



14 November 2014

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

By email: childsupport.reps@aph.gov.au

Dear Committee Secretary

**Parliamentary Inquiry into the Child Support Program - Mediation and Counselling
in Child Support Matters**

Thank you for your invitation to provide further information to the Committee regarding mediation and counselling in child support matters. The following comments have been provided by the Law Council's Family Law Section.

1. There is little doubt that mediation in family law disputes is worthwhile and has a good record. Historically lawyers have always attempted to resolve family law disputes through formal and informal negotiation processes including mediation.
2. Financial mediation is a compulsory step before any final hearing in property matters (Section 79(9) of the *Family Law Act 1975*).
3. In the Family Court of Australia, compulsory mediation occurs with a Registrar or Deputy Registrar of the Family Court. In the Family Court of Western Australia and the Federal Circuit Court of Australia, the mediation occurs with a Registrar, or, where the parties have sufficient means, with an outside mediator appointed by, and paid for by, the parties.
4. Many financial disputes include consideration of child support arrangements. Many financial matters are resolved by way of Consent Orders or Agreements including Child Support Agreements.
5. Disputes about the quantum of child support payable, usually in the form of change of assessment applications, are not commonly brought before the Family Law Courts, but are dealt with by the Registrar of Child Support under Part 6 A of the *Child Support (Assessment) Act 1989*. The vast majority of change of

assessment applications do not involve lawyers or the Family Law Courts (although lawyers are often asked to advise clients on the merits of making or defending applications, and to assist with preparation of the documents).

6. In those cases which do go before the Family Law Courts there is usually, if not always, mediation prior to trial through the attendance by the parties at a Conciliation Conference with a Registrar or through private mediation as outlined above. There are usually cases where the child support dispute is a component of a property settlement dispute, and where, as a consequence, it is in the interests of the parties to consider the change of assessment application at the same time as the property settlement (see Section 116 (1)(b) of *The Assessment Act*). The Family Law Section observes that where there are no Court proceedings on foot, and no lawyers are involved, mediation of child support disputes rarely occurs prior to the determination of the change of assessment application by the Child Support Registrar. There currently would seem to be no facility for this to happen.
7. It is likely that mediation of such disputes could reduce the number of contested applications. The benefits of parties resolving their dispute by agreement through mediation are obvious.
8. There could however be some obstacles to introducing mediation into the current change of assessment process:
 - (a) The subject matter of the dispute is the amount of child support which is paid, usually on a monthly basis by one parent to the other. This is quite often a major and important component of the payee's income and they rely on it for important living expenses. The introduction of an additional step in the resolution process (whether in the form of compulsory mediation or otherwise) has the clear potential to increase delay, to the detriment of the financially weaker party. The element of "strategic delay" on the part of the financially stronger party, is also likely to arise. In circumstances where the parties do not have lawyers, there is a real risk that they enter the mediation without knowledge of their rights, and a realistic understanding of the possible outcomes of the matter if it is not resolved. Ignorance of those rights could lead them to pursue an application which has no basis, or to reject reasonable offers of settlement, thereby causing the other party unfair distress and potentially financial hardship, or to settle for an outcome which is less than optimal. Some people avail themselves of legal advice before commencing change of assessment processes or after they receive them, but many do not. Furthermore, the process involves fairly complex areas of law and few family law practitioners specialise in child support matters, given that nowadays those matters do not, as a general rule, involve the courts or lawyers;
 - (b) For a mediator to be credible he/she needs to be independent, and obviously so. A mediator working within the Child Support Agency, no matter how competent, would face the real difficulty of one or both parties perceiving a lack of independence. Community based mediation services are already stretched and under resourced and there can be significant delays in

accessing those services. They often do not have expertise in child support matters which, we think, is required for effective mediation in this complex area. In any event we doubt that community based mediation services have the capacity to take on significant child support work. Court Registrars certainly do not.

If the Family Law Section can be of any further assistance please let us know.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M Hagan', written in a cursive style.

MARTYN HAGAN
SECRETARY-GENERAL