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STANDING COMMITTEE ON COMMUNITY AFFAIRS

Reference: Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Bill 2006

WEDNESDAY, 4 OCTOBER 2006

CANBERRA

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Wednesday, 6 December 2006

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SENATE STANDING COMMITTEE ON

COMMUNITY AFFAIRS

Wednesday, 4 October 2006

Members: Senator Humphries *(Chair)*, Senator Moore *(Deputy Chair)*, Senators Adams, Allison, Carol Brown, Fierravanti-Wells, Patterson and Polley

Substitute members: Senator Barnett for Senator Fierravanti-Wells and Senator Siewert for Senator Allison

Participating members: Senators Barnett, Bartlett, Bernardi, Mark Bishop, Boswell, Bob Brown, George Campbell, Carr, Chapman, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Forshaw, Heffernan, Hogg, Hurley, Hutchins, Joyce, Kirk, Lightfoot, Ludwig, Lundy, Marshall, Mason, McEwen, McGauran, McLucas, Milne, Nash, Nettle, O'Brien, Parry, Payne, Robert Ray, Siewert, Stephens, Stott Despoja, Watson, Webber, Wong and Wortley

Senators in attendance: Senators Adams, Humphries, Moore and Siewert

Terms of reference for the inquiry:

Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Bill 2006

WITNESSES

CARTER, Mr James Bernard, Vice-President, Australian Capital Territory Branch, Lone Fathers Association (Australia) Inc. 1

ESSEX, Ms Allyson Elizabeth, Director, Child Support Policy, Child Support Policy Branch, Department of Families, Community Services and Indigenous Affairs 39

FARRAR, Mr Denis, Treasurer and Executive Member, Family Law Section, Law Council of Australia 7

HAZLEHURST, Mr David, Group Manager, Families, Department of Families, Community Services and Indigenous Affairs 39

KENNEDY, Mr Ian, AM, Chairman, Family Law Section, Law Council of Australia 7

KINNEAR, Dr Pamela, Branch Manager, Child Support Policy Branch, Department of Families, Community Services and Indigenous Affairs 39

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PARKINSON, Professor Patrick Newport, Private capacity 32

PRICE, Mrs Sue, Director, Men’s Rights Agency 17

TAYLOR, Ms Jacqueline Sharon, Executive Officer, National Council of Single Mothers and their Children Inc 23

WILLIAMS, Mr Barry Colin, National President, Lone Fathers Association (Australia) Inc. 1

Committee met at 9.06 am

CARTER, Mr James Bernard, Vice-President, Australian Capital Territory Branch, Lone Fathers Association (Australia) Inc.

WILLIAMS, Mr Barry Colin, National President, Lone Fathers Association (Australia) Inc.

CHAIR (Senator Humphries)—I call to order the public hearings of the Senate Standing Committee on Community Affairs, which today is meeting in Canberra to inquire into the Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Bill 2006. That is quite a mouthful. I welcome our first witnesses. Thank you for the submission which you have supplied to the committee. I believe you have received information about parliamentary privilege and the protection of witnesses. The committee prefers to hear evidence in these hearings in public but, if you have evidence that you prefer to give confidentially, we can consider taking evidence in camera. Let us know if you wish to use that opportunity. Would you like to make an opening statement about your submission before we ask you questions?

Mr Williams—Yes, thank you very much. I was a little bit disappointed in the time frame you have allowed us to present this submission. We had only three working days to go through this submission. We class ourselves as a professional organisation; we have been around 34 years producing submissions et cetera. We believe that time frame did not allow us to get to the real nitty-gritty of the whole legislation and to be able to talk on it today. However, we did work night and day to get this little bit done. We like to do our research and have everything that we can to back up what we say. I want to finish by saying I was a little bit disappointed in the Senate for giving us only that amount of time, and I ask that in future we have at least a couple of weeks before we present such a valuable paper to the parliament.

CHAIR—Certainly. If it is any comfort to you, the committee was not involved in the process of determining the time frame for this and I do not think any of the senators here would exactly welcome the time frame we have been provided with either.

Mr Williams—Like anything in the parliament, there seems to be a rush at the last minute on important papers. This is going to affect millions of people throughout our country and I would like to strongly recommend that the government and the Senate together work closer on these things. The amendments have been out for some months and to give us only three days is a little bit hard for our organisation. And I guess that all other organisations around Australia would be feeling the same effect.

Mr Carter—Perhaps we should be addressing these comments to the government rather than to the Senate. We realise that.

CHAIR—Yes. It was certainly put forward by the government so I am sure the government is aware of a number of concerns that have been expressed in these and other submissions about the short time frame for this inquiry.

Senator MOORE—You can be assured that the committee will be making that point when we table the committee report. It is something we all share.

CHAIR—Do you wish to make any other statement about the submission?

Mr Williams—About the report I would like to say that, having been one of the consultants on the first child support scheme, I have probably been involved in child support longer than anyone else—probably longer than most of you people sitting here. I am travelling around Australia at the moment running workshops to explain to the public how these amendments will affect people and in what ways they will not affect people. I have also studied every other child support scheme in the world in the last three months. I have looked at those schemes and looked at our new amendments.

I do have to congratulate this government on bringing in these new amendments because I think they will make Australia's scheme fairer. There are a few things that need tidying up but I think the amendments will give Australia the best child support scheme in the world, once 2008 comes and we are working on combined incomes. I do not think there is a fairer scheme anywhere.

I was studying the English scheme which, unfortunately, has just completely folded. There is no scheme in England now because it was a complete failure. I always thought ours was heading down that line but the new amendments that the task force was able to come up with, although they are not everything that we wanted, go a long way to improving and giving us the best scheme in the world, and I endorse it.

CHAIR—Thank you. Do you want to make an opening statement, Mr Carter, at this stage?

Mr Carter—There are a number of points we could raise but they are likely to come up in the course of questions. If the Senate committee has questions which might involve a little bit of research on our part to answer fully, rather than our trying to deal with them off the cuff in a very summary way would you allow us, if necessary, a couple of days to come back with a more detailed response?

CHAIR—That is fine. If you want to take a question on notice, you can give us a written response later. That is fine. We do not have a lot of time, of course, to report in but a little bit of time is available for that.

Mr Carter—Because it is very complex legislation. The legislation runs to 300 pages and there is an explanatory memorandum that runs to 230 pages. There are a lot of issues in there. We can give off-the-cuff answers but it will not necessarily satisfy your requirements fully.

CHAIR—I understand. I will kick off with a couple of questions. You might want to take these on notice—that is fine. I am looking at the fourth page of your submission. Under the heading 'Stages 2 and 3' the third paragraph poses a question about the provisions that deal with disregarding second jobs and overtime that a parent might undertake after separation in order to help build up their financial capacity to deal with the obvious costs associated with separation. You make the point there that you wonder why these provisions apply only after a separation. You say:

> There may be many worthy cases where a parent has undertaken a second job and/or overtime *before* a separation who is equally ... deserving of consideration.

I do not quite understand how that arises. If parties undertake second jobs or overtime before separation, it is presumably just part of the mix of a family's assets and will be shared—presumably—between the parties to a marriage or relationship. I do not understand what you are saying about how this should apply before a separation. How can it apply before a separation?

Mr Carter—We are looking at a situation here where, let us say, a father—though it could be a mother, but in most cases it will be a father—is putting the effort into a second job, maybe sometimes even a third job—one hears of cases like this—or doing a lot of overtime in order to support the family and, in the course of doing that, is perhaps losing some contact with the children. The individual concerned is putting that sort of effort forward. If the marriage collapses, perhaps even partly for that reason, then in a second marriage which is undertaken there is no credit given under the present rules or the proposed rules for that man in that situation. If the same person was previously holding one job and the marriage collapsed, and then that person married again, he could then undertake a second job and that would be given credit under the child support formula and under this proposal. That seems to us to be somewhat inequitable. If one is looking at the worthiness of the individual, you could make a case for saying that the man who is putting in that sort of effort even in his first family is perhaps the more worthy case than the one who undertook it just for the second family. Does that make sense?

CHAIR—I understand what you are saying. I suppose it would be very complex to attempt to factor it in. Obviously this applies after a separation when you begin these complex formulas to equalise or somehow reckon the respective contributions of parents to the welfare of children or the costs of raising them.

Mr Carter—The point is the total amount of effort that has been put forward by that individual and the extent to which demands should be made on that extra income by, in effect, the first family in that situation. I should say that it is not a huge issue in some ways because the number of individuals affected even by the present provision is not large—several hundred—but as a matter of principle it is something that we thought was worth raising. We have raised it on numerous occasions over the years. I think the Lone Fathers Association was actually influential in getting the present provision into the legislation, but it was somewhat modified by the department as departments tend to do. We are not sure whether what they did was really, in principle, the best thing.

CHAIR—I suppose the difficulty with this would be if, say, a father takes a second job during a marriage, earns extra income and the income is actually spent by the family as it is raised. The question is: how do you take that into account after separation? It would, presumably, be quite a complicated formula to produce that kind of outcome.

Mr Carter—If I could put a finger on where the inequity arises, it is here: you have two individuals, both of whom are working second jobs and overtime. One individual has it taken into account and the other does not, simply because one of the individuals concerned undertook that second job after these events occurred and there was a change of partners—the marriage collapsed.

CHAIR—The other question I want to ask is about the next paragraph. You say:

High-income non-custodial parents were previously paying far too high an effective marginal rate of tax-plus-child-support previously, and that needed correction. However, shifting the "cap" on child support payments to a lower income level, as now proposed, merely shifts the inequity to a different income level, namely, some middle income earners.

Can you explain the point that you are making there?

Mr Carter—This is something which is being considered by every committee. Obviously the original committee that designed the scheme decided that this was a worthwhile feature to have, and it has been raised and considered perhaps three or four times since then. All the official groups that have done the analysis have ended up with the conclusion that there should be a cap. We have tended to have some problems with that because we have seen that it produces a kind of cliff face effect at some point in the income scale, if you like. Below that point, the marginal effective rate of tax can be very high because you are adding tax to extra child support via the formula which could lead you to perhaps 90c in the dollar as a marginal payment. Beyond the cap, there is no more child support paid, so one is just paying the tax rate. So you could be going from an effective tax rate of 90 per cent to 60 per cent. It is a kind of cliff face, if I can describe it that way, which normally in matters of tax and other related matters one would try to avoid.

Senator MOORE—Your submission talks about the potential value of these changes, which is quite right—until they operate, it is hard to assess them. In terms of your role in the whole process, what do you see your role being in the future in relation to the implementation and continuing evaluation? How would you like to see that work?

Mr Carter—As a 'peak body' we have a role which is recognised by the government with a small amount of funding—for which we are grateful, but it is not huge—which allows us to spend some time on evaluating developments and putting forward proposals and things of that kind. That function will continue. What was the other thing you mentioned?

Senator MOORE—I asked about evaluation. It seems that one of the ongoing issues is that, when legislation of this purport is implemented, it is left for years, until people see exactly what is happening and what is going on. An important element of this legislation into the future is effective and timely evaluation. I would like to get some sense of how you see that should operate.

Mr Carter—The Lone Fathers Association, as part of its ongoing function, receives an enormous amount of information from individuals around the country. We take something like 20,000 or 30,000 calls a year from people who are caught up in the scheme as either residential or non-residential parents. We get continual feedback on how the scheme is affecting people, so we are getting input in that way. We are also providing output particularly to the Child Support Agency because we have good contacts with them, which we take care to cultivate, and they are happy to collaborate with us. Any egregious cases tend to get passed on to them, and they are dealt with at a very high level in the agency—and I am talking about the chief executive officer, who takes a personal interest in what we raise with them, and he is providing a very good and conscientious service in following these cases up.

Mr Williams—We do take 30,000 calls; we take a little more now. We have 20 branches operating around the country, and by the middle of next year we expect to have at least 30. We are in the process of opening what we have called the Office of the Status of Men and Their Families in Canberra, and the doors of that will open in the next couple of weeks. It will operate from Kingston. It will be a men's shopfront for men—and for women too; we will not discriminate—to come in and tell us their problems or to contact us with their problems, whether it is child support or new relationships and things like that. We are working to host a national conference at Parliament House here, in the main committee room, next June to look at the legislation—this bill and the new family law relationship bill—to be able to show people just where it is going, whether it is working and whether it has been a bad or good exercise.

You might think that 12 months down the line is too quick, but people out there in the community want to know where taxpayers' money is going and whether this is going to change the face of family law in Australia. I honestly do not believe it will take effect until the new child support changes on combined incomes come into effect in 2008. Then I can see both of them joining together—that is why I made that statement before—and making it much simpler and much better for both parents and especially the children.

We liaise with other big groups and with groups from around the world. We are getting information from them all the time and we are feeding it out to other groups and to our own branches. That is where our information comes from. Besides that, we get close to 60 emails a day about people's problems. Jim stated that we have a very good relationship with the CSA. We have a relationship with the top people in the CSA. We have the privilege of taking people's cases to the new manager if we feel there is something wrong with them.

I must say that the CSA have been very good. In many cases the CSA have been right and in many cases the client has been right and it has been fixed up. That is a very good attitude. It is good to see that the Child Support Agency are actually listening to people and trying to correct any errors. We can all make errors. For instance, I have just seen one where they took $700 out of a person's income and it was not even his mistake; it was a mistake in the system. They quickly corrected that. So there is good and there is bad out there.

Senator MOORE—Is the link with the CSA a formal or an informal link? Is it through some kind of formal arrangement or agreement or is it an informal process?

Mr Williams—I meet with them every two months. I go in and chat with the manager. When I am travelling around Australia running these workshops and explaining how the system works, I am doing that because I do not think the government is getting enough publicity to the people out there. People are confused, especially about the new relationship centres. I know that they are not part of this, but they will be connected.

Senator MOORE—I think they are.

Mr Williams—People's expectations are that you will just walk into a new relationship centre and will both end up having shared care of your children. That is terribly wrong, because it is just not going to work that way. Child support is going to affect those people who do not have equal parenting time more so than those who do have equal parenting time. That is the point I am trying to make. It is unbelievable how many people out there in the community do not understand the new amendments. That is why I have taken it on my back to go around my branches and run workshops and open them to the public and explain to them the system and what they can and cannot expect. I think that the government needs to do a big media program to explain to the people out there what is really going to occur. I think it would be to the benefit of the government and to the benefit of the people out there to really know what is going on.

Mr Carter—We can obviously monitor the changes that have already occurred and the effects of those changes and the ones that are coming up shortly.

Senator MOORE—From the perspective of your clients or the people who contact you.

Mr Carter—Yes. We get calls from everyone. We get calls from children. We get calls from women who are residential or non-residential parents. We mostly get calls from men, of course. Probably the big change, as Barry has suggested, will be when the formula itself changes. That will be a massive change. At that point there will be a lot of feedback from a lot of people about how it affects them. We will be in a position to monitor that. There is also another monitoring exercise going on which is in some ways even more important because it is very basic, and that is what is happening with the family relationship centres and what is happening with the Family Court. That is a critical area. Governments have to be careful, but there have been some fairly critical comments from senior people in the government—and possibly in the opposition; I am not sure—about whether the Family Court system is working as it should. So there is a bit of a spotlight on the court and whether it is in fact going to be making decisions which are consistent with what the parliament has said it wants to see happen.

Senator MOORE—And—being careful about commenting on the judiciary, which we all are—that is all part of the whole process, isn't it?

Mr Carter—Of course it is, and the two go together. In fact I am sure that Barry could say a lot more about that.

Senator MOORE—I have one more specific question. I do not think the *Hansard* from last week's inquiry has come out yet, and I know that you will be reading that very carefully.

Mr Carter—Yes, I will read it with great interest.

Senator MOORE—We heard some evidence from a legal aid representative last week in Melbourne. One of the points she raised was in regard to fees for late payment that were being imposed by the CSA. She gave very detailed evidence about very high fees that were being charged. Even though that is under the current system and the new system is actually going to have strengthened compliance elements, it was quite interesting for the committee to hear about the level of the late fees and to hear what was said about a strengthened compliance mechanism making sure that these fees are applied and recovered. I was interested in your point of view, given your client group, on this. Have you heard about this? Do you have any views about it? It was quite telling evidence. Rather than ask you the normal questions about other things which you have in your submission, I would really like for this committee to get some comments on that process.

Mr Carter—I think you could look at those issues from different perspectives. A lot of people would think of a late fee as being in effect a fine for not having paid on time—if you do not pay your doctor on time, you are likely to find that you are paying interest at a very high rate. It is seen in the same light as that. I think the task force itself made the comment that arrears in child support often occur with low-income non-residential parents who have difficulty enough paying the original principal, so to speak. If they have to pay a fine on top of that, it can spiral out of control. So it is a situation which is fraught with problems.

Senator MOORE—Have you had this raised with you by people who call in?

Mr Williams—Yes, quite often we get people who for some reason or other have not been able to pay and their penalties build up over a period of time. Sometimes these costs are ridiculous. They might owe $18,000 or something like that. It is very hard to just pluck $18,000 out of the air. But there is hope because I do know that if that person who owes the money approaches the agency then they can come to some sort of arrangement to reduce that amount. They might want to offer a lump sum or something like that and then start paying it off. I know that I should not be saying that here, but that can occur.

Senator MOORE—When someone calls through with that issue, what advice do you give them? I am sure they are seeking advice when they contact you.

Mr Williams—We give them what advice we can and we also run a free legal advice service every Thursday with a professional solicitor. We send them along there. We try to help them. Then we will go to the agency and speak on their behalf. A lot of these penalties occur in what is the most discriminatory part of the child support scheme. I am not a lawyer, but it is illegal to put a capacity to earn on a person and hold that capacity if that person for some reason has to leave their job. Even if there is an illness, that capacity will stay on that person and they will incur a penalty.

I brought this up in the task force and Professor Patrick Parkinson agreed that I was right. You cannot impose a capacity to earn on one party; the capacity to earn must be imposed on both parties. I am very disappointed. I went to the discrimination commissioner about this and never got a satisfactory answer. You cannot say that I have a capacity to earn $150,000 because I am working. My ex chooses to stay home and yet she might have a better capacity to earn than me. She could be a lawyer or someone like that but chooses to stay at home while the children are at school and not work. That capacity immediately has to be put on her too. That could come as a challenge in the High Court because it is a form of discrimination. That is one form of discrimination that I cannot support in the Child Support Agency.

Senator MOORE—You have raised that regularly, Mr Williams. You have come to see many of us about that particular issue.

Mr Carter—There are some cases where people are seriously ill. There was a case where a man was so ill that he was carrying a colostomy bag around. This man was told by an official that they thought that he should be able to earn $100,000 and he was asked why he was earning only $30,000. They were going to charge him on the $100,000 that they thought he should be able to earn. I think this is pretty dodgy territory for any government.

Mr Williams—They are minor cases, but the capacity to earn is put on the payer, not the payee. What I am trying to point out is that you must put the capacity to earn on both people. The government is now saying that, once the children are a certain age, the other parent has to try to find work up to 30 hours. But, as I said before, some of these people have the capacity to earn even higher than the payer. I am not trying to excuse the payer; I am saying that everything has to be equal. If we are looking to have a good scheme, everything has to be equal for both parties.

If the cap is going to be dropped from $140 to $104, that is a good start. My position on that is that we did it wrong. That should have been the last thing we did this year. The combined incomes should have become an issue, because that affects the most people. The people on average weekly earnings are the ones who are suffering the most.

Mr Carter—I hasten to add that I am not suggesting that someone who has been on a high income and for some reason drops down to a lower income should be allowed willy-nilly to drop their obligation to their children. Something needs to be done in a situation like that. People should be assessed at some reasonable but perhaps lower figure than what we see coming out of assessments by the CSA.

Mr Williams—I have another point. Though other people do not understand this, we understand why the government could not bring the combined incomes in this year. That part of the legislation is still to be passed, and work on the computer systems and everything else in the Child Support Agency, Centrelink and the

Australian Taxation Office or wherever does take time. The government was quite right. It could not rush it through. As I mentioned earlier, that was what Britain did and Britain has lost the whole plot now. The Home Secretary threw his hands up in the air and said, 'We've had enough. When people break up, they will have to go to court and work out the problems themselves.'

Mr Carter—I could give a little bit of history on that.

CHAIR—Unfortunately, we do not have the time for a little bit of history, if that is all right. We might come back at another time.

Mr Carter—This is a very interesting piece of history.

Senator SIEWERT—I have only one question, as a lot of mine have already been answered. A number of submissions have raised the issue of not being able to change agreements. What is your opinion on that?

Mr Carter—In principle, agreements should last until they are no longer agreed, one would imagine.

Senator SIEWERT—A specific example has been raised—but I actually know of others—where an agreement for 50-50 custody has been reached at the beginning of a break-up or when the parties are negotiating and that slips somewhat sometimes. The point has been put that, because the agreement has been reached, that agreement cannot be varied and that the parties have to go back to court. What is your opinion on that? Do you think that is a good thing? Some submissions have suggested that there should be a capacity to vary the agreements within limits?

Mr Carter—I think there has to be flexibility in agreements. If you do not have that flexibility, people will look outside the agreement and want to raise the matter with the court to get a court order to override the agreement.

Senator SIEWERT—That is the point being made: that they are going to have to go to court to change the agreement. Do you think there should be a capacity to vary the agreement—in that you do not have to go to court but you have to reach a whole new agreement?

Mr Carter—I am not quite sure of the context of the question, but I would say that, in principle, agreements should be things that are agreed and there should be some scope to vary the agreement. Presumably there is some provision in the agreement for a modification or an amendment of the agreement.

Senator SIEWERT—My understanding is that there is not.

Mr Williams—Agreements are varied. Once your income falls by 15 per cent or rises by 15 per cent, the CSA can make another agreement for you. You have that right. The only time it has to go back to the court is if it has been a court order. If your wage rises by 15 per cent or falls by 15 per cent you are entitled to have a review.

Senator SIEWERT—I do appreciate that, but there could be other things. For example, the original agreement is based on there being 50-50 joint custody. That may change over time, which apparently quite a few do. I do not have the details in front of me about how many do. I do not know.

Mr Carter—There are very few agreements which are absolutely followed to the letter and forever. Changes happen.

Mr Williams—But that is a fault in the child support system, that it works on nights. There are many miners in North Queensland who can only see their children in the daytime because they are on night shift, but those days are not taken into the calculation. That is one thing we pushed hard to try and get through. Unfortunately, we could not get it through. It is something that really needs looking at. If a dad or a mum has got the child through the day, they still have the expense of having to have a house; they still have the expense of having meals and things like that for them. It should not matter whether the child sleeps there or not; the principal is they share having the child.

Mr Carter—The problem with agreements is there is a floor which protects the interests of the taxpayer, so you cannot have an agreement which has the effect of increasing the contribution of the taxpayer in the support of children. That is something that is there, and the parliament is always going to want to have that there. If you have a floor of that kind, presumably you cannot fall below it so that limits what you can do to change an agreement.

CHAIR—We have a tight time frame today, so I am going to draw this part of the proceedings to a close. Thank you very much for your time here today and for the submission you have made to us. It has been very useful.

[9.42 am]

FARRAR, Mr Denis, Treasurer and Executive Member, Family Law Section, Law Council of Australia

KENNEDY, Mr Ian, AM, Chairman, Family Law Section, Law Council of Australia

CHAIR—Welcome. I thank both of you for your appearance today and for the submission that you have provided the committee with. It is a very extensive one. I think you are aware of the issues to do with parliamentary privilege and the protection of witnesses and evidence. You will be aware also that the committee has the capacity to take evidence in camera, if that is thought appropriate. If you wish to provide such evidence, please let us know. Before we proceed to ask you questions about your submission, I invite you to make an opening statement about the issues in it.

Mr Kennedy—The family law section, while it does not necessarily agree with all of the amendments brought about by the new legislation, does not intend to address the policy issues underlying it. Those discussions have been had, the policy has been formulated and this is the product of it. Our concern is that the legislation is drafted and implemented in a way that will not necessarily achieve the objectives in a workable sense in some areas and it will not necessarily be as accessible to the public as we would perhaps like it to be. The section endorses the bulk of the changes contained in the legislation, and in particular the introduction of a formula based on proper research about the actual costs of children, the combined incomes of two parents, differentiation between the ages of children and better recognition of the cost of shared care.

We also endorse the removal of the tyranny of time spent with children as a barrier to parents reaching proper shared care arrangements out of fear of financial consequences and better recognition of the competing needs and entitlements of first and second biological families. We support the greater flexibility and autonomy for parents to make their own child support arrangements, subject to safeguarding the revenue, and, in particular, the availability of binding financial agreements and lump sum child support. We also support the empowering of payees to take direct steps to enforce child support obligations and recover arrears, and the appropriate treatment in the new legislation of family tax benefit payments. We are more neutral on some issues, such as the recognition of support for stepchildren to the detriment of children in first families but, again, that is a policy decision. Time permitting, we may make some general comments about the efficacy of that, but we accept that that is there in the legislation.

The view of the legal profession is that Australia's child support system works relatively well for a significant proportion of separated families. However, there is a cohort at either end of the scale—the high- and low-income earners—and another group in the middle where it does not work as effectively as we would like. It is important that the new legislation addresses those issues appropriately. The efficacy of an administrative approach to child support based on a formula is limited by a range of not uncommon circumstances and ways that people arrange their affairs. Complications arise where you have income derived through trusts and entities, income splitting, negative gearing, salary sacrifice, employment benefits of a non-monetary nature, undisclosed income or second jobs, underutilised earning capacity or, in general, in a self-employment situation.

The concern of the family law section is to ensure that, as far as possible, the proposed legislation deals appropriately and effectively with those issues and delivers fair and predictable results for all families in the child support system. It has been said as this legislation has worked its way forward from the initial recommendations that only 40 Australian families currently in the child support system will be unaffected by the changes. The majority of the complaints that led to the impetus for reform have arisen from the perceived unfairness and ineffectiveness of the current scheme. Our concern is that there will be no let-up in complaints if the new scheme, because of drafting inadequacies or failure to adequately address fundamental aspects, is in turn perceived as being unfair or inadequate.

I imagine that everyone has said this to you, Mr Chairman, and to the committee, but it is a matter of considerable concern that so little time has been made available to consider and reflect on the practical effect of this very detailed legislation. As lawyers, we do not see cases where the day-to-day operation of the Child Support Scheme works appropriately, but we do see repeated instances where it fails to deliver appropriate outcomes in the real world. The report of the ministerial task force highlighted that the formula would be legislatively complex, and it certainly is. The Minister for Families, Community Services and Indigenous Affairs in his second reading speech described the reforms as:

> ... the most significant and most comprehensive in the 18-year history of the Child Support Scheme ...

The legal profession is very aware that there is all too often a marked gulf between the way legislation is drafted and its practical effect. As we note in our submission, it is extremely disappointing that there has been such limited opportunity to consider and finetune the drafting. We are very sensitive that the committee is in exactly the same position, with an extremely tight reporting time frame. In relation to the formula, it is particularly disappointing because it does not come into effect for almost another two years. I think it is the view of the legal profession that rushed legislation is always bad legislation and the foundation is there for problems that should not exist.

In our submission we have tried to identify some of the areas where the stated intentions of the new scheme may fail to be achieved, and we are happy to discuss those with the committee in any way which might help with its deliberations. We should make it clear that we have no entrenched position. Our intention is purely to try and ensure that the new legislation works as well as possible and achieves its objectives in the best possible way.

CHAIR—Thank you for that. Do you wish to make a statement, Mr Farrar?

Mr Farrar—No, I am happy with that, thank you.

CHAIR—Could I take up that point about complexity which you raised. In his submission to the committee, Professor Parkinson, who was of course the chair of the task force, makes this comment:

Although the formula will be legislatively more complex than the current formula, I do not believe there will be any great complexity for members of the general public.

By that, I assume he means that members of the community who may need to access it will not have any greater difficulty understanding how to do that. Would you support that intention?

Mr Kennedy—He also said in his initial report that it was important that the legislation be rewritten in a way that was much more accessible to the general public, and clearly that has not been achieved. I think this present comment is more a triumph of hope over reality. We as lawyers—and I think on our executive which has been looking at this we have a total of something like 300 years of combined professional experience—have the gravest difficulty working out a great number of the clauses. Some of those are reflected in our submission, but even the ones that we have not particularly responded to, because they are policy driven and bring about a particular objective, are very difficult to understand.

It is also fair to say, from the clients we see across our desks day by day, that the present scheme is almost impenetrable to the average person. The new scheme is going to be no less transparent and possibly even more complicated. It may achieve better outcomes, but in being able to understand and follow how it gets to those outcomes it is going to be a considerable challenge, not only for the payers and payees but also for those who are advising them at each level, including their legal advisers.

I do not know whether you have seen it, but the current scheme is contained in a loose-leaf legal service. It is extremely thick and the new one will probably be even thicker, with no greater clarity attached to it. For anything that is a bit outside the norm, it really is a labyrinth to try to find your way through the system, the legislation and the relevant provisions to get to an answer. As I said, for the great majority of people—who are salary earners, where their income is readily identifiable and where there are no complications—it works pretty well. The formula is a good thing and even the present formula works satisfactorily for most people. But it is with that, maybe, 15 per cent of people who are at one end or the other, or who have more complex financial arrangements, or who simply do not want to pay and want to duck the issue that difficulties arise.

Mr Farrar—Senator, you and I would recall running maintenance applications in the Court of Petty Sessions. We were dealing with legislation that had probably three or four pages and maybe six sections. Now we have two pieces of legislation that run to probably 200 or 300 pages. I do not know that the system actually produces better outcomes or faster outcomes. Certainly the intention of the legislation seems to be to enable people to represent themselves, not to spend money on legal representation, but I think the real outcome has been that people put their future in the hands of the bureaucracy to tell them what the outcome is. When they want to take issue with what the bureaucracy tells them, they have some major difficulties negotiating the system.

This legislation imposes essentially a four-tier structure: review, objection, Social Security Appeals Tribunal and, ultimately, court. We are of the view that very few people will last the distance if they have a genuine gripe with the system. Most people find that the system wears them down by the time they have been through the review and objection process and do not take it any further. We think that the outcomes under the new

regime are probably going to be fairer for the majority, but for the minority who have issues in their financial make-up that take them out of the norm this is going to be extremely difficult for them to deal with.

CHAIR—You point to the drafting complications in the scheme. Are you saying that if we simplify or clarify those sorts of issues—the sorts of things you have drawn attention to in your submission—the legislation, once those things are sorted out, will actually be fairer than the present scheme?

Mr Kennedy—It will be better. It will not be perfect and it will not be clearer, but it will be better in its outcomes.

CHAIR—Indeed. I think perfect legislation requires perfect legislators, and I do not think many of us pretend to be that. You are not also saying that the series of possible outcomes that the legislation provides for is so complicated that it renders the scheme inaccessible and that we should simplify the system in order to make it more easily understood by practitioners and laypeople?

Mr Kennedy—In an ideal world that would probably be a preferred outcome. And I think that, in some respects, is what Professor Parkinson had in mind in his initial report. That has not happened. This is the legislation that we now have. It is the legislation which, with some amendments, will no doubt be passed. So, because of the limited time, we have taken the position that the best way we can provide some assistance is to try to at least identify some areas where improvement might help its overall efficacy.

CHAIR—Can I turn to a couple of specific provisions you mentioned in your submission? You raised issues about section 44(1)(d) of the bill and said that the provisions are not clear in dealing with the process of calculating the input into a family income of a second job or working overtime. The formula that has been used in section 44 is a fairly simple one. It just says:

(i) in accordance with a pattern of earnings, derivation or receipt that was established after the applicant and the other parent first separated; and

(ii) that is of a kind that it is reasonable to expect would not have been earned, derived or received in the ordinary course of events.

That is the definition of what income is considered to be excluded from the calculation of child support income. That is an example of a fairly simple enunciation of the principle that the legislation is getting at. What is wrong with that enunciation?

Mr Kennedy—I think we would say that it is not necessarily simple. Our comment on that, basically, is that it seems to try to encapsulate the concept of an intention to exclude income from overtime or a second job taken to re-establish oneself after separation. That is a clearer, simpler formulation of what we are trying to get at but it is a rather convoluted way of expressing a simple concept. If the intention is to say that income derived from a second job obtained after separation for the purposes of re-establishment is to be excluded, then the legislation would be better off saying that rather than phrasing it in the way it has. It is an example of the failure, again, to implement the committee's recommendation for clear English expression of concepts. As lawyers we all understand it and that is not a problem but, for the average person looking at it, I suspect it will raise complexity and a bit of uncertainty as to whether it catches their position or not.

Mr Farrar—And what does 'what is reasonable' mean in the context of that section, and what does 'the ordinary course of events' mean in the context of that section? We think it could have been expressed more clearly, as Mr Kennedy said. We think it is a recipe for disputation.

CHAIR—Could I just have a quick look at the section of your submission headed 'Percentage of care'? You point out that in sections 49 and 50 of the bill it says:

The percentage (if any) of care of a child that a parent or non-parent carer is likely to have during a care period is determined in accordance with the following agreement, plan or order if the Registrar is satisfied that the agreement, plan or order allows such a percentage to be determined ...

Then it makes reference to oral or written agreements or parenting plans. You go on to say:

A determination based on "an oral agreement between the parents" ... is much more problematic and raises significant evidentiary issues as to the precise terms of such an agreement.

You recommend:

... oral agreements only be recognised for the purpose of determining percentage of care if the parties acknowledge that there was such an agreement.

This was sort of raised by Senator Siewert before.

I agree that lots of oral agreements have been formed between separating parents, and it is very difficult to take them into account in the event that they disagree subsequently either about the terms of that agreement or that they made an agreement in the first place. But why would it be necessary to exclude the possibility that the court might nonetheless find that there was such an oral agreement—and it was a free and open agreement between the parties—and not give it weight?

Mr Farrar—We are not saying that that should not happen, but this section is saying that, in the face of a dispute between the parties—because that is the only way it will arise, if the parties do not agree that that is their deal on child care—the registrar is called on to make a determination as to whether there was an agreement between them at some point in time. That is an evidentiary issue and we do not think the registrar should be doing that.

Senator SIEWERT—I will just jump in here: in your next paragraph you say that, rather than it being determined by the registrar, it is more likely to be determined by a magistrate or a judge.

Mr Farrar—Indeed. We are talking about how much child support somebody should have to pay their ex-partner. An issue arises as to how much time the children spend with each parent, and by looking at what has been happening will determine what that will be in the future. They do not agree on what has been happening: she says something different to what he says. They are not going to go through the review process and the SSAT; they are going to go to court to have a court order on the pattern of care for the future because that will determine how much time the child spends with each of them. While it is not a criticism of the legislation, the reality is that the parenting time with each parent will be determined under the Family Law Act, not under the child support act.

CHAIR—I assume that that will have the effect of saying that, if a parent chose to repudiate an oral agreement, it would effectively have no weight. You would go back to square one and negotiate it from the beginning, to get the best outcome.

Mr Farrar—And that happens all the time now in various contexts: (a) was there an agreement? and, if so, (b) what were the terms of the agreement? Where couples are separating—and the emotional climate can be rather difficult—people can genuinely have a view that they have agreed on X, but the other person believes they have agreed on Y. If it is not in writing, it is never really possible to get a real fix on whether or not there was a meeting of minds and, if so, what it was they actually agreed on. You see that almost on a week-by-week basis, where people think they have an arrangement with their children for the coming weekend and it falls over because the other person quite genuinely thinks it is some other agreement. It really puts the registrar in an impossible situation, and the registrar either makes a finding in favour of one person or the other without any evidentiary basis or says, ‘We’ll just have to ignore the whole thing in that case.’ The risk is that, if it becomes a real issue for parties who are concerned about the percentage they need to contribute to children, you may be forcing them into the court system, where they would not otherwise perhaps need to go to get a determination of what periods of time the children are going to spend with each parent.

CHAIR—Could you comment on the issue that was raised with the previous witnesses about the requirement of courts to vary agreements between parties? Senator Siewert was raising a question in respect of oral agreements and written agreements as well.

Senator SIEWERT—It links to your other comments and the question I was asking earlier about the agreements and the capacity to vary them. In your submission you made the point about the ability to vary agreements but also the capacity to set them aside fairly easily. It links to this as well, but the issue about going back to court over an oral agreement links to that too, doesn’t it?

Mr Kennedy—We would take the view that that is inappropriate. An agreement should be able to be varied, if the parties agree on the variation. The way the legislation is drafted, all that can be done is to set it aside and start all over again. We would not be in favour of that. In the present system, you can have a child support agreement submitted to the Child Support Registrar for acceptance, and once it is accepted it is in force. If you want to change that, you can simply make an amendment and send the amended agreement in and it will be accepted. We see that as an entirely proper process.

Senator SIEWERT—So you would like to see that maintained?

Mr Kennedy—Yes—and clearly spelt out in the legislation.

Mr Farrar—The problem arises when people do not agree on amendments to their previous agreement. The backstop there is that ultimately a court can make a determination. Section 98 of the current act, the Child Support (Assessment) Act, says that the court may discharge, suspend, revive or vary the provisions of a child

support agreement. So variation is possible under the current law and we have not seen any difficulties in the way that has been worked in practice. What has been a problem is that the principles on which the court acts in deciding whether to vary an agreement or discharge, suspend or revive it have been rather vague and not well expressed in the current legislation. We have pushed for, and I think it has been accepted in this draft, the circumstances of variation including a change in the circumstances that prevailed at the time the agreement was entered such that, in the interests of justice, the agreement should be varied. That is a fairly familiar circumstance that has applied historically to all maintenance variation applications—where a court can change an amount that was previously ordered if there has been a significant change in circumstances.

What we are concerned about, and what we say in our submissions, is that one of the grounds to vary a child support agreement by a court in this bill includes that the amount is not proper or adequate—as soon as somebody decides that the amount is not proper or adequate, the agreement goes out the window. We do not think that is appropriate, especially if it is the sort of agreement that has been entered into with independent legal advice—what is called the binding financial agreement type of child support agreement. To be able to throw that out just because somebody claims that the amount is no longer proper or adequate seems—and I think Professor Parkinson's submission to this committee says the same thing—to dilute the value of the agreement to such an extent that I do not think they will be used.

Senator SIEWERT—We also had evidence from Victoria Legal Aid, who said similar things.

Mr Kennedy—It is necessary to draw that clear distinction between the binding and limited forms of agreement. In a limited form of agreement, clearly it should be variable by agreement between the parties and probably should be variable by the court at a much lower standard of evidence. If it is a binding agreement, it should be only in very limited circumstances and, we would suggest, analogous with those in the Family Law Act governing the variation of a binding financial agreement, and it should be set aside; otherwise, it should remain in force. We see the binding agreement as an extremely important tool in enabling families to rearrange their financial affairs on relationship breakdown. To be effective, it must be genuinely binding; it cannot be the sort of agreement that is easily set aside by a fairly modest change in circumstances.

Mr Farrar—Can I also comment on page 16 of our submission. We quote the new section 80E. The two types of agreement, as we say, are limited and binding agreements. Limited agreements will not be possible if they are agreements for payment of an amount less than the formula. One wonders what the policy behind that is. Secondly, and I am looking at section 80E(2) of the bill, child support agreements are often used where people want to make provision for the payment of bills: school fees, education and sporting expenses, orthodontic expenses, health insurance, dental, medical—things that are not necessarily current and repetitive but are contingent, things that might happen.

Trying to work out under section 80E(2) whether an agreement with those provisions in it actually aggregates to more than or equal to the amount that would be payable under the formula will, I think, be an impossible task. The note to the said subsection says that there will be regulations that will work out how to calculate how much child support is being paid by reason of agreeing to pay half the orthodontic expenses et cetera, but we just do not see how that is possible as the bills may never in fact arrive. We think that, because you cannot have an agreement that works out to be less than the formula amount, the value of child support agreements will be diminished and I am not sure that people will bother with them as much as they have until now. The other thing we are really concerned about is that it would seem, under the bill, that all existing child support agreements are null and void and terminated from the passage of this bill. That is the way we read it, and we wonder why that is.

CHAIR—I would hope that is not an intended consequence.

Senator SIEWERT—We will ask the department.

Mr Kennedy—The Child Support Registrar must look at each current agreement and make a determination as to whether it is a binding agreement or not. If it is binding, it remains in effect, but there is no such thing as a binding child support agreement under the current legislation because the formalities that will be required in future are not required under the present system. So thousands and thousands of settlements that have been reached on the basis of a combination of consent orders, financial agreements and child support agreements are going to fall over and there is the potential for a considerable rush to the courts to revisit the entire financial resolution of the issues arising on the breakdown of the relationship. If that is the actual effect of the new legislation, it would be an appalling outcome.

Mr Farrar—That is at pages 240 to 242 of the bill, as we read it. There may be a policy behind that, but we cannot see what it would be.

CHAIR—I think there is a question looming there for the department later this afternoon.

Mr Farrar—It is dealt with in paragraph 61 of our submission. I would have thought there should be a saving provision for all existing agreements.

Mr Kennedy—It is a very simple amendment to cure the problem.

CHAIR—Indeed.

Senator SIEWERT—I am aware we have got limited time, but I want to ask some questions arising from comments that you made about proposed section 80E(2) and non-periodic payments. We heard evidence in Melbourne on Friday from Mr Geoffrey Brayshaw from the Australian Family Support Service. The point he was making is that a lot of people pay non-periodic payments. We were told there does not have to be an agreement with the other parent when whoever is making those payments does so. That is the evidence we were presented with. Is that a correct interpretation of the current act?

Mr Kennedy—It depends. Of course there does not have to be an agreement, but if you want them taken into account as part of your child support contribution, there has to be an agreement. In addition to whatever child support you are assessed to pay, you may choose to pay other things outside that but you do not get credit for them as part of the child support liability.

Senator SIEWERT—Mr Brayshaw was saying a lot of people do make extra payments.

Mr Kennedy—You can make what are called non-agency payments up to a certain per cent of your child support liability, and that percentage will increase to 30 per cent of what you are assessed at.

Senator SIEWERT—But there does not have to be an agreement with the other parent what the 30 per cent will be?

Mr Kennedy—No.

Mr Farrar—There are two issues: payments to the other parent which are mutually agreed as being in satisfaction of child support or payments on their behalf, which are subject to that agreement, are counted. The issue arises when people make payments of school fees, dental fees et cetera without the agreement of the other parent that this will be part of their child support and then make a claim for credit as a non-agency payment when the custodial parent has not agreed that that was part of the deal.

Senator SIEWERT—That was where I was trying to get to in a roundabout sort of way.

Mr Farrar—That is not an uncommon issue, and mortgage payments are a good example, especially if people are going through a property settlement. If they have issues about the contributions they have each made, and one says, ‘I’ve paid mortgage payments for the home and I want credit for that in my property settlement,’ but then they have also gone to the Child Support Agency and tried to claim a credit for 30 per cent of their child support liability as being satisfied by making those payments. That is already in force, and I think it has been in force since 1 July this year when it increased from 25 per cent to 30 per cent. I do not know that you will ever solve that. It seems to me a legitimate policy that payments made for the direct benefit of children—like rent for the house they live in, mortgage repayments, their dental fees or school fees to a limited extent—should get some credit, even if the other parent did not agree.

Senator SIEWERT—It is a difficult issue when someone is trying to budget, for example, and somebody else decides to make a payment that is contrary to their budget.

Mr Kennedy—Exactly. The payee wants cash and the payer wants some sort of assurance that the payment is going for the direct benefit of the children, but there are all sorts of grey areas where the expenditure may or may not be appropriate. One parent may take the children out on a clothes buying expedition and the parent with the majority of care might say, ‘That wasn’t really necessary. They had plenty of clothing. That should not be credited.’

Senator SIEWERT—I was wondering how that relates to the comments that you were making earlier about proposed section 80E(2). Does it relate to that at all?

Mr Farrar—The paragraph of our submission is—

Senator SIEWERT—I am talking about paragraph 47, on page 16. That is what reminded me to ask the question.

Mr Farrar—No. That is really about formal child support agreements. Oral agreements are really outside the scope of that section, as we understand it. It has to be in writing. It has to be signed. Again, there are always problems if one parent says, ‘It was agreed that I would make that payment and that would count as part of my child support,’ and the other one says, ‘No, it’s not.’ Then the registrar is in a pretty difficult position and generally will err on the side of caution, saying, ‘Unless you can demonstrate the agreement to me I am not going to find that you have satisfied your liability by paying for those clothes or that dentist’s bill.’

Mr Kennedy—That then creates the problem that the payer has already paid out those funds but then has to pay them again in cash because of the finding of the registrar.

Mr Farrar—The agreements are a valuable tool. They are frequently used. We are a bit concerned that, while we supported the changes that the ministerial task force recommended, especially in the way that you vary agreements, the task force report has done a bit of a metamorphosis into this bill. I think even Professor Parkinson said that this is not the concept that he was advancing. Nonetheless, we support the notion of two types of agreement and that the binding agreement, with the benefit of independent legal advice, should be more binding than the simple agreement. At the moment it is not.

Senator ADAMS—I would like to ask your opinion on how the family relationship centres will handle this complex legislation. Just looking at your submission, I am thinking: ‘Will these organisations be able to deal with this issue?’

Mr Kennedy—What I suspect will emerge is that the family relationship centres will become triage services and will direct people with any level of complexity in their affairs, be it financial or otherwise, to other services that are able to give them better advice. Already they are developing informal relationships with community service organisations in their areas, with Centrelink, with the Child Support Agency and with local lawyers. They tend to direct people to those sources to get the advice that they need. So I think they will be able to hand out brochures about child support and give a general indication, but in the end the process involves an application for administrative assessment in any event, so it ends up with the agency. But in terms of helping people to negotiate a package, I think it is going to be a little bit complicated for them. The package of financial resolution may be at a level of complexity that makes it rather difficult to achieve.

Mr Farrar—A common situation we see in our office is that somebody comes in with a child support problem and they have a big pile of correspondence going back years. They have been trying to deal with it themselves, because it is not very cost-effective to use a lawyer for these things, and they have just got into a big hole. Sorting out what has really been happening and what the agency has been calculating they should have to pay and how that has changed when they have lodged new tax returns, had more children or the children have grown up is a very complicated process. I suspect that family relationship centres might be confronted with those piles of correspondence.

One of the concerns in this bill is that it will no longer be possible to change an assessment beyond 18 months retrospectively and we do not think that that is necessarily a desirable thing. Sometimes the root of the problem started some years ago when there was a spike in income which was not repeated or a redundancy payment, for example, and that has set off a whole chain of subsequent events where assessments have been made which are out of kilter with the person’s real income. I am not sure we understand the logic behind the notion of putting a retrospective cap of 18 months on how far we can go back. Sometimes there needs to be an ability to review what has been happening for considerably longer than that.

Mr Kennedy—A good example of that in the real world occurred just as I left the office yesterday. I had some documents come in from a client in England who has been served with one of those bundles of documents with reassessments going back five years, and within each of those five years, several reassessments as rates have changed or there has been a new financial year that has rolled over. We will sort it out, but for the average person looking at it, they would throw up their hands and say, ‘What do I do?’ That level of complexity is not going to be eased by the new legislation. Again, perhaps it does not arise so much from the legislation itself but from the functioning of the administration of it in the agency.

Senator ADAMS—What worries me is that I think we need some clear guidelines and, certainly, as was mentioned earlier by witnesses, the effect of this legislation should be made well and truly clear to the public and in a way that they can understand. I know that I am confused; I guess I should be better prepared, but it certainly is not an easy issue to get your head around. This is why I am wondering about it. In this regard members of the general public are in a situation where they are upset and emotional and it is very hard to

think. We are trying to think clearly without being affected by any of it. It is a matter of concern as to how people are going to be helped and not be confused by it, and given a clear path through. It is very important.

Mr Kennedy—The maze has got more complex, of course, because we are adding another layer of review to that whole process. They start with the registrar, then internal review, then the SSAT and then possibly the court. But our other main concern is that the SSAT is not set up to deal with disputes between two people. It is there to resolve administrative issues between a government department and an individual. The processes that take place within it in the child support arena, where you have two competing parties, are really quasi-judicial and it is not meant to do that sort of work.

There are also questions about the constitutionality of interparty disputes being determined in that sort of tribunal. Leaving that aside, it becomes the final arbiter of fact. There is nothing in the legislation that makes it clear that parties can be legally represented, for example, that they can cross-examine the other party to get at the truth of the financial situation, that they can compel the production of all of the relevant documents and so on. What exactly is going to happen in that setting where the tribunal tries to make findings in matters of any complexity is a matter of very considerable concern.

CHAIR—Are there more self-represented litigants and applicants than there were when you and I were practising family law 20 years ago, Mr Farrar?

Mr Farrar—There certainly are. I think the Family Court's analysis of its participants in proceedings is that about 40 per cent of all litigants represent themselves. I do not know what the Federal Magistrates Court figures are but I would suspect they would be similar if not more.

Senator SIEWERT—As an addendum to that, would it be true to say that more people handle child support without legal representation anyway?

Mr Farrar—Yes.

Mr Kennedy—And, of course, you cannot have legal representation until you get to the court stage, although a lot of people do seek help from a lawyer in filling out the forms and formulating their submissions and their appeals, but they are on their own. That is very difficult for the great majority of people. The others things that are going on in their lives are sufficiently stressful, but then they have to sit down across the table from their former partner, often in quite fraught circumstances, and try to perform a task that they are not trained to perform. It is really very challenging and distressing for many people.

Mr Farrar—You get a lot of people who feel unhappy and disaffected by the system without actually understanding where they might have gone wrong. It is complex law; there is no doubt about that.

Senator SIEWERT—People's first contact with child support is when they lose their income and apply for benefits. Their partner then gets a notice served on them from the Child Support Agency. It is the very first contact that they have with child support. I speak from personal experience.

Mr Kennedy—That is quite dramatic for many people and of course they then place the blame on their former partner without realising. We spend a lot of time explaining to people, 'It is not your former partner's doing, it is a requirement if he or she is to obtain social security benefits of any sort.'

CHAIR—There is a mistake though, isn't there, in equating simplicity with fairness in every case? It was proposed at one stage when the Family Law Act was being considered that every marriage should end with a fifty-fifty split of property. That would be very simple but obviously also very unfair in very many cases.

Mr Kennedy—In New Zealand it does and it is regarded as very unfair. There is only very narrow scope for variation. I think it is fair to say that nowhere in the world is there a perfect scheme for anything, be it property division or child support. If there were we would all have it but by and large the ones that we have here are better than average and we want to keep them that way.

Mr Farrar—The point you make is interesting. In property we have chosen not to go down the path of formularising our outcomes by having laws that say each outcome is tailored to the justice of the case and the facts of the individual circumstance, and that is why our outcomes are not as easy to predict sometimes. We have gone the other way in child support and maintenance. Instead of the previous law prior to 1989 which said that the court would make a decision, if parties could not agree, based on what the magistrate felt was necessary to be paid in this case for this couple, we have gone away from that to a formula approach to try and simplify the system and create more predictability and less expense for parties. We have gone from six sections to 300. That is the by-product of that policy decision that was made back in the late eighties, I suppose.

Mr Kennedy—Having said that, it does produce a fair income in probably 85 per cent of cases in a simple administrative way. It is that other 15 per cent which causes difficulty, and which causes a lot of the complaints that come to you and to parliamentarians in the other place and which is really a driver of the changes that we are now experiencing in many ways.

Senator MOORE—You have a very detailed submission and a lot of it is to do with very specific questions about the drafting and intent. In fact, you have said upfront that you are not going to get into policy, you are going to get into specific clarification points. Have you submitted these issues to the department directly?

Mr Kennedy—No, we have not.

Senator MOORE—We will!

Mr Kennedy—First of all it is a submission to this committee and embargoed until released. One of the problems is that it emerges from a department that we do not normally have dealings with. Anything that comes out of the Attorney-General's Department tends to be run by us as an exposure draft form first to look at these technical issues. We have a good working relationship with that department. It may well have been that a lot of these problems could have been overcome if a similar arrangement existed between the Law Council and the department responsible for the present legislation but it has not happened, so we are playing a catch-up game now trying to deal with those issues.

Senator MOORE—Does your organisation have any ongoing role—I am asking this of most people—in the monitoring and evaluation of the new legislation?

Mr Kennedy—Yes, very much an ongoing role. Part of our responsibility is to make submissions to government. We will get information from our members around the country that may point out deficiencies in legislation. We will recommend to government changes that might be needed and more often than not they are accepted. We also play a very active educational role for the legal profession. For example, when the new shared parental responsibility legislation started earlier this year we ran a national seminal series in 19 centres around the country that was attended by 2½ thousand practitioners to familiarise them with the new legislation. We are intending to do something similar next year with the Child Support Agency. We want to take that seminar series to the same centres and perhaps 2,000 to 3,000 practitioners to try to get them to understand how it works so that they can pass that knowledge on to their clients and in their indirect contacts with the family relationship centres and so on.

Senator MOORE—I was fascinated by your concept of the family relationship centres as 'triage'—I am going to remember that, and I will use it and attribute it. I just wanted you to know that.

Mr Kennedy—Thank you.

Senator MOORE—I am particularly interested in your comments about the SSAT and its role. It has been promoted as one of the ways that this legislation can be simplified and made more accessible to people, and it will give them an immediacy of response, because the SSAT traditionally turns over cases pretty quickly. But your comments there need to be taken up. I am sure as a committee we will be providing these comments directly to the department—I am sure they have read it; they will have done that. But in terms of the process we hope that you as an organisation will get a response. We will be seeking a response from the department, specifically on the questions that you have raised about the implementation of the process and where it goes.

I am also interested in your expectations of the future. You have identified that FaCSIA, until now, is a department from which you have not had much of an immediate response. Is that something that you are going to look at changing in the future? The way their submission reads, they are continuing to take ownership of this process.

Mr Kennedy—Yes. We would hope that they would be prepared to have an ongoing dialogue with us. We have managed to do something similar with both Tax and Finance—

Senator MOORE—Which are very entrenched.

Mr Kennedy—Not entrenched; it is a start. It was a problem we had with them earlier, with legislation that impinges on family property settlements, but we got into dialogue with them and spent a day with those two departments together, talking about the issues. I think they called it a scoping workshop or something like that. It was a very effective process and they were able to go away with an understanding of the issues and to draft the legislation, which is currently before parliament but has yet to be passed, to do with capital gains tax rollover relief in family settlements. So that sort of liaison is extremely valuable and we would certainly like to

have a similar relationship with FaCSIA, particularly in this area but also in any other area that touches on family law responsibilities.

Senator MOORE—So that would be an outcome you would be seeking in anything—a close working relationship?

Mr Kennedy—It would be a very desirable outcome if we could achieve that.

Senator MOORE—Okay.

Mr Farrar—Can I raise one specific thing—it is not in our written submission, but the more you read the more you pick up. On page 163 of the bill, there is a reference to appeals from the Social Security Appeals Tribunal. Section 110E says that appeals will be heard by a court 'constituted as a full court or by a single judge'. Section 110B says the appeal can be determined by any court having jurisdiction under the Child Support Act. Under section 99 of that act, that therefore includes the Family Court, the Federal Magistrates Court and all state and territory courts of summary jurisdiction. Now, the Federal Magistrates Court and the state courts are not peopled by judges—they are magistrates. The section is intended to mean that only judges hear appeals from the SSAT. That is not what section 110B says. So I think 'judges' should be expanded to include magistrates. Otherwise, the Family Court is going to have a lot of work that it did not actually want.

We have not talked about stepchildren, and our submission probably covers our position on that, but it is somewhat of a concern that this legislation as drafted would indicate that people will be able to claim their stepchildren as dependants automatically, for the purposes of reducing the child support they pay for the children from their previous marriage. That is a social policy consideration, no doubt—

Mr Kennedy—It is one which is inconsistent with the provisions of the Family Law Act dealing with responsibility to stepchildren. At the very least, there should be consistency between the two pieces of legislation.

Senator MOORE—That is in paragraphs 69 and 70 of your submission.

Mr Kennedy—It is a passing point in a way, Senator, in that we are not visiting the policy issues. But we do raise a note of caution about that because historically it has been a source of considerable disputation between former partners and it is likely to increase as a result of the changes implemented by this bill.

Mr Farrar—For example, as the legislation is drafted at the moment, a child could come to live with a couple and a week later be claimed as a stepchild for child support purposes.

Mr Kennedy—Yes. The couple have to have been together for two years, but it does not say the child has to have been a member of the household for two years. It is an issue particularly with adolescent children, who may change from one parent to another. It is perhaps not as well drafted as it might be.

Senator MOORE—Thank you.

CHAIR—Okay. There are a few bits and pieces we have to get the department to respond to. Can I thank you very much for your time here today. It has been a very useful session. I am sure if we were consulting you and paying for your time we would be paying a lot of money for all of that! So we are very grateful for the contribution you have made to the inquiry.

Senator MOORE—We would be using you as our representative!

CHAIR—Thank you for that.

Mr Kennedy—Thank you for the opportunity.

CHAIR—We will now suspend for 10 minutes.

Proceedings suspended from 10.35 am to 10.49 am

PRICE, Mrs Sue, Director, Men's Rights Agency

CHAIR—Welcome. Thank you for your appearance. Do you have any comments to make on the capacity in which you appear?

Mrs Price—The Men's Rights Agency is a national organisation looking after men's issues for separated fathers.

CHAIR—I understand that we have provided information to you on parliamentary privilege and the protection of witnesses. You have probably appeared before at an inquiry or two.

Mrs Price—One or two.

CHAIR—So you know about those things. I remind you that the committee has the capacity to take evidence in camera. If you wish to present evidence of a confidential nature, please let us know. We have your submission, and I acknowledge the point you make about the limited time for the inquiry to be held in. I might pre-empt your comments by saying that the committee itself is not particularly happy about having to comply with this in a short period of time. Nonetheless, the committee members are going to do our best, and we appreciate you having produced your submission. I invite you to make an opening statement about that submission before we proceed to questions.

Mrs Price—Thank you very much. I have to say that the lack of time is really quite appalling. I will not say anymore; I think everyone else has covered it. But three days to produce a submission after 300 pages and 200 pages of explanatory memorandum is quite impossible.

We have problems with the derivation of the costs of children. I refer you to the table on page 73 of the explanatory memorandum. We believe this has a lack of transparency. There is no method outlined as to how these numbers were derived. I might refer you also to a Dr Lawrence. He sent in a submission and he says the same thing. He says:

Costs of Children Table, and the accompanying ways of using it ... is extremely difficult to understand.

I think everyone is having that problem.

There have been three significant studies undertaken over the past 10 years to determine the costs incurred by non-resident parents in meeting the contact needs of their children. There is Henman and Mitchell, the overall determination of the costs of children, and McHugh and Lovering. These studies employed the budget standards method in deriving costs for both circumstances. The budget standards method utilises both nominative and behavioural factors to develop the costing data. There have been other studies that have looked at the cost of children in differing households and configurations using an equivalent scale. There has been heavy criticism about the budget standards method from the perspective of it relying too heavily on judgemental considerations. Nonetheless, it has become an important input into the policy formulation due to its inherent strength of transparency and focus on a needs basis rather than a wants basis to establish financial criteria to obtain certain standards of living.

I think everyone would agree that the single biggest issue with child support obligations is the relevancy of the child support numbers to actual costs. I would suggest that there would probably be more complaints lodged with politicians about CSA than any other legislation in our recent history. The concerns with the costs of children data are really significant. Both the budget standards approach and the equivalent scale approach do not necessarily reflect the behavioural changes between two people prior to children and two people after the arrival of children. This has led to the perception that equivalent scales overestimate the costs of children to households. Life changes are made to suit the circumstances. For example, a childless couple may eat out at a moderately expensive restaurant before children. After children, they may go to McDonald's or eat takeaway. Similarly, with holidays they may stay in a five-star hotel before children, and afterwards they may go camping.

To take a purely economic approach, underpinned by the assumption that the standard of living as measured by expenditures by the parents on adult goods prior to the arrival of children must be preserved after the arrival of children, is totally invalid. This thinking can be extended to parents after separation. Clearly, after separation the spending behaviours of both the resident and non-resident parent will change. Again, the degree to which the resident and non-resident parent substitute, compromise and capitalise on their respective positions via behavioural change has never been fully assessed. These behavioural changes have a direct

bearing on the true costs of children, directly impacting social security policy formulation. Again, it is totally invalid to assume that the standard of living as defined by the previous intact household must be maintained.

We also confuse costs and expenditures. Costs are what a child needs to fully engage in contemporary Australian society, below which the child may be disadvantaged according to established societal norms. Expenditures are what the parents elect to spend on their children, based on their values and aspirations. Private lessons in classical piano are not a cost; they are a discretionary expenditure. As I said before, there is a lack of data to allow the modelling of costs. Henman and Mitchell, both respected social policy analysts, have placed on the record:

> Our estimates ... are not derived from survey data on how much non-resident parents actually spend on contact. (To our knowledge no representative data of this kind exists anywhere in the world.)

There is no research into the costs of children in separated families; it is all done on intact families. There is no research into the fact that both parents have fixed costs if each is to maintain a household. They also have a variable cost in the middle, which is the time that the child spends with them. There is no research which includes government contributions to family income. To ignore these moneys gives a false impression as to the amount of goods that can be bought from the family income that is earned.

We believe that there is a complete lack of credibility in the data that is being proposed. Despite the attention to clever formulae for differing family configurations, it is a situation of: if you put rubbish in you will get rubbish out. Any sensible approach to child support must start with a properly designed data-gathering exercise focusing on both costs and associated behaviours. I have here with me a graph which the committee might like to have a look at. It shows the anomalies in the formula that has been proposed. The graph shows a step change in the cost of children at 13 years. As you look at the graph, you will see that the top line is for one child of 13 years. When the parent gets to an income of $32,000 up to $45,000 there is a 40 per cent increase. After the child is 12 years old and 364 days, overnight, his or her cost goes up by 40 per cent. Somewhere in the data that is presented, that is an anomaly, and anomalies like that should not exist in properly prepared data.

CHAIR—Can I ask where those figures come from.

Mrs Price—We did an analysis on the incomes and what happens all the way through from these costs of children data. We believe another very serious issue is the interaction of the CSA reductions and the reductions in family tax benefit A and B to paying parents who do not have more than 127 nights. It is a situation of giving with one hand and taking with the other, unfortunately. A non-custodial parent who is earning $30,000 with one child under 13 whom they only see for 51 nights, he or she will save $653 in child support but they will lose $603 in family tax benefit A, giving them a net saving over the year of $50. A non-custodial parent earning $40,000 with one child over 13 whom they see for 51 nights will pay $634 more in child support and they will also lose $745 in family tax benefit A. So they have a net loss of $1,379. This tends to be what happens with the lower income people and with all income people who have 13-plus age children whom they do not see very often. They will be paying quite a considerable amount more.

We also have a problem with the set levels that we have. At the moment under our current act we have a bar of 109 nights before payment is reduced by about a third. The new bar is going to be 51 nights. After this the payments will reduce by 24 per cent. We believe this will cause a decrease in contact. We have enough trouble now with fathers trying to get contact over the 109 nights. If it is reduced down to 51 nights before there is a reduction in child support, you will see people trying to stop contact at 51 nights rather than go up to 52 or over.

The next level under the existing formula is shared care at 146 nights. That gives about a 50 per cent reduction in payments. The new formula is going to be based on exactly half the 365 nights—that is, 182 nights. It means that those with 146 nights will no longer be regarded as a shared-care parent. There will be a 146 to 365. These are parents who struggle, possibly spending thousands of dollars and plenty of heartache gaining shared parenting orders. They will suddenly find themselves relegated to something less in the child's life.

I move on now to the Social Security Appeals Tribunal and appeals. We are concerned about the use of the Social Security Appeals Tribunal because it is used to adjudicate disputes between a government department and citizens. Child support disputes are not disputes between a government department and citizens; they are disputes between two parents. I do not see how the Social Security Appeals Tribunal can be described as an independent body. I would object strongly to a social security appeals hearing being initiated by telephone. I think that, unfortunately, they operate under a lack of rules of evidence. To give oral decisions is just

unthinkable. To be able to appeal to a court only on an error of law makes it extremely difficult to determine and seems to limit the full right of review of a court as specified in Luton v Lessels. One judge, Justice Glass, in Azzopardi found that, even though the finding of the court was perverse—that it was contrary to the overwhelming weight of evidence; that it was against all the evidence; that it ignored the probity forces of the evidence, which was all one way; or that no reasonable person could have made it—it still did not amount to an error at law. These are the problems that people are going to have. They say that this will be a cheaper option. It will not be cheaper because people will not understand it. They will not be able to take it to an appeal.

There are other issues, obviously. There is the fee of $6 per family for unemployed people. I think that is pretty tough on them. They get $210 in social security money. If we take $12 off them, what does that say about their contact with their own children. That might be the money that they are using to have contact with their own children. One of the things that probably annoys us most is this 40 per cent only paying the minimal amount. There is a great deal of hoo-ha made about this. A lot of people use it to demean fathers. But they have to realise that it is actually an accumulation of people who are in a lower socioeconomic bracket who have moved into child support over the years. You suddenly have a 40 per cent accumulation. There is no magical event that happens once a separation takes place that means a long-term unemployed person is suddenly going to go out, find a job and work. It just does not happen that way. Of course, a lot of those 40 per cent are people who have married for a second time. They are on a low income and they have a high exempt income because of the subsequent children that they have. So they are not able to pay a great deal. We make a lot of fuss about this 40 per cent who are supposedly only paying the minimum amount of child support. They are not able to pay anymore.

We have one last issue, which we have been having difficulty with over the last couple of years, to do with children getting to 16 or 17 years old. We have the government telling us that our kids should be going into apprenticeships instead of perhaps going to university. So we have children going into apprenticeships at the age of 16 and they are bringing home $350 or $450 a week. They get pretty good money. But they still take child support. What is wrong with those children actually paying for the board themselves? Why should it fall back on the non-custodial parent to continue paying child support when the child is actually earning more than the basic youth allowance? I think that is something that needs to be corrected. That is my last point. I have probably said what I need to say in the short term. If I can help you by answering any questions, I am happy to try.

CHAIR—Thank you very much, Mrs Price. Given that you have had, as you pointed out, a limited period of time to prepare comments, you have covered quite a lot of ground, and we thank you for that. This legislation has been criticised from a number of points of view. It was criticised earlier today by the legal profession for being complex and difficult to understand. And I think you have made that point as well—with respect to that table on page 73, for example.

A number of women's groups have criticised the bill for effectively shifting income away from women and towards men. I am trying to work out how I would categorise the criticism that the Men's Rights Agency is making of it. I think you are joining the criticism that it is complex and unclear in some points. What is your view about that question of shifting financial outcomes to be more in favour of men? The National Centre for Social and Economic Modelling has suggested that the effect of this legislation will be that in a separated situation men will have slightly more income and women will have slightly less than they had before. Do you criticise the legislation for that phenomenon or for it not going far enough in providing better income outcomes for men? What is your take on this?

Mrs Price—I criticise it because they just have not done the work that I thought they were going to do. They have not done the research. Whilst you are concocting formulas on supposition and what you think might happen, you are not going to solve the problem. You are not going to make sure that children are looked after; you are not going to make sure that you are not taking too much off a father or not giving enough to a mother who is the resident parent. So you have to do the research in the first place to find out what should be the proper level of child support.

I would remind the committee that, in our opinion, our Child Support Scheme goes way beyond the bounds of where it should be. The government obviously gives a safety net amount. When parents do not have a job they get about $80 per week for a child under 13 and $90 for a child over 13. Professor Parkinson has said on two occasions, in public, that the $80 a week for a child under 13 is sufficient to raise the child. It is not supposed to enable them to go out and have a ball every night. It is a minimal amount. It is a safety net

amount. We really feel that the government should not really be seeking any more than that from non-custodial parents or from parents. That should be the level that is taken into account, and then anything over and above that should be left to the discretion of the parents.

You would take away a lot of the angst if you got rid of these enormous amounts of money that are taken from non-custodial parents' incomes. They have been high and they are high. We know that anecdotally from the people that we have dealt with. They are having a very tough time. I do not think these changes are correct. Certainly in some situations, where the mother is now going to retain the full family tax benefit, she is actually not going to lose anything at all.

CHAIR—Are you saying that the changes, in that sense, do not go far enough in shifting the—

Mrs Price—I do not think they are correct. In some ways they go perhaps a little too far in one way and in other ways they do not go far enough. When we have anomalies like that 40 per cent increase, or where someone who is supposed to be paying a little less is actually going to be losing $1,300 a year, it is not correct. It is obviously not working; the formula is not correct, because it has not been based on the actual costs of raising children in a separated family. That is what we really need to turn our investigation towards.

CHAIR—You have made reference to this problem of the lower bar for contact, and you point out that because the threshold at which a non-custodial parent will not get any benefit in terms of adjustments for child support has been set at 109 nights per annum, a lot of custodial parents will be giving access for 108 nights; they will not let them go beyond the 109 nights.

Mrs Price—That is what happens currently, yes.

CHAIR—How do you fix that problem? Men have been complaining for some time that the periods in which they have care and control of the child are not being taken into account. If this effectively allows that more to be the case, how do you avoid the problem that you have raised?

Mrs Price—I think you have to go back to doing absolutely pro rata—if you have the child for one or two nights, that is the amount of money that you share. It alleviates any false expectation that if you do not give contact for over 52 nights you are going to gain by that. If you can remove that gain, or that impression of gain, then you should solve the problem. People will come to understand that whether you have one night or you have 10 nights or you have 100 nights that money is going to shared according to who has the child, because it is the child's money. That was one thing that Larry Anthony had right when he was the minister of family services. He changed the family tax benefit to being a shared family tax benefit because, as he said, that money should go with the child, not with the parent. It goes with the child.

CHAIR—Another issue that has been raised in these hearings is the failure of the system as proposed, or even at the moment, to capture the value of unpaid child care in a separated family situation. A custodial parent, typically a mother, will of course provide a great deal of time as a child carer and that is not factored into the equation. It is not offset against the financial contribution that the father may make in that arrangement. What do you say to that?

Mrs Price—I do not think you can bring that sort of issue into this. We are talking about child support. We are talking about support for the child, not support for the mother while she is caring for the child instead of being out working. I think the government is changing policy and expecting that mums can go out and do some work. It is a little difficult for mums who have a large family of a young age, and I am not quite sure whether that is really what we want as a society. It would seem that we are causing a lot of distress to people when they come home—when they are latchkey kids and do not have a parent at home to greet them. So I am in two minds on that. But I do not think you can start turning the value of care for the children into a child support issue. You have to keep that separate. If that has to go into a Family Court issue, into a spousal maintenance issue, that is probably where it better belongs than in child support.

Senator MOORE—I know you have not had a chance to look at the *Hansard* from last week, but we had the Australian Institute of Family Studies appear before the committee. A number of the people who were appearing in that capacity had been on the original review and were continuing in the capacity of advisers on what is going to happen next. We asked some questions about the data on which decisions had been made, and the witnesses referred extensively to research that they and other people had done about the cost of raising children in all circumstances, including separated households. I was wondering whether you or your organisation—and I know you do a lot of the work for the organisation—had been in contact with them to discuss the kind of research that they quoted to us as being the basis of their deliberations.

Mrs Price—No, we have not. I was not aware that there was any other research. There were about five studies included in the Parkinson report which the task force said they had referred to and based their information on. We have obviously looked at those studies, but I am not aware of any other studies that there might have been.

Senator MOORE—I think they were the ones that they were mentioning, but they were also talking about ongoing research they were doing on the very issues you have raised—research about the actual costs of raising children. As you know, that has been a huge point of debate through the evolution of this legislation.

Mrs Price—We have tried to access data on that through the HILDA data set and it actually is not there. They do not have a flag or a marker to give us the information we need about separated and divorced families. It would be a simple matter to fix with the ABS figures—with their budgets and the figures that they put out—if we had some flags put in there to say: 'This person is separated. This is a separated dad. This is a separated mum. This person had remarried. This person has stepchildren'—that sort of thing. Then you would have the data there to say, 'Okay, this is what they are spending in their family's circumstances.' There is no data at the moment.

Senator MOORE—I know that your organisation has been submitting regularly to this kind of process, and we do understand the limitations on this one, but we would find it useful—if not immediately, when you have the opportunity—if you could tell us the kinds of costs and issues that you think should be taken into account. You have mentioned some of them verbally but it would be useful if you could, with the experience and the perspective you bring to the discussion, give us some information about what should be being considered in terms of perhaps looking at further research down the track.

As I think we have stressed consistently through this discussion, this is not an end point in the ongoing evolution of this legislation and the way this is going to be handled. I certainly do not think any legislation can respond perfectly to this set of circumstances but I think we can continue to learn through the process. Specifically on the issue of the costs, which I know is of great importance to your area—and I will be asking other witnesses exactly the same question—you have identified in your evidence today that there is a gap in the data set. If you could tell us what you think it is then you will be feeding it in, but we will also be feeding it in to see whether that can be picked up.

Mrs Price—We can probably do that fairly quickly.

Senator MOORE—That would be great.

Mrs Price—We have been working on it for the last six months.

Senator MOORE—For a long time, I know.

Mrs Price—We do have a proposal almost ready to go to family services to look for some renewed research into these types of areas. We have done quite a lot of work and established what is and what is not being done. Family services have told us where the gaps are and where we might start to focus.

Senator MOORE—We would find that very useful. Do you work with AIFS?

Mrs Price—Only from an outsider's point of view, I suppose.

Senator MOORE—In terms of your interest and future activity, we got the impression clearly on Friday that they were very open to having people contact them and talk about these areas. Maybe that would be a direct line—and, if they do not want it, they will tell you—in terms of process. Professor Hayes and Dr Gray were talking about those things. If we could go forward with that, that would be useful.

Mrs Price—We can certainly make contact; that is not a problem. It is a good idea.

Senator SIEWERT—I want to follow up where we left off. If you are not happy with the current formula and the formula in the legislation, where do you suggest we go with it? Given that we are still expanding the data and the research, what would you like to see in this legislation?

Mrs Price—In essence, I would like to see an actual figure put on the cost of raising the child at a certain age. We are talking basics; we are not talking excessive costs. That figure is divided between the parents. Both are responsible for supplying that. If one of the parents is not working then of course it is going to fall back on the taxpayer to keep that money there. There is research that shows that if fathers in particular are not pushed but they have good contact with their children, they are more than generous. If the basic needs are taken care of, they will make sure that their children are not going without. There may be one or two that do not, and

some process can be put into place to make sure that they do. But the majority of them will look after their children without this enormous overburdening of child support on top of them.

That is what I would like to see. But it is probably not going to happen. So, being realistic, I think you have to start from the point of view of what the actual costs are of the children in separated families, taking into account also that the father has a cost to put a roof over his head and make it suitable for the children to stay with him and that the mother has costs. And those costs—the transport costs and the costs of putting a roof over the head—are probably going to be pretty comparable. But in the middle you have the variable costs, the costs of the children, which depend on whether the children are with dad or mum for two, three or four nights a week.

Both parents have to be able to support their children, and the children have to be supported properly. There is no argument about that whatsoever, but we have to find the best way to do it that does not cripple people and does not cause huge numbers of people to take their own lives. When they finally released some figures about the deaths relating to child support, it was 4,100 in, I think, 2003, and that is double the level in the normal community in those age groups. These are perfectly healthy parents who are supposedly in the prime of their lives and they are dropping off like flies, for various reasons. We have to find a solution to that.

Senator SIEWERT—Coming back to the issue of unpaid care, particularly in a situation where one parent has more of the residential care than the other, do you see that the residential parent would have more costs for unpaid care in needing to provide child care et cetera to enable them to work, particularly if they have to work extended hours or in jobs that require them to work out of normal office hours, where it is easier to get care et cetera? How do you see that being factored into the equation? Isn't that a cost of child support?

Mrs Price—I do not believe it is. As I said, I think we are dealing purely with what it costs to raise a child. We are not talking about a surreptitious form of spousal maintenance, so that the person who is caring for the child can stay at home and look after the child. I think we have to be realistic. We have gone on for so long now where families have separated and one or the other parent has gone off with the children and then decided to stop work. A lot of people we know of who actually stop work when they leave with the children. They virtually say, 'Now I'm on my own, I can't work because I need to look after the children.' But they leave behind a perfectly good parent who is happy to provide care with them so that they could do whatever they had to do to survive in this world—one going out to work or both going out to work. That is becoming a reality in this life. We do not have the luxury of saying to mum: 'You can stay at home now.' Very few families are able to do that now. I think we have to start looking at the realism of the situation, and I do not see that as being part of child support.

CHAIR—Thank you very much for your time today and for the submission you have given to us. We appreciate that you have provided that all in a fairly short period of time. It has not been easy to do that, so we thank you for it.

[11.23 am]

McINNES, Dr Elspeth, Convenor, National Council of Single Mothers and their Children Inc

TAYLOR, Ms Jacqueline Sharon, Executive Officer, National Council of Single Mothers and their Children Inc

CHAIR—Welcome. I think you have both appeared before in parliamentary inquiries so you know the drill as far as the protection of witnesses is concerned and parliamentary privilege. I remind you that we have the capacity to take evidence confidentially. If you want to give evidence in camera, let us know that you have evidence of that kind and we will be happy to consider accommodating that request. We heard from the Victorian branch of the national council in Melbourne last week and we have the submission you have supplied to us. We would be happy to ask you questions about that, but we would like to invite you to start with an opening statement.

Dr McInnes—Thank you. I will lead off and my colleague will follow. We have raised concerns about the issue of unpaid care provision. As we have heard from previous evidence, in current social arrangements women tend to provide the majority of unpaid care. It costs money to provide unpaid care; it is just not a cash expenditure. It is certainly a cash cost in forgone earnings and opportunities for earnings development that the person who is not in the workforce or only partially in the workforce has incurred as a result of their unpaid care work for dependent children.

When we are talking about unpaid care provision we are also talking about children as newborns. We really do not have the child care, the capacity or the social infrastructure to enable anything else to happen with little babies, other than that there be quite a lot of unpaid care input from parents. As I stated before, the data clearly tell us that within Australia it is women who do that. In the situation of a couple that cost is of course shared across the couple, and it is quite often a trade-off between them where one will emphasise earning and the other will emphasise unpaid caring. But at separation it is the person left with the unpaid care role who has to limit and forgo their earnings and also has to share their income with more people in the household. So we are arguing that there is a gender bias in the formula in that it does not take into account the non-cash cost of unpaid care work, which nevertheless is fundamental to raising children. Children will not survive without it, and by not recognising that we are basically (a) devaluing it and (b) treating that work as less than significant.

The second point we want to make is that this scheme will on the government’s own estimates result in 60 per cent of children of separated parents having less money to live on in the household in which they are primarily resident. There is an argument that says that the other parent will have more money in their pocket to spend on the children, but if they see the child only one night a week the opportunities to spend money on that child are limited. There is also the assumption that, if the care of the child is divided between households, the costs will be divided between households. Another major flaw in this legislation and in the existing regime is that there is no cost-sharing process which means that if we have 50 per cent care of a child, for example, that 50 per cent of education costs will be held in each household. We could apply the same to health costs, clothing costs or any other kind of non-consumable infrastructure cost that is over and above that day-to-day food and transport needs of the child.

When that child is visiting a parent or is partly resident with a parent, obviously that parent will meet, hopefully, the minute-to-minute costs of feeding them and giving them a bed to sleep in. But there is no requirement, no process; it is absolutely left open that that parent has no requirement to that child’s ongoing costs for the wider infrastructure costs. That has been left open. One of the things that really concerns us is that children are in the middle of what could become a ‘stand-off at the OK Corral’. We have this attitude come out anyway where parents say: ‘I’ve paid my child support. You buy the child a birthday present out of the child support; I’ve done my bit. I’ve paid child support and I’ve done my bit around the child’s camp costs,’ or around extra lessons with their music, for example. So already that ‘who is going to pay for what’ is present, particularly when children are split across households.

Under the new family law system we have to halve the care of children wherever possible across households. That will mean that they stand increased risks of not having their costs met in one, either or both households. Another little quirk in here is that children with disabilities are overrepresented in the child support population and the children of separated parents population. They have even higher medical costs and even higher chronic risk factors. They are a particularly vulnerable group that will be left out to dry at the

medical and chronic illness end, because quite often one of the reasons the marriage ends in the first place is the stress, cost, anxiety and burden of having a child with a disability to care for.

The Child Support Scheme was set up with the avowed intention that children should share in their parents' prosperity according to their means. That is being undermined by this bill. The previous legislation said that wealthier parents should have the biggest rewards. In this formulation, for 0-12 of the dependency, two-thirds is going to have less income and support from the parents. We have heard the argument that because there are less cash expenditures on young children it has happily—or unhappily, for us—erased the costs of unpaid care provision, which is the major cost when a child is young.

If you had to actually pay someone to provide every hour of unpaid care, you would quickly find that children were unaffordable in cash terms. And yet we are raising the cost of providing that care. We know that on current figures 15 per cent of children in Australia live in poverty and that children in single-parent families are at highest risk of poverty. What we are doing is creating deliberately more opportunities for more child poverty in Australia—more incidence, more depth and more duration. We are also, of course, creating a greater reliance on cost sharing between households—a point I have already addressed—which is not being put anywhere in the formula and will leave children very vulnerable.

Ms Taylor—We are also very concerned about the 24 per cent discount for one night a week's care—14 per cent to 34 per cent. We feel that that is disproportionate, particularly at the lower end. The other thing we are concerned about is that it brings in that financial incentive at an even lower level. So there seems to us to be an assumption that having contact with your children, whether it is because you actually want to have contact with them or because you get a discount, is a good thing; whereas we would argue that a purely financial incentive alone is not necessarily a good reason for contact. We have certainly had calls from single mothers expressing concern, having been approached by the non-resident parent who has not previously sought contact but now is because of the opportunity for the discount.

The other thing we would like to comment on is the enforcement measures. We note that they are much more vague than the changes to the formula in the legislation. They were not in the terms of reference. We think it is interesting and we are obviously concerned from our perspective. Greater enforcement would be something we would welcome, but we still have concerns as to how that will be applied, particularly in light of the changes to the capacity to earn provision, and what that will mean for self-employment. We are concerned that it will make it easier for non-resident parents to opt for self-employment and not come under the old rulings on capacity to earn. So they make a choice where they could earn more money to support their children if they have third-party employment.

We are also concerned because, although this legislation is supporting the ideal of shared parenting, as the changes to the Family Law Act have, the reality, if you look at who does what in a couple before they separate, is that it is still highly gendered. We find that when court orders or parenting plans are set out, they tend to follow the pattern of the payer's employment. And, most usually, he is in work and she has been looking after the children. That means that her opportunities to seek earnings through the labour market are left to fit into what is left over, because the plans have already put in place for the non-resident parent, who is in employment. So there is a gender bias there.

There is also Canadian research, longitudinal data, available which shows, where fifty-fifty court orders have been handed down, that, over time, contact has eroded more to a sole custody arrangement, usually with the mother. So one of the concerns is that this legislation relies on parenting plans, court orders et cetera to determine levels of care. We are concerned about what that will mean if that care does not pan out. We understand that there is a provision for payees to initiate change but, once again, the emphasis is on the payee having the emotional and financial resources to do that. I know, from all the women I speak to, that one of the last things they are willing to do is, as they would say, rock the boat with regard to child support. They do not think it is worth the grief of the payback they will receive. That is an overwhelming concern that I hear every day. So we are very concerned about that.

The last thing I would like to mention is the impact of Welfare to Work. In this report, which was primarily done prior to Welfare to Work being handed down, Professor Parkinson makes the comment that he does not believe Welfare to Work will have a serious impact on these recommendations. We would have to differ. Welfare to Work is seeing a reduction in income to sole parents when the youngest child turns eight. It is putting in new requirements for them to seek and undertake paid work, regardless of whether or not that suits their children's needs.

The calculations in this report are all based on the resident parent being on PPS. The reality now is that the resident parent will be on Newstart once the youngest child turns eight. That is a very different payment scheme; it cuts out much earlier. You go off the benefit completely at a much lower rate and you lose your pensioner concession card, and yet all those concessions have been factored into these formulas. So that is a really big concern and we would argue quite strongly that the impact of Welfare to Work needs to be factored into this legislation because it will make a huge difference. The combination of the changes to Welfare to Work and this will mean far less income into the resident parent's house.

Dr McInnes—Could I just quickly add regarding Welfare to Work that we have given a little space in our submission to this issue of principal carer designation, which is particularly alarming because with one child only one parent can have principal carer status. We can have a situation where we have a 'half' child in each house—a 50 per cent and 50 per cent half child arrangement—and both parents are claiming benefit, which is not an usual scenario. Separations are very disruptive of working patterns and we know that people on income support are more likely to separate and have shorter periods of partnering. But when they separate and the child gets halved across them, one parent will be the principal carer and one will not.

The one who is not will have none of the principal carer protections in the Welfare to Work system, none of the limitations on reduced requirements to look for work, none of the protections on net earnings from work and none of the protections around: 'You don't have to get work if you can't get suitable child care.' We have had mothers of under-one-year-olds who have got half children ordered by the courts who are not the principal carer and who are treated like any other Newstart allowee in the system. The expectation on them is: 'You will look for work. You will comply with all the requirements and if you don't you face an eight week non-payment period. We are not interested in issues such as whether you have child care.' That is not part of the arrangements for people who have half children and who are not principal carers. We are creating a disaster out there in that policy regime under family law and Welfare to Work, and then factor in on top of that the loss of income involved in the child support changes. We are going to see some of those half children in very, very dire circumstances.

CHAIR—Thank you for those opening statements.

Senator MOORE—I always have great difficulty in the concept of a half child.

Dr McInnes—We all do.

Senator MOORE—I know that you were on the review and, as I understand it, your organisation continues to have a role in the advisory group that will have a monitoring and evaluation role in what is going to happen next. Is that right?

Dr McInnes—We have not been advised that we will. We were a member of the community reference group, so we were not privy to the putting together of the recommendations but, rather, were present at show and tell sessions of particular bits that they had generated and wanted our opinion or feedback on. I would not see it as a genuine informed consultative process and we have not had any formal invitation, indication or description of process that would enable us to be a realistic part of any monitoring and evaluation.

Senator MOORE—At this stage.

Dr McInnes—At this stage. We have been given some funds, as have other organisations represented on that task force, to publicise and inform the population about the changes as they occur.

Senator MOORE—One of my key interests, and you would have picked it up in previous questioning, is what is going to happen next. We have had an evolving circumstance which, in principle, will not please everybody, but we have to see what happens next and effectively monitor and evaluate. As at this stage I am trying to clarify with every witness, and will continue to do so, what happens next. You were on the advisory committee and that was widely published. You had a role there. But, in terms of what happens next, there has been no formal understanding of where it goes?

Dr McInnes—No. In fact, we are pushing for monitoring overall, obviously, but particularly of the issue, for example, of children with disabilities in the system. There are flashpoints of crisis vulnerability where people will go into terrible circumstances quietly and invisibly.

Senator MOORE—Were those issues raised during the advisory process, Dr McInnes?

Dr McInnes—No, they were not. As I understand it, NATSEM, the economists and modellers, worked up their figures, showed us bits of the report and got our reactions to various ideas. We were reflecting back our

opinion as a representative consumer organisation on various ideas presented to us, rather than having an informed, fully participatory role in the development of the report.

Senator MOORE—Did you raise with the department the concerns that you are sharing with us now?

Dr McInnes—We raised our concerns right through. However, we were outnumbered: there were only two women's organisations and there were, I think, four organisations representing the interests of men, or shared parenting groups, on the task force. So in no sense was it any kind of democratic process; it was simply about us being there and reacting.

Senator MOORE—So your particular concern is that you do not see that as a formal advisory process with genuine participation and consultation. Did you raise that with them at the time?

Dr McInnes—We accepted that we were being located in a particular way.

Senator MOORE—Okay. I just want to be clear that when we raise it with them it is not a surprise.

Dr McInnes—We agreed to be on that group, but that was the only option offered—and it was certainly not fully informed.

Senator MOORE—I am sure that other senators will ask more questions about that. You quoted a figure that 60 per cent of families and children would be negatively affected by these changes. What is the basis of that assessment? Where does the 60 per cent come from?

Dr McInnes—It came from a statement uttered to the press by Professor Parkinson on the day of the report in Parliament House, during a press conference. It was said in my hearing—I was very interested in what he had to say—and it was later reported in various newspapers. But it does pick up a point: once you take out the small percentage of high-income earners and you cut the support for their children, if you take two-thirds of the period of a child's dependency, from zero to 18, and apply a lower formula, you are starting to approach the 60 per cent idea. I would make the point too that, between 14 per cent for the younger age group and 21 per cent for the older age group, there is 18 per cent in the middle—a figure that pretty well addressed an across-the-board average and would have been a much simpler thing to apply.

I have to agree that we are getting far more complexity in this system, and one of the things we are already finding is that Centrelink, which has to administer a lot of this, is drowning in complexity. When you go through how things are applied, there is a great deal of confusion at the coalface, at the bureaucracy face and at the legislation and implementation face around how all of these things interact. The change is not well understood by any of the levels of people who are supposed to be implementing it, let alone the poor people in the community who are subject to it.

Senator MOORE—So how are you going to use the funding that you have received to advise people of how it is operating and so on?

Dr McInnes—I will hand over to Jac.

Senator MOORE—It just seems to me that it is one of the major things you have put in your submission and put forward in various public processes around this whole change. You have raised the issues you have raised with us today—yet my understanding of the funding the organisation has received is that it is specifically for you to go out and help people understand the change. How are you going to do that?

Ms Taylor—We are going to do it in a variety of ways, including having a 1300 phone number and a website email facility. We will also be doing information sessions which will be aimed at single mothers as well as workers in the community who would have interactions with single mothers. One of the reasons we have accepted the funding is that we do feel it is really important that single mothers have the opportunity to understand these changes as fully, completely and accurately as possible. For example, when the first lot of legislation went through to reduce the cap of the non-resident payer, women got three days notice and the letter they got did not say that they could apply for a change of assessment if something like private schooling had been agreed to during the marriage. That was something that was in the report as a recommendation with regard to some of the difficulties that reduction would make. They were not advised of that in the official notification from the Child Support Agency. That is one reason why groups like ours need to be involved: to ensure that we can explain to women what their rights actually are.

Dr McInnes—And to feed back to the Child Support Agency that, firstly, giving people more notice and information before you change their income by potentially thousands per month would be useful, courteous and reasonable to expect in public administration and, secondly, one should also have full information about one's options to respond to that circumstance. That was not done either, which, again, is illustrative of some of

the struggles that the bureaucratic system is having in administering the increased complexity and the pace of change and in fully disseminating the information at that level. We find when we talk to people about the change of assessment that we get blank looks and then they have to go and find out about it.

Senator MOORE—Does this funding continue to the next stage of implementation as well?

Ms Taylor—At the moment the funding is to 30 June next year. There is a process of renewal subject to satisfactory performance, but we only have guaranteed funding to 30 June.

Senator MOORE—Do you have a relationship with CSA and regularly go and talk to them about the concerns raised?

Ms Taylor—We do have a relationship. Of recent times there have been fewer meetings. There used to be a quarterly registrar's advisory panel, but that has not been meeting quarterly.

Senator MOORE—What about a relationship with the director of CSA where you talk through these kinds of things?

Ms Taylor—I think we have a better relationship with the child support branch of FaCSIA than we do with the Child Support Agency.

Senator MOORE—I will leave other people to talk about Welfare to Work, but I think you would understand that we have particular concerns about the impact of Welfare to Work. I refer you to the hearing we had in Melbourne on Friday, where we asked AIFS about their role in Welfare to Work and in carving up the figures and so on. I refer to that to because we all share that concern, but I am sure other people want to ask questions about that. I want to ask a possibly dopey question. We heard this morning from the lone fathers group, who were also sitting on the advisory group. They talked about their concerns about where it was going to go next and about relationships with process.

We have now heard from you, and you have different concerns, but there are key issues about what is happening now and where it is going to go next. Are there any kind of joint meetings between your group and the lone fathers to see whether there is common ground on these concerns and whether you can move forward on these things? I did not ask the lone fathers because I had not heard from your area but I see them sitting here so I put that question on notice to them as well. Is there an arrangement where your organisation and their organisation meet in some way to say: 'These are our concerns with what is happening. How are we going to work through these?'

Dr McInnes—We do share various consultative arenas, such as the registrar's advisory panel meetings at the Child Support Agency.

Senator MOORE—Where you are all sitting around a big table?

Dr McInnes—There would be delegates and, for instance, the advisory group sitting in reference to the task force. So there are opportunities within the public process to air our different views. Our reading of many of the things that they produce is that they are wildly inaccurate and so falsely constructed in many respects as to be meaningless in our terms.

Senator MOORE—And on that basis you do not see any value—

Dr McInnes—On that basis, where do you have a productive dialogue? For example, our argument that single parents and their children are the family type most at risk of poverty is absolutely unheard in their arguments of, 'Men need more money,' or, 'Payer parents should pay less.' So there is not a reconciliation of perspectives even around the facts. We tend to work from reputable research sources such as the Australian Bureau of Statistics and the Australian Institute of Family Studies. We tend to base our work around Australian statistics and research and also reputable research in the wider international arena, but we find that our perspectives are wildly different in the most part from those put forward by the lone fathers.

Senator MOORE—In any further evaluation processes, advisory groups or whatever, would you expect to have a role?

Dr McInnes—Yes, absolutely.

Senator MOORE—You want to have a role? We want to know what the role is.

Dr McInnes—We have a consumer group which is greatly affected by the changes, and democracy suggests they should have a voice.

Senator ADAMS—I would like to ask you about your organisation and the family relationship centres. Where do you see that role fitting in with you?

Dr McInnes—We are going to have a consultation tomorrow to discuss that with some people who are with a centre, as a matter of fact. We hear a lot from single mothers and their children around their experiences. We are getting reports from family relationship centres about women's concerns of domestic violence being dismissed—that they have been told to get over it or to be future focused; and these might be women who have escaped things like attacks with weapons. We are really concerned about how women's safety is playing out in these relationship centres, and what kinds of skills and training are being brought to families where there might be issues around people's safety. We have serious concerns from the reports that we get—and I would emphasise that we do not get phone calls from happy people; if you take the time to phone or to come and see us, there is a problem. We are getting a steady trickle of concerns that women experiencing violence are not having those violence concerns acknowledged, recognised or in any way being part of the consideration of the child's wellbeing. We have massive concerns about that. Obviously, we have to work out ways to productively find out about the practice and addressing of issues of safety for women and children.

Senator ADAMS—We have heard evidence that they are perhaps looked upon as a triage centre. Have you had anyone referred from there to your organisation?

Dr McInnes—No, we have not. They are not referring to us. We are going to see the one in Adelaide tomorrow, as I said, to start a dialogue. But we have had a number of reports from around Australia of extremely concerning practice on the women's reports; and it is about violence.

Senator SIEWERT—I would like to return to the issue of unpaid care. It has been raised a number of times. How would you incorporate it into the formula?

Dr McInnes—It was incorporated into the formula, under the differential income caps. That was the purpose of that, as I understand it, within the original framework. It was recognising that the person with primary residential care not only had a larger household to support from that income than the other parent but also had to maintain the infrastructure of care and make decisions around that care provision. Hence the differential recognised that the resident parent had those burdens of cost, so that when they did earn there was a mechanism which enabled them to keep more of their earnings to apply to their household than would otherwise have been the case.

So the flattening of the exempt income between households is, again, another way of erasing the differential. It is as if unpaid care does not exist. Of course, it does not exist, from a parent's perspective, if you can find someone else to do your unpaid care—perhaps a new woman with some children that she has already got to look after. From that perspective, it would not be an issue. Unless you were actually giving up your time, not working as many hours or restricting your earning activities, you would be starting to pick up some of that burden directly.

Senator SIEWERT—So you would go back to some sort of differential cap?

Dr McInnes—It was one way that worked to recognise it. And of course there is the new terrain—where we have exactly the same exempt income but he sees the child one night a week and she has it six nights a week. She organises her earning life entirely around the care of that three-year-old whereas he has to be available for a visit only one night a week and has all his earning capacity. He does not have to spend his money on anybody else—unless he chooses to—except the child that visits him one night a week. It is a fantasy that there is equal demand. Of course that would change if there were a fifty-fifty framework, which we can expect with the half children legislation that we have now.

Senator SIEWERT—On the issue of Welfare to Work, you have also talked about the differential cap going and the costs on households. We heard in Melbourne last week that there had not been any modelling done on the combination of this legislation and Welfare to Work.

Dr McInnes—That is correct.

Senator SIEWERT—That is your understanding?

Dr McInnes—Yes.

Senator SIEWERT—Have you done even any quick back-of-the-envelope calculations?

Dr McInnes—I have got a minimalist case study from last year that I based on those figures at that time, if you look at page 6 of the submission. I just punched the data into the ready calculator on the Child Support Agency's website. I had one six-year-old with mum on the PPS and dad earning $50,000 a year and having no

contact. The formula reduction from 18 per cent to 14 per cent would reduce his child support payment by $20 a week, and because she would recover a little under 50c in the dollar on FTB she would have a $10 a week cut, not $20, so she would have some cushioning there. If dad saw the child one night per week, counting in now the 24 per cent discount on child support, he would pocket around $50 a week—much more again—and mum would get back only $20 per week with the FTB changes, which enable her to keep FTB up to a division of care of 35 per cent.

So the dad is earning $50,000—that is average income. With him having the child one night a week, after that compensation the mum is losing $20 a week. Under Welfare to Work, if we bump the child's age up to eight years old and mum is now on Newstart, she has an instant loss of income of around $30 a week in the rate of payment. She used to have a clawback of 40c in the dollar on earnings. On Newstart, that goes up to 60c or 70c in the dollar on earnings, so she keeps much less of her earnings. Again, earnings depend on hours, but some of the modellers suggest it could be up to $100 a week if she was in paid work; she would have less money to spend. So it is $30 if you are not in paid work, $100 if you are in paid work and add on another $20 per week on top of that in child support losses. There we are looking at her being down by a minimum of $50 if she is not in paid work. If she is in paid work, we could bump that up to $120. You would appreciate that, because there are different rates for the different ages of children—different rates of earnings, different patterns of workforce participation—it is difficult to come up with a figure. But we are looking at compounded and cumulative costs here. So, for that woman, we are looking at $120 per week cash out of that household.

Senator SIEWERT—We will be following that one up with the department as well.

Dr McInnes—Good. Thank you.

Senator SIEWERT—On the issue of the 24 per cent reduction in child support payment for one night's care: when we had the Men's Rights Agency before us earlier they talked about the impact of reducing contact hours—the issue of 108 nights and 51 nights. How does that interact with the 24 per cent reduction for one night?

Dr McInnes—That is 14 per cent of care. You get 24 per cent off.

Senator SIEWERT—That then adds up to 51 nights a year, doesn't it? That is how that interacts there?

Dr McInnes—That is right, yes.

Senator SIEWERT—Okay. That has just clarified it in my mind.

Dr McInnes—And if they are a minimum payment parent then there will be no payment. So it is a 100 per cent reduction if they are a minimum payment parent and they see their child one night a week; they get to keep 100 per cent.

Senator SIEWERT—Okay. Thanks.

CHAIR—I have a couple of questions in the time we have left. You made comments about not factoring in the actual and opportunity costs of unpaid child care. It is a reasonable point to make, but it is also true to say that that concept has never been built into either family law or child support provisions in the last 30 years. You might argue that it should have been, but it is not the fault of this legislation that it has continued to not treat that particular factor as part of the formula for calculating family income. It would also, presumably, be extremely complex to do that. I do not know whether you would have a flat rate to assess, as the contribution that typically a mother would make to a family income, or whether you would have to keep a record of how much time the mother was spending with the child, or whatever it might be. It would be a very difficult concept to actually implement, wouldn't it?

Dr McInnes—Yes and no. I would challenge your assertion that it has not been recognised in legislation. As I went through with Senator Siewert, it was in the original legislation that was introduced in 1989-90 around that differential cap. From my recollection, understanding and reading of those documents, that was what it was supposed to recognise. So there was a mechanism there.

CHAIR—Was that actually legislated?

Dr McInnes—Yes.

Ms Taylor—It is the disregarded income for the payee, which is about $40,000 now, versus the exempt amount for the payer. That was to recognise the unpaid care work and the lost opportunity cost.

CHAIR—When was that taken out of the legislation?

Dr McInnes—It will be taken out in this legislation. This is what is going to do it. This provision will erase any recognition of unpaid care in the child support legislation, which is why we argue that it is gender biased against women who provide the majority of that care. Obviously, if men provided the majority of that unpaid care, it would be biased against men instead of towards them.

Another way of calculating it was mentioned. Obviously, there is time diary research that has been done by the Australian Bureau of Statistics and there would be averages around unpaid care work for children at different ages. There are also different categories of unpaid care work. There is intensive one-on-one, which might be reading a story to the child, changing a nappy or giving the child a bath, but there is also the context where you are simply home after school and you are cooking, supervising homework, writing a letter and doing lots of other things. You might even be doing some paperwork.

The intensive unpaid care is most strongly associated with little babies. It is in fact so costly that the number of long day care centre places for little babies is very small relatively in Australia. It is very costly to provide that care but, nevertheless, it does need to be provided. If we do not recognise it, we are in danger of creating a generation of children who have no or less access to unpaid parental care, with all the attendant woes that accompany that outcome. As we make it less valuable and require it less and require more workforce activity which does not take into account unpaid work, we are depriving children of access to the opportunities of unpaid direct parental care and, in sense, we are requiring that unpaid work to be delegated to other institutions, individuals or agencies.

CHAIR—My other question was around the point you make about the formula assuming that parents will apportion costs appropriately—that is, if one parent has a child for 30 per cent of the time they will meet 30 per cent of the costs. You say that that is a false assumption and that it does not follow. I think that is true, but men's representatives who have appeared before us have argued very strongly that the situation as it is presently constructed is inequitable towards them—and the Parkinson task force has confirmed that to some extent.

They argue that realigning income contributions or income assessments for the purposes of a separated family towards men gives them a great capacity to be able to spend on their children—a capacity that they do not have at the moment—and that how much they spend or a women spends in these circumstances is quite independent of the amount of time that the child might spend with either parent. The system really is not sophisticated enough to break down the expenditure amounts in that way unless you were to construct a system where, irrespective of how much time a child spent with a parent, you designated one parent as being the only parent that spends anything on the child other than their immediate needs for food or whatever.

Dr McInnes—That reflects the system that we have had. We have had a pattern of primary residential care mainly in one household. It has been part of the terrain, in a sense iterated by men saying, 'I've paid my child support. You buy the child's birthday present. Why should I?' I go back to the finding that it is unfair to men. Eighteen per cent of your income within a restricted band is certainly less than the average residential parent spends on their children. To restrict it to 18 per cent of your income would be a fine achievement.

To go back to your point about apportionment of costs, it is possible to do it through parental agreements. However, they are outside the child support system; they are in the family law system. I can see an argument that says: 'You and I will share the child 40-60. I will pay all the education costs out of my share and you can pay all of the music lessons out of your share.' So parents can come to those agreements. Of course, civil, respectful and honest parents will have that sort of arrangement. However, where you have high conflict, if you have a parent who is prepared to use violence against members of their family, they are already demonstrating a high level of disregard. We find in the research that we and others have undertaken that where you have violence, abuse and continuing conflict you also have a reluctance, an avoidance, a minimisation, a delay and a resistance to paying child support. Those things tend to go together.

Now that we are halving children as the norm in family law and we have a system of child support where we are going to apportion it across parents on half time, we are going to create a much increased risk of leaving children in the middle with both parents vacating those costs and no mechanism apart from their conscience, perhaps. When children are in a total residential parent household and their parent is not feeding them, the state child protection system can come in and say, 'You're not providing for that child adequately.' If they are not sending them to school it goes back to the parent who is in loco parentis. Once you have half-children, who knows who has that child? Who knows who is responsible for sending it to school or for buying its clothing? Nobody really has total responsibility. We have only half a child, so we can always point to the other parent and say, 'I bought school shoes last week. Why should I buy sandals?' So the child will have to

wear hot shoes in summer because one does not have the capacity to buy new shoes and the other one says, ‘Why should I? I pay child support.’ If they have a disability it is a much more serious matter than shoes.

We have created a different terrain through the combination of the family law legislation, this legislation and the Welfare to Work legislation. We have created a different space for families where we are going to have many more half-children. That is already coming out of the courts. A fairly standard arrangement, regardless of any concerns, is for half-children. There is no age limit on that either; they can be breastfeeding babies in half a household half of the time. The patterns of that are as wildly variable as families themselves. It is not necessarily a week about. It is not necessarily any particular pattern, so we cannot assume that in public policy either.

The other terrain where family law intersects with this is that now, under the new family law arrangements, parents can make a new agreement at any time without any requirement to register it. So we might have an arrangement of 50-50 and then we agree, because he has a job somewhere, that it is going to be 30-70. We can write that agreement between ourselves. There is no necessary connection back to any part of the system. Then we might change it again the following week because we can. We now do not have to register parental agreements. We can make them in our lunchtime, have no scrutiny and proceed on that basis. Previously they had to be registered or in court orders, so there was an official record of the latest applicable parenting agreement or plan or order. That is over. We now have a much more amorphous presentation of the latest parenting plan. They could be forged, postdated or predated. There is no control over how on paper the parental arrangements are to be determined, because if we go to court and get an order and then we sit down and make an agreement that supersedes the court order. So we have a lot of complexity coming into our public policy administration concerning separated families when you put those three pieces of legislation together. I think it is worth a whole-of-government inquiry into what is going to happen when these three things come together. Nobody has asked that question yet, and there are big risks for children and families.

Ms Taylor—With regard to your earlier comments about expenditure, the ministerial task force report, on page 155, does actually acknowledge that, when the child is substantially shared, the parent with the care of the child for the majority of the time incurs proportionally greater expenditure than the other parent on non-recurrent items. So there is actually an acknowledgement in this report that expenditure does not break away evenly.

CHAIR—I was not suggesting that it did. What I was suggesting was that the assumption that a non-residential parent will not spend necessarily on the child, merely because he—and it is typically he—does not have the child for as long as the residential parent, does not always follow. We have had a lot of men’s representatives who have argued strongly that the inequity, as they see it, in the present circumstances deprives them of the capacity to invest in their children’s needs and welfare to the extent that they would like. The proposed formula does not deal with that problem but it is very hard, unless you have one parent who is tasked with the responsibility of providing all of those basic needs. You suggested that the way that you might fix that problem is by that parent having custody of the child for the majority of the time. Whether that is a legitimate answer to the question is something that I suppose we will have to make an assessment about. We are out of time. I thank both of you for your time here today and for the submission you have presented to us.

[12.12 pm]

PARKINSON, Professor Patrick Newport, Private capacity

CHAIR—Welcome, Professor Parkinson. Your name has been very frequently mentioned in the last few days of hearings. I am very glad to see you appear in person before the inquiry. Do you have any comments to make on the capacity in which you appear?

Prof. Parkinson—I am a professor of law at the University of Sydney and former Chair of the Ministerial Taskforce on Child Support.

CHAIR—Thank you. I assume that you are familiar with the rules about parliamentary privilege and the protection of witnesses. I also remind you that we can take evidence in camera if you have a desire to present evidence of that kind. We have a submission from you and we would like to ask you some questions about that and about the many other comments and questions that have been raised with us in the course of the hearings. Before we do that, would you like to make an opening statement about any of the things that are in your submission or more broadly in this legislation?

Prof. Parkinson—I want to make the briefest statement and not to speak to the submission particularly at all. I am here to assist you in any way I can. This was a very difficult inquiry, as you can imagine. When the reference group first met, the mums groups basically took the position that child support could go up but it could not go down. The dads groups took the view that child support could go down but it could not go up. That has been the way in which child support policy has been debated for the last 15 years. The only answer to that is a principled one and that is to go back to the whole basis of the Child Support Scheme, which is the cost of children. That is what we have done. People may criticise the formula in various ways, but we made the best effort we could, starting from a position where we had no predetermined view whatsoever. We looked at all the evidence exhaustively over six months. We came up with the conclusion that the current system was broken and that it needed to be fixed, and here we are.

CHAIR—Let me throw some of the issues to you that people have thrown to us. The last witnesses, for example, put to us that the task force was ‘not a genuine informed consultative process’. What was the process that you used and how do you respond to that criticism?

Prof. Parkinson—The task force was deliberately set up so that the decision making was with the members of the task force, assisted by the reference group. The reference group had the major stakeholders; Jocelyn Newman, a former minister; and others who were of enormous assistance to us. The reason I asked for it to be set up that way was that we wanted those who were making the final decisions to be doing so on the basis of the evidence, without having to trade off in a political way all the different views.

The reference group met frequently and was extremely valuable to our process. Everything that we were thinking about, all the evidence that we found as we went through we put to the reference group. I have to say that Elspeth McInnes was a terrific member of that group; she brought great wisdom and learning to it, as did many of the other members of the group. There are various aspects of the policy that directly reflect the reference group conversations that we had. But, ultimately, it was clear from the start—and I think it was the only way we could work—that we on the task force made the decisions, without having any interest groups to represent and doing the best job we could on the evidence we had.

CHAIR—The last set of witnesses also raised issues about Welfare to Work and its interaction with this package and about the family law system and its interaction with this package. Given that some of these changes to Welfare to Work were in the process of being announced and legislated for at the time you were doing your work on the task force, do you feel that the outcome of the task force process, the recommendations in terms of adjustments to child support, adequately takes into account welfare to work issues and the general structure of the Family Law Act?

Prof. Parkinson—Certainly. If I may I will take Welfare to Work first, and then go on to the Family Law Act issues. We were very well aware of the government’s plans for Welfare to Work. They were inchoate plans at the time we were working through them but we worked in tandem with them as that policy emerged. One of the great benefits of having the task force at that time was that we were able to align policy across various areas: family law policy, Welfare to Work and child support. For example, on the definition of what it means to have the care of a child, in our recommendations we make suggestions about what Newstart with child should be and so on.

Were we aware of the fine detail of the Welfare to Work proposals? No. But I was able to meet with the Minister for Employment and Workplace Relations a few days before we finished our work and brief him personally on what we were doing. He was able to give me a briefing in general terms of the direction in which he was going. I saw no inconsistency between them. The reason is simply that the basis of the Child Support Scheme in this country and in many parts of the world is that you should contribute roughly the same proportion to the care of your children as you would do if you were living together. That was the basis on which John Fogarty made the recommendations back in 1988 and it is the basis of child support schemes around the world. So in a sense the level of support that government gives to parents from the public system is irrelevant to the issue of what the costs of raising children are and how best they can be shared between the mother and the father.

Obviously, though, we were aware of the context. We were doing modelling very carefully on the interrelationship between things like child support, FTB and Newstart to make sure that the outcomes we had were as fair as they could be. In our final decision, where we set the final formula, it was all of those different factors that we took into account.

Going briefly to the Family Law Act: I chair the Family Law Council, so I was in a good position to know what was happening in that area as well. Again, I think it was marvellous timing for this review that we were able to align policy between the Child Support Scheme and the family law system in a much better way than we had before. So, while I heard complaints of a disconnect, I think that what we have is a system that will work in harmony in a way that will be very effective because the systems have been designed at the same time.

CHAIR—I would like to clarify in particular the question of the net financial impact on residential parents, typically mothers, of these changes. The point was made, I think by the Australian Institute of Family Studies, and I think it was also made in the task force report, that the effect of these changes is to shift some income away from mothers into the hands of fathers but the loss of income for mothers is offset by the increase in government support, such as family tax benefit, over the past 10 years or so. Have I understood correctly what the task force is saying about that?

Prof. Parkinson—Absolutely. We began really with no preconceived views at all. We had an inkling from previous research that at the highest end the child support rates were too high. But what we discovered when we actually looked at all the figures was that the child support rates were too high across a lot of the spectrum. The simple reason why is that it is a fixed percentage. And so the more that one earns, the more one spends on one's kids but the less as a percentage of income that one spends on the kids; and because of the marginal tax rates, one does not have the same percentage of one's income to spend. So what we found was that it was simply too high across much of the spectrum.

Once we decided to have two age ranges, from nought to 12 and from 13 to 17, it meant that inevitably there would be less for younger children and more for the older children, and the net effect was that overall there will be a greater reduction in child support than an increase but there will be some cases where there will be an increase in child support. We were very concerned to offset that by ceasing to split the family tax benefit. So the primary carer will now receive all the family tax benefit under 35 per cent of care. The father may well be paying less child support, but that was, as we say, the fairest result we could reach on the evidence.

CHAIR—The question of unpaid child care has been raised with us. We have heard it asserted that that is not properly valued and that the contribution that, again, typically a female residential parent makes to the net income of a family needs to be properly valued by having that unpaid child care factored in. What is your response to that?

Prof. Parkinson—It is a very complex set of issues. We do value unpaid child care in the community and in the system. It is valued in the family law system in the sense that typically when a relationship breaks down, if they were married at least, you would see the primary carer getting 60 or 70 per cent of the assets. That is not an uncommon result. It is not fifty-fifty. The reason it is not fifty-fifty is that we recognise that there are opportunity costs for opportunities which have been lost. One parent may well have an ongoing career while the other may have interrupted their career and so on. That is the primary reason why we weight the property settlements very heavily in the favour of the primary carer. So it is taken into account there. It can be taken into account in spousal maintenance as well, although that is pretty uncommon in Australia now. So if you start taking it into account in child support, you have to really look at what it is that you are trying to do and why.

There are plenty of non-resident parents who would say: 'I'd love to have more time with my kids. I'd love to do more of the caring.' So you get into debates about family law and how to share the care of children after

separation. The basis of the child support policy has never been about trying to compensate for opportunity costs or unpaid costs; it has been about trying to share the paid costs as equitably as we can. If the carer is out of the workforce and is not in paid employment, so they are putting their energies into the care of the child at home, the consequence is that the non-resident parent will be paying most of the costs if not all of the costs of the child because, taking into account both the mother's and the father's income, the mother does not have any private income whereas the father does and therefore he is bearing all the costs of the child effectively. If they are both working then under the formula they are sharing that equitably and there is an allowance for childcare costs.

I am sorry that is a complex answer, but that is the situation: we have always based child support policy on the actual costs of children, and with a formula which takes into account the costs for both mothers and fathers you can deal with that as equitably as possible in the circumstances.

CHAIR—Thank you, Professor Parkinson. Senator Moore, any questions?

Senator MOORE—Professor Parkinson, I am really interested in this link between the changes that are happening under this part of the law and the Welfare to Work process. We spent a bit of time talking with the Australian Institute of Family Studies, AIFS, on Friday about that. I will let you know that it has been a couple of weeks since I read the Parkinson report again, but I cannot remember seeing anywhere in your report any comment about other changes that are happening to families, particularly sole parent families. I am happy to be contradicted on that, but I just cannot remember anything. I specifically asked AIFS about that, because they are the premier research group on family issues in the country and they were used in that way through your report. We asked them whether they had been involved in modelling the impact of other changes to income through the welfare processes and also whether they were looking at cross-government impact. It is very hard to look at any family in isolation. I know that your task with this report was to look specifically at child support and how it would work, but you cannot do that in isolation. I know you can try, but you are looking at the circumstances of one family.

So could you reaffirm that both your group and the advisory groups were able to look at your area while also being aware of the concurrent changes that were going to be happening in other forms of process, particularly for single parents—mostly women, because single parents are mostly women, but not only women. It could be a single father who was affected, but it seems that currently in Australia single parents are mostly women. Was it spelt out in your report that you were aware of these other changes? Was some modelling done on the financial impact of those changes, taking into account the fact that the only income for most of the parents who were at the lower bracket was a welfare payment, family tax payment and child support? Was the impact of a lower single parenting payment on the financial arrangements of families taken into account?

Prof. Parkinson—I understand your question entirely, and I agree with you entirely that all of these impacts are very important. Before I answer the specifics, I can say that I wrote to the Prime Minister just a couple of months ago saying that I thought it was very important to have some sort of systematic research modelling the impact of the Welfare to Work, child support and family law changes all at once—

Senator MOORE—All at once, yes.

Prof. Parkinson—and make sure that we can see as best we can what is happening to families. I could not agree with you more about that. I got a very positive response to my letter, saying that, yes, that was obviously what we should do. The changes came in on 1 July 2006; more will come in in 2007, more will come in in 2008. We have a golden opportunity here, through a cohort study, to see what is happening and to monitor all the impacts. That is going to be very complex because we do not know what the impacts of all these things will be on workforce participation. That is one of the major unknowns.

In the work that we did, no, we did not factor the Welfare to Work changes into the modelling in a financial sense. My answer to Senator Humphries was that we were aware of them. So they did not take us by surprise. We knew the rough direction in which the government was going and we were able to have some neutral input into that. But, at the end of the day, what the figures were telling us was that for families at the bottom end of the spectrum—about whom we should be the most concerned—the government support was really quite generous, particularly because family tax benefit is paid per child. So the economies of scale which are built into the child support system are not there in the FTB system. By the time you add in rent assistance, pharmaceutical allowance, telephone allowance and all these other things, all the evidence we had was that families were being really quite well supported. In fact, the levels of family payments were very high compared to other countries in the OECD.

Generally, we felt that the direction of government policy over 15 years had been very supportive indeed to families. The Welfare to Work changes have to be read in the light of that. Very roughly, there has been a real increase of 250 per cent in payments for children since 1988. It was quite hard to work out exactly what the figure is, but as a ballpark figure it is a real increase of around 250 per cent—

Senator MOORE—Across the whole community?

Prof. Parkinson—Yes.

Senator MOORE—So this is not one level of support; this is across the whole community?

Prof. Parkinson—Yes and no, because family tax benefit A is based on income and therefore focused on the lower socioeconomic groups.

CHAIR—Is that 250 per cent in real terms or simply in dollar terms?

Prof. Parkinson—In real terms. There was an increase between 1988 and 1995-96. It is hard to track because some of it was through the tax system and some of it was through the benefit system, but there were increases through those years. Then there have been really quite significant increases since 1996 in the family tax benefit—every budget sees it going up and so on. We found that the family tax benefit level now meets most or all of the cost of children in low-income families. So we have a very good safety net. It is in that context that we need to understand the Welfare to Work policies. They are not my policies; I make no comment on them. But they come in the context of quite a generous support for families. Of course, once the youngest child is eight, the opportunity for paid work increases. So, no, it was not in the modelling; yes, we were aware of it. I fully agree that it is very important that we do the research to see what all these impacts are.

Senator MOORE—That is one of the things I am grappling with most—the evidential base of the change. I am fully aware that we will not be able to trace the actual impact until we have years of data and also try to cleanse that data and make sure it is a true reflection. It is very difficult. The situation that we asked about when we were looking at the legislation implementing Welfare to Work was that specifically the costs and the survival of families be looked at. The evidence we had then was that it was very difficult for single parent families, regardless of the gender of the single parent family, to cope with just going through the process—allowing for the significant incentives to employment assistance that is coming in on one level but not to the person.

The actual fortnightly impact on a family—and, in dollar terms, the figures churned out were $30 or $40—was exacerbated with the number of children. You add in the family tax payments, which are available to everybody, regardless of their income, even the lowest. Seemingly, the group that is going to most affected by a reduction through this legislation is going to be that group as well. It is the cost of children and all those things.

It worries me that, when we are looking at the evidential base and the significant modelling that was done—and we do value the fact that some of it had not been done before and that came into the report that you published—they do not take into account a concurrent financial change to families who are going to be impacted by the change. To me that is a gap. I am not quite sure how that was able to happen when the same policy direction was being pushed across the same groups. That is a big gap of just being able to see whether or not people agree with the data—and that is another whole battle—but at least having the data takes into account every known consideration that is happening to a family. With these changes, we have had changes involving the people who are paying child support, regardless of gender. If they cannot pay, there is some variation to that and some variation to minimal payments and all those things. Also, has there been a genuine look at the big issue of compliance? It is continuing to worry to me. I particularly asked the AIFS whether they had been asked to do some work in this field and they have not. That is not your issue because your role has finished but to me it is a big gap.

The other thing is a more specific ongoing issue, and I will give you a chance to provide a wide answer: the role of the SSAT, which has come up in a lot of people's submissions to us. I know that it is probably not as attractive an issue or as widely known an issue as the impact of adjusting payments, but in terms of the systemic impact it is great because a lot of the people who are part of the social security Centrelink system are aware of the SSAT under that heading and here they have another role. A number of people have actually raised queries about the provisions and how that will operate, and I know that was a direct recommendation. I am just interested as part of the process to get something from you on record about why you think the SSAT role has been recommended and what impact it would have. Further, were the complaints that have been made

about its legality and process taken into account by your group as legal experts? I will then pass on to other people.

Prof. Parkinson—If I can just first briefly address the Welfare to Work issue a little more. We did model—and very carefully—the impact of all these changes on those who are currently on welfare. What we found was that the trade-off between family tax benefit not being split and the child support changes was going to be either neutral for them or advantageous—that is, it would make a dollar difference here and there with that group because they are not typically receiving much child support. When they get all the FTB, it is actually more valuable for them. Obviously some are going to be worse off as a result of the child support changes, but they will still be getting a lot of child support. Where their former partner is a high-income earner there will still be significant amounts being transferred. We did model all of that very carefully and we are comfortable that the trade-off between the payee getting all the FTB and the child support changes did create a fairly equitable balance.

It is then totally outside of my remit, obviously, to say, 'Has that balance been upset by the Welfare to Work changes?' I fully understand that that is an issue on which people would have views. The difficulty in terms of this inquiry is asking, 'Because the government has changed the Welfare to Work rules, should that impact on the amount that is paid by private transfers between the mother and the father?' I think that is quite a tricky policy area.

Senator MOORE—It is very tricky. My concern is whether you had the modelling or not and whether that specific point was discussed in your deliberations.

Prof. Parkinson—I think it was. The detail was not discussed, but we were aware of the thrust of the changes. We were looking at the figures which suggested that the level of support for the lowest income families is really quite good in Australia because of all of the benefits. The child support changes were not going to impact adversely on the most vulnerable groups. That was obviously of great concern to us all; yes, we did work through all those things. Ultimately, though, the Welfare to Work policy was not our policy to talk about and so we could only be aware of it and nothing else.

Senator MOORE—Was it in the report?

Prof. Parkinson—No.

Senator MOORE—Thank you. I just wanted to make sure.

Prof. Parkinson—No, it was not, because the report was concluded before the budget. On the SSAT: it was not a direct recommendation of ours. The reason it was not was that it was totally outside of our terms of reference. But what emerged through the inquiry was a concern that there were various decisions being made by the agency which were not reviewable in the way that every other administrative decision is. What we basically said to the government was, 'Look at this.' It surprised me that they took a look at it so quickly. I thought it might be on the two years out agenda but they came to the conclusion very quickly that there needed to be some review mechanism and the SSAT was the most appropriate.

In terms of my own views on this, what struck me when I was chairing this review was how this population—payers and payees—is concentrated at lower end of the socioeconomic spectrum. The median income of payers is really quite low; it is well below—substantially below—average weekly earnings. The advice that I gave to the department when they were considering this was, 'Whatever you do, make it quick, simple and cheap.' I do think that is the wiser course in terms of public policy.

There are not necessarily large amounts of money at stake in these reviews, but there are important issues. People need to be treated fairly, they need to be treated sensibly, but there is no point in putting them through another court process with another $30,000 of fees—if they could afford them. There is no point to having eight-month delays. Whatever it had to be, it needed to be quick, simple and cheap. If there is rough justice in tribunals, there is rough justice in courts—sometimes very rough justice in courts. So I believe the SSAT recommendation is probably the way to go. It is one of a number that one could have chosen. It seems to me to be a sensible policy response.

Senator MOORE—From a legal perspective?

Prof. Parkinson—From a legal perspective. I know that the Law Council has another view; the Law Council often does.

CHAIR—You suggested that an analysis should be conducted into the interface between family law, Welfare to Work and these changes, which you wrote to the Prime Minister about. Should that occur after these changes are all in place? Is that what you are saying?

Prof. Parkinson—No. I was actually recommending—and I think the letter was written in about May—that as soon as possible we look at a cohort study, starting with the cohort of 'separate after 1 July 2006'. Because there will be sequential changes, it will be possible to untangle the different effects, from a research point of view, by seeing the impacts of the different changes as they come in.

CHAIR—You said the PM gave you a positive response to that?

Prof. Parkinson—The PM's response was to refer it to the Minister for Families, Community Services and Indigenous Affairs to be the lead minister in having some sort of research of that kind. I do not know what has happened since, but it was a very positive response.

Senator SIEWERT—Can I just follow up on the discussion on the SSAT. In your submission you point out that there should be an amendment to the bill concerning that. Do you still believe that amendment is appropriate?

Prof. Parkinson—Yes. It was not a major issue, but I was asked to look at the bill a couple of days before it came in and that was one of the issues I picked up.

Senator SIEWERT—I want to go back to the issue of unpaid care. You were here, I think, when we had that discussion with the National Council for Single Mothers and Their Children. I am wondering what your comments are on that issue and why it has now been taken out of the formula. Is their understanding of the differential cap the same as your understanding of it, and why did you not factor it in? You considered it in your report but it has been left out of the calculations.

Prof. Parkinson—I have to respectfully disagree with what was said. The existing child support formula is really based on one income only. It is the payer's income and it is, as you know, a percentage of that income above a self-supported level. It does factor in the payee's income but only to a very high level for this particular cohort. It is about $40,000 per year. It is average weekly earnings for all employees. That is the comment about the differential cap. The payer has a self-support amount of $13,000 or so. The payee's income is not taken into account at all until it reaches a very high level. If you go back to the Fogarty report, the justification that they gave for that—and Elspeth McInnes was absolutely right about this—was to say, 'Well, we shouldn't take her income into account because she is providing unpaid care for the child and we want a simple formula which only takes account of the payer's income.' That was how it was set up.

What we have recommended is a different formula entirely, and so you cannot really compare the old with the new in that sort of way. What we are saying—and this is the way things have moved around the world—is that in an intact family you typically have two incomes. One partner may be working part time, but the majority of mums of young children today have at least some part-time income. So, if you are trying to replicate what is happening in the intact family and say child support should be about the same level as it was, it makes logical sense to take account of both incomes. That is why we have the same self-support formula, because you are taking both of them into account.

Senator SIEWERT—I must admit I still find the argument of single mothers very valid, and that is that their capacity to find additional work, those sorts of things, is definitely affected if they are the primary carers.

Prof. Parkinson—Of course, but the way the formula works—and this is actually a lot more equitable to payees here than the current formula—is that, if she has decided not to enter the workforce or cannot enter workforce because of the care of three young children then the childcare costs are going to be borne by the payer. So it is like a sliding scale. If she has a very low income then all of the costs are going to be borne here. As the incomes rise then there is going to be more equivalency between them. So we do take account of unpaid care.

Senator SIEWERT—Yes. The argument, I suppose, then revolves around not necessarily just the childcare costs. There are a lot of other costs associated with unpaid care that are not picked up by childcare costs. That is plain and simple. It is not a simple formula of unpaid care then equating to childcare costs. That is the argument as I understand it.

Prof. Parkinson—No, it is absolutely not. The biggest costs are the opportunity costs of time out of the workforce. Here we get into family law policy as well. If you look across the population, what you see is that men's income—this is from Institute of Family Studies research—tends to be on an upward level in real terms.

Whatever their employment may be, they go from being the apprentice to the supervisor and maybe the manager and so on, so you do tend to see an upward curve and then it flattens off around the late forties or early fifties as people begin to wind down. What you find with the pay levels of women with children is that it goes up and then it goes down, and it does not reach up to the point where it was. Those are the opportunity costs.

Across the population one can see that, but at an individual level it is very hard to say what the opportunity costs are for somebody who did not do something. They may have become Prime Minister or they may have been on the backbench. It is hard to discern what one's career path would have been if one had made certain choices. So it is very hard to factor opportunity costs in. We factor them into the property settlement where there is substantial property by treating them equally as a starting point and then giving to the primary carer more of the assets. I do not know that there is much else we can do in the system to deal with the opportunity costs. The other great problem is that opportunity costs are not expended if the carer repartners. If she repartners with somebody with the same income level as she had before then there is actually no loss resulting from the separation because she goes back to having a partnership with somebody with a similar income and so on. It is very hard in a separation to factor in the likelihood of repartnering.

Senator MOORE—Of either partner.

Prof. Parkinson—Of either partner, yes. These are the imponderables. During some of our lighter moments in the task force we were saying of many of these groups that they cannot afford to divorce. That is the reality. The financial pain of divorce is not something that any of us can share fairly. We can just do the best we can.

CHAIR—Just to summarise what you are saying to us, in your submission you have made some recommendations for some changes and modifications of the package. Do you feel, though, that the legislation as presented has basically captured what the task force is recommending? Is it 90 per cent there, 80 per cent there or 50 per cent there? What would you say it was?

Prof. Parkinson—I was very pleased with the bill. It took a lot of caffeine to absorb some of the detail. It is quite complex. But I think the government has done a marvellous job in terms of working out the detail of this and the micropolicy. I have fed a few comments to the department. There were minor details here and there. No doubt when I have time to study the bill there may be a few more issues. But generally I have been very comfortable indeed with the way it has been translated into the legislation. I might even go to 100 per cent. In other words, there is no critical area of disagreement between me and the government on any of this.

CHAIR—How do you recommend from this point on that the government or the community should monitor these changes? Obviously they are fairly critical. What mechanism should be put in place to make sure they hit the mark?

Prof. Parkinson—We dealt with that in the task force's report. We said it was critical that there should be an ongoing research program. I know that the department has taken that up. Child support policies seem to have been in the too-hard basket for governments over the years. There were inquiries and there were tinkering changes here and there, but it is really so important to community life that we need to keep on watching over it. We were basically saying that one has to monitor the costs of children; we do not expect them to change dramatically, but one wants to have the research base to know whether there have been significant changes. We need also to look at what is happening to the family tax benefit and other government benefits for families because they are a very important part of the income of lower income families. If there were significant, substantial changes in the family tax benefit system or its equivalent under further changes, one would want to look afresh at the child support policy as well. What I hope we have done is to give you a methodology which can be used in five or 10 years time. You can use the same basic techniques we have used and update the child support formulae accordingly. There should no longer need to be a six-month inquiry of the kind that we had.

CHAIR—Thank you very much indeed, Professor Parkinson. This has been a very useful session and we appreciate your work today and of course the work that you have also done over that six-month period to help produce, hopefully, touch wood, a better outcome for parents in separated situations. Thank you very much.

[12.52 pm]

ESSEX, Ms Allyson Elizabeth, Director, Child Support Policy, Child Support Policy Branch, Department of Families, Community Services and Indigenous Affairs

HAZLEHURST, Mr David, Group Manager, Families, Department of Families, Community Services and Indigenous Affairs

KINNEAR, Dr Pamela, Branch Manager, Child Support Policy Branch, Department of Families, Community Services and Indigenous Affairs

CHAIR—I welcome representatives of FaCSIA here today. Thank you for appearing. I understand you are aware of parliamentary privilege and the protection of witnesses. I remind you that the Senate has resolved that you should not be asked to give opinions on matters of policy. The resolution prohibits questions asking for opinions of matters of policy but does not preclude questions asking for explanations of policy or factual questions about when and how policies were adopted. We have a submission from you; thank you very much for that. There are a number of issues that have been raised in the course of the hearings and that is why you have come late in the hearings—so that we can put to you some of the things that have been put to us about the legislation. Did you want to make an opening statement about any of the issues in your submission or the legislation generally? Is there anything that you feel needs to be put on the record with regard to any of the issues which have been raised in the hearing today?

Mr Hazlehurst—I believe that there will probably be a number of questions that you will ask us that will go to many of the issues that have been raised today. Rather than having a prolonged opening statement, I am happy to turn it over to questions very quickly. There are a couple of minor things that I thought I would mention up-front, so as to perhaps save some time down the track. They probably relate to the 'where next' questions that have been raised during the course of the day.

I particularly wanted to signal that one of the good things about having an implementation period of the next couple of years is that we will be able to work through the significant complexity that is reflected in the legislation, to put it into legislation, as well as implement that in terms of the service delivery implications, the new systems that need to be built and the very extensive communication that will of course need to occur with families to explain to them how the changes are going to be implemented—what they will need to do and how the changes will affect them. Those things lie ahead of us, and we will be using the next 18 to 21 months very productively to cover them.

In terms of the monitoring and evaluation side, the government agreed with the recommendations of the Ministerial Taskforce on Child Support around monitoring, evaluation and further research, and we are putting in place now a program of research and monitoring activities to do that. We are aware of Professor Parkinson's letter to the PM, and we are working closely with other departments on monitoring the effects of the combination of the different policies.

The government also accepted the recommendation of the task force to establish a further form of advisory or reference group to look at not only the child support system as it unfolds into the future but also, more specifically, the implementation of this set of changes. The government and the minister have been considering exactly how to approach that, and the arrangements that will be put in place over the implementation period and beyond will be unfolding shortly. We are certainly grateful for the relationship that the various peak bodies and advocacy groups have with their constituents and, as flagged earlier, we are providing some additional support to them, in particular to communicate the changes.

Those are very minor things, but I thought it was worth touching on those first. I am very happy to answer any questions. To clarify, you probably worked out that Pamela Kinnear works for me and Allyson Essex works for Pamela. We thought it was important to have Allyson here as well because she has been very intimately involved in a lot of the detail to do with the preparation of the legislation.

CHAIR—Indeed, I am grateful that we have got people here who know some of the detail of these changes, because the point has been made by some of our witnesses, and it has certainly not been lost on us, that we have a very complex piece of legislation before us and a very short time in which to examine it. We may well return to that point when it comes time for us to report. A number of issues have been raised by the Family Law Section of the Law Council, for example, and they are really too detailed and complex for us to run through here today in a half-hour. I propose that we ask the department for a response to those issues and, indeed, anything else of a technical nature that has been raised today that needs to be responded to. It is our

job to recommend to the Senate any modifications or amendments to the legislation to deal with issues which are of importance to its operation, and in the time we have we do not have a lot of leeway to achieve that.

For example, as I am sure you have heard, the Law Council said that, in their opinion, some of the provisions of the bill will make null and void all of the existing child support agreements that are operational at the point at which the legislation comes into force. I assume that, if that is a consequence of the legislation, it is an unintended consequence. Can you tell us whether that is what you understand the legislation will do? Is that unintended and, if so, can it be fixed?

Mr Hazlehurst—The short answer is it is not the case. We had a discussion with the representatives of the Law Council in the corridor and agreed to provide them with some further information that would clarify the position on that. Broadly speaking, although I am happy to go into more detail now if the committee would like me to, the situation is that where there are provisions in agreements that it makes sense to continue—that is, where the agreements are, for example, for a set dollar amount—they will just continue. Where they refer, though, in effect, to the old formula—for example, where a particular percentage of the income of the payer is the amount under the agreement—they do not work so well in the new environment and in essence the agreement would be frustrated by not being able to be calculated in the same way.

We are happy to provide some more detail to the committee on those and the other matters raised by the Law Council. We are reasonably well advanced on that. We of course have not had the opportunity yet to brief our minister on some of those things but we are happy to provide that to the committee very quickly, being mindful of the time frames.

CHAIR—As long as we can find you in the event that the High Court strikes down all of the child support agreements and ask you, 'Please explain,' I am reasonably happy with that assurance.

Mr Hazlehurst—I suspect a lot of people know where I live.

CHAIR—The point was made, I think by the Men's Rights Agency, that, in calculating the cost of raising a child, when a 16-year-old moves off into the workforce as an apprentice and earns $200, $300 or $400 a week, that does not come off the amount that parents have to contribute to the cost of raising that child. Firstly, is that the case and, secondly, why isn't it factored into the formula?

Ms Essex—A formula assessment is designed to deal with most cases most of the time, but there do need to be certain circumstances, as allowed for in the legislation, where a departure from the formula assessment is appropriate. One of the grounds for departure in section 117 of the act is that the child has financial resources. The sorts of circumstances that the Men's Rights Agency were speaking about would be the kinds of things that we would anticipate that parents would use to seek a change to the assessment. It will depend on the earning capacity of the child, whether the child has any special needs, what contribution the child is able to make to the household and so forth.

Senator MOORE—Is that provision in the current act?

Ms Essex—Yes. It is one of the 10 reasons for a change of assessment.

CHAIR—So, if a child is earning money in that way, a parent who wants an adjustment made can go back to the registrar and ask for a change of assessment?

Ms Essex—Yes. They can make an application for a change to the assessment, bearing in mind that a range of other factors will be taken into account in that, including the financial resources of both the parents, the financial resources of the child and whether it is equitable and proper to change the assessment in those circumstances. I am saying that there is flexibility in the scheme currently to deal with that specific situation and that parents can avail themselves of that flexibility.

CHAIR—Can I come back to a more general question about the legislation. The Law Council said that they could not understand why there needed to be a great rush to put some of these provisions in place, given that some of them are not going to be operational for nearly two years. Putting to one side whatever decision the government might want to make about the timetabling of legislation—I assume it is true that many of the provisions here will not be operational for quite some time—is it possible for there to be, in the time between now and when they come into operation, further work on the sorts of issues and potential problems that have been raised by some of our witnesses?

Mr Hazlehurst—The reason for presenting the legislation to the parliament as early as it has been does relate to the implementation task. The impacts will involve changes to, most importantly, the child support computer systems and the Centrelink computer systems because of the interaction with the family tax benefit.

Members of the committee may be familiar with previous evidence provided to the committee around the timetable, but it relates to independent advice that the Department of Human Services commissioned about the length of time it was prudent to allow between the settling of the legislation and its implementation. Basically the advice was that a minimum of 12 months was needed to build the systems and, once the systems were built, there needed to be a period to interact with families, collecting information from them about the circumstances upon which their new assessment could be made, as well as communicating that to them with sufficient time for them to have some reasonable notice of the change or the circumstances to fit the change, whatever it might be.

So if we work back from 1 July 2008—at the start of the financial year because of the interaction with family tax benefit—by the time this legislation is passed, which will certainly not be before the end of this year, subject to the passage of the legislation through the House and the Senate, there is then a period of 18 months following that. That does leave open the possibility that if there are changes or errors identified that need to be corrected, and naturally that would be a matter for the government and the parliament to consider, there is that period of time to do that. I guess the obvious thing to say is that any change made will have implications for the implementation of the package as a whole. It is extremely complicated and I am constantly reminded of the experience of others, including those who are now responsible for the system in the UK, that, if you mess around with these things too late in the piece and you make a meal of it, it is disastrous not for the government but for the families involved.

Senator MOORE—And sometimes both, Mr Hazlehurst.

Mr Hazlehurst—I would not of course comment on the implications for the government.

Senator MOORE—Yes, I know.

CHAIR—A couple of other issues were raised with us. The Lone Fathers Association suggested that the extra income which parties earn before a separation, such as that obtained from second jobs and overtime, ought to be assessed with respect to the after-separation division of costs in the formula for the care of children. In some circumstances you can see where that would be a fair outcome at least; why can’t that be done?

Mr Hazlehurst—I am sorry; would you repeat the question?

CHAIR—The Lone Fathers Association made the point that the formula that we provide for here is that, if a father, typically, goes out and gets a second job or earns overtime, that is not taken into account. It is extra income which, under the formula proposed here, does not come into the assessment of what needs to be shared for the cost of the child—that is, you do not factor that into what the shared income of the family is and in calculating how you divide that between the parents. Why can’t income of the same kind earned before separation be factored into that equation as well?

Mr Hazlehurst—I might have first crack at that and then I will offer it to my colleagues to add anything that they think is appropriate. The starting point is that the income that you are earning prior to separation is the income upon which the child support is assessed. There is provision in the new formula for some different arrangements around re-establishment costs. I am not sure if your question is going there, but that would be where a child support payer earned additional income in the form of an additional job, overtime or whatever. Broadly speaking, the arrangements that would be in place under the new formula would quarantine that additional income for a period of three years.

CHAIR—Is that income earned after separation?

Mr Hazlehurst—Yes.

CHAIR—Suppose a husband is anticipating that the family is heading for some financial difficulties because of separation and goes out and earns extra money in the same way before separation to build up a nest egg to provide for the family when the inevitable day comes that they split up. Why can’t that be taken into account?

Mr Hazlehurst—I think that goes to the kinds of issues that Professor Parkinson was raising earlier about the interaction between the family law system and the child support system, in the sense that those assets that are on hand at the time of the separation would be considered as part of the settlement. But it is really only the income that is being earned post separation that would be applied to the child support assessment, being mindful that if there were any dramatic changes in the patterns of people’s earning post separation, if there was

a suggestion that someone might be deliberately reducing their income to avoid child support, that would also be taken into consideration in determining what an appropriate assessment of child support was.

CHAIR—An issue that the Men's Rights Agency has raised is the threshold of 52 nights a year that a non-custodial parent needs to have a child for before that parent's time is taken into account in assessing the amount of the contribution that the parent makes to the child's costs. It is pointed out that, if you lower that bar to 52 nights, you will find many custodial parents or residential parents making sure that the other parent does not get more than that number of nights, and that will have the effect of actually depressing the amount of contact that a non-residential parent gets with their child. Do you concede that that is a problem? Can it be fixed?

Mr Hazlehurst—I guess we will have to wait and see, in part, whether that turns out to be a problem. The most common arrangements for contact are higher than that. The most common arrangement is every second weekend and half the holidays, which is around 24 per cent contact. The 52 days is about one night a week, which is about 14 per cent. It goes back again to what Professor Parkinson said about constructing a new principled approach, which was to recognise that the costs of contact particularly increased, on average, once there is one night a week—that is, there are infrastructure costs associated with overnight stays on a regular basis. The task force found, and the government accepted, that that actually created costs that were greater than 14 per cent. Those costs did increase in the range between 14 and 34 per cent contact, but not hugely.

Hence the judgement of the task force, accepted by the government, was that it made sense to pick a figure in the middle, which was 24 per cent in terms of the cost, and to have that at one night a week and not have scope for arguing, if you like, about every night over the course of a year in that range. That was on the understanding that, if a tally had to be done—whether it was 65 nights, 68 nights, one week missed or whatever—that would potentially lead to a lot of argument and a lot of change, rather than having a more reasonable level of stability across the range, which is defined as contact as opposed to shared care.

Senator MOORE—I have a couple of specific questions. In what would specifically be your area, do you have a table that shows currently where people are—ages, locations, incomes, those receiving child support, those paying child support and the number of children involved? Is that the kind of data you would have? I went to you, Mr Hazlehurst, because you are in that section, but I am going up the line now. Even though it is a child support issue, if the department owns this legislation and, I would anticipate, has a policy ownership of this, do you have a table that we could look at?

Mr Hazlehurst—I believe there is probably some published data on that which is available from the Child Support Agency.

Senator MOORE—I just have not seen it. I had a look at the annual report and it was not very detailed.

Ms Essex—I can tell you that there is a range of data on the website of the Department of Human Services in relation to the location of child support customers and the distribution of those across the country. Could we look at that and come back to you?

Senator MOORE—Yes. It is to do with the policy impact of this legislation. I asked similar questions of AIFS in Melbourne on Friday about the database, the set, on which you can then assess what is going on—taking a line and saying, 'These are the people who are currently involved.' With any evaluation or monitoring at least you will have a starting point—and I was having trouble finding that starting point. So can you take that on notice?

Mr Hazlehurst—We can see what we can provide quickly.

Senator MOORE—A lot of the questioning—and I am sure you will have a look at the *Hansard* of Friday—was about the research capabilities in terms of the data that fed into decisions and, once again, looking at what happens next. One of the issues that have been raised consistently is that we have had a system that has been working for a long time but there were problems with the system—no-one has disagreed with that—and we are now going to introduce quite a significant change to the system, but how do we make sure that we are getting it as right as we can from now on?

Mr Hazlehurst, you said that the government has accepted that there will be a process. When you were describing the process, I was trying to think of comparable things we have going already in the system and, from your agency, the childcare advisory group is already ticking over. From your point of view, is that the kind of model—and I know it has not been determined yet—for an ongoing group that would be feeding advice, mainly, I would imagine, and direction to the minister in terms of how it would go? That is the model you are familiar with?

Mr Hazlehurst—The government agreed to the recommendation which basically said that. The details of that are imminent.

Senator MOORE—So that is the idea; okay. Certainly one of the things we have had great trouble with—and I know you have seen it—is the speed with which this inquiry is being progressed. People know that the Parkinson report took a long time, and people know that every picture tells a story but that it takes a long time. I am not prepared to make a statement on whether the legislation is more or less complex than the previous legislation, because it was very complex too, but the time people have had to look at it has been quite short. Do you have a document that can show the implementation dates of the various stages of this legislation? I was having a quick squiz at the documents we have, because the point you made about the information and how long it takes for the system to gear up is very real and I want to get a concept of where that goes.

Mr Hazlehurst—We would be happy to provide that. It is actually extremely simple, because there is only about—

Senator MOORE—I see 1 July 2008 has got big stars around it.

Mr Hazlehurst—There are a very small number of things that start from 1 January 2007.

Senator MOORE—Are they mainly the things that have already been passed in the first piece of legislation or are they in this batch?

Mr Hazlehurst—No, they are in this legislation.

Senator MOORE—So there are some on 1 January 2007?

Mr Hazlehurst—There is the SSAT review, and then mainly the changes to court procedures.

Senator MOORE—So that is a legal change? They are legal things, which really the legislation—

Mr Hazlehurst—Right, but we can direct you specifically to those provisions.

Senator MOORE—The quite monumental changes to the IT systems—we are well aware of the complexities of that.

Mr Hazlehurst—All of that is in 2008.

Senator MOORE—So it comes into effect 1 July 2008. Basically, the time lag is in getting the system changed, doing the IT work that would be involved in that across at least three major departments and doing the testing that would go on once you have got something built.

Mr Hazlehurst—It is, but what I should be really clear about is that 1 July 2008 is the date upon which the new assessments commence. The systems all need to be working well ahead of that to support the process of—

Senator MOORE—It would be nice.

Mr Hazlehurst—engaging with parents and formulating the new assessments and sending them out to people.

Senator SIEWERT—Where the payments are worked out on percentages, will you automatically reassess all of the agreements? Some of them are not agreements; they are just assessments, aren't they? Will you automatically reassess all of those before 1 July 2008 so that parents—residential and non-residential—will all get a piece of paper saying, 'We've reassessed under the new formula, and as of 1 July this is how much you'll be paying and this is how much you'll receive'?

Mr Hazlehurst—That is right—for all of those assessments where people are on a child support assessment.

Senator MOORE—The new assessment will kick in on 1 July 2008. So you would have to have a letter out to every client that spells it all out a considerable amount of time before that.

Mr Hazlehurst—That is correct. Let me give you a stylised representation of what is going to happen. I will only give you a stylised one, because the fine detail around this is still being sorted out. It is the responsibility of the Human Services portfolio to manage the implementation of the service delivery angle. Basically, either towards the end of 2007 or in the early part of 2008, contact will be made with all families within the child support system advising them in some detail of the changes coming up as well as providing them with, in effect, a request for information from them about their circumstances. This is because the way in which the new formula works is quite different from how the old formula worked and different information or additional information may be required. That will then be assessed by the Child Support Agency. In some

cases, it will need to go backwards and forwards between the parents to confirm exactly what the information is, and a new assessment would be determined and sent out to parents, but not in the last couple of weeks before 1 July 2008. I cannot tell you exactly when, but it will be well in advance of that.

Senator MOORE—Not over Christmas or that first week—

Mr Hazlehurst—I do not think we will be ready by Christmas, so I am pretty confident it will not be Christmas.

CHAIR—You are talking about assessments there, not cases where there are agreements between parties?

Mr Hazlehurst—Going back to what I mentioned before about the question that the Law Council had raised about child support agreements, in essence, what is happening—again, the stylised version—is that every agreement on the books is being looked at. In fact, I think the Child Support Agency may already be starting to look at those to get ready for things. As I say, those that can continue as they are will continue as they are; in those cases that, broadly speaking, do not work under the new formula or the new scheme, the CSA will be notifying parents of that and they will need to make new arrangements. Is there anything you want to add to that, Allyson?

Ms Essex—I think, from listening this morning, that there has been little bit of confusion about what is referred to in the bill as an agreement. The kinds of agreements we are talking about are about how child support is paid and the amount that is paid. They are not agreements about the care level that various parents have. There seems to have been some confusion this morning about that.

Senator MOORE—They do logically interact.

Ms Essex—They do interact. There are a range of ways that they might interact, according to the agreement. But the provisions that deal with how you determine care are separate to the provisions in relation to agreements. The provisions in relation to agreements understand that there will be a prior determination of care.

Senator SIEWERT—But that is going to make it more complicated for some parents and some clients involved because of the interaction with the care provisions that have been made. I assume you are referring to care provisions that are made under the Family Law Act in the Family Court.

Ms Essex—There are a range of ways that care can be agreed. The important thing about the sorts of agreements that we are talking about is that they tend to be very specific. They tend to talk about the sorts of arrangements that parents will have. It will be very clear to the Child Support Agency those agreements that can be implemented and those agreements that cannot be.

Senator SIEWERT—What will you do with the ones that cannot be under the new formula? You will then seek to renegotiate those agreements I presume?

Ms Essex—The arrangements in relation to agreements are set out in the bill. They are set out in section 74 of schedule 5. Schedule 5 deals with agreements. It sets out in section 74 what the registrar is to do in relation to each agreement. That will step you through. The relevant sections of the explanatory memorandum also step through what will happen in those circumstances.

Briefly, to summarise it, there will be agreements that are not administrable under the new scheme and they will terminate because they cannot continue. Parents' options then would be to have a formula assessment or to make a new agreement. They would have a choice between a binding and a limited agreement depending on what is most suitable to the parents' circumstances. Agreements that are administrable under the new scheme become binding agreements, but there are two key differences. The first difference is that they will be able to be terminated by written agreement of both parties. In other words, it is different to the new kind of binding agreement. There is a provision that says that, for some parents, continuing this agreement might not be what they want. They can say, 'No, we don't want to continue with this particular agreement.' Family tax benefit will continue to be assessed using the actual agreement amount rather than the notional assessment that is provided in the bill. As I said, that is set out in section 74 of the bill and the relevant provisions of the explanatory memorandum.

Senator MOORE—In terms of the way we are going to move forward, I am interested to see where FaCSIA and child support fit. You have heard the concern about Welfare to Work and its impact here. It has been made very clear to us in previous sessions that the only responsibility that FaCSIA had under Welfare to Work was child care. We have heard that on a number of occasions whilst this legislation was being drawn up, which is interesting considering that we were told it was just child care. This goes much further, in my

opinion, than just child care. With what happens from now, particularly with the head-of-agency responsibility that FaCSIA has, I think—and I want to have that confirmed or denied—where does the interaction of the various forms of impact on families belong? Who is the lead agency for that? In terms of the ongoing aspect of information gathering and impact on families of things like the Welfare to Work changes, where does the responsibility lie for getting information on that and seeing how the various government responsibilities link?

Mr Hazlehurst—In relation to the first part of your question—the taking forward of the child support reforms—you are right. FaCSIA has the lead.

Senator MOORE—So you are the lead. Who is going to be in the intergovernmental team for child support?

Mr Hazlehurst—We can provide you with some information about that. But, broadly speaking, we have a steering committee and a set of governance arrangements that involve—

Senator MOORE—Is that already in place?

Mr Hazlehurst—Yes. It has been in place for six months. Basically, since the announcement that the government made in February, we have flipped over from an interdepartmental committee into an implementation group. We have a steering committee chaired by FaCSIA with representatives from all of the relevant agencies—the Department of Human Services, the Child Support Agency and Centrelink. We have a core committee, which is the people most involved—mainly those people I just described—and then we have broader members who are involved but are not core members of the committee. That includes the Department of Employment and Workplace Relations.

Senator MOORE—That is in the wider group?

Mr Hazlehurst—Yes, and the Social Security Appeals Tribunal and the Department of Veterans' Affairs. We would be very happy to provide you with the governance arrangements.

Senator MOORE—That would be good.

Mr Hazlehurst—They are quite complex, as I am sure you would appreciate. We would be very happy to provide those. In terms of the broader responsibilities around monitoring the interactions between things, there is no formally established group doing that, but we are both separately and jointly responsible for the effects of our programs. There are obviously, as we have mentioned before, processes of monitoring, research and evaluation that are being undertaken around the child support reforms, consistent with the recommendations that the task force made.

Whilst I cannot speak with authority on it, I know that there is a similar set of evaluation and monitoring initiatives going on in relation to, for example, Welfare to Work. We are also working, particularly with DEWR but also with the Attorney-General's Department, around the concurrent impacts. That has not crystallised into a formal committee or anything like that, but we have met a couple of times, partly in response to Professor Parkinson's letter to the Prime Minister around these issues. It is partly to look at the things that we are doing that overlap anyway and the extent to which we are proposing to survey families that might be affected by both reforms—and wouldn't it be good to survey them only once if we can make it so? It is also to look at what the opportunities would be to think about how you would measure the combined impact of the reforms.

Senator MOORE—Does your department chair that one, even though it is only at an informal stage? Everyone is saying that it should happen, and I am just wondering—

Mr Hazlehurst—Our minister has been asked to take the lead.

Senator MOORE—So FaCSIA would be expected to be the lead in that as well?

Mr Hazlehurst—The precise terms I do not recall, but the Prime Minister has certainly asked our minister to take the lead on the issue.

Senator MOORE—A statement that we have had quoted today is that 60 per cent of families involved will be disadvantaged by this process. It was in the media and Professor Parkinson also allegedly said it. Has there been any research to quantify whether 60 per cent of the people currently involved in the system will be affected?

Mr Hazlehurst—Both in the course of finalising the task force report and, more particularly, after that and during the government's consideration of the report, we provided advice to government about a range of things

to do with the impact of the reforms. I cannot disclose all of that information, as it was part of the advice that was provided to government. What I can say about it is that, broadly speaking, everyone is affected.

Senator MOORE—Affected negatively?

Mr Hazlehurst—For most people the changes are small. Some of these things are only stating the obvious, but I will say them anyway. Very often, the way in which a particular family will be affected will not just be because of one thing. It will not just be because they have older children—for example, children over the age of 13. It could be a combination of the age, the number of children and the levels of income of both their parents. The other thing I would say about it is that it is very hard to predict exactly what the impact will be two years down the track. People’s circumstances are changing all the time. For example, the Child Support Agency recently provided some information about the first six months of the calendar year. There has been a quite significant increase in the proportion of their new cases where the person who was going to be the payee will be the father or the—

Senator MOORE—Sure; there are changes.

Mr Hazlehurst—As those changes start to filter through, partly as a response to some of the changes in family law, we might see that in the population as a whole—for example, in terms of shared care arrangements—they will actually have a flow-on effect on child support outcomes.

Senator MOORE—Is there any publicly available data that indicates the proposed impact of the changes? Considering that there has been so much public comment about how many people are going to be negatively affected by it, can any data be shared that has a look at that claim—and it is quite public—in terms of us being able to assess it and, if it is minimal, which we have been told it is, to quantify that?

Mr Hazlehurst—The only publicly available information is the information that is in chapter 16 of the task force report.

Senator MOORE—So there has been no assessment of the wider impact of the payments. The only public stuff is already in the folder. No subsequent stuff can be made public.

Mr Hazlehurst—Correct.

Senator MOORE—I have one last question. I could go on for a long time, but we cannot; we have to move on to aged care. In terms of process, there has been a lot of discussion around the role of the SSAT and various comments have been made about the use of the SSAT. You have already said that they are one part of the ongoing issue. I know that we have asked you specifically about the Law Council stuff, and you as a department will get back to us on that. A number of people have raised the fact that the SSAT is known to the client group, because a lot of people at the lower end are already involved with Centrelink and have information about the SSAT through other interactions. Do you know about the way it operates, its role, its resources and the role of the registrar? Have you any comment about the responses to the SSAT and whether it is seen as an effective mechanism in its new role? To the best of my knowledge, up until now the SSAT has purely been a group that looks at Centrelink and social security law and the impact of social security decisions. It is not seen as a body that would say an interaction between two people, an agreement, is flawed.

Mr Hazlehurst—There are a couple of quick things I could say about that.

Senator MOORE—I just want a couple of comments from the department’s point of view on the SSAT.

Mr Hazlehurst—One very specific thing that is worth being clear about is that the parties to a review of a Child Support Agency decision, in respect of a child support determination, will be the person who applies for the review and the Child Support Agency.

Senator MOORE—So, from the point of view of the department, it is not between the person applying for the review and the person who is making the payment.

Mr Hazlehurst—Correct.

Senator MOORE—It is between the person who is making the request for the review and the Child Support Agency.

Mr Hazlehurst—Does that mean that the other parent will not be involved in any way? No, of course not. They are likely to have some interaction with the process, although in some instances they might not.

Senator MOORE—They are likely to have an opinion about what is going on.

Mr Hazlehurst—Sure, but just to be really clear about it: it is still an administrative decision that is being reviewed.

Senator MOORE—I think I can actually see that—for the sake of this process, which does not seem to have had wide understanding by a number of people who have put evidence to us—

Mr Hazlehurst—We have noticed that. So that needs to be clarified.

Senator MOORE—So we are talking yet again about an administrative decision. It is the administrative decision that it is the role of the SSAT, as opposed to the interaction between people.

Mr Hazlehurst—That is correct.

Senator MOORE—I can see that. That has not been particularly well spelled out in any of the documents, but I understand the point.

Senator ADAMS—We have had quite a lot of evidence that the general public are very confused. I am just wondering what the department has done initially to say what the changes mean. That confusion has come from quite a number of the witnesses who have spoken to us, so I would just like to know what you have done and what you are going to do to try and rectify the problem.

Mr Hazlehurst—The challenge for us in communicating the substance of the changes at one level is that until they become law it would be somewhat presumptuous of us to be communicating them to the public in any great detail. In respect of those changes that occurred from 1 July 2006—which of course are not the ones that are the subject of this legislation—families were written to with details of the changes that were occurring, particularly as they related to them. We have in place now, though, a communications strategy that is being further refined as we go, including through market research and the like, to ensure we get the messages right for families. That will really kick in in earnest around the small number of changes that will occur at the end of this year, commencing on 1 January, the biggest of which relates to review by the SSAT. People will be informed of that change occurring, but they will also be informed, when they receive a decision, of their right to appeal to the SSAT.

Also, over the next 18 months there will be quite a substantial amount of money—which was set aside in the overall package—for communicating with families about the changes. One of the things the government was considering in all of this was that, first of all, it had to wait until the legislation was actually passed. It was also considering when would be the best time to give people the most information about this, given that it is a long lead time and given that their circumstances might change in the meantime. The very big effort around communication is going to be closer to when the big changes happen so that it is actually in the front of people's minds, on the basis that that will be more effective.

The other thing I should point out is that the lead role around communications, particularly once the legislation has passed, is actually with the Department of Human Services, as it relates to service delivery. They are taking the lead now. Within our governance structure we have a number of working groups, including a communications and stakeholder management working group that is chaired by the Child Support Agency working closely with their colleagues in the Department of Human Services. I am not sure if I have completely answered your question.

Senator ADAMS—You have to a point, but I am concerned about the general public because there is a lot of angst out there. A lot of people are becoming very worried about what is going on. You get someone's interpretation, you get someone else's, it gets together and then it is just blowing out. So how are you dealing with that? That is what I wanted to know.

Mr Hazlehurst—The main thing is to say that, once we have passage of the legislation, we are then in a position to communicate with families in more detail about what the changes are going to be. There will be a mixture of ways in which that is likely to occur. There will be the use of direct mail to families, there will obviously be information available on websites and there will also be other forms of mass media informing people of the changes occurring and where they can get more information. Also, naturally enough, the service delivery agencies themselves will be in a position to provide people with more information when they ask for it, once the legislation is in place.

Senator ADAMS—It is highly complex, so my plea to the department is: can it be simple so people can understand?

Mr Hazlehurst—We are working very hard to ensure that it is simple but also that it does not avoid telling people the important things they need to know.

Senator MOORE—Did the Attorney-General's Department draft the legislation?

Mr Hazlehurst—The Office of Parliamentary Counsel drafted the legislation, but we provided the drafting instructions.

Senator MOORE—So the drafters did it. I was interested to know.

Mr Hazlehurst—We took the lead, but we worked very collaboratively with Human Services as well.

Senator MOORE—I may have to ask you to get back to us quickly if we put any questions on notice, but I think most of the questions we would ask have already come up in the evidence that we have had before us. There is some specific stuff—the questions asked by Professor Parkinson and by the Law Council. There was a specific question asked on Friday by the Legal Aid people about child support debts and whether it would be possible to pick that up in the legislation. Even though it is child support, the legal person was asking about it and about some interpretation stuff. So, after you see those, I think that is it.

Mr Hazlehurst—I am mindful that there is a lot of detail in many of the submissions, as well as in the legislation of course. We might pick the things we think you are most likely to want to know about and do that as quickly as we can and then, if there is anything else that you would like from us, obviously we are happy to provide it.

CHAIR—That would be useful but, given that we have to report on Tuesday, we will have to have a very fast turnaround time.

Mr Hazlehurst—I am thinking within the next 24 hours.

CHAIR—That would be great. Thank you very much indeed for the care and attention that we have been given by the Department of Families, Community Services and Indigenous Affairs. We thank you for your time here today and for the submission you have given to us.

Committee adjourned at 1.47 pm