



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

JOINT SELECT COMMITTEE ON AUSTRALIA'S FAMILY LAW  
SYSTEM

**Improvements in family law proceedings**

(Public)

WEDNESDAY, 19 MAY 2021

CANBERRA

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**SENATE**

**JOINT SELECT COMMITTEE ON AUSTRALIA'S FAMILY LAW SYSTEM**

**Wednesday, 19 May 2021**

**Members in attendance:** Senators Hanson, Polley and Mr Andrews, Mr Perrett, Ms Steggall, Mr Young.

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**FLANAGAN, Mr John, Deputy Registered Officer, Non-Custodial Parents Party (Equal Parenting) [via video link]**

**WILLIAMS, Mr Barry, National President, Lone Fathers Association of Australia Inc.**

**Committee met at 09:02**

**CHAIR (Mr Andrews):** I open the 13th public hearing of the Joint Select Committee on Australia's Family Law System. This is a public hearing and a *Hansard* transcript of proceedings is being made. The audio of the hearing is also streaming live via the web and can be found at [www.aph.gov.au](http://www.aph.gov.au).

The committee has received a media request to film parts of today's proceedings. Unless there are any objections, the committee authorises this request subject to the agreement of each witness. I advise witnesses that answers to any questions taken on notice should be forwarded to the secretariat by the close of business Wednesday 26 May 2021. The committee is currently due to present its final report by 30 June 2021, however, the committee has sought an extension to 29 October 2021.

I now welcome Mr Williams from the Lone Fathers Association of Australia and, via teleconference, Mr Flanagan from the Non-Custodial Parents Party (Equal Parenting). In addition to Senator Hanson, who is here in the room, currently we have Mr Young and Ms Steggall on teleconference and I expect that other members of the committee will join us in due course. Mr Williams, you lodged submission No. 112 with the committee. Are there any amendments or additions to that submission? It's okay?

**Mr Williams:** Yes.

**CHAIR:** Mr Flanagan, you lodged submission No. 1 with the committee. Are there any additions or amendments to the submission?

**Mr Flanagan:** No, that's all there is, plus the fact that I did put in a supplementary submission, which is on your website.

**CHAIR:** Thank you. Information on parliamentary privilege and the protection of witnesses and giving evidence to parliamentary committees has been provided to you as part of your invitation to appear. I invite you to make some opening comments, but given the time constraints could you keep it to two or three minutes, please. Mr Williams?

**Mr Williams:** I thank the joint select committee for allowing me to address this important panel. I wish to make the committee aware that I had the honour of being one of the six consultants under the chair of His Honour John Fogarty to study and introduce the child support scheme for Australia. Much of the scheme came from the Wisconsin and Williams/Colorado schemes. Myself, the organisation I represent and its affiliates have always and will always support the child support scheme, but this scheme has to be fair to both parents and their children. Unfortunately, at this time, it's not the case. It's terrible, daunting and unfair to thousands of clients. These clients feel like they have no rights or avenues except to pay up and accept it.

**CHAIR:** Thank you, Mr Williams. Mr Flanagan, do you have any opening comments?

**Mr Flanagan:** Yes, thank you. Our submission was dated 23 September 2019. As noted, we still have a problem with an unfair agenda and we still do not have the solutions in place to fix the problem. We note that 18 years ago we put in a submission to the Standing Committee on Family and Community Affairs inquiry into shared parenting and child support issues. That was 18 years ago, and almost exactly the same issues that we raised in that submission we raised again in our submission dated 23 September 2019.

In summary, our submission contained 10 main points. There were four points related to family law and there were six points related to child support. We believe all those points need to be addressed individually. One of the problems we had with earlier inquiries is that they did not address the fundamental issues relating to family law and child support. They tried to bandaid the problem. I note that your committee tabled an interim report on 15 March. Unfortunately, that had much the same problem—it tried to bandaid the situation by proposing such things as mediation. This is all fine and good, but, until you fix the fundamentals of the problem, you're not going to fix the problem with bandaid solutions. That's why we raised these 10 points, and hopefully your committee will give them due consideration. In passing, we've also read the Lone Fathers Association of Australia submission, and we agree with the points made in that submission by Barry Williams. Thank you very much.

**CHAIR:** Thank you, Mr Flanagan and Mr Williams. One of the issues that has come before the committee relates to the interplay between the child support system and the family court system and the fact that you can have orders in the court, which may or may not be followed, and then there seems to be, in at least a significant number of cases, discrepancies between the way the court is approaching the matter and the way child support is approaching the matter. We would like to see if there's any way to address that issue. The other issue is the

operation of the formula itself in relation to the custody of children. The suggestion has been made by some witnesses to this inquiry and in some of the submissions that there is a perverse incentive, or there may be more than one perverse incentive, to have the children for longer as that can effectively increase the amount of child support paid to a parent. Orders may be breached in order to bring about that situation. We're looking at this in a practical way—is there anything that can be done to overcome some of these difficulties or problems at the present time?

**Mr Williams:** We've put in submission after submission after submission over the 41 years that I've been a lobbyist at this Parliament and the Old Parliament House. We've made submissions time and time again, and nothing structural seems to come out of it. The issue is that if you pay your child support, you're guaranteed your access, just like in Denmark. I brought this to Denmark style to George Christensen's hearing, but nothing was ever done. We've got to face it, family law in Australia is a \$33 billion industry. It's getting worse for payers, because most payers are men, and now with the domestic violence accusations—which are taken on a presumption of guilt, not a presumption of innocence—it's absolutely shocking. I believe this parliament is not doing its job by not enforcing access to children.

I can't tell you names, but I get calls at 3 am in the morning from people who are threatening suicide and stuff like that. It's just terrible to hear men crying on the phone at that time, because they can't see their kids. With all due respect to the senators, we do have a bit of a hostile Senate, especially the ones who think that if you talk about men's rights, you're a woman hater. Well, that's not right. That's how I see it, in many cases, in the Senate.

For many years we have been saying that access is a major, ongoing problem in Australian family law—for decades. In recent years, the issue was examined by the House Standing Committee Family and Community Affairs in its report, *Every picture tells a story: Inquiry into child custody arrangements in the event of family separation*. In recent months, the Lone Fathers' Association has made numerous submissions to government on the subject of child contact orders, enforcement, penalties and improving the post-parenting order processes. The LFA had discussions on the subject with the federal Magistrates Court, the Law Council of Australia and the Child Support Agency. The association now puts forward a proposal to set up a child orders enforcement agency. We gave evidence to that effect to the House standing committee inquiry in 2003; still nothing has happened.

I tell you, the complaints we are getting—clients are being treated with German Gestapo-like tactics by the Child Support Agency. It's got to stop. It's terrible to get letters, like I get from mothers, saying that their son took his life because he could no longer cope with not seeing his kids. We do enforce child support, but we do nothing about enforcing access. I've been to court with people after people, and all that happens is it gets transferred to another date and another date. One man that I'm working with now has paid \$120,000 just because he wants to see his daughter. He hasn't been charged with any violence or anything; it's just because they say that the mother doesn't want him to see the child, so they've got to look after it.

**CHAIR:** Mr Williams, do you think the nub of the problem is there's a lack of enforceability of orders?

**Mr Williams:** There is a terrible lack. It's always going to be the same, because—I'm not frightened to say it—the law firms have got their hands in everything. The cost to go to court; even to get transcripts—people just haven't got that money. Here we are in an epidemic of coronavirus where people have lost their jobs, but they've still got to pay child support, they've got to track whatever they get and stuff like that. It's just got to stop.

**CHAIR:** Mr Flanagan, do you have any views about that?

**Mr Flanagan:** Yes. We fully support the comments made by Barry Williams. What he said is completely correct. But I'd like to refer you to our submission. One solution is to cap the child support payments. That's a solution that can be adopted and it's fairly easy to adopt. Basically, in the child support formula there are seven columns for the cost of the children. We propose that columns 2 to 7 be eliminated and that we have only one column to work out the child support for the cost of the children.

Once that happens, it reduces the cost back to a reasonable level and people can afford to pay the child support. At the present time, the child support formula is an open-ended formula and people do not have any incentive to try to get into work and earn money. They find that it becomes impossible to survive, so they leave work or they find some other way of avoiding child support. There are various ways of avoiding child support, as you probably know quite well. But that's what happens; if a system doesn't work then people adopt ways of trying to avoid it. The system doesn't work as such. We think that the problem should be fixed at the ground level, therefore we believe that you should look further in our submission of 23 September 2019. Thank you very much.

**Senator HANSON:** Yes, Mr Flanagan, I'm aware that you made that recommendation to get rid of sections 2 to 7 with regard to that, but you have no diagram here so we can actually have a look at it. There are a lot of diagrams that the department puts out but I would like to have seen a diagram here. I actually found it very hard

to understand and follow. Child support is very complicated in how it goes. You started with a person who starts at \$60,000 a year and how much access they have. Then you said that if the partner has \$20,000 a year that person would pay \$8,000. I just don't understand it; are you saying that it starts at the level of \$60,000 for everyone? Can you just basically explain?

**Mr Flanagan:** I'm not saying that at all. I'm just saying that whatever the formula comes out at, that's what we should do. We're not restricting that; we're restricting the actual cost of the children. As the income goes up, the cost of the children goes up. We're saying that it's open-ended at the present time. We want to try to make a cap on it and to have it not be so open-ended—so there's a maximum. So \$60,000 would be the maximum, yes.

**Senator HANSON:** Alright. Do you agree that it should be based on how much it actually costs to raise a child rather than based on income?

**Mr Flanagan:** That's how the formula is supposed to work but it doesn't work that way. It actually works on the basis of how much people earn. Yes, I agree with you.

**Senator HANSON:** Yes, it does. Do you think that a person should be paying child support if they're working more than 38 hours a week on a second job or overtime? Do you believe that should be taken into consideration—that they should be paying child support?

**Mr Flanagan:** They should be paying child support, but it shouldn't be open-ended. If you start to take overtime and extra payments into account, you'll find that there's no incentive for that person to work the overtime or the extra payments. So you're actually forcing people to restrict the number of hours that they work.

**Senator HANSON:** Mr Williams, you actually made a comment about family violence. Both Mr Flanagan and yourself have referred to the Family Law Amendment (Family Violence and other Measures) Act 2011. That was brought in on 7 June 2012. Do you believe that has a lot to do with the problems we have today with domestic violence and allegations of domestic violence?

**Mr Williams:** I do. The reports coming in to us say that whenever some of the mums and that want more child support they make a complaint about violence, when there has been no violence. Of course, child support is calculated on gross income and time spent with the children. We're finding that a lot of mums are denying access so they will get more child support.

**Senator HANSON:** You say in your submission:

... the criminal amendment to the 2010 Family Violence Bill that accepts a person is guilty on accusation alone.

I think that's your main grief about it, isn't it—that it's just on accusation alone?

**Mr Williams:** That is. For instance, I went with a fella who was accused of domestic violence here in Canberra to the court with him. They only knew each other, him and the lady, for a fortnight, and he was blamed for domestic violence and stuff. The police dropped the summons off, and he had to go to court. When he went to court, the registrar asked him, 'Did you do this?' He said: 'No, I did not. I wasn't even there. I can prove that.' The registrar said, 'I'll go and speak to the mother and the daughter.' He went down and spoke to the mother and daughter, and he said, 'What did he do?' She said, 'He sent me bad texts.' He said: 'Well, we've looked at all the texts you've had. He gave his phone and there's nothing on there.' She said, 'I'm just getting up and going.' That's the sort of thing. It worked out that the father of that girl came forward and said: 'I'm glad the young bloke wasn't charged because that is exactly what her mother did to me. She blamed me for domestic violence, but, when it was challenged, she pulled it all off and went off and said she made it up because she was upset.' This costs a lot of money, and that's what's going on all the time.

**Senator HANSON:** There are organisations, especially those that support single mothers and their children, who say in their submissions that there are no lies, that women don't lie, that this is not the case, that domestic violence is absolutely real.

**Mr Williams:** It is real, but it's real on both sides. Our law states that if you're male virtually you're violent; you're guilty, but when you're female you're not. I'm not knocking females, because our organisation is made up of men and women. We have a 50 to 50 per cent membership of women to men around Australia, and all these women agree that the children should have rights to be with both parents at all times if they can or as much time as they can—and grandparents. We don't discriminate against women.

I work very closely with another lady who you will be speaking to today, Terese Edwards. We worked on a child support scheme for a long time. We've already put up to reopen the national stakeholders. I don't know whether you're aware of that.

**Senator HANSON:** No.

**Mr Williams:** The national stakeholders is something I put in the John Howard years.

**Senator HANSON:** No, I didn't read your submission.

**Mr Williams:** We met every three months—the Child Support Agency, our group, women's groups, family relationship services, Centrelink and everyone. We all had little tables there, and people could come and listen, and we could discuss people's problems, especially child support. We could discuss what was going on, why people weren't happy and that. In those days, when Matt Miller was the manager of the child support scheme, I could drive to Woden—and clients would send an email saying, 'I give Barry Williams right to talk on my behalf because I don't understand the legislation.' The legislation is very hard to understand. We could go over there and we'd put the case up on the wall, his chart, and we'd look at it and we'd find out whether the Child Support Agency was right or whether the client was right. Seven out of every 10 the Child Support Agency was right, but there was always that magical three or four per cent where the person had a bum deal, so we could fix it. But the new government came in and they closed that all down. Now these people have got no-one really to talk to, only their bosses in the Child Support Agency. They're asking us if we'll take their case up, and I've got to say to them, 'We've got no more phone numbers to the Child Support Agency; we have no contact with them at all.' They cut all that out not only to us but to the women's groups too. They are the sorts of things we need to try and help these people and give them advice on their child support and stuff like that. But there's nothing like that for men now in the whole family law system. You just have to pay money, money, money and try to win—

**Senator HANSON:** So are you saying you don't get the same assistance given to men's organisations and groups and male individuals facing the family law courts as what women do? Is that what you're saying?

**Mr Williams:** It is. You just have to look at the funding the women's groups get, and I applaud them because they need it. But men's groups get nothing like that. We are just an organisation the same as John's trying to help these poor people; they are suffering. That is our main aim, especially the Lone Fathers' Association and Parents Without Partners and grandparents. Children's rights are being denied by this Australian government and are not being upheld under the paramount rights of the child. The child has rights, too. In the courts now they don't even listen to 10- and 12- year-old kids.

I was planning an international world conference just as coronavirus hit in October, the year before last. We inquired about hiring the main ballroom downstairs because we were going to call an international world conference. We had people coming from America, England, New Zealand, Canada, Trinidad, Tobago and places like that because their countries are suffering the same in that the children's rights are not being upheld.

I believe that we could have won a case against the government in Australia because you can't just keep denying your children's rights. When John Howard was in there, he called me in. I showed John Howard that there was nearly a million children just before 2006 in Australia who could not see their intact families on the other side. John said, 'I will get that checked out.' He told me I was right and that's why they were holding that conference, to try to bring in shared equal care; instead, we got shared equal responsibility, because Labor and the Democrats crossed the floor and voted against it. So what we got was a presumption of equal responsibility, which means nothing because all the responsibility is you pay, you pay, you pay.

If I could just touch on what John was saying, we also put a submission up years ago that child support should be calculated on net income, not gross income. I actually tackled Paul Keating when he was Prime Minister about that. All he would say was, 'We can't do it because it wouldn't be fair to intact families.' That was the only answer we got back from him; we could never understand what he meant. Many men are doing overtime and working a second job. If kids and mothers have the house—as our submission said years ago—why do the men have to pay on second jobs and overtime, because they're trying to get that money to get themselves a house so they can have access to their children, but nothing happens.

**Senator HANSON:** Thank you very much. I want to keep moving forward. Mr Flanagan, can you explain to me your definition of the rights of the child?

**Mr Flanagan:** Yes, the present Family Law Act says:

A court must have regard to the best interests of the child as the paramount consideration.

Now, that means exactly what it says. It says that the rights of the child shall be 'paramount'. That particular clause was based on the United Nations Convention on the Rights of the Child. That says 'the best interests of the child shall be a primary consideration.' Now, we believe that, yes, the best interests of the child are important, but the other interests of the other parties involved are also important. The mother, the father and the other relatives are important, but under the current legislation those rights are not taken into account, because the legislation uses the word 'paramount'. We would suggest that it would be quite easy to change the word 'paramount' to 'primary' in the legislation. As an example, section 65E defines what 'the best interests of the child' is. If you can do that, we



believe that the decision will take into account the rights of the other party, which doesn't happen at the present time.

**Senator HANSON:** Do you agree with that, Mr Williams?

**Mr Williams:** I do.

**Mr YOUNG:** Can I interrupt here? I thought this was a child support inquiry. We've already done the Family Court inquiry, and I think a lot of this is more to do with the Family Court than child support. Is this right or wrong?

**CHAIR:** It's the interplay between both, but we'll get to your questions shortly. Senator Hanson, continue.

**Senator HANSON:** You are exactly right. This is where I'm getting to the point, Mr Young. The determination of the courts and basically who pays child support and how it's paid comes down to who has custody of the children, so it does go to the rights of the child. But what I'm leading to is: do you believe there are parental rights as well, Mr Flanagan?

**Mr Flanagan:** Yes, I believe the reason that at the present time they're not taken into account is because of that one particular word: 'paramount'.

**Senator HANSON:** Are you aware that section 51(xxii) of the Australian Constitution goes to 'divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants'? It states in our Constitution that there are parental rights, but this has been overlooked, and the total focus has been on the rights of the child. Therefore, I go to the point that child support is about people getting custody of the children, which uses the rights of the child, and thereby deny access to the other parent. A lot of it is based on what money they will be able to get out of it. Am I correct?

**Mr Flanagan:** Yes, that's correct. That summarises it very well.

**Senator HANSON:** Have either of your organisations ever challenged section 51(xxii) of the Australian Constitution about parental rights?

**Mr Flanagan:** No.

**Mr Williams:** When Mr Jim Carter was alive, he was my consultant. We did send a letter to international human rights about the parental rights of the child, but we never ever got any answers back. It wasn't only 51(xxii); it was quite a few things we sent away, but we never got any answers back, wherever the letter went.

**Senator HANSON:** I also want to ask your opinion about this: on child support, I hear from a lot of mothers as well as fathers that they have no access to the children because the courts have allowed them to move interstate or elsewhere. They don't get to see their children, but they are still asked to pay child support. Do you know of cases like that, and what do you believe should be the case?

**Mr Williams:** Could you repeat that?

**Senator HANSON:** Parents are denied access to the children or parents with custody of the children move away, and the other parents don't know where they're living, so the parents don't get to see the children, but the noncustodial parent still has to pay child support even though they don't get to see their children. What is your opinion about that? You first, Mr Williams.

**Mr Williams:** Firstly, we have fought that little bit for a long time. That's what the Danish style does. I sent links to the George Christensen inquiry when he was doing this. In Denmark, you pay your child support and you guarantee your access. There is no going to court. The police are used and they go and find out why the child hasn't been handed over. They then charge the primary carer that's got the child US\$300 the first time. If they have to come back a second time it is US\$600 and, if they have to come back a third time, the child is taken off them and given to the other parent. It works brilliantly in Denmark and they don't have the problems that we have.

I went to all the trouble of going to the Danish embassy and getting them to send the links to George Christensen's inquiry. But, evidently, they didn't even look at them. George said they looked at them, but the committee wasn't interested in that sort of thing. The only thing we've had to help is, as I said, the national stakeholders. I'd urge you people, especially in the parliament, to ask the minister to reopen it, because it was helping everybody a lot and we didn't have all these problems.

When Mr Tehan was the child support minister I was lobbying him and he was going to reopen it. It's impossible to catch one of these ministers for DSS and speak to them in the parliament and explain to them how badly it's needed. I've spoke to the boss of Relationships Australia and to Terese Edwards, from the National Council of Single Mothers & their Children, and they are all backing me to keep going to the parliament to try to get this reopened, because they know how important it was and how we were able to make a lot of lives a bit

better for these men and people who are missing out on access and stuff like that. We as organisations should have numbers where we can contact the child support agency, especially when they're talking suicide—and, believe me, there's a lot of it going on.

**CHAIR:** We will now go to Mr Young.

**Mr YOUNG:** Thank you for your time, gents. I've been through this myself and have plenty of mates that have gone through this, unfortunately. So it hits home for me. I agree with you on the innocent until proven guilty. I also agree on enforcement of access. Child support and how that is formulated and paid is what we are here to talk about today. Just to make the maths easier, let's say child support is, say, 10 per cent in a particular circumstance. If you cap the income test to \$60,000, that means that someone who is on \$60,000 would pay \$6,000 if they are on 10 per cent and someone who is on \$200,000 a year would pay \$6,000. What do you think the cohort of people on that lower income of around \$60,000 would feel about that, knowing that, as a percentage, they are paying about 10 per cent of their wage whereas the other people are paying about three per cent? Do you think that would cause any angst amongst the community?

**Mr Flanagan:** I think that's actually the solution to the problem. If you can cap the child support payments, you will have less incentive for the custodial parent not to provide access to the child. At the present time, the less contact the noncustodial parent has, the more child support that they are supposed to pay. Therefore, there is a disincentive to give access to the noncustodial parent. By capping the child support payments, that would provide one method of solving the problem.

**Mr YOUNG:** I understand, but I think you're missing my point. I understand the concept and I understand the reasons for it. All I am saying is that if one person is on \$60,000 a year and another person is on \$200,000 and yet they are paying the same child support, do you think the people who are on \$60,000 a year would be annoyed with the people on \$200,000 because they're paying the same amount of child support yet they are earning less than a third of what those on \$200,000 are earning? I'm just talking about public opinion and how the public would feel about that. Have you given any thought to that?

**Mr Flanagan:** Yes, but I think the question is not so much about how much a person is earning and more about how much contact the child has with the other parent. If a person is on \$200,000 and paying their 10 per cent—which I think I said last time would be more like about 30 per cent—you will find that there is less incentive for the mother to give access to that person on \$200,000—

**Mr YOUNG:** It's alright. You're not understanding my point. That's okay.

**Mr Flanagan:** I understand your point but I don't see its relevance to sorting out the problem of contact with the child.

**Mr YOUNG:** When you bring ideas forward—I'm just trying to put forward the issues I think may come up from the public or how well it will be accepted. I understand the principle behind what you're saying, and I like it. But what I'm saying is that if I'm on \$60,000 a year and I've got a mate on 200 grand and he's paying the same amount of child support as me—because there is a cap of \$60,000 on the income test—I'm going to be very annoyed because I'm paying 10 per cent of my wage in child support and he's only paying three per cent of his. That's all I'm saying. Have you given any consideration to that?

**Mr Flanagan:** Yes. But, if you look at it from the opposite point of view, if you're on \$60,000 there is no incentive for you to go and work harder or longer to earn more money.

**Mr YOUNG:** I completely understand.

**Mr Flanagan:** That's where it comes from rather than from that end.

**Mr YOUNG:** I completely understand. Senator Hanson and I have had discussions. We like the idea of a fixed amount based on how much it costs to raise a kid regardless of income. I am just playing devil's advocate. We have to try and understand what the response will be if we make these recommendations. That's all. So I just wanted to know if you have thought about that aspect. That's okay. It's all good.

**Mr Flanagan:** One further point: in the child support formula, there is a threshold of 11 per cent contact. If the contact is below 11 per cent, the payer pays the maximum child support. If the contact is above 11 per cent, the child support is reduced by two or even three times what they would pay if the contact is below 11 per cent. Therefore, there is a big incentive for the custodial parent not to give access to the non-custodial parent and to keep the contact below 11 per cent—

**Senator HANSON:** I have to correct you. For the record, it is 14 per cent.

**Mr Flanagan:** Sorry, 14 per cent.

**Mr YOUNG:** Whatever it is, it doesn't matter: we all agree on that. We have discussed as a committee that the answer to that is that if you have a custodial agreement of a certain amount of days that's what you pay regardless of whether you actually have the children. That fixes that. We understand that. We think we've already got a remedy for that. If you have been given custody of two nights a week and the other parent keeps them away and you don't get the kids, you don't have to pay. Mr Flanagan, did you get a copy of the family law inquiry that we just did and the recommendations?

**Mr Flanagan:** Yes, I did. As I said in my introduction, I didn't think they were very good. It lacked ways of showing how to fix the problem. The recommendations suggested that we should pay more money to the Family Court and pay more money to legal aid. I think it says on the very last page of the report that solicitors should be able to have at least \$50,000 per case or 10 per cent of the assets—whichever is greater. So it didn't actually go towards fixing the problem; it just talked around the issues and didn't really go to the fundamentals of the issue, which I suggested earlier on.

**Ms STEGGALL:** I feel like we're discussing a bit away from child support. What is your view in relation to the way the formula changes when one of the parents has further children? It basically reduces a parent's liability to provide for a child, yet essentially the living costs of that child have not changed. What's your view on that?

**Mr Flanagan:** You're referring to the child support formula as it is now. If the second parent has another child, that has a very minor effect on the child support payments even though that child does cost as much as the first child to raise. There's no real provision to help the second parent out with the reduction of child support payments, because the reduction is very minor.

**Ms STEGGALL:** Yes, so, in effect, if a mother, for example, re-partners and has more children, it will impact the formula as to her ability to provide financially, so what she would contribute to the children. It's the same for a father. If a father has further children, it reduces their liability of child support to the first relationship's children. So what's your organisation's view in relation to this? You've put forward a case around having a fixed fee for child support, so should it also be fixed regardless of whether either party goes on to have further children?

**Mr Flanagan:** Yes, it should be fixed. The person who is liable for child support should have an idea of how much it is going to cost them so that they can work their finances out around that. There are fewer arguments regarding access as a result.

**Ms STEGGALL:** Anecdotally, in relation to your membership, are you aware of the percentage or have you ever asked—because I understand it's mostly fathers—how many, in fact, took parental leave at the birth of their children and took time out of their careers to be primary carers of the children?

**Mr Flanagan:** Sorry, I wouldn't know that.

**Ms STEGGALL:** Okay. In a financial sense, this is part of the inequity that develops and then impacts this formula in terms of the giveaway between the caring relationship and essentially the financially providing relationship for children. Has your organisation considered that need for fathers to be more involved in the caring role in the early years, to reduce that expectation of a financial role later?

**Mr Flanagan:** If a parent pays child support, they should be entitled to access to their child. That then allows them to have a relationship with the child.

**Ms STEGGALL:** But do you accept that at the moment it's quite separate? A child needs certain financial support to live, regardless of what relationships they're having with either parent. In fact, the act establishes that as soon as someone is biologically a parent of a child there is a financial responsibility to provide for that child, regardless of access or any other circumstances. You don't accept that?

**Mr Flanagan:** Yes, of course I accept that people should have to pay for the cost of rearing their children. But you have to also appreciate the fact that, if you can't get access to your child and have a relationship with that child, there's less incentive to actually pay the child support in the first place. The more child support you pay—

**Ms STEGGALL:** You see it as an incentive rather than a responsibility?

**Mr Flanagan:** No, I see it as a benefit of providing child support—that is, you actually have a relationship with that child. It's human nature to not want to pay child support if you're not allowed to have access to that child.

**Ms STEGGALL:** Okay. Thank you.

**CHAIR:** Mr Williams, Mr Flanagan, I think that has exhausted the questions from the committee. I thank you both for your submissions and also for coming along, and, in your case, Mr Flanagan, joining us to discuss these matters this morning. We appreciate it. Thank you very much.

**Mr Flanagan:** Thank you.

**Mr Williams:** I was asked to drop off a client's paper to you. I don't know whether you can accept it or not. Could I give it to the—

**CHAIR:** Give it to the secretariat, yes, and we'll make an assessment once we've looked at it.

**Mr Williams:** Thank you very much.

**COOK, Professor Kay, Private capacity [by video link]**

**EDWARDS, Ms Terese, Chief Executive Officer, National Council of Single Mothers and their Children [by video link]**

**McINNES, Dr Elspeth, Adviser, National Council of Single Mothers and their Children [by video link]**

[09:50]

**CHAIR:** I welcome by videoconference representatives from the National Council of Single Mothers and their Children and Professor Cook from Swinburne University of Technology. Before we continue, is there anything any of you wish to say about the capacity in which you appear today?

**Prof. Cook:** I am from Swinburne University of Technology, but I am appearing in a private capacity.

**Dr McInnes:** I'm an associate professor at the University of South Australia and an adviser to the National Council of Single Mothers and their Children, and I'm here in that capacity.

**CHAIR:** Ms Edwards, you lodged submission No. 397 with the committee. Are there any amendments or additions to that submission?

**Ms Edwards:** I think there was an addendum with the report that the National Council of Single Mothers and their Children did with Professor Kay Cook, so I'm hoping that you've received that as well.

**CHAIR:** Thank you. Information on parliamentary privilege and the protection of witnesses and giving evidence to parliamentary committees was provided to you as part of the invitation to appear. If any questions are taken on notice, we would appreciate the answers by 26 May. I invite you to make some opening comments. If you can keep them to two to three minutes, that would give more time for discussion and questions. Do you want to lead off, Ms Edwards?

**Ms Edwards:** Thank you very much. I want to say how emphatically we welcome the opportunity to give evidence and to put some facts, some research and some real lived experience before the committee. I certainly speak from a critical position of single-mother families, who are entitled to receive child support, often contending with hardship, housing stress, financial abuse and financial control, in the context of very exhausting system fatigue. I argue at this point in time that the child support scheme does not uphold the key principles of operating in the best interests of the child, and I'm very concerned that child support has given in to some of the loudest and the most powerful voices at the expense of children.

The key point I'd like to start off with is that we have a \$1.6 billion child support debt, tracking in the wrong direction. I'd also like to point out that that's a very soft and airbrushed figure because it doesn't take into account debts from private collect or written-off debts. I'd also like to point out that we have over a quarter of the customers—200,000-plus people—who have chosen not to lodge their tax returns, which means that the efficacy of the scheme in ensuring that there is accurate income is eroded. The third point I would like to make is in regard to family and domestic violence. Our understanding and needs have matured since 1987. However, there is only one remedy that's still available, and that is for a woman to seek an exemption, which results in the perverse financial rewarding of men who choose to use financial abuse and violence to not pay child support. However, I do want the committee to know that we are not without remedies. We know the solutions. This is not a wicked problem, and I'm really keen to engage in that discussion.

**CHAIR:** Thank you, Ms Edwards. Dr McInnes or Professor Cook?

**Dr McInnes:** Thank you. I would just like to note that the issues of poverty and violence, particularly against mothers with children after the breakdown of a relationship, have continued to be present as a social problem. In fact, as the 2006 changes reduced child support payable to families raising the children and changed the way child support was calculated, the overall effects have been impoverishment. This is alongside the shifts in the welfare-to-work policy, which reduced payment when the youngest child turned eight. Together, these have meant that there has been increasing poverty amongst single-parent families; and we have all watched, with some horror, as we've seen the prevalence and persistence of serious violence and a continuing context of abuse.

We see this against rising debt in the child support system, as Terese has pointed out. We see this as women's opportunities to get education, secure more skills, get better-paid work and less-costly childcare support have been static, at best, and going backwards. The submission by NCSMC makes concrete recommendations that child support actually be paid as a debt to the Commonwealth, because the Commonwealth is much better positioned to recover that debt from taxpayers, whereas if families are left to manage that in mediation or if it goes through the court system it ends up being extremely costly to all parties, which we don't want to encourage.

Effective action to ensure that child support is properly assessed and paid, and that, in the process, there's protection for women and children from gendered violence, is fundamental if we're going to have families raising children in safety and with adequate financial support. I'll stop there—Kay?

**Prof. Cook:** Thanks, Elspeth, and thanks for the opportunity to present. Just over 30 years after the child support scheme was introduced, the problems that it was brought in to address still persist. A significant number of single mothers and their children still live in poverty, and single mothers and the department have difficulty collecting payments when payers don't want to pay. While the payments, when received, can reduce the likelihood of poverty by 21 per cent, the maintenance action test, in the context of high rates of domestic violence and the interactions between family tax benefit part A and child support—especially for women with private collections—can exacerbate women's and children's poverty, and cause significant financial and psychological harm. It's a government system that can be used as a weapon to enact financial abuse and it shouldn't be tolerated by the government.

While the system has undoubtedly provided benefits, these benefits accrue most to families who need the system the least. When parents willingly work in their children's best interests and agree to share their resources, the child support formula provides a way to determine what should be paid. Child Support Collect provides a way to automate payments and make them more reliable, and can provide a useful tool to recoup payments from less-willing participants. But when parents don't want to work in their children's best interests, the child support scheme can provide a way to enact ongoing control. The more financially secure parent—overwhelmingly, the father—can use the system to make the less financially secure mother's income unreliable and inadequate. Living on the poverty line, as many benefit recipients are, makes this a matter of extreme concern. The consequences for women and their children are debts, foreclosures, bad credit ratings, food insecurity, homelessness and their and their children's social exclusion. But the interaction between the child support and benefit systems make the consequences of unpaid child support even worse, as the cost to women is well beyond the cost of the unpaid child support.

In addition to the unreliable child support that makes it impossible for women living on the poverty line to budget, women face the threat or reality of family tax benefit overpayments and then Centrelink debts. The uncertainty and insecurity that these women with caring responsibilities face can then cripple them financially, emotionally and administratively. So they're often damned if they pursue their child support debts and damned if they don't. This is especially the case for women with private collections, which is more than half of the case load, and women using the modified entitlement method of family tax benefit A calculation. When child support is not paid or it's paid late, neither of these methods should result in family tax benefit part A debts to the women and children who depend on family tax benefit A income for their survival.

What the National Council of Single Mothers and their Children submission presents is a path for financial security for the women and children the system was designed to support 30 years ago. We really thank the government for acting on the recommendation to compel both parties to lodge tax returns annually, and we hope that the committee takes on the other recommendations in our report.

Finally, I would like to note that the research that our submission draws on may not be possible in the future, given the university's new funding model and the loss of academic staff that's occurring in areas where research cannot easily be commercialised. On this issue, and on child support, I really hope that the committee can find value in our research and act so that social justice can be achieved. Thank you.

**CHAIR:** Thank you all. I will lead off. It seems to me that at least some of these problems that are experienced are due to the delays that exist in the system and that if the various issues could be brought to the table, so to speak, early on in any proceedings and allegations of domestic violence could be dealt with upfront, and issues of the custody of children and child support could be dealt with more or less at the same time—in other words, if there were some way of triaging cases so that, where these issues have been raised, they can be addressed immediately or very quickly by the Family Court, taking into account what the child support requirements are as well—we might solve some of the problems. Is that a realistic view, or am I being optimistically naive?

**Ms Edwards:** I think the earlier intervention takes place the better, particularly when anything goes awry. I would suggest that long waiting lists are stressful. They add a degree of uncertainty. So the earlier it can be responded to the better—but not without ensuring there are due practices and protective processes around domestic violence.

Going to your points about the child support scheme, what we find is that there's normally a pattern of poor payment, and it only gets acted upon when the payee, usually the mother, identifies it. So I agree that if there's

something that's gone awry, like a short payment, a late payment or a nonpayment, the sooner we respond the better.

**Senator HANSON:** Do you agree with the way the child support formula is structured at the moment?

**Ms Edwards:** I think the child support formula is premised on some things that are not accurate. For example, it's premised on public schools being free, so there's no cost provision for education if the child is in public schools. We know that that's not the case. It's quite expensive no matter what sort of school you go to, even the public ones. So I feel that the formula has undersold the reality of living expenses, and I would really like a review of the basket of goods. In particular, at the time when the child support formula was brought into place, we didn't have such high housing stress and our utility costs were much less. So we've seen a significant cost in housing pressures in raising children, but our formula is still back 40 years ago, when it was a kinder time.

**Dr McInnes:** Can I add that there is also a real issue where children have a disability or chronic health conditions and there can be disagreement between parents about the costs of that. Basically, children need what they need, and it's better if the system is able to use records and costs, particularly as we've now got the NDIS. This can be easily established in terms of calculating any additional costs arising from a child's disability situation. We need to have these capacities. The other big flaw with the formula was that it assumes that younger children are cheaper because they consume a lower cost bundle of consumer goods. But the formula as it stands does not cost the unpaid care and the opportunity cost of that unpaid care, so it's basically assuming that that labour is free, and, if we are going to give something value as economists, it needs to be costed. When you take that into account, as we know from childcare costings, care for very young children is in fact a much higher component of the costs, yet this isn't reflected in the child support formula at all. It's a systemic gendered bias against what is often women's labour, because they give up their time in their workforce capacity and earnings opportunities quite often in those very early years. This is made totally invisible in the formula, to the detriment of the families raising those young children. And we know the young children period is when children have the greatest developmental and learning gains and are really adversely affected when they're contending with poverty and difficulty. So there are high stakes for families about whether this is working properly.

**Mr YOUNG:** Ms Hanson, can I ask a question of Ms Edwards while she's on this point?

**Senator HANSON:** Yes.

**Mr YOUNG:** You were saying that the cost of living has gone up and therefore that the paying parent should be contributing more. Would it stand to reason that that would put more burden on the paying parent? If the costs have gone up, they've gone up for everyone. So, if they're paying more to the other parent, doesn't that put strain on them, and then a whole bunch of issues are created by them having to pay the higher amount?

**Ms Edwards:** What I was saying is that the formula doesn't take into consideration the increasing cost and the assumptions that it underpinned, so that was what I was actually responding to.

**Mr YOUNG:** Yes, I understand that. What I'm saying is that the costs have gone up for everyone, not just the person receiving the payment but also the person giving the payment. So, if you put a greater burden on them—the pie hasn't changed; their income is still the same—you're just giving more to one person. To me we're just transferring the stress from one party to another.

**Ms Edwards:** I actually strongly disagree with that, because the formula also takes in a 24 per cent discount for one overnight stay. I was narrowing it down, but, if you want to broaden it out with other issues that surround the child support system, the current formula is: if you have your child for one night a week, you get a 24 per cent discount. I don't know anyone who, mathematically, would believe that's a fair assumption. The other thing that's wrong with the formula is that it concludes on four children, so it basically says to a family: your 5th or even more children are free. So I think the cost for the payer has been incredibly generous around that 24 per cent discount.

**Mr YOUNG:** I'm not talking about the formula. I understand your point of view on the formula. You're saying that it puts stress on the people because they're not receiving enough money. My point is: won't we be transferring that stress, because the other person will be worse off—the one that's paying? That's my point. We can argue about the formula and discuss the formula—I get all that. It's just that I don't want to have stress on either party; I'm trying to reduce the stress on both. I think that, by putting more on the payer, we're actually going to be creating more stress for them.

**Ms Edwards:** Yes, I've heard you say that, and I'm just saying I disagree.

**Prof. Cook:** I would suggest that wages policy might be a way to remedy that. We are trying to divide a pie. Families with two incomes are struggling because wages aren't keeping up with the cost of housing. When you

have parents on a single income or relying on government payments, obviously that creates stress. Benefit payments are not keeping up with housing costs. Wages aren't keeping up with housing costs.

My other point is that, in making the formula increasingly technical and trying to accurately cost and precisely calculate all of these different eventualities, the formula—and Australia's quite particular on this—is creating a thousand new fronts for parents to contest and fight about. To drag this through the courts and changes of assessment is an attempt to fix a social problem with a technical bandaid, and then than, especially in private collection, is being further downloaded onto individuals to sort out. This is a social problem about how you fund the unpaid and uncostered work of caring, and a formula, a technical bandaid, is never going to solve that issue. That's the underlying, fundamental problem with the child support formula: it can never solve the problem of there not being enough income.

**Senator HANSON:** You say how much you pay for caring. Mother or father, there shouldn't be a dollar value on caring for a child. Both parents are responsible for bringing the children into the world. It is the responsibility of both, not a factor of who should get paid for what job they do. This should be based on how much it costs to rear that child, which is both parents' responsibility. Do you not agree with that?

**Prof. Cook:** But the opportunity—

**Senator HANSON:** We've lost the sound.

**CHAIR:** Professor Cook, we can't hear you at the moment. It looks like you can't hear us either.

**Dr McInnes:** Can I just say we're not talking about paying the parent staying home with the child; we're talking about costing it.

**Senator HANSON:** There was a comment made about women having to give up their work, their income—the cost of providing that care. I'm sorry; it does have a lot to do with it, and that's what they're saying that women are going without—the ability to work. And a lot of women are actually making that choice by going through the court system. A lot of fathers want to have their children, want more access to the children, which would give the women more opportunity to go out and work if they wished. If it were sorted out between both of them then both parents would care for the children.

I'll go back to child support—

**Ms Edwards:** I'm so pleased you mentioned that, because I do want to correct the record on that through facts. What usually happens is that the pattern that was in the family before separation is the pattern that continues. When we had the push for equal shared care, a couple of years after separation what we found was that, overwhelmingly, women became the primary carer again. There's only about 12 per cent, even under a shared care agreement, where there is actually shared care. I just want to clarify that the notion of denying men access and men not getting it is not borne out in the actual realities of life. And this is a couple of years postseparation.

**Senator HANSON:** Thank you for your comments. That is underwhelmingly what we are hearing in submissions and evidence to this committee.

I want to ask you a question about the formula. Do you believe that, if there is separation and you have two children, you actually should pay child support—totally agree with it; they're your children—and it is worked out, the child support? Do you believe that it should not be allowed to be altered, regardless of the circumstances of the father or the mother? Do you believe that that child support should be responsible so that, if they go on to have more children, it is their responsibility, not the responsibility of the former parent?

**Ms Edwards:** Sorry, it was a confusing question. Could you ask that again?

**Senator HANSON:** I'll put it this way. If you have a couple that split up, child support is worked out, based on the income. If the mother was working at the time of separation, and she actually remarries and has another child, that affects the child support formula. What's your opinion about that?

**Dr McInnes:** I think it goes to the realities of the pie that Terese has talked about. It doesn't get bigger; it's divided anew to fit circumstances. People's circumstances do change, and individuals' circumstances change according to health, repartnering, or more children. If a formula isn't responsive to that, then it's not reflecting reality, and I think, to go back to the opening question by Mr Andrews, the issue is about making determinations on what are the realities for each party. Our recommendation about compulsory tax return lodgement goes to that point. We need real-time, effective assessment of the resources in the family and the circumstances, and this needs to be calibrated against real earnings and real circumstances. It doesn't change whether or not a child is sick on a night of access. Whatever's registered with the department or whatever's registered as an agreement or a court order will apply unless and until that is formally changed, and it doesn't change with casual variations. But the formula has to have adaptable features, and it should rely on real-time capacity to respond.



**Senator HANSON:** Then I'll ask this question. If a woman who has custody of the children most of the time remarries again, that income is taken into that house. She does assist in paying for the rent or, if the house is fully owned, electricity and rates. Why isn't that taken into consideration in the child support from the payer?

**Ms Edwards:** Are you asking for another partner to be considered into the income support rather than the biological parents? Is that what you're asking? Because—

**Senator HANSON:** No, it's not. You see, you've just made a comment. You've wholly based your argument on the cost of living, the cost of housing—expenses. If someone else has come into the equation and is now providing that house, a roof over the head, or is paying for electricity, water and rates, that has to be taken into consideration, surely?

**Ms Edwards:** I would argue that the two biological parents are responsible for the child.

**Senator HANSON:** So your argument about costs of living doesn't come into the equation—it's the same thing, if you look at the other side of things: the payer. If they get married again, the person who is bringing income to that household shouldn't be taken into consideration either.

**Dr McInnes:** The thing is that there's no compulsion in Australian law to require a partner to contribute equally to the economics of a household's running. I don't think.

**Mr YOUNG:** We know that, but should there be? That's the question.

**Dr McInnes:** I think that would complicate things further and be a lawyers' party cubed if we went down that route. The thing is that relationships change and, if you are benefiting by a new partner's generosity or you are costed by the reliance of a new partner, that doesn't change in essence that you have children. You are the biological parent of a child that needs a quantum of support from you determined by your income. That's broadly what the formula tries to address. What else can it do?

**Senator HANSON:** The big problem is domestic violence that has happened. Of course, domestic violence leads to parents not getting access to their children, and this works both ways. It's not just men, it's also women, who don't get access to the children based on domestic violence allegations. We've heard a lot of submissions that people have used domestic violence against the other partner when it's been an allegation and not fact, but the courts have used it to actually deny access to the child. Would you agree that there are people out there that use false allegations to stop the other partner from getting access to the children or to improve their financial circumstances and get more child support?

**Ms Edwards:** I believe it's been a really well-populated myth that women make up allegations or that they're heard, because we actually know that domestic violence, and violence against women generally, is significantly underreported. So we need to be really clear. I don't even accept the premise of your question. I think it's just propagating another myth.

**Senator HANSON:** So not one? So you're saying that there couldn't even be one case of a person using a false allegation of domestic violence against a partner to stop the kids from seeing them or to increase the child support?

**Ms Edwards:** I'm saying that it is more likely that domestic violence is completely underreported.

**Senator HANSON:** Does anyone else have anything to say on that? Does anyone agree that it could be used as a tool against former partners to stop them seeing the children or to increase child support payments?

**Prof. Cook:** If you look across society—and there's ample evidence, say, in the media at the moment—women bear the costs of making reports of violence, sexual harassment or whatever it will be. A woman making these allegations is well aware of the costs that will accrue to her as a result of making them. It is much more likely—and research shows it and the courts show it—that women are less likely to report domestic violence. Whether that is in seeking an exemption or whether that's in the courts, it is much more likely to be underreported than over-reported in instances where there is no violence. It defies logic that women would be subjecting themselves to that for child support that is unlikely to be paid anyway in those circumstances. Where is the financial gain for these women in doing that—to inflame a situation, to make it harder for themselves to have a relationship with their children's father and to try to recoup child support payments? It doesn't make sense.

**Ms Edwards:** One of the issues I deal with a lot when women contact me is that they know that there is going to be conflict anyway. They are fearful of that conflict but they tie themselves up in knots to be what society believes is a good parent, which is to ensure access. We've seen some really frightening outcomes because of that. So there is incredible pressure put on women to actually provide access, and this is in the space of a lack of safe access centres, a lack of court support and also those myths around women making up false allegations.

**Senator HANSON:** One submission we've received states:

... overzealous courts often misuse domestic violence orders ('DVOs') that should be used as a shield to protect real victims of domestic violence.

This is confirmed by an academic survey of 68 Australian families. Conducted by Sotirious Sarantakos, an Associate Professor of Sociology at Charles Sturt University, this survey found that a significant number of allegations of domestic violence are either false or can't be substantiated. In these cases, he explains,

the initial allegations of DV were modified ... during the course of the study, particularly when [the alleged victims] were faced with the accounts of their children and mothers, admitting in the end that they were neither victims of violence nor acting in self-defence.

... ..

Indeed, a survey of 38 magistrates in Queensland reveals that 74% of them agreed that domestic violence orders are regularly sought for tactical reasons. Likewise, a survey of 68 magistrates in New South Wales found that 90 per cent of them agree that restraining orders are commonly sought merely as a "tactical device" in order to aid applicants with family law disputes, in particular to deprive former partners of contact with their children.

I would say that these are surveys that have been done, judges that have admitted—even David Collier—

**Prof. Cook:** Which [inaudible] emphasises—

**Senator HANSON:** Even David Collier, a former judge who retired from the Parramatta Family Court, has said that such orders have become a major 'weapon'. This is the problem that we're having as to domestic violence. I oppose domestic violence. But there are organisations that are putting men down as if they are the only perpetrators in this. Anyone can be violent—anyone can commit domestic violence—but the fact is that you—

**Ms Edwards:** I think [inaudible] did lots of research—

**Senator HANSON:** What we have to find, and get to the bottom of, here is: false allegations being put against people—I don't care whether men or women, but it appears to be more men—to deny them access to their children. This is being used because they want more in child support and they're being vindictive against their ex-partner.

**Prof. Cook:** [inaudible] that they are unlikely to get—

**Senator HANSON:** Those who are suffering are the children. At the end of the day, it's about the children. And it's not about—

**Ms Edwards:** Senator Hanson, that's just rubbish, and it wasn't borne out in the reviews of 2006, and that's why there was new legislation brought in in 2010. I know that my colleague Elspeth McInnes has been part of that very critical research.

**Dr McInnes:** I just would say also that John Edwards shot his two children and himself, and he went to a police station and said, much as you have said, 'My ex-wife will come in and make allegations against me because she wants to look good in the Family Court,' and the police said, 'Oh!' And when she came and made those allegations to the police, they took no action. The children were shot dead and the husband shot himself dead. It has been weaponised—it has. It's a widespread belief, but it isn't borne out in practice.

**Dr McInnes:** I would like to see a system where, if allegations are raised, both parents subject themselves to a comprehensive overhaul of their system profiles and agree to engage in safe practices, so there is responsibility which ensures the safety of the child and that the parents' actual practices are recognised. The other thing about restraining orders is that the data shows us that most are not responded to in any way by police—and people with restraining orders are killed anyway, so they're not that effective.

**CHAIR:** On that point, doesn't this reinforce why any allegation of domestic violence should be dealt with immediately? If domestic violence is a reality then we want to put in place, as you say, some protective measures to ensure that nobody is endangered, regardless of whether they're parties to the former marriage or the children of it. I'm not necessarily agreeing, but, if there are circumstances where it is used as a tactic, that ought to be disclosed, it ought to be revealed, straightaway as well. So it comes back to my original question: surely part of the answer to this is that any allegation of domestic violence should be triaged by the Family Court and dealt with within days, not within months, and not drag on even for years?

**Prof. Cook:** If you consult the family and domestic violence services, the problem to be overcome is women's reluctance to report because of the harms and the difficulties that reporting brings to them. The time post separation—particularly in instances of family violence—is the most dangerous time for single parents. That is the time when they are most likely to be seriously harmed or killed. To then bring down the system on your ex-partner can exacerbate that danger, and we don't have a good system to protect women in that system. Sometimes seeking an exemption or not seeking child support is a way to just make the whole problem go away—fight or

flight—and just running away from the system, not engaging, is a significant barrier to bringing this out onto the table early.

**CHAIR:** I understand that but what's the alternative? I mean, I'm sitting here with a sense of *deja vu*. I sat on an inquiry into child support in 1992, as I recall, and I'm hearing some of the same issues now, almost 30 years later. So if the system's not working now and it wasn't working then, perhaps we need some sort of radical approach, which changes it entirely. But I don't know what the answer is. I don't think we will find the answer necessarily, but maybe through this process we may be able to make some improvements for everybody.

**Dr McInnes:** Another point to note is that domestic violence isn't over quickly, no matter how we might try to have a system that makes it so. In the lives of the people it affects, it goes on potentially for decades. We also know it has a massively adverse effect on children. We need a system weighted to protecting the children and supporting the adults. But we need to make safety of children a paramount, primary and absolute value that is applied.

**Ms Edwards:** Can I suggest to you that some of the learnings that came out of COVID were really quite insightful. Domestic violence was elevated. There were teleconference opportunities, so there wasn't that safety concern driving there; there wasn't that safety concern of the actual court case itself. So I thought some of the learnings that came out of what happened during COVID, because it was acknowledged that domestic violence increased during that time and there was a proactive response, can be insightful.

The other issue we can make headway with is coercive control because that's actually what we're talking about. Once people become more aware in the criminal system, it will be clearer. So can I just point you back to the listings that came out of COVID were really helpful during that period.

**CHAIR:** You will have noted that in our previous report we made recommendations that some of those practices which the court had adopted during COVID become standard practice in the future. Whilst we haven't had a response to that yet, I understand informally that's something that the court is able to do. Professor Cook, did you want to say something?

**Prof. Cook:** Chair, I am going to take you up on your radical solution. I think the perennial problem of why this has remained a problem for 30 years is that the formula can never address the social problems of income inadequacy in both households. What we've been talking about and spending most of our time on are the most extreme cases. The government's trying to weigh the individual responsibilities of parents, the need for children to be above the poverty line and have adequate resources with keeping state expenditure at a minimum and reasonable amount. But individualising this through the formula is in some ways now exacerbating the problems; it becomes another issue to fight about. To take up your radical solutions, you could remove that by, for example, placing a one per cent or a whatever it is tax levy on paying parents which goes into the state and then the state provides additional payments to parents, so you would still have that individual responsibility. There's the path the states are trying to grapple with in this direct accountability—I pay so I can see my children. But if we can reframe that debate as 'you're contributing to your child in the most efficient way so that they can have the resources that they need', so depersonalising this while still giving payers a reason to feel like their payments are going to their children but taking the fight away from these individual parents over the technical aspects of the system. It's things like, 'I have X amount of medical costs,' 'My school fees are this,' or, 'You've seen them for this many nights'. We have proliferated the areas where people can take offence and seek revenge; we've entrenched the problems rather than resolve the problems, and I think we need some radical thinking because we're not achieving any of these things. We're not achieving parental responsibility in terms of ensuring payments and it's costing the state more to police and mop up. We're trying to implement all of these new systems and they're not providing children with adequate resources; we're not ticking any of the boxes anymore.

**Mr YOUNG:** Firstly, do you think that how much someone earns changes the cost of bringing up a child? For example: if the person who is not the main caregiver earns \$50,000 a year or earns \$100,000 a year, does that make a difference to how much it costs to bring up that child?

**Dr McInnes:** They did that calculation in the child support formula review and chose to cap the higher-end income on the argument that there was only so much you could spend on a child. Of course that's elastic, and it does change with family income in non-separated families, but there's the question of capacity and choice. I guess that we've presumed, in a way, that parents want the best for their children. In an intact family they can make decisions mutually about a child's needs. Once they're separated it goes back to their individual incomes and capacity.

The formula has been quite limited in its capacity to promote such dialogue and choice. Ideally, parents would be able to agree—and we know that in many cases they can, but in many cases they can't. That was the solution

the formula came to then. There's an argument that the many assumptions embedded in that formula are on a shaky basis. You can't say that they're necessarily true anymore because, as Terese pointed out, costs, practices and earnings of parties, and the profile of wages in the Australian population, have changed. COVID has been part of the impact on that as well.

**Mr YOUNG:** I understand all of what you just said, but my question still wasn't answered. My question is: does how much the non-custodial parent earns change how much it costs to rear the child? That's my question.

**Dr McInnes:** You may choose to pay more, but—

**Mr YOUNG:** That's right, and I agree with that. I'm not talking about that; I'm asking if it costs any more?

**Ms Edwards:** It can. I think you want an exact response, and it can. As I said before, it's usually the patterns that were in play before a family separated which try to be replicated so that the child doesn't all of a sudden miss out on all the life opportunities they had when the family was together. We know that if children in Australia come from a lower-income family then they have fewer opportunities. We know that it builds if they're middle-income and then it builds again for a higher income. So I'd argue that it's really what was in play before and that you'd really want to try for the children to maintain those.

**Mr YOUNG:** Yes, okay, I take that point of view. That's why I'm trying to get an answer to this question, because perhaps we're looking at different ways to try to simplify this.

**Ms Edwards:** Sure, yes.

**Mr YOUNG:** The other thing I've got is something that I think we always need to take into consideration. In my role as a parliamentarian I personally know of people who have come to me in my office, and one of their issues is that, in theory, if someone earns a higher income then getting them to contribute more is better for everyone. But the reality is that many of these people are actually throwing in their higher-paying jobs or taking demotions in their particular field, so they don't have to pay as much child support. Their feeling is: 'I'm doing a lot of work and I'm actually not receiving much of that extra money that I'm earning.' I had one fellow who was on \$350,000 a year who didn't work for two years because, he said: 'I've got enough money in the bank that I don't have to do that, so I'm not going to work. I'm not going to give away that much money. I'm not working for that.'

**Prof. Cook:** For his children.

**Mr YOUNG:** Is it right? Is it—

**Ms Edwards:** No.

**Mr YOUNG:** No, I'm not defending it. I'm just saying that that is a reality. The issue is that we've got to try and balance it, so that we incentivise people to continue to work and continue to try and earn as much money as they possibly can. My fear is that once you start to take more and more away from them, we disincentivise them, and that's an issue for everyone.

**Ms Edwards:** Mr Young, from the start of the child support system, the people who were opposed to it were the noncustodial parents who had to pay. At every inquiry we hear the same thing. I wonder if there's something about how we talk about child support? Going to the heart of what Kay was saying, perhaps we need to look at it as a system that takes out some of that personal emotion and we make it what it is, which is actually child support. When child support went from a court maintenance system to a scheme, it tried to eradicate the choice and discretion that was exercised by noncustodial parents, and there has not been one inquiry that I've read about or participated in where there has not been some opposition to paying it. I think we need to get a bit real on that as well.

**Mr YOUNG:** Look, I'm not saying that it's every case; don't get me wrong. We're trying to get an outcome here. I'm not on anyone's side here; I'm on the kids' side.

**Ms Edwards:** Good.

**Mr YOUNG:** I want to deal in the realities of what happens if we don't fix it. I think we need to consider all of those things when we're making recommendations.

**Ms Edwards:** Yes, sure. In regard to looking at the children, can I please make a point to you, Mr Andrews, in relation to the significant review you oversaw through the 2000s? One recommendation that was never picked up—it's a really important one to us—is recommendation 9.3, often known as the Parkinson recommendation, on the intersection between child support and the maintenance income test. It is so low. What happens is that really small levels of child support paid—around \$1,600 per year—reduce the family tax benefit and also rental assistance. I just want to say that that's been a longstanding issues since that 2006 report. It would be fantastic if some of that was looked at as well.

**CHAIR:** I was going to ask about that, but you've answered the question in a sense.

**Ms Edwards:** Thank you.

**CHAIR:** I've read paragraph 15 of your submission. We're running out of time, but, in terms of radical solutions—as I understand it, 60 per cent of child support payments are less than \$5,000 a year, which is not a lot of money. Let's just theoretically double that and say \$10,000, and assume that \$5,000 is provided by the party who has the day-to-day custody of the child; \$10,000 a year for raising a child is not a lot of money. It might be enough at certain stages of a child's life, but as they get older and they get into their teens especially, that's not going to go very far. So the reality we are dealing with is that the overwhelming cost of raising children in these circumstances is born by the state, one way or another. The parents are making some contribution, but the reality is the state is actually paying the vast majority of these costs. So, to come back to you, Professor Cook, I'm just sitting here thinking through this: should there be another way in which we recognise the reality that the state's really paying the major cost in all this, and then tax or seek a contribution from the parents towards that cost?

**Prof. Cook:** You're saying \$5,000 from each parent. One is coming from the paying parent based on their taxable income. It's the opportunity cost that is being compensated through child support. The parent with the lower income who has the caring responsibility typically either is not able to work as much or has really high childcare costs. That's also why it's really contentious, because it gets entangled with spousal maintenance—that it's compensating for this opportunity cost of looking after children, of caring for children. So it's an ecosystem.

Child support is not going to fix all of the problems. It's the cost of child care. It's the availability of employment—and suitable employment for women that is secure, that is within school hours, that provides benefits such as sick leave et cetera. If that were available and the incentives in tax, family tax benefit and welfare—income tapering, for example—were favourable, it'd be great. Children would have access to more private income, and child support would then feed into that. At the moment, there are so many children living below the poverty line. Typically, the largest group of those are in single-parent families. Something's going terribly wrong, and just putting more money through the government system is still not fixing that problem. Child support, the tax system around child support, the ways that the child support system is unravelling from where our—it's based on a 1950s model of how income is generated and how families work. Incomes are becoming more erratic with the gig economy, private contracting and self-employment, and the child support system and the tax system that it's based on aren't designed to work with that easily. They assume a stable situation: 'You earn \$56,000 a year in waged employment. Here's your tax return. That's set for the year.' But now we have: 'This fortnight I earned more. This fortnight I earned less. I've got my own business, so I'm not going to put in my tax return, because I'm still waiting for things to come through.' All of that complicates and really messes up the principle of what this is.

If we found a way to really simplify it to provide the supports for caring parents to allow them to care—I came in on the end of the last session and I heard the question about parental leave and fathers taking up that care work. If we can equalise caring responsibilities and share the opportunity costs of care, not the dollar costs of care, between the parents more equally, child support becomes much less of a problem, because both parents are able to earn, both parents are able to care, both parents should be able to earn incomes above the poverty line and there's less need to transfer resources. But that requires state investment in the social infrastructure to enable that.

**Ms Edwards:** When child support doesn't work—when it's not transferred—it's so sharp at the moment, because we have removed our investments into children. With mums we now say that, if their child is eight, they're unemployed and they lose money there, and they lose money if they work, because of the harsh earning threshold. We have the most targeted family payment system in the OECD, and that has gone backwards in terms of the children that it covers and also the indexation arrangements. So what happens in the household of a single-mother family is that every source of critical resources is removed, and so, when any system breaks down, it has a really detrimental effect. It is absolutely to our shame that 47 per cent of kids living in sole-parent families now live in poverty, and that has been because of policy decisions that have been made over the course of the year.

**Senator HANSON:** I want to finish on a statement, because I know we've got to break now. Ms Edwards, you made a comment that, in all these inquiries that you've been to and from what you've read, non-custodial parents don't want to pay child support. I'll pick you up on that, because that is not the case. In evidence given by the Lone Fathers Association and the Non-Custodial Parents Party, they've always stated that they want to pay their share for the custody of their children. They love their children. They're quite happy to pay child support for their children. The concern is that it's not fair and that they are not seeing their children. The whole fact is that fathers are suiciding, losing their lives, because they are not getting to see their children.

Another point in your submission here is you stated that my public comments and policy positions lead to the belief of a distinct lack of impartiality. Can I tell your organisation that I am very, very impartial. The whole

inquiry is about finding the answers for both sides. When I have an organisation representing men that feel they're not being heard and when lives are being lost, children are being murdered by both parents, it's not about being a feminist or standing up for one group or the other. It's about finding the right answers to this. I am not taking sides, but I want the truth.

**Ms Edwards:** I think that statement just illustrates my point, because you've mischaracterised what I said. I said in inquiries, when there has been a dispute about paying child support, it has come from non-custodial fathers. So, I never made that blanket statement at all.

**Prof. Cook:** I'd also like to add that the department's secretary in the 2003 inquiry debunked that statistic that 15 fathers are committing suicide due to child support. That is the total number of fathers who committed suicide, who happened to be separated fathers. There is no attribution of cause in that. This statistic gets trotted out at every inquiry, and the department's secretary is on the record in that inquiry as saying that that statistic is not valid. It is not to be used in that context, and it keeps coming back.

**Senator HANSON:** Are you saying that fathers don't suicide—

**CHAIR:** Sorry, I'm going to intervene. I don't think we're going to advance much. I've allowed Senator Hanson, Professor Cook, Ms Edwards and others to put their view, but I'm not going to continue this discussion, because we're out of time, amongst other things. I thank Ms Edwards, Dr McInnes and Professor Cook for their submissions and for discussing them with us today. Thank you very much. The committee will now suspend for a short period.

**Proceedings suspended from 10:52 to 11:04**

**LANCASTER, Dr Andrew, Project Leader, Child Support Australia**

**CHAIR:** We will resume the hearing. I now welcome Dr Andrew Lancaster, from Child Support Australia. Dr Lancaster, you've lodged submission 881 with the committee. Are there amendments to that submission?

**Dr Lancaster:** No.

**CHAIR:** Information on parliamentary privilege and the protection of witnesses and giving evidence to committees has been provided to you as part of the invitation to appear. If there are questions on notice we would appreciate answers by 26 May. I invite you to make some opening comments.

**Dr Lancaster:** Thanks for inviting Child Support Australia to appear here today. Child Support Australia is a project I started four years ago with the goal of system reform. We have a popular website, busy advice forum and growing YouTube channel. We advocate for children and parents. Payers, recipients and their partners all use our resources in large numbers.

We have four reform proposals, the biggest of which is for Australia to adopt a logical payment formula. We've also proposed a measure to address parents hiding income, a large-debt recovery solution and a requirement that court orders for parenting time be respected. The debt recovery solution was developed after the first interim report. We are convinced that each proposal is both doable and beneficial. The problems are well known and we have worked through the solutions carefully.

As well the various proposals, today I would like to talk about how the committee frames its recommendations on child support. In particular, as a former policy adviser within government, I would like to explain how the committee might help ensure that the public sector starts working towards reform instead of against it. Child Support Australia would like to make a fairly brief statement about how recommendations are framed in in the final report. We do this because we really want to see change. What I say next is based on highly relevant career experience at the Department of the Prime Minister and Cabinet and the industry department.

I note that the submission from the Department of Social Services to this inquiry is absent of reform proposals. It also fails to acknowledge widespread problems. The DSS submission is seemingly oblivious to all but one of the many interactions between the family law and child support systems. In our view, the DSS submission whitewashes what is happening to kids and parents in Australia right now. I can almost guarantee that you will get limited help from the officers you speak to later today in terms of improving the situation.

Harnessing the power of the Public Service may be key to the inquiry succeeding with respect to child support. You need to get DSS and other agencies working towards reform rather than dragging against it. To that end, I believe the inquiry's recommendations should focus on initiating cabinet level processes. The committee can, in effect, direct public servants to do further work in the directions you want. You can do this by recommending ministers seek to make submissions to cabinet presenting policy options in particular areas. Our submission contains an example of the sorts of words that could be used. These are in the language of cabinet decisions.

The advantage of a process oriented approach are that recommendations shouldn't be rejected out of hand; a considerable number of policy ideas can be put forward; each proposal would be well developed before the government has to make a call on it' and the government may come up with different and better solutions. Significantly, the approach would prevent the government relying on the same circle of officials for guidance on what actions to take next.

When policy processes reach a cabinet level, dozens or hundreds of public servants are called upon to make things happen and ministers and senior officials become accountable for delivery. In my experience, a well-crafted recommendation in the manner suggested would have a good chance of activating the Public Service in whatever directions the committee intends. Unfortunately, I'm far less hopeful of this inquiry succeeding with respect to child support if normal methods for responding to committee recommendations are followed.

Perhaps the committee could ask the Department of Social Services today what the typical procedure is. Would the DSS be expected to take the lead on child support in terms of formulating responses to the committee recommendations? Would they actually develop detailed implementable options, or essentially just respond with 'accept' or 'reject' advice? Can they actually be trusted with managing a reform process given they are yet to acknowledge that serious systemic problems exist?

That statement goes to an idea of an approach. I'm not really looking at discussing it at length today. I would like to focus on the four proposals that we're putting forward.

**CHAIR:** In terms of those proposals, Dr Lancaster—I'm reading from your submission—the first recommendation is to consider legislative options for reforming the child support system, including a formula option whereby regular child support A would only be payable with respect to care provided by a parent or carer

above the 50 per cent level and payments would depend on the payer's income while being independent of the payee's income, and payments would rise with the income of the payer but at a low or zero incremental rate once income passes an average level. I go to the first point: 'would only be payable with respect to care provided by a parent or carer above the 50 per cent level'. Are you in effect saying that there should be a presumption that 50 per cent of the care for the child is with each parent and a payment should be made only when one parent goes above that? Is that what you're essentially getting at?

**Dr Lancaster:** Yes, that's correct. At the moment, the system in Australia is that we have an income-share method. You assume that the parents essentially act as an intact couple, so they share the resources. One parent may be paying 100 per cent of the costs of the children. This approach starts from the position that parents have equal care and there is no child support paid, but, if one parent provides less than 50 per cent care, the cost savings that they make from that are transferred to the other parent.

**CHAIR:** I'm thinking about the objection that might be made to that. I'm thinking about the previous witnesses, for example. I suppose I'm guessing what the objection might be, but could it be that, in the case of the custodial parent whose opportunity to work is lost, or is in part lost, by the fact that the person is caring for the child, the 50 per cent proposal would be unfair to that party? How would you respond to that? That would be the kind of objection I could imagine.

**Dr Lancaster:** We're talking about the principle. What it comes down to is a formula at the end of the day. I'm proposing a fairly standard formula. The UK uses it. You only look at the income of the paying parent. If care is 50-50, no child support is paid. Then you look at the income of the paying parent. As their income goes up, they pay an increasing amount and then it tops out. That's how it would work in practice. The reason why this type of formula is not used is that it seems too arbitrary. You essentially make up rates. You take a percentage of the parent's income. I think that's why it's fallen out of favour, even though it's a more sensible formula to have. For example, in the United States, nearly all the states now use an income-share formula. If you look at that formula in mathematical terms or in terms of outcomes, it doesn't actually perform well; it just has a nice theory behind it, because you can say, 'We're trying to make it like the family is all together—how they share each other's income.' It sounds nice. I think that's why that model is so popular. A simple model where you take a percentage of the paying parent's income is falling out of favour with policymakers, for whatever reason, but I think it's because of the lack of a story. I'm putting a story on it so that it has a principle approach to it. At the end of the day, you can put whatever parameters on it you like. You can make it extremely generous or not generous, depending on the numbers you use.

**CHAIR:** Thinking through how this would work in a hypothetical example, let's assume that the carer is caring for the child 75 per cent of the time. Under this proposal, the payer would be responsible for 25 per cent of the time that he or she is not caring for the child—the other person is caring for the child—and payments would depend on the payer's income. So it would be a percentage of income for that 25 per cent—have I understood that correctly?

**Dr Lancaster:** Yes, that's correct. Essentially what you would do is work out what the payer would spend if they had 50 per cent care—no child support involved—and, given that they only have 25 per cent care, it is half of that amount. So, effectively, they pay half in cash to the other parent and they provide the other part of their care in the form of direct care.

**CHAIR:** Would the care be based on a calculation of the cost of children? How do you get to your base level?

**Dr Lancaster:** What I propose is using a median or average income of single parents and then what they spend. The strange thing about the current system in Australia is that they just look at intact families; so all the cost data includes every parent except for parents who are separated. It's quite bizarre; it's all for families. But, in this case, you'd look at a single parent and their income and what they would spend. You'd fix it to, say, an average and use that as a base and then just calculate percentages. You wouldn't have lots of cost tables; you'd just have a single figure. If your income is zero, you'd pay zero; if it's half of the average, you'd pay half. It works out to an extremely simple formula. The UK uses this type of formula. It doesn't quite have the same principles behind it, but you can just punch in some numbers and very quickly you get the child support assessment.

**CHAIR:** Could you, on notice, give us a couple of scenarios so we can actually see the figures and how it works out? I'm trying to understand it as we are discussing it, but I think it would be useful if I had a couple of case studies that show what would happen if it was, say, a 60-40 situation versus an 80-20 situation and how the figures would work out. I think that would help us in terms of doing that.

**Dr Lancaster:** Yes, not a problem. We have actually built this alternative formula into our calculator at Child Support Australia. We've got the most popular non-government calculators for working out child support. Every



time someone works out their child support, we put the alternative figure down at the bottom. I'm happy to do that.

**CHAIR:** That would be useful to help the committee understand your proposal in terms of what the practical outcome would be. So I don't think I need to ask more questions about it because I think that would provide the answer for me and other committee members in a way in which we could see in black and white what it means in terms of the figures.

**Senator HANSON:** Dr Lancaster, you are basically saying—and correct me if I'm wrong—that we should put the financial responsibility for the child or children in the hands of both parents?

**Dr Lancaster:** Yes, that's correct.

**Senator HANSON:** So it's the responsibility of both of them. They both brought the children into the world, regardless of the separation, so they both have to take responsibility regardless of how much care they have for the children. For a married couple, even if you are home together or the husband is out working and the wife is working—whoever looks after the child—it is no different than if you are separated and the situation is that they have to look after the child. Once the child gets to school age it becomes a lot easier because the child is at school during the day and child care is provided for them. Most of the time, the cost is picked up by the taxpayer anyway. So it is a financial responsibility. The big problem we hear of with child care is that a lot of non-custodial parents are paying child care but they don't get to see the children and they have little access to the children. And if they are on \$190,000, which is the cap, for two children they are paying at least \$40,000 and for three or more children they are paying \$50,000 year.

What we've heard in evidence is that this money goes into the hands of the custodial parent and they don't know if it's spent on the children. We hear a lot about it possibly being spent on botox, new shoes, holidays or buying a new car and that it's not necessarily going to the child. Have you ever thought about maybe that money being put into an account for the children and accessed by both parents for specific items, whether those be education, sport or anything which relates directly to the children? Basically, it would work like the cashless debit card which we have in the system now already. It would be controlled; you could only spend it on certain areas and it could be viewed by both parents. That would make sure that it's there for the children. Have you ever thought of anything like that?

**Dr Lancaster:** Yes, I have thought about it. It has been proposed by quite a lot of people. There isn't an element of that in the current system with respect to things like major medical expenses, dental fees or private school fees. Things like that tend to be separated from child support, or a parent gets credit for those things.

The issue is partly that it would be complex to administer something like that. As well as that, you can't capture all the costs of raising children in those terms. Economic studies show that for the cost of a lot of things, like adding an extra bedroom to a house, or paying for excellent holidays or how you furnish your home, are hard to capture exactly for what is spent on the child. Economists have a way of doing it, but it just doesn't come down to simple expense items that you can really capture.

**Senator HANSON:** At least everybody would have a starting point and know that the money is going directly to the child. What do you feel about the way the child support system is at the moment? You spoke about the formula: should child support be based on what it costs to rear a child? It should go in age brackets, because a child aged from one to six is a lot cheaper than, say, from seven to 12 and then from 13 to 18—those three brackets. But if you actually did it on the cost of rearing that child—conservatively, you wouldn't need to say, 'We're going to put them into a private school,' that's out of the question. It's the basic cost of rearing a child.

That parent has to have a roof over their head, but they have to find their own roof. So we wouldn't take the cost for structuring a house for a single parent. Admittedly, they need an extra room for the child and that should be taken into consideration. Why are we tying it to parental income when we should basically look at the cost of rearing that child? And it should be borne by both parents who brought the child into the world. So why are we tying it even to their ability to earn, regardless of the fact as to whether they're earning that money—their ability to earn that money?

**Dr Lancaster:** Yes, I think you've hit the nail on the head for the problem with the current system; it's all based on income. If you can get your income below the self-support threshold then suddenly you don't have to pay anything. You don't have to contribute anything and the other parent might have to pay 100 per cent of the costs for the child. With income sharing at the moment, there's no anchoring into real costs.

The formula that we've proposed has more of that anchor there. There's a benchmark level where we say what the average payer would spend. There's that point and then you level off payments for higher-income earners. For lower-income earners you try to get up to that point quickly so there's no relief if you drop below a certain income

level. There's always a problem with lower-income earners; you can't force them to pay a fixed amount—like a general level of cost.

**Senator HANSON:** A lot of the argument is that the child has the right to live the lifestyle that it would have had if the parents were still together, but that's not the fact. That's hypothetical. Circumstances may have changed, but it's the decision of parents to split and go their own ways. In my dealings with a lot of parents, if they are in the financial position they will gladly pay for that education, they will gladly buy them that extra pair of shoes and they will gladly do whatever they can for their child, because they love their child. They will spend that money on their child.

**Dr Lancaster:** In effect, under the current formula the payer is considered to be living as part of the family in a dual-income household, and hasn't borne all the costs of divorce and everything else. The amounts they're asked to pay are out of proportion with what they can afford. The problem is that people want to get on with their lives. It's one thing to be part of a close-knit family, where you're living with your children and spending everything on your kids, but when you start a new life—you might have a new partner, with other kids involved—you can't spend in the same way you would if you were all together under the same roof. The current model is wrongheaded from the start, to try and reanimate an intact family when that's not the case at all.

**Senator HANSON:** If you have a couple that splits, one is the custodial parent and one is the non-custodial parent, and the custodial parent remarries, has more children and doesn't work anymore, why should that affect the non-custodial parent in payments?

**Dr Lancaster:** It shouldn't. That's why we've proposed a formula where the income of the custodial parent wouldn't have any bearing on payments. It doesn't make sense to have the custodial parent's income as part of the formula, because it's a terrible measure of their economic circumstances. As you pointed out, they can remarry someone wealthy, and that gives them the opportunity to not work, but their income enters the formula as though they're in need of more money when, in fact, that's not the case. It's a really poor measure of economic circumstances, because most parents re-partner following divorce and you've got two new households that are quite different.

**Senator HANSON:** Take these circumstances: you have a couple that separate; you have what it costs to rear their child, two children or three children, whatever they've got; you work basically on the formula you're saying, and that amount of money is set. That's at the time of separation. Those are the circumstances at the time, so you set those. Then, so both parties can go and get on with their lives, money for those children is still set at that amount and is indexed with CPI, a cost increase to that. If they get an extra job, work part time, get married again, bring additional income into the household but don't pay the money or throw in their job, that is a cost to them and can be taken out of their assets or it's a cost against them for the rest of their lives.

**Dr Lancaster:** That's essentially what happens in quite a few US states, where they go through a court system. Once the child support order is made, it's fixed unless they want to go back to court. You can also achieve that through a binding agreement between parents; it's something we recommend parents do, because once you've locked in an amount you're free to run your life how you want. If the amount is too high and you then become unemployed, that could cause problems. But you could even have provisions for that.

Something the government could do is help people come to these agreements themselves. At the moment, to get a binding child support agreement you have to go and see a lawyer and get it signed off on, which parents might be reluctant to do. If there was a standard way of coming up with an agreement between parents where amounts are fixed, that could help a lot. The problem at the moment is: when incomes go up and down the assessment changes, so there's a constant incentive to try to get your income down because that will affect your assessment for the next year.

**Senator HANSON:** Where you've got a lot of shift workers, it is assessed on how many nights they spend with that other person. If they're a shift worker it doesn't come into the equation, in taking on night work, how many nights they are with that person. They can spend money on the child, although they've gone through the day, and hand them back. So should child support be tied to financials and how often you have the children?

**If we got rid of how many times, based on how much you've got the child and how much you pay, do you believe there would be more of an agreement, between parents, in allowing more access to the children and that caring by each party?**

**Dr Lancaster:** To get more agreement, I guess our approach is that you take away some of the profit making from child support. The fact is that parents on lower incomes don't spend much on their kids, but at the moment the formula assumes they're spending a great deal and, therefore, they need all this money.

**Senator HANSON:** But it shows that they don't.

**Dr Lancaster:** Yes, that's right. Our approach is just to moderate the amount of child support payments happening. You don't have these excessive amounts, and you take away the incentive for parents to try and dominate care. That reduces court appearances and all the rest, and it gets parents sharing their care more evenly.

**Senator HANSON:** So if we did away with how much care you're having and just come back to the basics of how much it costs to rear that child, split it between the two parties and get on with your life. If you want to move forward, fair enough, but you are responsible for paying that money for the care of the child.

**Dr Lancaster:** Yes, if we move away from being so sensitive to income. That's the real problem. Something that hasn't come up is that when you drop the custodial parent's income out of the system suddenly they've got an incentive to work. That helps children enormously, because custodial parents are much more likely to earn an income themselves rather than just rely on child support.

**Senator HANSON:** I've heard that a lot. A lot of parents throw in their jobs. They won't work. They won't do the overtime or extras because it's all going into child support and they're unable to live themselves.

**CHAIR:** You were saying for the other parent, though, weren't you? I just heard you say that if you exclude the payee's income, then that person has an incentive to work.

**Dr Lancaster:** That's right.

**CHAIR:** Could you elucidate that a bit more?

**Dr Lancaster:** At the moment, under the current format, it's based on both parents' incomes. So if the payee increases their income they get less child support. The thing is, there's no real point in having a payee income in there in the first place. It doesn't really help the calculations but it deters people from working. So if child support is just based on the payer's income, then what they do doesn't affect child support. It kind of halves admin costs, because you're not worrying about what the recipients are doing anymore. It doesn't matter. They can do what they want.

**CHAIR:** Maybe the examples you provide us will help me understand it better.

**Mr YOUNG:** I have a question on that theory you had there. In a scenario where the non-custodial parent earns \$100,000 a year and the custodial parent earns \$150,000 a year, would the non-custodial parent still pay?

**Dr Lancaster:** Correct, yes, based on them providing less than their fair share of care directly.

**CHAIR:** They pay when they're providing less than 50 per cent of the care.

**Mr YOUNG:** So the person earning more would still get paid.

**Dr Lancaster:** Yes, and they still pay. You don't penalise the custodial parent for earning an income; you let them earn their income. The fact is that higher-income custodial parents spend more on children anyway, so they probably deserve some compensation for that.

**Ms STEGGALL:** My question is in understanding this proposal. How do you take into account someone who's assessed as a payer—normally a non-custodial parent without the majority of care, but not automatically—of child support and willingly reduces their earning capacity or changes careers or study or significantly impacts their income?

How do you then take that into account? At the end of the day, if people are willingly changing their earning capacity—you can't get money out of a stone. We then get into a very dysfunctional system, which is very adversarial, where you have garnishee orders. It really escalates the level of acrimony. How do you propose to deal with non-primary carers taking steps to minimise their child support responsibility by reducing their earning capacity?

**Dr Lancaster:** We're not proposing any changes in that area. There's a provision there at the moment—that you can make an appeal against an assessment if you believe that any parent has reduced their income deliberately. Then Child Support can make a determination to keep the parent's income at its former level for a period of time. There's a provision there already. The formula that we're proposing would lessen the incentives for that kind of thing to happen, because it's a bit less adversarial in terms of people's income, but we're not proposing any changes to the current provision.

**Ms STEGGALL:** There's a substantial amount of evidence as well about the difficulty, if there is a challenge or a reassessment sought, of having tax returns coming in belatedly and adjustments being made to previous years' earnings. Some of the evidence that we've heard has been people being incredibly upset that their assessments have been retrospectively increased and then there's a child support liability where there wasn't one before. It gets garnished from wages, and that really impacts people's ability to meet their living costs. It is part of the equation that also needs to be looked at—how you properly assess the payer's ability to meet the child support

responsibility, whether it's in the positive or the negative sense, based on what they're doing with their earning capacity.

**Dr Lancaster:** We do have a proposal in that area. We hear complaints often about payers who haven't submitted tax returns for years or are doing something dodgy—they're earning cash income and they're not declaring it—or about various other issues, such as payers still using a really old tax return to work out child support. What you can simply do in those situations is use a default income level so that the payer pays a reasonable amount until such time as they start declaring their income properly or submit a tax return. That's the proposal we've got, which is fairly simple: you have a default income that you can apply in certain situations where parents are hiding income. In the other case, where income comes in higher and then they get liability, the onus there is probably on the parent to handle that themselves. If they're reporting that they've got a low income and it turns out that they've got more, then that's their problem.

**CHAIR:** Would that default income be the median income?

**Dr Lancaster:** Yes, that's exactly what we'd suggest.

**CHAIR:** Does that help? The person who is likely to be hiding an income is probably somebody who is earning more than the median income.

**Dr Lancaster:** Yes.

**CHAIR:** I suppose what you're saying is that, if it's based on the median income, at least they're paying something, and hopefully, in due course, the ATO will find out what their real income was and it can be adjusted subsequently.

**Dr Lancaster:** That's exactly right. For some parents receiving payments, the other parent hasn't put in a tax return for 10 years. At the moment, there's nothing that's done about it. All you have to do is say, 'Okay, you're paying the default amount until you put your tax returns in.'

**CHAIR:** Any other questions, Ms Steggall?

**Ms STEGGALL:** No, thank you.

**CHAIR:** Dr Lancaster, I think we've exhausted our questions. None of my other colleagues online have indicated they want to ask any questions. Thank you for your submission, and thank you for discussing it with us. If you can provide some of those examples of how your formula would work in comparison to how the system currently works, that would help us in terms of considering it. Thank you very much.

**Dr Lancaster:** No problem. Thank you.

**SMYTH, Professor Bruce, Professor, Australian National University**

[11:40]

**CHAIR:** I welcome Professor Smyth from the Australian National University. Do you wish to say anything about the capacity in which you appear today?

**Prof. Smyth:** I'm Professor of Family Studies at the ANU here in Canberra.

**CHAIR:** You've lodged submission No. 235 with the committee. Are there any amendments or additions to that submission?

**Prof. Smyth:** No.

**CHAIR:** I also note that you provided the committee with a number of documents in advance of your appearance today. Unless there are any objections, we'll take the documents as formally accepted by the committee and authorise their publication. Information on parliamentary privilege and the protection of witnesses and giving evidence to parliamentary committees was provided to you as part of the invitation to appear. If there are any questions on notice, we'd appreciate answers by 26 May, if that's possible. I now invite to you make some opening comments.

**Prof. Smyth:** Thank you very much, Chair, and thanks for the invitation to speak today. Our submission and comments are based on research and evidence in an area that, as you all well know, is dominated by much emotion and conflict. I was a member of the Ministerial Taskforce on Child Support back in 2004 with Patrick Parkinson. For the past 25 years, I've been working as a social scientist in the area of family law. In 2016, Professor Bryan Rodgers and I conducted a large comprehensive study of child support, and those findings are in the papers that I supplied. My personal view is that Australia's child support system leads the world in many ways, but compliance and enforcement remain a problem.

There are three issues that I'd like to briefly talk about today. The first is the lack of government data available about the scheme, which makes it hard to assess the various claims by different groups or individuals—that they're paying too much or receiving too little. The CSA's *Facts and figures* was last published in 2009 and has been replaced by scant quarterly reports buried on the data.gov website. The information provided in these reports and in departmental annual reports is now scant. It's really hard, as an academic, to follow what's going on within government data. Data used to be presented to the Child Support National Stakeholder Engagement Group, which hasn't been running for several years now—it was disbanded. Those stakeholder meetings were a great forum for community education, to help inform some of the various groups, and also for providing feedback to government about how the policies were working. One of the recommendations around the ministerial task force was to ensure that there was monitoring of the scheme. That group, which hasn't been running for some time now, was the way in which that recommendation was implemented.

The second issue I'd like to raise today is the black box of private-collect transfers, which is exactly half the case load, as it stands at the moment. The child support program continues to assume that private-collect cases are 100 per cent compliant. While this approach helps to improve compliance rates, as reported by government, it is an assumption that overestimates actual compliance, masks cases where financial abuse is occurring and reduces the amount of FTB that payees can receive. While payees can opt to move back into agency collect at any point, many will not do so because of safety concerns or to 'keep the peace' or to keep things going as they are.

The final issue I'd like to discuss briefly today is the urgent need to update the costs-of-children table—that is, the costs of raising children in different family circumstances. These estimates were done by the task force in 2004. Ann Harding and Richard Percival did the HES estimates, Paul Henman did the budget standards approach and Matthew Gray, my colleague at ANU, did a mirror analysis of all the costs-of-children data. In the task force we sat around with three different bits of data trying to get clarity around the costs of children, and that's the costs-of-children table. That was done in 2004, 2005. We're now in 2021, and a lot has changed during that period of time. This would be a relatively straightforward thing to do. It's just time and money and a couple of experts. I think it's a really useful thing to do. We really went to some trouble in the task force to emphasise how research needed to keep up to date, but this hasn't happened.

To close, child support—and separation, more broadly—reflects shared misery and sacrifice. That is the reality of separation. Money often acts as a lightning rod for hurt feelings. I know the chair has been around child support for a long time and would be well aware of the way that lightning rod plays out. One of the things that strikes me is that, in family law, children are everywhere and nowhere. Everyone talks about children's best interests, but when you look at policy and the research that I've been doing for the last 25 years, and when you talk to parents, often it's striking that kids aren't mentioned or a part of that in any way. I just think it needs to be emphasised that child support is for children; it's not spousal maintenance and it's not other things. It's the way in

which the money follows children through different homes. I'm happy to take questions on these three issues or on anything else you'd like to discuss.

**CHAIR:** Thanks, Professor Smyth. The whole objective of the child support system is to provide for the upbringing of children.

**Prof. Smyth:** Yes.

**CHAIR:** It seems difficult to justify why a generation has passed since we've updated the cost-of-children figures. Is there any reason given, formally or informally, for not doing that, apart from the fact that it takes time, effort and money?

**Prof. Smyth:** It's funny—child support is one of these really weird areas of public policy that wax and wane. When we sat down on the task force, the then Prime Minister John Howard basically gave us four months to modernise the scheme. When we sat down, we suddenly realised there were no data. The department had been depleted, in terms of people working on child support. That's still the case now. I think a couple of departments are down to one or two people who work on this issue. It flares up; all of a sudden there's a big investment. I think, politically, child support has been off the boil for a while because it's just been too hard. Because of the politics of it all, with so many competing interests and values, it's been put in the too-hard basket.

**CHAIR:** This is a personal reflection: I also think that it's partly a product of the so-called squeaky wheel. I can remember, say in the 1990s, when it felt like every second person coming into my electorate office had a complaint about child support, whereas that's much less frequent now. If people were complaining about issues then, members of parliament responded to it. I think that led to the inquiry report by Kay Hull, *Every picture tells a story*. Anyway, that's simply an observation from me that doesn't take us anywhere. Can I go back then. So it's fairly hard to justify not updating the cost-of-children tables, given this is what it's all about.

**Prof. Smyth:** Yes.

**CHAIR:** Secondly, your first point, about the lack of data—again, if public policy is going to be grounded in reality, then data is crucial for establishing, modifying or changing public policy over time. You're not the first person to mention this. As I recall, both groups this morning—what I'll call the 'fathers' group' and the 'mothers' group'—complained about the stakeholder engagement group not operating. Again, has a reason been given? We can ask the department this afternoon, but, from your experience or knowledge, do you know why that fell into disuse?

**Prof. Smyth:** I suspect it reduces the money and resources. We're poor.

**CHAIR:** Well, we weren't poor when this ceased to operate. We may be poorer now. We might have bigger debts now, if I can put it that way. As for the CSA's facts and figures, when they were last released—up until 2009—did they provide adequate, useful data?

**Prof. Smyth:** It did, though there were a number of anomalies around some of those bits of data. But certainly for someone who follows child support that was a critical resource for understanding churn—who's moving in, who's moving out—and other policy issues.

**CHAIR:** I'll ask about your second point, and then I'll go to Senator Hanson. The lack of information about the child support which is outside the government system, private arrangements—is there a solution to that? Is there a way of actually determining what is happening there? I agree with you; it would be useful again, for the purposes of trying to formulate the best public policy, to know what's happening, so how do we do that?

**Prof. Smyth:** I suspect the government have data, but we had a study of 5,000 active clients in the child support agency. We did a longitudinal study of 5,000 people over three years. I appeared before George Christensen a couple of years ago and said: 'We've got all this data. Let us know what you'd like, and we can analyse it for you and give it to you.' There was no interest. I'm just surprised that there's actually not more interest from government around the data that we have. It would be very easy to grab another couple of samples around private collect and find out what's going on within those groups. It's not a hard thing to do, but it gets back to political appetite and money.

**CHAIR:** Can you give me a ballpark figure of what money would be involved in doing that?

**Prof. Smyth:** I reckon you could probably do it for \$100,000, \$150,000.

**CHAIR:** How long would that take?

**Prof. Smyth:** You could do that pretty quickly if you were given a sample, but I'd say six months.

**Senator HANSON:** Thanks for your submission, Professor Smyth. Your submission, which I have before me, goes to domestic violence and false allegations. Basically your whole paper is referring to false allegations:

Green concluded that four of these cases (36%) involved false allegations of abuse—

You go here:

Schuman described seven cases from his clinical practice in which child physical and sexual abuse were alleged. He concluded that "all of the claims of abuse were ultimately shown to be nonvalid", 13 and suggested that "domestic relations cases are unfortunately fertile ground for nonvalid perceptions and/or allegations of misconduct of all forms".

It's through your whole paper. You've been in family law. You say you're with the ANU and you've been studying family studies for a long time.

**Prof. Smyth:** Yes.

**Senator HANSON:** I've asked the questions of the National Council of Single Mothers and their Children, who say no-one makes those allegations. And I've heard from former Chief Justice Diana Bryant, who said: 'No, they don't make false allegations. They believe it to be true at the time of making their statement.' What is your stance on this?

**Prof. Smyth:** I don't make a personal view or a personal comment. Everything I do is based on data.

**Senator HANSON:** Good.

**Prof. Smyth:** I try to be a balanced and sensible voice in this area. We have a paper under review at the moment looking at false allegations. The minute that paper is peer reviewed and accepted, I'd love to provide the committee a copy of that paper.

**Senator HANSON:** Thank you.

**Prof. Smyth:** I'm wary about reporting on the findings of the paper, but they're quite shocking but not surprising, if I could put it that way. And, as the Chief Justice Diana Bryant said—I read all 12 transcripts of the *Hansard* last night—sometimes people believe things to be true when they're not. So this distinction between genuine but mistaken belief around allegations versus deliberately false is quite an important one, and I can say in the data we're looking at that you're more likely to find people having genuine and mistaken allegations than you are around deliberately false allegations, but there's no doubt that it would appear that, in some instances, there are deliberately false allegations, so I'm not going to deny that.

**Senator HANSON:** As Justice David Collier, a retired judge now from the Parramatta court, and other judges that have been in questionnaires that've been put out to them have said the fact is that how false allegations are determined in the court system then goes to the heart of who has custody of the children, whether the parents have access to the children, seeing the children, and then we've got the whole formula with child support. It's really a catch-22 in how it's dealt with. It does lead to that. What I'm saying is with false allegations come the fact of—and these are allegations of sexual abuse, domestic violence, what we determine as domestic violence. There has been evidence given here today that in the family law amendment of 2011, where it states on not evidence but guilty of admission alone. That in itself—have you got anything to say about that? What's your opinion about that amendment that was put up?

**Prof. Smyth:** Once again: firstly, I'm not an expert in false allegations or DV. That's not my game. Secondly, I only talk to data. We have some data, and I'd love to present it to the committee as soon as we know it has been peer reviewed and accepted. That's about the best I can do on this.

**Senator HANSON:** We're here for child support. Are you across child support?

**Prof. Smyth:** I'm not quite sure if anyone is across child support. I sat on the ministerial task force. All of us thought we knew and understood child support, and it didn't take very long before all of us started scratching our heads on different things. I'm sure the chair knows exactly what I mean: you think you've got it, and then, because of the way—child support is about adequacy and equity. That's the spine of the scheme. These things are very hard to balance for any system. You've got advocacy for children, equity between parents and equity between parents and the state. When you sit on a task force, trying to play with these complex balance points, being across all of the complexities of the way in which the family tax benefit system interacts with child support and other things, it's a complete head spin. So in that respect, I have a working knowledge of how the scheme works, but I'm not sure there are many people left in Australia who are completely across it, apart from perhaps Patrick, some judges and a couple of other academics.

**Senator HANSON:** Correct me if I'm wrong: did you say that child support is not there for the livelihood of the ex-partner, that it should be there for the benefit of the children?

**Prof. Smyth:** Child support is about children, yes.

**Senator HANSON:** So it should be paid for them, not for a lifestyle for the ex-partner.

**Prof. Smyth:** How about I say that when parents do well kids do well. That's not answering your question, but I'm worried about where we're going with this line of questions around being adult-centric versus being child-centric.

**Senator HANSON:** Right. What we have to get to the bottom of is: Are parents denying the other parent access to having the children based on what they will get back in child support?

**Prof. Smyth:** Now we're talking about strategic bargaining and gaming the system.

**Senator HANSON:** Yes.

**Prof. Smyth:** There's a lot of anecdotal evidence that, basically, everyone is running around trying to maximise their child support or maximise their care. I've provided a couple of figures. If you look at appendix A, which I think you might have, we asked some questions about policy knowledge. We actually went to a national random sample of 5,000 people and we asked the question: 'Do you know the number of nights you need before you get a reduction in child support?' Many of those people said yes, and then we said, 'Okay, what's that number?' What we found was only one in 10 actually knew the correct answer, and people were far more likely to be wrong than they were right, which means you've got a bunch of people who think they know what the rules are and are purportedly running around gaming the system, and they might be fighting about something that's completely wrong. So around this idea that there's widespread bargaining, that everyone is running around trying to do the math and becoming petty accountants, the data suggests that that is not widespread at all.

**Senator HANSON:** When was that data done?

**Prof. Smyth:** From 2008 to 2012.

**Senator HANSON:** So it's pretty much out of date, the same as what you're saying about the cost of children.

**Prof. Smyth:** Yes, so—

**Senator HANSON:** So everything needs to be updated.

**Prof. Smyth:** Absolutely.

**Senator HANSON:** You can't really rely on that, because circumstances have changed. As I'm saying now, more of the fact is these days, with domestic violence accusations and allegations, also you have the cost of rearing children, and then you go back to your data of people doing it purely for—

**Prof. Smyth:** Senator, do you have better data and better evidence against our data?

**Senator HANSON:** Have I got better data?

**Prof. Smyth:** Yes.

**Senator HANSON:** No. That's why I'm having the inquiry—because I want to find out the facts. But how can you base how we are coming down with our decisions, our recommendations, if we don't have up-to-date data?

**Prof. Smyth:** I'd ask the government that.

**Senator HANSON:** Yes. But I'm asking you because you're a professor of family law at the ANU.

**Prof. Smyth:** When we finished this study, we actually went back to government and said, 'It wouldn't cost us a lot to add another couple of samples and follow this over time.' No money, so it didn't happen.

**Senator HANSON:** A lot of the data that I've read goes back to about 2010 or 2012, and you're lucky if you get anything around 2014-15, which was the last inquiry—George Christensen. So it's been left on the vine to rot and die without really keeping up with what the hell is happening. That's why people are destitute and there are so many problems happening in our system.

**Prof. Smyth:** What breaks my heart is that we have all of this data and we don't use it. I'd like to see us use government data, maybe link some data—some survey data with government data. There are lots of data sources around that aren't being used at the moment. One idea would be to make better use of the data, rather than running out and doing wholesale surveys again.

**Senator HANSON:** If this section of the inquiry is to do with child support, can I ask then: what was your reason for coming here and giving this evidence?

**Prof. Smyth:** Well, you invited me to come—that's why I came.

**Senator HANSON:** Right. Well, the committee has invited you. I'm pleased to hear your evidence and to see this—you just put to rest, to bed, these other people saying there are no false allegations, because your data here actually says there are. I will be looking forward to hearing what your report is going to be and to reading that.



**Prof. Smyth:** It's a fascinating little article, so I can't wait to have it peer reviewed. It was due last week and the peer review never came. So I can't wait to have it accepted and get it published. It's going to be open access; anyone can get it. It's taken two years, but it's a great little study.

**Senator HANSON:** Thank you.

**CHAIR:** On that note, I will go to Mr Perrett.

**Mr PERRETT:** Professor Smyth, this is further to a question you asked of Senator Hanson. The committee heard the assessment formula promotes unhealthy custody arrangements where, for example, one parent may seek to maximise his or her time with the child at the expense of the other parent, solely to increase the child support he or she receives. You gave us some comments about this. Could you expand on that a little bit more? Did I misunderstand some of the data that you just gave us? Was it a random audit of people that you actually went to see whether they were gaming the system? I think you said 'strategic bargaining and gaming the system'.

**Prof. Smyth:** It was a national random sample of 5,000 Child Support Agency clients.

**Mr PERRETT:** Quite significant.

**Prof. Smyth:** We did that just before the child support reforms, when the formula came in. It went into field—the last person was interviewed on the Sunday; the new formula came in on the Monday. It's as close as a baseline as you'll ever get. We followed those at two other points in time and we also grabbed two new cohorts. So we've got longitudinal data and cross-sequential data, which allows you to see whether the policy impacts of the formula have changed. It's a million dollars worth of data.

**Mr PERRETT:** Professor Smyth, you're talking to an arts graduate here. Statistically, can you explain that in simple terms? That's good analysis of a large survey. Can you explain that to an arts graduate?

**Prof. Smyth:** When you take a national random sample and apply weights to make sure it represents what's going on in the population, it gives you very precise estimates of what's real and what's not, or what might have occurred by chance. When you spend a million dollars on data—it was actually an Australian Research Council grant, in collaboration with FaCS at the time, and with the Child Support Agency. So they put money in and all three of us got together and did this big study.

**Mr PERRETT:** If I gave you the experience of three people that have come through my electorate office, wouldn't that outweigh your national data analysis?

**Prof. Smyth:** This is a selection effect. I feel sorry for all of you who have people come in and complain all the time, but I'm afraid that that is not a national random sample that's representative of what goes on in the general population of separated parents. That's why you spend so much money and time doing these studies. By the way, for the task force, a colleague and I did an attitudinal survey—that has come up a couple of times—where we looked at community attitudes to some of the things. The reason that we went to various changes around children's ages and income shares was that the community was completely behind these balance points. We did a really great attitudinal survey. That would be another thing that would be worth replicating now to see what the community think of various decision points that the committee is considering.

**Mr PERRETT:** You touched on this in your opening comments, but what do you think our child support system does well compared with the rest of the world but just generally?

**Prof. Smyth:** Its ability to respond to changing circumstances around parents' income, parenting arrangements and all of those things. If you are in America and you don't pay your child support you'll end up in jail, you'll lose your drivers licence, which means you can't work and you will be named and shamed on a website when the data may be wrong. The idea that every time there is a change you have to go back to court in America is a really bad idea—and I've written on this with a couple of Americans. Our system, when there's a change and it's reported, can cope with economic shocks and other things because of how agile it is. I think the rest of the world looks at our scheme and goes, 'Why aren't we doing that?' The UK scheme now in its third iteration. It started off ridiculously complex. I heard our last speaker talk about how simple the UK system is now, but anyone poor is no longer in the system and anyone who wants to use the system has to pay for it. So I wonder how that works for various parties. The chair mentioned that fewer people are coming in with complaints. To me, that sounds like the task force actually did some good work on improving fairness, equity and adequacy.

**Mr PERRETT:** I would reiterate what the chair said. I've been an MP for not quite as long as the chair, and I have seen a decreasing number of people go through, and that's males and females, people with children and people without children—all sorts. Not that you're interested in individual comments from an MP, but I can reiterate what the chair said.

I think we've touched on this, but I will ask this question anyway. Do you think the assessment formula creates perverse incentives for parents, such as incentivising maximum custody and reduced participation in the labour force?

**Prof. Smyth:** Our scheme is based on utilitarianism, which is the greatest good for the greatest number. So you are always going to have the odd case here and there where something perverse happens—and there are lots of examples of that. Those are probably the cases you might hear more about. We do have a change of assessment. There are ways in our scheme to depart from the standard formula, which is a great thing. But, by and large, this is rough justice. That's the reality of it. There's so much complexity in the modern family and it's hard to cater for that.

**Mr PERRETT:** You've already made one or two suggestions, but do you have any suggestions on approaches that could reduce conflict while maintaining the overriding focus on the outcomes of the child or children involved—because, obviously, that's what the legislation is all about?

**Prof. Smyth:** The latest research on conflict from the US suggests that conflict is this kind of concept that gets thrown around like confetti in family law. The latest research suggests that we actually need to look at the subtypes of conflict. For the last six years I've been working on interparental entrenched hatred. There's a small group of about four per cent where it's actually not high conflict at all; it's hatred. Hatred is used as a reunion behaviour to stay connected to someone, where someone hasn't let go in a relationship and they just want to keep on driving it so they can hold on. Hatred has some horrible implications for many families caught up in it, particularly kids, around the culture of hatred. You only have to look at the news and see some of these horror stories that are coming out of Australia and elsewhere to see the downside of hatred.

Obviously, in the court you've got mental health issues, substance abuse, domestic violence and cultural issues. There's a whole amalgam of complexity around these cases, and hatred can sit within here. I'd like to see the court be resourced to have a more forensic and therapeutic approach to understanding these high-conflict cases, because they are a massive drain on the system. They fight about everything. I interviewed some parents, and one parent said, 'He said I can have the kids.' Mum said to Dad, 'I'd like the children on Thursday night,' and Dad said, 'No, you can have them the night before Friday.' It's as if, whatever you can fight about, you have a go. Money becomes a great, tangible thing for these fights.

**Mr PERRETT:** Have you done further work on that? Have you got anything we can read on the hatred—that staying connected via hatred? Would you be able to send that through to the chair?

**Prof. Smyth:** Yes.

**Mr PERRETT:** Thank you for the evidence, Professor Smyth.

**CHAIR:** Just on that, where does anger fit into this? It's a long time since I've looked at studies on conflict and the like, but it does seem to me that there is a degree of anger amongst some parties to these disputes, which seems unresolved.

**Prof. Smyth:** It is like hatred. We talk about reactive hatred, which is a normal response to bad things happening to you, versus this kind of pathological entrenched hatred. Anger can be the same. It can be reactive. As you know, most conflict and anger passes after two years, but there's a small group who keep on fighting throughout the life of a child, and that's the group who can't hear children and are unable to be child inclusive or child focused. I'm curious about whether you're actually hearing the voices of children in any of the work you're doing as a committee.

**CHAIR:** Not directly. That's part of the problem. We had discussions about this in terms of the Family Court itself: to what extent does the Family Court hear from children? But I think the reality is that, like the Family Court, this committee only hears from children by proxy. The proxies are parents or parties. Everyone who comes before this committee says that they're here to represent and advance the best interests of the child, but, if that's being done by proxy, how do you determine that? That's getting into areas of psychology that are way beyond my pay scale.

**Prof. Smyth:** Yes. When I spoke with Kay Hull on *Every picture tells a story*, I was fascinated that—facilitated by two colleagues of mine, Professor Jen McIntosh and Professor Lawrie Moloney—the committee decided to actually go down to Melbourne and sit behind a glass window and watch a group of children talk about these issues. It completely changed their complexion and their direction. I'm amazed it was done at the very end. Of course, they had the pictures of the children. *Every picture tells a story* comes from that very last meeting around children's voices. So I'd just like to keep reiterating the importance of trying to hear children's voices through an expert or a competent, capable person who can look at their needs, their perceptions and their attachments.

**CHAIR:** Thank you. We're out of time, and none of my other colleagues have indicated they have a question, so thank you for your work and the various studies that you've presented to us and for coming along and discussing them today. Any further material that you're able to forward to us will be gratefully accepted. Thank you very much.

**Prof. Smyth:** Thank you so much.

**ZIMMERMANN, Professor Augusto, Private capacity [by video link]**

[12:14]

**CHAIR:** I now welcome, via videoconference, Professor Zimmermann. Do you have anything to say about the capacity in which you appear today?

**Prof. Zimmermann:** I am here in my private capacity.

**CHAIR:** Professor Zimmerman, you have lodged submission No. 6 with the committee. Are there amendments or additions to that submission?

**Prof. Zimmermann:** No; indeed, that's my main message to the committee.

**CHAIR:** Information on parliamentary privilege and the protection of witnesses in giving evidence to parliamentary committees has been provided to you as part of your invitation to appear. I also advise you that any answers to questions taken on notice we'd like by 26 May if possible. I invite you to make some opening comments.

**Prof. Zimmermann:** I am really grateful to the members of this committee for the opportunity that has been given to me to attend this private hearing. I'm speaking as a person who has an experience with these matters. Especially in my capacity as a law reform commissioner, we have to deal with matters of family law and domestic violence. My main purpose to be present here today is to discuss the child support scheme. According to my colleague, Patrick Parkinson, an eminent family law academic based in Queensland, Australia developed this comprehensive child support scheme, as you know, in the late 1980s establishing an assessment and collection regime that was basically ousting the jurisdiction of the courts in relation to child support. According to Parkinson, my colleague—and I have done my own research to confirm his assertion on the matter—such a scheme was largely driven by the need to ensure as far as possible that private transfers of money from fathers to mothers and vice versa would reduce the burden of the state in terms of welfare dependency.

So the Child Support Agency was established in 1988, as you know, and it imposed a mandatory formula for all parents. The amount of support to be paid is worked out by the agency based on the parties' tax records. However, under the current regime—and I have noticed this; I have the evidence to provide—that even a parent who is unemployed sometimes is required to pay \$10,000, \$20,000 and even \$30,000 in child support. Given this support is calculated at the number of nights children spend with each parent, a year later, the other parent can actually pay it off, so there is an incentive for this erratic inappropriate behaviour. So a parent with 100 per cent of care can expect to profit at the expense of the other parent; although the costs of asking for too much support may result in recipient welfare dependence, financial hardship and even suicide.

I myself have had to convince a person to not commit suicide just a couple of months ago when he gave me a call saying that he couldn't continue to pay the child support. He was unemployed, the child support agency was being unreasonable to him and he was now in Canada contemplating committing suicide. He actually told me he would become a statistic after my conversation with him on the phone. So I ask you to consider following scenario and have my closing remarks finished as a result.

Peter and Mary were married and had a daughter. They divorced a few years ago, and Mary was named the primary custodial parent, with Peter having access rights and an obligation to pay \$1,800 per month as child support. Despite the court order allowing him to spend the weekends every fortnight with the children, Peter last saw his daughter only in May 2018. For the next few months, he would go to the handover location on visitation days but neither Mary nor his daughter would be there. In one instance the mother said that she would not leave the car. Mary has said to some people she will never allow Peter to see his daughter again. As a result, for about three years of his daughter's 11 years old life, he paid child support but was not allowed to see his daughter nor his daughter allowed to see him. Meanwhile it is clear that the mother has maintained a deliberate campaign of turning the child against Peter. That campaign eventually paid off, resulting in a child who is aligned with the mother against the father.

Despite Mary's child alienation and years-long violation of the court orders, Peter has received a phone call from the child support agency, informing him of an increase in his payments for support of a child that he has never seen again. That was justified under the pretext that his court orders were not relevant and that the mere fact that parental alienation by the custodial parent has occurred does not absolve him of paying support. But the child support agency has gone a step further. In fact, it went on to reward the parent who has committed parental alienation. As a result of this alienation, the payment of support was considerably increased, and Peter is now being forced to pay more than \$2,000 a month in child support.

As can be seen, Peter had his fundamental rights to develop a meaningful relationship with his own daughter violated. Both daughter and father have been unreasonably prevented from seeing each other, but now Peter has to pay even more to support the mother. Of course, Peter's lack of contact with his child was through no fault of his own. That was entirely the result of the mother's cruel alienation, in violation of the judge's order.

In short, the child support agency has actively supported and financially rewarded the alienation of the father from his daughter. The system is doing exactly what the parental alienator wanted all along: more money to her and no visitation for the father. As of now, Peter doesn't get to see his daughter, and his daughter is now alienated and is not allowed to see him. This decision of the child support agency is despicable. A daughter has lost her father and the father has lost his daughter. This should never be allowed to happen. Given there is persistent deliberate alienation and refusal to comply with a court order, it should at least not be financially rewarded.

Unfortunately, this is a common story in a country where court orders are not always enforced and few steps have been taken to prevent irresponsible parents from alienating their children from their loving parents. Any effort to prevent these parents from engaging in such destructive behaviour is welcome. The simple fact is that no decent system should ever allow someone to unjustifiably destroy relationships, especially relationships between a child and her parents, without effectively opposing it. It is not acceptable.

A parent's malicious, continued efforts to alienate the child from the other parent—which mental health professionals, by the way, refer to as a form of child abuse—have actually been aided in at least two different ways: first, the courts and the police have allowed it to go on; and, second, the child support agency has required alienated parents to continue paying and even pay more to the alienating parent, thus supporting him or her in the alienation of the child. I would like to see anyone pointing me to anything positive about this appalling situation and the basic perception that the system has allowed alienation to be financially rewarded where a child's relationship with a loving father has been thoroughly destroyed by intentional alienation by a parent who must continue receiving financial reward for their alienation of the child.

As can be seen, the federal government should enact legislation which determines that withholding rights to access and visitation will result in the loss of support payments. Indeed, where the non-custodial parent has his or her rights to have access to the child unreasonably frustrated, support payments should be automatically suspended. Such suspension should be warranted where the custodial parent's actions have resulted in deliberate interference with the other parent's visitation rights as per court orders.

Above all, there is an urgent need for legislation to eliminate the undeniable and patently obvious link between parental alienation and the child support scheme, because alienation in this form constitutes a serious instance of child abuse, which should potentially give rise to the loss of primary custody. These legislative changes make perfect sense to me. It would discourage morally irresponsible parents from engaging in destructive behaviour against children. However, it certainly becomes all too late to repair the damage that has already been done not only to Peter and his daughter but also to numerous often alienated parents and children in this country.

I thank you very much for the opportunity to provide a fact, to my knowledge, that has been sent to me by a witness. I have collected countless testimonies of people who have received the same sort of treatment by the system. We need to do something about this, because, even if one case has happened, it is very unfair. The system should not reward irresponsible, immoral and, ultimately speaking, erratic behaviour. Thank you for the opportunity that I have been provided.

**CHAIR:** Thank you. Can I lead off. You said towards the end of your comments that where access is denied that should automatically lead to a loss of payments. Should there be a presumption in the law that there is a period of minimum access?

**Prof. Zimmermann:** There is no doubt that, if there is compelling evidence that a child has been alienated, the automatic loss can never be done by arbitrary means. One of the reasons why I abhor the system is that these matters should be decided according to due process of law and the basic principles of natural justice. The rule of law requires this to be the case. So the argument has to be proven, and the evidence must be provided. This can only be done at the courts. So if there is a need for the visitation time to be rearranged or the relationship between one of the parents has been altered for all sorts of reasons that we can imagine, that should then be done according to due process and the decision ultimately be made not by a child support agent but certainly by a member of the judicial courts.

**CHAIR:** My question is slightly different, though. What I'm asking is: should the starting point be a presumption that each parent is entitled to a minimum period of access which could be varied by an application to the court but that there be a base or a foundational level—

**Senator HANSON:** 50-50 share parenting.

**CHAIR:** or whatever it might be? Should there be a presumption in the law that each parent is entitled to a certain amount of access—a minimum amount?

**Prof. Zimmermann:** Undoubtedly so. As you say, this is actually related to the fact that all these arrangements have to be done in the best interests of the child. So I have to say that your assumption is correct. Ultimately all these things have to be done by judicial means and not by means of bureaucrats.

**CHAIR:** Secondly, before I go to Senator Hanson, if that were the case, should it also be the case that, where access has been denied rather than having an adjustment made administratively by the child support agency, that matter should go back to the court for determination.

**Prof. Zimmermann:** Absolutely, because it's absolutely appalling that a person who's already in a situation that is very emotionally stressful can receive a phone call from the child support agency. You can imagine a father, or a mother, who has for a long period of time been arbitrarily denied from seeing his child and then he gets this despicable contact from the child support agency telling him that not only is he now alienated arbitrarily from his child but he is now having to reward the person who has promoted the alienation. This is unacceptable. We can never accept the continuance of these sorts of things. I hope that you, through the parliament, do something to address this issue. I have read many articles proving my point—that this scheme is actually directly incentivising parental alienation in this country.

**CHAIR:** To be clear, what I'm asking is: if there was a presumption in the law that each parent was entitled to access of—I will take a very minimal position—one weekend a fortnight, and if that weekend a fortnight was denied to the other parent by the primary caregiver, in order to make any change in child support it couldn't be done by the child support agency; it would have to go back to the court to have a variation made to the presumptive position. That's what I'm putting to you.

**Prof. Zimmermann:** This is a court order. What amazes me is that so many parents have a court order and it is not enforced, even if the parent who is being alienated approaches the relevant authorities to seek assistance. It's regrettable that in this country we have court orders not being respected either by the child support agency or by the authorities that should be there at the beginning of this matter in order to enforce the rule of law.

**CHAIR:** I presume you know, from reading our previous report, that we have made some recommendations about the enforceability of court orders, which was raised in a lot of evidence to this committee.

**Senator HANSON:** Thank you for your evidence today and for your submission. You have put this in your submission:

Regrettably, as Professor Parkinson also points out, the present scheme provides 'perverse incentives ... for primary caregivers to resist children spending more time with the other parent to avoid a reduction in the child support obligation.' In view of the financial reward acquired, it is no wonder the system actively provides a perverse incentive for parental alienation.

That comes from Professor Parkinson. Do you agree with that?

**Prof. Zimmermann:** I absolutely agree with that. It is absolutely evident according to not only the information provided by Professor Parkinson but also my own interactions, as a former law reform commissioner, with victims of decisions.

**Senator HANSON:** We have had constant evidence from organisations like the National Council of Single Mothers and their Children that this is not the case. I just want to put on the record that you also agree with that. For the *Hansard*, can you declare what qualifications you have?

**Prof. Zimmermann:** I am a law professor. I was a researcher at Murdoch University, in their law school, and I was the recipient of the Vice-Chancellor's Award for Excellence in Research in 2012. I was elected the most effective law researcher in the law school two years in a row. Then I was appointed by the government of Western Australia to be a law reform commissioner, and I was involved directly in the report provided by the commission on domestic violence. Then I happened to be approached by the Sheridan Institute to open their future university, now only an institute of higher education. I hope in the future we can also have a law school.

**Senator HANSON:** Thank you very much. This is a hearing about child support. Do you have an opinion, or was it raised when you were in Western Australia as a commissioner on that, about child support? Is it working? Is the formula correct? If not, how would you advise this committee on recommendations?

**Prof. Zimmermann:** It is never correct to have, as I say, the un-enforcement of judicial decisions. I have to repeat once again that these matters should be done in the proper realm, and the court is the proper realm in which to make these decisions. I think the person prior to me referred to children being consulted. We have to be very careful about that, because the custodial parent has a huge upper hand when it comes to the relationship that she

or he will have with the child. There are so many alienated parents that have reported to me that the child has been thoroughly manipulated and brainwashed by the custodial parent, even to the point of the custodial parent, as a result of abusing of the child, neglecting his parental duty to provide proper education. They approach the department for child protection and get the child to give witness against the alienated parent in order to excuse the behaviour of the custodial parent. So we have to be very careful when it comes to the witness of children who have been totally manipulated by the custodial parent to turn against the poor person who has been alienated.

There are so many good parents. I refer, for instance, to my friend who just passed away—a very depressed person who went years without seeing his child. His name is Russell Goodrich, and I can say that because I'm [inaudible]. He spent 10 years without seeing his son. When his son reached a certain age, over 18 years of age, he did not want to see him ever again. This was a sad case of a parent who was completely alienated from his child and who was paying child support. Everyone who knows my friend Russell Goodrich, who was an anchor on Channel 9, knows that he was a wonderful and marvellous human being, and everybody who had the privilege to know him knew how much he was, prior to the alienation, an absolutely wonderful father. This is cruel and unacceptable, I can tell you.

**Senator HANSON:** I have one last question, and it is to do with child support and the access parents have to their children. We talk very often about the rights of the child. Do you believe there is a right of a parent to have a connection with their children?

**Prof. Zimmermann:** Absolutely. The child is the main victim of this. First of all, she is unable to develop a relationship with her parent, who is actually entirely innocent. As I say, parental alienation is a form of child abuse and should be dealt with accordingly. I [inaudible] and I hope it will be on the record that parental alienation is undoubtedly a form of child abuse, and the main victim of the alienation, ultimately, is the child.

**Senator HANSON:** Professor, you have a degree in law, don't you?

**Prof. Zimmermann:** Yes, several.

**Senator HANSON:** As I raised today, people say parents don't have rights when it comes to their children, but section 51(xxii) of the Australian Constitution says:

The Parliament shall ... make laws for the peace, order, and good government of the Commonwealth with respect to:

... ..

(xxii) divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants

Does the Commonwealth or anyone have the right to stop parents from having contact, on reasonable grounds, with their children?

**Prof. Zimmermann:** Certainly not. That is the stated position, that somehow the parents are not allowed to have the ultimate say when it comes to their children. I prefer to trust in the people of this country than in a bunch of politicians—I'm sorry. Certainly the parents have the right, and this right is not only established, as you have mentioned, in accordance with the domestic law; we also have to obey the international agreements and treaties that the government has established in this regard. The International Covenant on Civil and Political Rights is very clear that the parental right is an inalienable right of the family.

**Mr PERRETT:** Thank you for your evidence, Professor Zimmermann. I wanted to tease out something that Senator Hanson was just asking about, but, firstly, what are you a professor of?

**Prof. Zimmermann:** I was the chair for constitutional law at Murdoch University for about 10 years, and I'm also editing a law journal—

**Mr PERRETT:** So what are you a professor of now?

**Prof. Zimmermann:** I am a professor of constitutional law at Sheridan. I teach the foundations of constitutional government at that institute. I forgot to say that I'm also the editor of a law journal and the president of the Western Australian Legal Theory Association. More than 100 lawyers are members of my association.

**Mr PERRETT:** So Sheridan has appointed you as a professor?

**Prof. Zimmermann:** Yes. I'm a full professor at Sheridan.

**Mr PERRETT:** The law course there is not accredited. There's no CRICOS code. TEQSA doesn't list a law degree as an accredited course at Sheridan. What's going on there?

**Prof. Zimmermann:** That's exactly why I have been employed by Sheridan. I'm there to open my law school, and this is being done together with a person you might know, Emeritus Professor Gabriel Moens, who has been made a Member of the Order of Australia for excellence in education. So I'm very honoured to be involved with this exciting project of opening a law school.

**Mr PERRETT:** When is it likely to open?

**Prof. Zimmermann:** We are at the mercy of state bureaucrats. We have already applied; it's just a matter of time. I expect this to be done very soon, because our project is outstanding and it has been approved by some excellent members of the legal profession, including the deans of three different law schools.

**Mr PERRETT:** I couldn't see a CRICOS code at all in my investigations. You say, on your webpage, that you've got 'a strong commitment and concern for academic excellence, community service, and the highest standards of ethics,' but I thought you were up and running now as a law school and as a law professor.

**Prof. Zimmermann:** Yes. That's what I am. As a law professor, I don't necessarily need to be employed in a law school. There are many law schools in Australia that employ no lawyers. For instance, a professor at Murdoch University holds only a bachelor of psychology. He would not have a job at my law school, because, at my law school, we will only employ the very best in the legal profession.

**Mr PERRETT:** So how many students are in the law course at Sheridan?

**Prof. Zimmermann:** Hundreds. As I have mentioned—but I'll have to repeat it again—we are in the process of opening a law school. We have applied for accreditation, and we are waiting for the—

**CHAIR:** Mr Perrett, if you could come to the subject matter in our terms of reference, it might be useful.

**Mr PERRETT:** In your opening statement, Professor, you say that Peter has a 'fundamental right to develop a meaningful relationship' with a child, and then you touched on it in your evidence to Senator Hanson. Where is that fundamental right? Could you go to the law with regard to that fundamental right? My understanding was that the rights of the child were at the centre of family law, but you're saying, I think, that this is via international treaties. Could you quote it or give me the reference for the relevant treaty?

**Prof. Zimmermann:** I have already mentioned it, but maybe you could not hear it properly. I referred to the International Covenant on Civil and Political Rights. If you want to read the document, you will find the relevant chapter that provides this inalienable right of the parents not only to develop a meaningful relationship, but to have the ultimate say when it comes to the raising and the education of children.

**Mr PERRETT:** So you're saying that should trump the rights of the child.

**Prof. Zimmermann:** Why should you put both in conflict? Can't you please respect both rights as possibly coexisting?

**Mr PERRETT:** But not if the child was at risk of harm, surely? That's the nub of the matter. If the child is at risk of harm because of a parent, my understanding, and the legal precedent that I'm aware of, is that the rights of the child come before the rights of the parent.

**Prof. Zimmermann:** That's exactly why we need the courts to make the decision. We have these hard cases that are very difficult to decide, unless you have people with experience, with expertise in the area, to deal with the matter.

**Mr PERRETT:** So your position, then, is that the court should make that decision—say, in the example of Peter that you gave, I assume there was a legal decision by the court. You're saying that should trump other considerations?

**Prof. Zimmermann:** Look, who do you want to make the decision? I am talking about a judge. As far as I know, we have in this country something called the rule of law, due process of law and natural justice, so we have to be very careful to not take for granted what people say. These things have to be done in accordance with the proper rules and proceedings. I am saying that false accusations or accusations of this matter should be processed in a proper realm and the proper realm to make these decisions are the judicial courts.

**Mr PERRETT:** I was wondering, Professor Zimmermann, what do you think the child support agency does very well?

**Prof. Zimmermann:** I am highly critical of the decision, exactly for the fact that the court orders are not being enforced. I have recorded conversations between innocent victims of decisions and persons who work for the child support agency telling the person that the court order would not be taken into account and that the payment of child support to the person who was preventing the child was being granted and the substantial amount of money that was increased has made the life of the person who has been alienated utterly difficult. Some of these people have actually left the country because they couldn't afford to pay the support. I am 100 per cent in no doubt that this is even a leading cause of some individuals to take their lives as a result.

**Mr PERRETT:** I will just go back to the question; you might not have heard it. What do you think the child support system does well?



**Prof. Zimmermann:** The decisions regarding payment should not be done by the child support agency. My opinion as an expert on the subject is that these decisions should always be done according to the judicial process. Judges should make the decisions regarding the payment of child support and the agency would solely enforce them. So if you ask my opinion about the functioning of the system, I will tell you that it is disgraceful.

**Mr PERRETT:** I would just have one more go at it because I'm not sure if you are understanding what I'm asking. In your studies of the child support system, what do you think it does particularly well?

**Prof. Zimmermann:** I can't find anything at this point but you have mentioned this point. I'm highly critical of the fact that the court orders are not enforced and people are forced to pay far more than they can afford. As you know, I have established the possible link and, in my opinion, the compelling link between child support payments and parental alienation.

**CHAIR:** Professor Zimmerman, I don't believe any of my other colleagues have questions, so can I thank you for your submission and thank you for discussing it via video conference today.

**Prof. Zimmermann:** Thank you very much.

**Proceedings suspended from 12:47 to 13:31**

**CARSON, Dr Rachel, Senior Research Fellow, Family Law, Family Violence and Elder Abuse, Australian Institute of Family Studies [by video link]**

**KASPIEW, Dr Rae, Executive Manager and Senior Research Fellow, Family Law, Family Violence and Elder Abuse, Australian Institute of Family Studies [by video link]**

**WHITECROSS, Mr Andrew, Acting Director, Australian Institute of Family Studies [by video link]**

**CHAIR:** We'll now resume the hearing. I welcome via videoconference representatives from the Australian Institute of Family Studies. We're having some technical difficulties; we can't hear you and the vision is a bit blurred. I'm not sure if you can hear me?

**Dr Kaspiew:** We can hear you now, Chair.

**CHAIR:** Yes, that's better. You have lodged submission No. 731 with the committee. Are there any amendments or additions to that submission?

**Dr Kaspiew:** No, there aren't.

**CHAIR:** Information on parliamentary privilege and the protection of witnesses in giving evidence to parliamentary committees has been provided to you as part of the invitation to appear. If there are any questions on notice we'd appreciate answers by 26 May 2021. I invite you to make some opening comments.

**Dr Kaspiew:** Thank you. The Australian Institute of Family Studies is the Australian government's research body on family wellbeing. Established in 1980 under the Family Law Act, we're a statutory authority and our role is to conduct [inaudible] and communicate findings to policymakers, service providers and the community about factors affecting families. Our multidisciplinary—

**CHAIR:** Just a moment. If you're not from the AIFS, could you put your microphone on mute. We seem to be getting some interference. Graham, can you hear me?

**Mr PERRETT:** Yes, I can, Chair. I was muted.

**CHAIR:** I think it was from you. We'll find out. Sorry about that, Dr Kaspiew. The wonders of modern technology and videoconferencing.

**Mr PERRETT:** Chair, I can see another Australian government camera. It's not giving any image, so I don't know who that is. That wasn't there before.

**CHAIR:** I don't think that's the problem. I ask the AIFS to continue and we'll see if we still have the problem.

**Dr Kaspiew:** Thank you. Our multidisciplinary teams conduct research for numerous Australian government departments, including the Department of Social Services, the Attorney-General's Department, Health, Education, and the Department of Veterans' Affairs, and for state and territory governments. We would like to draw some research findings to the attention of the committee that highlight the critical importance of effective financial support systems for separated children and their parents. Our research shows that financial strain is an everyday reality for a significant proportion of separated parents. These findings indicate that, mostly, the child support program involves transfers of modest amounts that are nonetheless very important for families.

I'm going to refer to findings from our 2014 survey of 6,000 separated parents, with this sample being drawn from the child support program database. Two other datasets sampled show similar findings. More than half the 2014 cohort of separated parents were in rental accommodation, accounting for 54 per cent of fathers and 61 per

cent of mothers. Annual mean personal income was \$52,200, with fathers having higher personal income than mothers by more than one third. Fathers were at \$65,900, compared with mothers at \$39,100. Seven in 10 parents reported financial difficulties since separation, with the most common indicator being needing to seek financial assistance from family and friends. Half of the sample reported having to do this—mothers at 56 per cent more commonly than fathers at 44 per cent. Similarly, four in 10 of the sample reported being unable to pay bills on time, reflecting 41 per cent of mothers and 33 per cent of fathers. Over the medium term, financial strain eases but nonetheless remains relevant for more than a quarter of separated parents. Analysis of the AIFS longitudinal study of separated families reported in the domestic and family violence and parenting project show that, five years after separation, more than a quarter of mothers and one in five fathers reported three or more indicators of financial strain. AIFS research also shows that financial hardship adversely affects child wellbeing outcomes, reinforcing the importance of the work the child support program does in promoting the healthy development of children in separated families. Thank you.

**CHAIR:** Thank you very much. Were there any other comments on behalf of all?

**Dr Kaspiew:** We're ready for the questions. Thank you, Chair.

**CHAIR:** I will lead off. A previous witness today, namely Professor Smyth from the ANU, said a number of things. One was that the data on the scheme is inadequate and that the CSA's facts and figures were last released in 2009. My question is: does that pose problems for researchers such as you, in terms of actually ascertaining what's happening from an empirical point of view rather than just from the anecdotal evidence of participants in the scheme?

**Dr Kaspiew:** The research I have just referred to is rigorous, systematically conducted quantitative research, where we have used the Child Support Program dataset as a sampling frame to get a representative sample of separated parents. So that is one way in which the administrative dataset of the Child Support Program has been leveraged to support research. On the point of the administrative dataset of the Child Support Program being used more widely, I don't have a comment to make about that. I'm aware of the facts and the figures that are published by the Child Support Program on a regular basis, which do provide useful information. The institute is aware that it's very important for researchers to have access to administrative datasets, and it's no doubt that the Child Support Program one is a very important one, along with many others.

**Mr Whitecross:** I think it's fair to say that researchers would always welcome more access to administrative data to shed light on how programs are running.

**CHAIR:** The costs-of-children estimates were last undertaken in 2004. Does that potentially create problems in terms of the evidential base of the system—that we're now a generation since those estimates were done?

**Mr Whitecross:** There is an element of this which is a policy question about what the right costs-of-children calculations are to support the operation of the Child Support Scheme, which would probably be a matter for the department to comment on. But we'd certainly be happy to contribute to that kind of analysis. I think that the cost of children, as used in the Child Support Scheme, is quite a complicated idea, because how much you spend on children probably depends not just on objectively how much they cost but also on values questions about what's appropriate to spend on children. What we do know is that the basket of services, the goods that we all consume, changes over time in terms of electronic devices, for example, and cost of participation in school and various other things. So it is appropriate to update these things from time to time to make sure that the way we're estimating costs is keeping pace with community values and community standards around what's required to raise children commensurate with community expectations.

**CHAIR:** You made reference to the 2014 survey of 6,000 separated parents. In that survey, was there data that differentiated or pertained to parents who were using the Child Support Scheme versus those who were in private arrangements?

**Dr Kaspiew:** The sample was obtained from the Child Support Program dataset. That means that all of those parents were registered with the Child Support Program. We did collect information from them on whether their arrangements were direct collect between themselves or whether there were DHS child support collect arrangements. So we do have that distinction in the sample. Who isn't in the sample is people who have not engaged with the Child Support Program and aren't registered on the database.

**CHAIR:** Do your results from that survey show any differences between those who were using the agency for the purposes of payments and those who were in private arrangements?

**Dr Kaspiew:** Yes, they do show differences. One of the main differences is that parents who reported in the survey a history of family violence were more likely to be using the DHS-collect method than parents not so affected. There would be other areas of difference but that's the main one I can point to at the moment. If there are

things that are of particular interest to the committee, I'm happy to take the question on notice and provide further detail.

**CHAIR:** I am just trying to ascertain whether the experience in terms of the adequacy of payment or even the amount of payment that is made by the payers and received by the payees shows any substantial or significant differences depending on whether or not the payment is made via an agency collection versus a private arrangement.

**Dr Kaspiew:** I will look into our reports and I'll ascertain the extent to which we've presented analysis along those lines.

**CHAIR:** Thank you.

**Mr Whitecross:** I think it would be fair to say that private-collect arrangements are more likely to have a degree of noncompliance, because people often move to agency-collect to ensure consistency of payment. Obviously there are some people in agency-collect because there has been a past history of noncompliance and the agency hasn't managed to recover outstanding debts yet. But, generally speaking, agency-collect allows for the child support scheme to directly garnishee the payments and therefore can provide a more consistent approach to collection than private collect, where often there are challenges. So, on the one hand, you have a group of people who comply a lot and, on the other hand, you've got a group of people who aren't complying, and effectively they are not trying to enforce the noncompliance, because it is a private-collect arrangement and other factors are being prioritised, like the relationship between the parents or the stability of the care arrangement, for example.

**CHAIR:** One might presume that those using the agency are people where private arrangements are not working. But then we may not know a great deal about what is happening in private arrangements. There may be the incidence of failure to make payment or the inadequacy of payment from time to time. We simply may not know what's happening there.

**Mr Whitecross:** That's right, although we do have through surveys reports from parents about payments not being made. I think agency-collect is also often used where there isn't a strong relationship. So it may not necessary have been that private-collect hasn't worked; there may just not have been a strong relationship between the parents and therefore the personal connection to make a private-collect arrangement work may not exist and agency-collect might be preferred. For example, the parents may have never lived together.

**Senator HANSON:** We've heard from Professor Smyth that the figures aren't up to date and go back to 2012 to 2014. How up-to-date are your figures in the comments that you are making?

**Dr Kaspiew:** As I've said, this was a survey from 2014.

**Senator HANSON:** In reading your submission, a lot of your facts and figures and the stuff that you're referring to go back to 2012, 2014. Another one here is from 2008. So, really, they're not up to date, are they? You're going back at least six, seven years in the information you're giving to this inquiry. Again, I go back to what Professor Smyth said. It hasn't been kept up to date with today's times. To refer back to that period of time, when so many changes have happened, my question is: how up to date is the information you're giving us?

**Dr Kaspiew:** The observation that I'd make in relation to that question is that we do have those three datasets from those time points that you referred to. In broad terms, we actually find similar patterns in the datasets in relation to key issues such as parenting arrangements, the prevalence of family violence and the use of different family law system pathways. That tells us that, in these broad areas, there are trends that are relevant to the population across time points. There might be some areas where there have been some policy changes, where perhaps some of the information might not be quite up to date, but it is the best information that we have available to refer to at this point in time.

**Senator HANSON:** What is your opinion about the child support system that we have now—the formula—and how do you think it's working?

**Dr Kaspiew:** I think it's relevant to look to our data on the extent to which parents report compliance with their assessment. In our 2014 survey we found that 73.4 per cent of payers reported full compliance, 63.7 per cent of payees reported full compliance, around one in five payers actually reported that they paid more, and around 13.5 per cent of payees reported receiving more. So, if you look at levels of compliance as a benchmark, in terms of the operation of the system, I would say that those figures are reasonably encouraging. I'm not saying that the system's perfect; I'm suggesting that these figures would indicate that the system is working and that people are paying what their obligations are. I also note that more than half the parents consider that their assessments are fair, according to the findings of our 2014 survey. This is more evident among payers, with 61 per cent indicating that the assessment was fair, and 52 per cent of payees said that the assessment was fair. If you look at those

broad indications, they tell us that most people are complying and that more than half think that assessments are fair.

**Senator HANSON:** How did you access those people for that survey? Who were they? Were they a wide range of people? Were they unemployed? Were they on social welfare? Were they in high-paying jobs? How did you access those people?

**Senator HANSON:** This is a sample that is representative of separated parents who are registered on the child support program database. This sample included a sociodemographic spread across income brackets and employment status [inaudible] family types in the sense of how many children they have, whether they were re-partnered and so forth. It's a representative sample of separated parents registered on the Family Support Program database.

**Mr PERRETT:** Thanks very much for your evidence, folks. The chair asked some questions about the formula for the costs associated with raising a child. I was wondering if you had some early thoughts on that. Did you say it was formulated in 2004?

**Mr Whitecross:** I can't remember. It would have been around then.

**Mr PERRETT:** I'm just thinking of mobile phones, technology. Instead of textbooks we've now got iPads. Things are changing so quickly, even at the state school my youngest son goes to. I'm just wondering if you have some early thoughts on those sorts of costs and where you think we might need to go to get a more accurate cost?

**Mr Whitecross:** Broadly speaking, we would know that there are some costs that families are incurring now that weren't part of the basket of goods that people might have been consuming in the early 2000s. There would also be costs that have gone up disproportionately. For example, we know housing costs have gone up relatively fast, compared to some other costs, which might impact on the costs of children but also on the self-support amounts for payers and payees. They would be examples of costs that might be different to now. Usually, while we might be spending more on electronics we're probably spending less on some other things. This would be the argument, that we're doing a more detailed analysis.

I think the other thing to observe is that the job support scheme covers people at different points in the income distribution. Some of them are income support recipients and others are closer to middle income. The kinds of expenses they have would be different. Analysis of the cost of children probably needs to take account of what would be necessary to provide a basic [inaudible] standard of living to a child in a low-income family but also the normal community expectations of the standard of living of children in more middle-income families.

**Mr PERRETT:** Further to that, a number of inquiry participants submitted that the assessment formula promotes underemployment by reducing the amount of child support a parent has to pay if he or she earns less. Most people want to give as much to their children as possible but, assuming that is a phenomenon, do you see it as an issue and do you have any response to this assertion?

**Mr Whitecross:** I think there's an empirical question there. Over time, people have had trouble getting a grasp on whether those things really happen. Certainly, there is an anxiety about that. I'm not sure that the actual behaviour very commonly matches that, but you couldn't say that it never happens. Sometimes those perceptions are based on a misunderstanding of how the formula works: reducing your income reduces your standard of living as well as the standard of living of the children; increasing your income makes you better off. It increases the total cost of children but it also increases your share of the cost of children. I don't know that the work incentives necessarily work quite the way people perceive them to work. That might be a question the department have done more work on.

**Mr PERRETT:** It would seem to be a perverse incentive and it would certainly remove the best outcomes for the child from your calculations. I'm not saying people don't do that, but it would be a small minority of parents, surely.

**Mr Whitecross:** I think it would be fair to say that the child support formula is quite complicated and not necessarily well understood by parents. That does create the opportunity for there to be misunderstandings about what the incentive effects are in the formula and also about what the assumptions are on which the formula is based. It wouldn't be surprising if there were some confusion amongst parents about how it worked and what the formula assessments actually meant.

**Mr PERRETT:** Now I'm going to do something that I shouldn't do. In terms of corporate knowledge from the Australian Institute of Family Studies, going back to the eighties, do you think the child support system is increasing conflict or reducing conflict? You can respond to that however you want, which might be not at all.

**Mr Whitecross:** I'll throw to Dr Kaspiew in a minute, but I should start off by saying that, of course, the purpose of the child support formula isn't to impact on conflict between parents in the first place; it's to ensure better outcomes for children and that children get to share in the resources that are available for their parents. That's the primary goal of the child support scheme. I'll throw to Dr Kaspiew to see if she's got anything to say specifically on conflict.

**Dr Kaspiew:** I go back to the prior system of asking the court to make orders for child maintenance, which is what the Family Law Act provided for prior to the inception of the child support program. I don't think you can find that there's any more conflictual way of obtaining child maintenance orders than going to court. Compare it to the system that it replaced, which was a discretionary system governed by the Family Law Act where parents had to go to court to obtain court orders. I think this administrative mechanism, from the perspective of conflict and difficulty, is better.

Again, in terms of thinking about broad patterns in the separated population and the extent to which conflict does or doesn't occur, I would point to our research that shows that most separated parents separate, make parenting arrangements, make property arrangements and comply with their child support assessment without a great deal of conflict. That statement probably applies to about 70 per cent, and the balance there is various degrees of conflict over various kinds of issues. Really, you have to look at whether it's the system that's creating conflicts or whether it's characteristics that arise from a family, its circumstances or its features that are creating conflict. Systems and processes that they encounter become part of that conflict not necessarily because of the character of the system or the process but because of the character of the circumstance in that particular situation.

So it's a little bit of a chicken-and-egg argument, but I do point to the fact that the majority of separated parents work most things out by themselves, report good wellbeing on their own part, have good relationships with their former partner and report positive wellbeing for their children. I think we need to put the difficult cases in perspective.

**Mr PERRETT:** Could you just remind me: every parent who had a decision about their resources and how they would be divvied up for raising their children—they just took that from the bench? It was handed down on Mount Sinai and they just accepted it happily and gleefully. Was that the case when we changed the system?

**Dr Kaspiew:** That's actually not the case. They'd make an application to the court and the court would make a determination, unless they managed to resolve the matter after a court order had been applied for—so, along a litigation pathway. Actually, just recently I was reading some observations about the operation of that scheme. Basically it was considered that a court process for obtaining child maintenance was underused. Not that many people used it, which meant there was a higher call on government resources for the support of sole parents. It was a system whereby, unless you settled and made an agreement by yourself, you would go to court, and it was considered at the time—one of the policy drivers of the child support scheme—that there was insufficient financial transfer between parents for the support of the children under that process. That's part of the thinking that led to the establishment of the child support program.

**Mr PERRETT:** Okay. Thank you very much.

**CHAIR:** I have one last question. Is the AIFS undertaking any current study or studies, or surveys, into any aspects of the child support system?

**Dr Kaspiew:** We currently have a project that we're working on called Compliance with and Enforcement of Family Law Parenting Orders. It is funded by Australia's National Research Organisation for Women's Safety. It is a multi-strand project. Two strands of the project involve surveys with professionals who work with separated families. There's also a survey with separated parents who have court orders for parenting matters. In both the professional survey and the parenting survey we do ask questions about child support and the implications of noncompliance with parenting orders for child support.

So, there is that piece of work that's currently in the field. We'll be providing an interim report based on data from professionals to ANROWS at the end of August. Then we're due to provide the final report to ANROWS in the first quarter of next year. The other element of that piece of work is data collection and analysis from court files of enforcement matters that are dealt with in the court. So, that's parenting order enforcement matters, and that will be a sample of about 1,000 matters that have been dealt with by the courts in the previous five years.

**CHAIR:** Is it possible for the preliminary report in August to be made available to this committee?

**Dr Kaspiew:** We will certainly discuss that with ANROWS.

**CHAIR:** Thank you. Then, can I make a formal request on the part of the committee to you and to ANROWS that the report be made available to the committee, even if on a confidential basis?

**Dr Kaspiew:** Thank you. We note that.

**CHAIR:** Thank you. I think that concludes our questions. I thank you for the submission to the inquiry and thank you for coming online and discussing it with us today. We appreciate that. Thank you.

**FAICHNEY, Ms Kirsty, Acting Deputy Chief Executive Officer, Services Australia**

**FLAVEL, Mr Matt, Deputy Secretary, Social Security Stream, Department of Social Services**

**HALLIDAY, Mr Brenton, Acting General Manager, Child Support, Indigenous and Tailored Services, Services Australia**

**HUNTER, Dr Nerida, Branch Manager, Families and Payment Support, Department of Social Services**

**MANNING, Ms Caroline, National Manager, Child Support Program, Services Australia**

[14:11]

**CHAIR:** I welcome representatives from the Department of Social Services and Services Australia. I'm sure you've heard many times the general words that I could read out to you, but I'm going to take it that you understand them as well as we do. We have your submissions. Would you like to make opening comments?

**Mr Flavel:** I don't have an opening statement, but I did think that perhaps it would be helpful for the committee to put a few facts on the record. They will be beneficial to some of the comments we might make in response to questions and, noting that our submission was lodged in December, as a matter of updating. There are only a few, and I will say at the outset that of course we're very happy to facilitate the committee's consideration of other data or other bits of information you feel you might need.

As at March 2021, there were around 673,000 child support cases, involving about 1.2-odd million parents and carers and just over one million children. In terms of those active cases, around half are what's known as agency collect and the other are private collect. That's where parents have agreed to exchange financial resources without going through Services Australia. That proportion is 50 to 50, or thereabouts, between agency collect and private collect, and that proportion has stayed relatively stable, at least over the last four years.

One of the core concepts for working out parents' income is adjusted taxable income, and the median adjusted taxable income at March 2021 for payers was \$50,828 and for payees was \$29,273. We, in our submission, noted a little bit on the distribution of child support payable, and the percentages and facts in there remain broadly consistent. Again, as at the end of March 2021 in around 30 per cent of cases decided under the formula the amount payable was \$500 or less. In 61 per cent of cases, it's under \$5,000 per annum. An additional bit of context is the median child support payable under the formula is \$3,354 per annum, so that's about \$65 a week. In other words, because it's the median, 50 per cent of child support amounts payable are under those amounts per week or per annum.

In terms of demographics, around 88 per cent of payers are males.

**CHAIR:** Can I stop you, Mr Flavel, because I didn't quite understand that. Can you go back? After you gave us the figures of the 30 per cent and the 61 per cent, you went on to the \$50. Can you repeat that, I didn't clearly—

**Mr Flavel:** It was the median child support payable. So looking at the median case—in other words, where the 50 per cent cut-out would be—that amount is \$3,354 per annum. I just converted that to \$65 a week as a point of reference. So, as I said, in terms of demographics, 88 per cent of payers are male. Around 90 per cent of payees have what's known as primary or above primary care—that is, where they have more than 65 per cent of care.

Finally, around 60 per cent of payees and around 22 per cent of payers receive an income support payment. We don't have a further breakdown of that but that gives some sense of the proportions who are relying on income support.

One final footnote I would make is the figure I gave you, particularly for payees, at \$29,273 has grown reasonably significantly over the past year. We've not properly analysed that, but I would suspect that, given the proportions of payees on income support—things like the coronavirus supplement over the past 12 months—are possibly inflating that figure slightly. Again, we can come back to the committee with further information on that and anything else you require. With that, I would be very happy to take any questions you have.

**CHAIR:** So to come back to that point, does that median income include income from government benefits?

**Mr Flavel:** That is correct, yes.

**CHAIR:** So it is the total income regardless of source?

**Mr Flavel:** That is right. The concept of adjusted taxable income is one that is under the tax law, so payments and other forms of income that are assessable for income tax purposes form part of that.

**CHAIR:** Do those figures, \$50,828 and the \$29,273, include people who are under private collection arrangements or is it just those under the agency collection?

**Mr Flavel:** Yes, it is under both.

**CHAIR:** So, overall, it is the whole cohort and that's what their median incomes are?

**Mr Flavel:** That is correct.

**CHAIR:** So the conclusion one can draw from that quite obviously is that the majority of people using the child support system are relatively low-income.

**Mr Flavel:** Lower on average, yes.

**CHAIR:** Lower or however you want to describe it.

**Mr Flavel:** Those medians then matter, so that figure that I gave of 30 per cent of cases being under \$500 per annum or less goes with that.

**CHAIR:** And close to two-thirds are under \$5,000?

**Mr Flavel:** That is correct, yes. And that distribution gets very, very thin. In less than four per cent of cases the amount of child support liability is \$20,000 or more, noting that that is an amalgam of those parents with high incomes who might have one, two or three children, so it's not \$20,000 per child; it's \$20,000 liability in total in only four per cent of cases.

**CHAIR:** A couple of things arose this morning in terms of data. The last time the cost of children study was done was 2004. Obviously there have been changes in costs over that period of time. Is there any reason why it shouldn't be done again, because we're talking about probably a generation in reality, 2004. Even if we got it done, it might be another couple of years, so that's getting up to 20 years.

**Mr Flavel:** Sure. There are a couple of points to note. One is that those costs of children are indexed. So their real value, if you like, is maintained through time in the same way other aspects of the child support formula are indexed. There should be no sense that in some way it reflects costs, not taking into account normal CPI or other adjustments. But they are nonetheless around the 20-year-old mark, so in terms of patterns of consumption, it's a moot point as to whether they remain current. Other submissions and people in this committee have raised that as a potential area of further inquiry.

**CHAIR:** This morning Professor Smyth from the ANU told us that the last time the agency's facts and figures were released was at 2009 and was pointing to therefore a dearth of data in terms of what researchers like him have available to them. Is there some reason why what was released up until 2009 hasn't been released subsequently?

**Dr Hunter:** I would say there is data released on data.gov.au, and researchers do approach the department on a regular basis and put in requests for bespoke data.

**CHAIR:** To paraphrase Professor Smyth—and if he's listening or he reads the transcript and I've misquoted him, I'll correct it—he was basically saying that what's available now is inadequate compared to what was available up until 2009.

**Dr Hunter:** I think it would be fair to say that we'd be happy to talk to Professor Smyth about what he needs and provide data under standard data-access arrangements.

**CHAIR:** When did the Child Support National Stakeholder Engagement Group last meet?

**Mr Flavel:** My understanding is that was in around 2014, but that's just going off—

**CHAIR:** Is there a reason that it was disbanded?

**Mr Flavel:** My understanding is that it was actually created by the minister or ministers at the time. It sort of met under their auspices, so it would have been a matter for ministers at the time as to why it was disbanded, or not continued.

**CHAIR:** A number of witnesses have put to us that that was a useful exercise. This morning the Lone Fathers Association, the Non-Custodial Parents Party and the National Council of Single Mothers and their Children, lamented the fact that the group no longer meets.

**Mr Flavel:** What I would say, Chair, is we're always happy to meet with representative groups, and it will come as no surprise to the committee that we do that right across the range of areas that we're responsible for. As Ms Hunter noted earlier in her answer about data, there are data sources on data.gov.au, but also we're happy to talk to academics and the like to see if there are other ways in which we can facilitate the provision of data. I don't want the committee to be under the impression that the absence of that group in any way diminishes our interest in ensuring that there is access to data and information and that we have solid engagement with stakeholders. We do that already regularly, and we're very happy to meet with stakeholder groups that want to come and talk to us



about concerns about the system—not individual cases, obviously, but about policy and ways that the system works as a whole.

**CHAIR:** One of the areas in which there have been a lot of evidence to this committee, both orally and in the hundreds of written submissions, has been the enforceability of orders and how that then relates to child support, this connection between the amount of time that a parent has custody of a child and then, therefore, the flow on effect in terms of the amount of child support which is payable. Something I was exploring with one of the witnesses this morning—I can't remember who it was now—was whether there is a place for some sort of presumption of a minimum amount of custody for a parent, or both parents, each parent under the arrangements, hypothetically—this is just out of thin air—but a presumption that, for example, each parent is entitled to have one weekend a fortnight or something like that as the minimum amount?

**Mr Flavel:** I think it's important to recognise that choices and decisions around custody are really matters dealt with under the Family Law Act. If one wants to step back from the child support system, it recognises the primacy of the Family Law Act in terms of that framework for decisions around custody and then builds the child support formula around that. As we've previously noted with the committee, there are elements of the way that the arrangements work that help to preserve adherence to those orders, so in some instances, where a parent is not complying with a court order, there is the ability to have the child support formula reflect the court agreed care rather than the actual pattern of care for up to 52 weeks in certain circumstances. That allows time for those parents to go through the family law system in order to deal with those issues around custody. I think it's important to recognise that the child support system is an administrative one that sits in concert with the Family Law Act but doesn't seek to influence outcomes around care.

**CHAIR:** But, if the parent who has the primary custody of the child—if I can describe it as that—effectively denies custody to the other parent, then administratively that has a consequence in terms of the increase in the amount of child support which is payable, unless some action is taken in the court. So there can be a flow-on effect in an administrative way which would seem to me to be a little perverse. I suppose the question is: if a parent who has the primary custody of the children is not complying with the order, and that leads to a reassessment of the amount of child support that that person claims, should there be a stop, at that point, in increasing it until it goes back to the court, given that orders are not being complied with? This is just an area, it seems to me, of continuing angst. I don't know how many people it is amongst, but it is enough that we've had a sufficient number of submissions about it to this inquiry.

**Mr Flavel:** There would be a multitude of reasons why a parent might choose to withhold care. To the extent that they were doing that in order to generate a better child support outcome—that's one of the reasons. Then the way those interim care provisions work is that they effectively say, 'You're not going to gain from that,' because the formula is not going to deliver a beneficial outcome to that person while you resolve those matters either through formal agreements or indeed by re-prosecuting through Family Court proceedings.

**CHAIR:** But that depends, as I recall—from a previous conversation we had—on triggering an assessment along those lines by the agency, does it not?

**Mr Flavel:** I'm not sure if my Services Australia colleagues want to talk in more detail about the practicalities of how it works, but those provisions, as previously mentioned, are up to 52 weeks, in the case of a court order that has been 'breached' within the first year. Then it goes to 26 weeks, or 14 weeks in the case of an informal written agreement between the parents.

**CHAIR:** I suppose what I'm wondering is: if one party alleges that a court order has been breached, should any readjustment of the payment be halted until they've gone back to the court and dealt with this?

**Mr Flavel:** The point of the interim care order is that it would reflect what the court has ordered. As a hypothetical case, if the court had ordered fifty-fifty care, for instance, and one parent was withholding that—and this was a court order that had just been made, so within the first 12 months after it had been made—the parent who is being denied the care could apply to Services Australia and ensure that the child support payable works on fifty-fifty, regardless of if there was a 100 and zero per cent, say, operating. We think that's an effective way of ensuring that the child support arrangements act in concert with the family law arrangements, rather than sort of leading them.

**Senator HANSON:** You're talking about court orders that have been brought down, and you've got 52 weeks after that, and there is a formula there. What about after separation, and a parent withholds the children from the other parent? At what point does your department step in and say, 'I want child support out of the parent'? Can they get child support without having to go before the courts?

**Mr Flavel:** Yes. Child support is not reliant on a Family Court outcome.

**Senator HANSON:** So you just have to interview the parent. The case hasn't been set down, so that parent can deny access to the other parent, and it can take months before they do it. Because they are denying access to the other parent, they say to you, 'I want child support; I've got the children all the time.' Therefore you assess it on their income, and they have to pay it, regardless of going before the courts.

**Mr Flavel:** I'm not sure, again, if my Services Australia colleagues want to talk about what I'd call the small 'i' interim arrangements, where, for instance, separation has happened, there is a pattern of care and a child support assessment has been done during that time.

**Mr Halliday:** Services Australia would take into account the information from both parents on the care of the children at that time. We would—

**Senator HANSON:** Of course, a parent could say: 'I can't see my kids. They won't allow me to see the children. Of course I'm not having them overnight. They won't give me access to the children. I've got to wait for a court case to be heard and it could take six months before I actually go before the courts.' They are going to be paying child support while not being able to see their children. You would have to take it on that basis, wouldn't you?

**Mr Halliday:** The child support would be based on where the children were located at that time. Exactly as we just said: we look at both parents and determine who has the care of the children, for what percentage and the assessment would be based on that.

**Senator HANSON:** That can be used for financial gain though, couldn't it?

**Mr Halliday:** I can't comment on that.

**Senator HANSON:** Well you're dealing with it all the time; it's your department. I'm sure you get complaints about it. I'm sure people tell you. I hear it through my parliamentary office. You're the actual department, so you really can comment on it, because I'm sure they tell you what they tell me.

**Mr Flavel:** Senator, in those circumstances, are you saying that there should be no child support payable until there's a court order? That's the one logical extension of that argument. That would run counter to the argument—

**Senator HANSON:** That's exactly right. There has to be something reasonable about this. The parents cannot withhold. People are not getting access to their children because the whole system is clogged up. I know cases; I hear it all the time: 'They will not allow me to see my children.' Therefore, they're paying out a lot of money sometimes to the ex-partner and it's excessive. I understand the figures you've given me here of what people actually pay, the percentages, but some people in high-paying jobs, who may work in the mines, are denied access to their children. They are paying thousands of dollars a month, and they don't even get to see their children. Until it goes before the courts to determine who has custody of the children and what access, shouldn't there be something put in place so that instead of paying thousands based on their pay at the time, there's a reasonable amount that you pay per child?

**Mr Flavel:** It's still a system based on what's in the best interests of the child; it's not about the parents and them sorting out their differences in relation to custodial matters. In that example you gave, the incomes of the two parties are not in dispute. They've separated; one person is working in the mines, and the other person has another job or source of income. The fundamental resources available to support that child are not in question. What is in question under the scenario you gave is the matter of custody. And it's still the case that custodial matters are best dealt with under the family law arrangements, rather than through the child support arrangements.

**Senator HANSON:** It's something that we possibly need to look at. Can you tell me—what is the amount of money both parties can live on before it is taken into consideration for child support?

**Mr Flavel:** Senator, there's not a concept for that. There is what's known as the 'self-support amount'.

**Senator HANSON:** It's about \$26,000.

**Mr Flavel:** It's \$26,000, but it's important to recognise that amount is set at one-third of male total average weekly earnings—MTAWE—not from a bottom-up process of how much do you need to sustain yourself. It's formula based, set some time ago at one-third of MTAWE. As I mentioned before in response to another question, that amount is also indexed each year.

**Senator HANSON:** It is a starting point. You say in the formula that you've got to have so much money to live on yourself before you actually pay child support.

**Mr Flavel:** It recognises that it's reasonable for there to be an opportunity for a parent to provide for themselves, and that the totality of resources available is not just 100 per cent available for the child.

**Senator HANSON:** Correct. It's a starting point. It's \$26,000 for people to pay rent and live or pay their expenses. We touched on this the last time we talked to you. When someone doesn't pay their child support you can go to their place of employment and you can draw down on their wages by an amount—which you disclosed last time—of about \$372.58, or something like that.

**Mr Halliday:** It's \$383.10.

**Senator HANSON:** Thank you. I didn't bring that figure with me.

**Mr Halliday:** Which is from net pay.

**Senator HANSON:** Have you looked into it, because I raised this last time: if you believe that a starting point is \$26,000, why is the department allowed to draw down on someone's wages to \$383 a week? I haven't worked it out yet, but my calculations say that doesn't even come anywhere near the \$26,000. Why is the department allowed to draw down someone's wages to \$383 a week to take out child support?

**Ms Manning:** The self-support amount is the figure that's used to be taken off the top prior to the assessment being made about what child support is payable. The protected earnings amount is what's taken into account to ensure that a payer has an amount to live on from the amount that's garnisheed. They're two totally separate and independent figures. The garnishee arrangements are generally in place because a payer has not reached an agreement with the agency about how they're able to pay their child support debt.

**Senator HANSON:** Have you looked into it—if what you're doing could be unconstitutional?

**Ms Manning:** I can't say that I have, no.

**Mr Flavel:** In what way would it be unconstitutional, Senator?

**Senator HANSON:** The fact is that you've actually set in legislation to give someone an amount to live on of \$26,000 a year before you actually then start doing the formula for them to live on. That's what you stated. Both parties say that someone can have \$26,000 a year before you start working out the formula—how many children and how many nights a year they have—and then they start paying their child support on that. You're actually taking more out of a person's wage. That's their wage and you're actually going into their wage, through the employer, and taking money from their income. It's well below what you stipulated in legislation for them to actually live on and support themselves before they start paying child support. I have a real problem about that.

**Mr Flavel:** I don't think I have any more to add to what I said before, which is that the \$26,000 is a notional amount which is one-third of MTAW—so it's not set by mandate how much the government thinks somebody needs to live, it's just a recognition that payers and payees within the system ought not to have 100 per cent of their income taken into account for the purposes of working out child support.

But I do think, on the garnishee arrangements—and, again, Services Australia may want to add to this—that they're applied in a narrow set of circumstances where there's wilful noncompliance. It's not as though every payer is having their wages garnished. In fact, we may be able to get data for the committee—maybe not today—about how many circumstances that's used in. Of course, it's not unique to the child support system. There's the ability, ultimately, to have garnisheeing of wages in other circumstances as well within Commonwealth administration.

**CHAIR:** There does seem to be a discrepancy, Mr Flavel, because the garnishee operates at \$383 per week but the \$26,000, which seems to be—however it's calculated—a third of MTAW, is actually \$500 a week. So from the perspective of the ordinary person looking at this, it does seem somewhat inconsistent that there are two different figures. On the one hand, you're saying, 'This is how much we'll accept that you need for self-support,' but on the other hand you're saying, 'We're going to garnishee an amount which leaves you with less than that'. Can you see how people would see this as being somewhat inconsistent?

**Mr Flavel:** Again, I don't think I have anything further to add, other than the different conceptual basis. One thing we can come back to the committee on—and I'm not sure if anybody wants to add to this—is those protected amounts. I think they're set under the tax arrangements, rather than just the social security law. I may be wrong there, so we can come back to the committee with that.

**Senator HANSON:** You don't know for sure who set those amounts?

**Mr Flavel:** No. I'm not sure of my colleagues have anything further to add to that—

**CHAIR:** Any further elucidation you might be able to provide us with could be helpful in that—

**Mr Flavel:** That comparison of how the garnishing arrangements work in other settings—for tax or other purposes—is what I'm referring to here.

**CHAIR:** Sure. Sorry, Senator, I interrupted.

**Senator HANSON:** No—thank you. Can you tell me if you've done an investigation, through your department, into what it costs to keep a child per week?

**Mr Flavel:** I'm not aware that we've done that.

**Senator HANSON:** Has your department done it at all in the last 10 years?

**Mr Flavel:** The cost-of-the-children tables that were done back in 2004 were done on the basis of research undertaken under the auspices of the ministerial task force that was set up at the time. And they went and looked at evidence about costs of raising children and costs of raising children at different income levels, which, as we've previously discussed with the committee, is why we have a scale that goes up with income and then, beyond a certain point, ends.

**Senator HANSON:** So it's 17 years old?

**Mr Flavel:** It's been indexed, so it's consumption patterns at the time but indexed. It's not like the data has in some way not being touched for 17 years.

**Senator HANSON:** Do you have any idea what it is? You said that was done in 2004. Do you have any idea how much you assess it is to raise a child? I'm thinking about a person's income. I'm not interested in that, okay? There are people that I know getting who are flat out getting \$20,000 or \$22,000 a week and keep children, and people who are on a couple of hundred thousand dollars and they can keep children. So it depends on whether you want to buy them designer clothes or whether you want to buy them clothes that they look smart and well-dressed in. They're getting an education, and it depends on how you run your household. So, what is the cost of rearing a child using public education? How much is it to feed that child? How much do you consider it is to clothe that child reasonably? I'm not talking about designer clothes; I'm not talking about all this—basically. How much is it if they've got a sport they're involved in? Do you have any idea of that at all?

**Mr Flavel:** It's not something we've done. With respect, I suspect that if I asked you and I asked Mr Andrews and I asked Mr Perrett what they thought was reasonable, you would get three different answers. What the task force did was look at actual spending patterns, and it is the case that as incomes of parents rise the amount they spend on children rises, so any individual can have their own view as to what it costs to raise a child. I'm a parent. I might have my own views, but I think that it's important we're using evidence, and the evidence that was used was looking at actual patterns of spending.

**Senator HANSON:** Wasn't it in families? Correct me if I'm wrong, but was it based on evidence from families and not a single parent with a child?

**Mr Flavel:** I'm pretty sure, but I'm happy to take this on notice, that it was across a range of different family types.

**Senator HANSON:** I thought the evidence today said it was based on families and not that single parent base. You should maybe question me, because I've been in both categories, as a single mother and trying to rear children, and I know what it's like to try and make ends meet. Parents can still give their kids that care and attention without costing parents \$300 or \$400 a week to rear that child, so it's got to be within reason, what we do believe is a reasonable amount to rear that child.

**Mr Flavel:** Again, I just refer to the data that I gave in the beginning in my evidence that for a third of cases the payable amount is \$500 or less, so that's less than \$10 a week.

**Senator HANSON:** Just explain about the Maintenance Action Test to me?

**Mr Flavel:** I might ask Dr Hunter if she wants to take this one.

**Dr Hunter:** The Maintenance Action Test is a policy setting that connects family tax benefit, so the main family assistance program, with child support assessment. As you'd be aware, families on low to middle incomes can receive supplementation from government for the cost of raising children through family tax benefit. Because the child support scheme is intended to establish arrangements so that parents cover the cost of their children to the extent of their financial capacities, families are required to apply for child support from the other parent before they can access family tax benefit. And the support that they receive from the other parent is part of their income testing arrangements for family tax benefit.

**Senator HANSON:** Family tax benefit A—how much is that a year?

**Dr Hunter:** It depends on the individual circumstances of the family, so it will depend on—

**Senator HANSON:** It's means tested?

**Dr Hunter:** It is means tested.

**Senator HANSON:** It does go on the child support that they get, doesn't it? So every dollar in child support is halved in the family tax benefit—is that right?

**Dr Hunter:** It will depend on the individual family circumstances, so it can depend on the age of the child, the income of the family, whether they're a single income family or a partnered income family, or whether they're receiving income support—

**Senator HANSON:** So what's the maximum amount that a family can get?

**Dr Hunter:** I don't have that to hand.

**Mr Flavel:** We can get that pretty easily.

**Senator HANSON:** Would it be \$1,686.30? Does that sound about right?

**Dr Hunter:** It would depend on the family circumstance. If they have a large number of children, it could be more than that.

**Senator HANSON:** So that's A. What about B?

**Dr Hunter:** Again, it depends on the family circumstances.

**Senator HANSON:** With regards to what?

**Dr Hunter:** Family tax benefit part A and part B are to support families with the costs of raising children. Family tax benefit B is an additional payment for families that is primarily targeted to families that have a primary income and a model. So they may be a single parent family or they may be a family that has a primary earner with a secondary income earner that has got a small amount of money that's brought into the family.

**Senator HANSON:** Is both tax benefits A and B actually included in their income? When they have to disclose their full income, is that included in it?

**Dr Hunter:** Yes.

**CHAIR:** Just to pick up on that, as I understand it, it's the provisional amount of child support rather than the actual amount of child support which is taken into account. So if a payer is not making the full amount of payment, then the payee can be in a situation where their FTB and rent assistance is reduced by 50 cents in the dollar for amounts above \$1,653.45 per year. Is that the case?

**Dr Hunter:** It depends on the collection arrangement. Under private-collect arrangements—which is about 50 per cent of the child support population—we assume that that child support is collected and the family tax benefit adjusts accordingly. It's also worth mentioning that family tax benefit is an annual entitlement and there's a period of reconciliation after a tax return is lodged at the end of the year. Under agency-collect arrangements it can be more responsive to the actual moneys coming into that family.

**CHAIR:** When you say it can be more responsive, can you be more clear about what that means?

**Dr Hunter:** Yes, apologies for that. If a payer fails to pay child support there can be an adjustment of family tax benefit.

**CHAIR:** So that would be on the application of the payee saying, 'Although I was entitled to \$4,000, I only got \$2,000' or whatever?

**Mr Halliday:** In that situation, if child support was collecting that money, we would know the amount through the department and that would adjust that payment accordingly. With private-collect it's assume that all of that money is being paid as assessed.

**CHAIR:** Is that a rebuttable assumption or presumption? In other words, if the payee says, 'The amount that I was due was X, but I only got X minus Y,' can that be taken into account then in terms of the family tax benefit?

**Mr Halliday:** We would be determining that based on the child support assessment that we had calculated and the amount advised to both parents. So for any child support assessment that's the basis of the assessment. The difference in a private arrangement is that we expect those payments to be paid privately. So we would be expecting that whatever that assessed rate is per month, for example, being paid and received in a private arrangement.

**CHAIR:** So I think your answer is no, it can't be adjusted.

**Dr Hunter:** If someone's on a private-collect arrangement and a debt is incurred—so they're not actually receiving—they can move to an agency-collect arrangement and they can apply retrospectively.

**CHAIR:** So they would have to do that in order to obtain the amount of FTB that they would otherwise be entitled to had it been based on the actual amount received by way of child support payment, rather than the assessed amount?

**Dr Hunter:** Yes.

**Mr Halliday:** And there is a safety net period as well. So they may contact us and, for up to three months, we could collect arrears. Again, we would talk to both parents about whether payments had been paid. But there is that safety net built in for parents who are trying to do a private-collect arrangement.

**CHAIR:** Perhaps you could answer this. You might say it is a matter of government policy. Why was the amount for that situation \$1,653 per year, whereas, for low-income families who are not in receipt of maintenance, the threshold amount is \$54,677 per year and the reduction is 20c in the dollar rather than 50c in the dollar? Why the very large discrepancy between those two?

**Mr Flavel:** I'm not sure I understand the discrepancy. It might be helpful to the committee if we come back to you with some information about the family tax benefit arrangements. As Dr Hunter said, they're complex. They are based on incomes and they're based on the ages of the children. We have FTB parts A and B. It's useful to see those. It's hard to encapsulate those with a single figure. Also, the way in which those arrangements intersect the child support arrangements, including the maintenance test, might be something that's useful to come back with, rather than quoting figures.

**Dr Hunter:** We were asked about whether family tax benefit contributes to income. I was thinking about that question in terms of it being income that a family receives. It helps with the cost of raising children, but it's not income for the purposes of the adjusted taxable income that is then used in the child support assessment.

**CHAIR:** Mr Perrett.

**Mr PERRETT:** Thank you both for your evidence. I have a question about the Family Advocacy and Support Service program. It's part of the Family Court. Have you guys heard of that at all?

**Mr Flavel:** Sorry—what was it, Mr Perrett?

**Mr PERRETT:** I'll say it again. There's the Family Advocacy and Support Service. We heard evidence in the earlier part of the inquiry. It's a wraparound service as part of the Family Court. Have you heard of that program?

**Mr Flavel:** Not off the top of my head. It's outside of our jurisdiction, so to speak. If it's in the Family Court, it's more for the Attorney-General's Department.

**Mr PERRETT:** Very much so. But we also hear that much of the conflict flowing from Family Court processes turns on child support. I was wondering whether you'd consider looking at that process. It's in Brisbane. I'm not sure whether it's in other family courts. A person at the point of conflict might be able to give information and have input that would actually be very useful, I would suggest. It might be outside of your riding instructions. Chair, I anticipate that it might be something we'd consider in our report. You might want to get your head around it in terms of how that could be a useful process. You don't have to answer. I just flag that for you as something to consider.

**Mr Flavel:** I'm happy to look at it. Any suggestions are very welcome. I'm not sure I understand the specific relevance for the child support formula.

**Mr PERRETT:** Because decisions are going to be made at the top dispute part of the family law process, I guess.

**Mr Flavel:** As we covered before, we have to differentiate between what's fundamentally an issue of custody under family law versus the amount of child support that's payable.

**Mr PERRETT:** I am very aware of that. I just wanted to flag that. I will clarify so we get it on the record: DSS make no decisions about time spent by your clients with children. Would that be true to say?

**Mr Flavel:** That's correct. That is fundamentally what I've been saying: those are matters dealt with under the family law arrangements rather than under the child support arrangements.

**Mr PERRETT:** I want to be very clear because sometimes the questions have blurred that—as though decisions made about time spent with children were anything to do with your employees. You are dealing with the consequences of those decisions; you are not making those decisions or being involved with that decision-making process.

**Mr Flavel:** That's correct.

**Mr Halliday:** We would, in child support, need to make decisions on the percentage of care for the assessment, but not on where those children should be. We're not deciding on that. We need to discuss what is the percentage of care with both parents so that we can do the child support assessment.

**Mr PERRETT:** Okay. I'm not sure if you heard the earlier evidence from the Australian Institute of Family Studies.

**Mr Flavel:** Did we hear the evidence? Some of it.

**Mr PERRETT:** Okay. This is a question I've asked several witnesses today, so I'll just lay it out, and then I have a follow-up question. A number of inquiry participants submitted that the assessment formula promotes underemployment by reducing the amount of child support a parent has to pay if he or she earns less. Do you see this as an issue, and do you have any response to this assertion?

**Mr Flavel:** I'm not sure I would agree that it promotes underemployment. Some people suggest that, in some way, it discourages people from working, but I don't think those decisions will always—there can be a multitude of factors at play in the choices that people make about working, so how much they work. The sole motivation of reducing a child support liability, I think that might be a bit of a stretch.

**Mr PERRETT:** I have certainly had people in front of me, people from a broken family, both with children and without children, and it was clear that one of the parties was reducing their hours of work, therefore reducing their income. I've had it suggested that a tradie was taking cash. I've had it suggested that doctors, with plenty of work, would seem to be reducing their hours. I don't know what percentage of the workforce was casual when the Family Law Act came in during 1975, but at the moment about 25 per cent of the Australian workforce is casual. If you include contractors and the like, it's about 35 to 40 per cent. So, two people in five have insecure work of some sort—that is, work that can be varied from above or from decisions made by other people in a way that mine or yours can't be in terms of a standard pay-as-you-go wage. I just wondered how that has influenced your answer to that question that I just asked about people reducing their work hours to reduce the amount of child support they pay.

**Mr Flavel:** I'll leave matters of cash in hand for tradies to the tax office and others to deal with. But, look, we've talked to the committee before about the way the arrangements work. There is a concept of earning capacity that uses three factors. If it's deemed that somebody has a higher earning capacity and no legitimate reason—quite clearly somebody might have an illness or other reasons, or they might have had another child—and where none of the three tests are met, it is possible for their income to be deemed at a higher level than what they actually earn. There's underemployment where somebody wants to work more. The example you're giving is where somebody is working in a full-time job and cuts back their hours. There are provisions that allow Services Australia to deem an income based on the earning capacity if those three criteria are met.

**Mr PERRETT:** Would you have any data on when that formula was used? Would that be the sort of thing you could drill down into?

**Mr Flavel:** Yes, we can absolutely take that on notice.

**Mr PERRETT:** And, dare I say, rather than giving us all of the pie, the particular bit of the pie where it's conflicted would be interesting. I'm not sure if you tick a box for conflict or if it's just that all the data is crunched as a whole, but I'll wait to see what you get back to us with.

**Mr Flavel:** Yes, let us come back to you.

**Mr PERRETT:** Thanks for your evidence.

**CHAIR:** As there are no further questions from my online colleagues, and Senator Hanson has no further questions—

*Senator Hanson interjecting—*

**CHAIR:** I thank you very much for your submission and also for your discussions with us today and on other occasions. We may well come back to you again in this inquiry, although we are trying to finish it in a timely manner and keep it confined to a number of discrete issues, rather than look at everything more broadly. On those matters about which you indicated that you could provide some more information, we'd appreciate that information by 26 May, if that's possible. Once again, thank you very much for your participation in this inquiry.

That brings me to the conclusion. I thank all the witnesses who have given evidence to the committee today. I thank Parliamentary Services—Hansard, recording and others—and, particularly, the secretariat.

**Committee adjourned at 15:00**