stay-at-home parenting. The bottom line is that every major group would win, including children and paying parents, by removing financial barriers for receiving parents who want to work and earn more.

For happy co-parenting, see Timtab.com. A robot will write your parenting plan for you. Um, it's artificial intelligence - AI, not a robot! Whatever, Mr Know-It-All. Just go to Timtab.

Principle 3: Let payers choose

The "let payers choose" principle says that you should allow payers room to be generous with their children of their own free will. In other words, don't force-extract every available dollar out of payers who are already meeting their obligations.

The issue is especially relevant for higher income payers. Under whatever formula you apply, higher income payers will normally be more than covering their share of the costs of raising children.

To explain why we should “let payers choose”, think about this quote from a Wendy Mass novel.

“A fight is going on inside me,” said an old man to his son. “It is a terrible fight between two wolves. One wolf is evil. He is anger, envy, sorrow, regret, greed, arrogance, self-pity, guilt, resentment, inferiority, lies, false pride, superiority, and ego. The other wolf is good. He is joy, peace, love, hope, serenity, humility, kindness, benevolence, empathy, generosity, truth, compassion and faith. The same fight is going on inside you.”

The son thought about it for a minute and then asked, “Which wolf will win?”

The old man replied simply, “The one you feed.”

If we want parents to choose a positive approach towards parenting and being a provider, we should allow room for that to happen. Let paying parents make their own choices. If they are already providing well, let them choose what they do with their extra income. They are the ones who earned it and we shouldn't be taking away their right to decide how their money should be spent.

To do the opposite, to go for every last dollar, gives rise to resentment, despair and counterproductive behaviour. Child Support Australia often hears from payers and their new partners expressing lack of hope. No matter how hard the payer works, they seem to never have money to save, or to put towards a home or new family, or to invest in an education fund for when their child finishes Year 12. And we also hear many stories about payers who quit work, reduce hours or go to extreme lengths to hide their income. Australia's child support scheme has been feeding the bad wolf.

And squeezing payers also creates incentive problems for recipients. Recipients are often able to profit from caring for their children. This creates a temptation to dominate care and work less, to the possible benefit of the recipient but at a cost to everyone else.

How does it help children to have them brought up mainly by low-income parents who are exploiting the child support system? It doesn't. They should be spending more time with higher-income parents.

“Extra Care” formula

The three principles discussed so far allow us to create a fairly simple child support formula, the “Pay for Extra Care” formula. Instead of the horrible complexity that exists at the moment, child support could potentially be calculated by most people just using a hand-held calculator.

With the “Pay for Extra Care” formula, child support is only payable for care a parent provides above 50 per cent. That quality comes from the “50:50 care is fair” principle. The formula has two more features that follow from the other two principles. Payments depend only on the ability of the payer to contribute towards the child or children, not on the receiver’s income. And the amount of child support tapers off at higher income levels, allowing good providers more choice.

To calculate child support, let’s start with the cost of a child. This is the annual cost of raising one young child.

Under the proposed new formula, the cost of a child is 15 percent of the payer’s income for all income up to \$75,000 per year. For any income above \$75,000 up to \$180,000, it’s 5 percent of the extra income.

Why have we chosen these rates and levels? Actually, we’ve mostly taken them from the current scheme. \$75k is about the annualised rate of MTAW: Male Total Average Weekly Earnings. The current scheme uses this benchmark. A 15 percent rate means the cost of a child is about the same as currently applies for an average payer. The 5 percent rate gives a solid tapering off in payments for higher income earners who face high marginal tax rates.

Let’s see how the formula works using an example. Suppose John is the payer because he has less than 50 percent care. If his taxable income was \$90,000 last year, the annual cost of a child is 15 percent of \$75,000 plus 5 percent of \$15,000. This is 11,250 plus \$750, which equals \$12,000.

Next, we adjust for the number of children and their ages. Again, we’ll use the settings from the current scheme. These are implicitly given in a series of tables and are based on economic studies.

The “cost of children” is the “cost of a child” with any cost loadings added. A second child increases costs by 50 percent. Three or more children increase costs by 70 percent.

With respect to ages, a teenager costs 15 percent more than a young child. Two or

more teens add 30 percent. If the only child is a teen, there is a 40 percent cost adjustment.

Let's suppose John has two teenagers. The total cost factor is 100 percent plus 50 percent for having a second child plus 30 percent since both are teenagers. So the cost of children for John is \$12,000 times 180 percent or 1.8, which works out to \$21,600.

This is the total cost of children if they lived with John all the time. We can use it to calculate how much John should pay in child support. Remember, he pays for the extra care provided by the mother above 50 percent.

Suppose John's ex, Kate, has the children 11 nights per fortnight. That means she is providing four extra nights of care per fortnight above the 50:50 level of seven nights. So, the extra care she provides is four divided by 14, which is 28.6 percent. That means the amount of child support John pays Kate is 28.6 percent of the cost of children. This is 28.6 percent of \$21,600, which works out to \$6,178 per year.

How does the formula compare?

We've added this new formula to Child Support Australia's online calculator. So anyone can see how their assessment would change if the new formula were introduced.

The new formula is fair. You can see how it works. It has similar economic assumptions as the current formula in terms of salaries and the cost of children. But the payment calculation is different.

Essentially, the new formula requires payers to return the savings they make from providing less than their fair share of physical care. By contrast, the current formula, which is difficult to explain in words, has all sorts of haphazard income transfers going on.

In terms of assessments, the new formula tends to produce lower child support amounts. This happens because the new formula is unbiased. It avoids biases associated with the current formula. For example, it doesn't (a) inflate the cost of children by adding incomes across households (b) require payers to cover anywhere up to 100 percent of often inflated costs and (c) have an irregular relationship between a parent's care percentage and the amount of financial credit they receive for providing care.

Principle 4: No reward for breaking the law

There's another principle that should be part of the child support system. This one doesn't relate to the formula as such. It feels almost ridiculous to have to say this, but we need a new principle of not rewarding parents who break the law.

Suppose, for example, a parent defies a court order and keeps their child away from the other parent. They ring Child Support and say, "I know there's a court order for shared care but I've got the kid all the time now." What does Child Support currently do? They send a bill to the poor alienated parent demanding for more money for the offender.

Another example. Suppose a payer earned very little eight years ago and has refused to lodge a tax return since. They're obviously hiding income since they regularly go on overseas holidays. What penalty does Child Support apply in this case? Nothing. They just keep assuming the offender has little income and reward them with a favourable assessment.

We actually have hundreds of examples of these sorts of things, which have been supplied by forum participants.

Breaking the law is wrong and so is rewarding such behaviour. Simple fixes are possible by following the "Breaking the law goes unrewarded" principle.

If court orders are in place, a parent should not be paid for extra care above the level ordered unless they can show the other parent is refusing to provide care.

If a parent is doing dodgy things with their income reporting, Child Support can just set their income to a high benchmark level until they start complying.

These are easy fixes that would help stop illegal activity. They do, however, require legislative changes.

Winners and losers

Reforming the child support system would help the people who are being treated unfairly. These include:

- children who can't see one parent because the other parent is keeping them away for financial gain;
- children with low living standards because parents are trying to keep their incomes down for financial gain;
- parents who are working extra hours to provide for their children; and
- parents who are encouraging relationships between children and the other parent.

Reform would improve incentives so that people are rewarded for doing the right thing rather than for doing the wrong thing. Children would benefit. Society and taxpayers would also benefit as a result of better employment outcomes.

People caught up in the system would benefit overall and not just financially. The child support system would start feeding the proverbial good wolf and starving the bad one. We would see fewer disputes, greater positivity and, it can be confidently said, a better side of humanity.

*j. the potential usage of pre-nuptial agreements and their enforceability to minimise future property disputes;
and*

k. any related matters