

## **Agreement between Australia and the United States of America for the enforcement of maintenance (support) obligations**

### **Background<sup>1</sup>**

- 3.1 The *Agreement between Australia and the United States for the enforcement of maintenance (support) obligations* (the Agreement) provides for reciprocal arrangements between Australia and the United States to establish and enforce child support and spousal maintenance liabilities. It will benefit Australian children and their parents by facilitating these categories of payments.
- 3.2 The treaty action is part of a response to the 1994 review of certain aspects of child support by the Joint Select Committee on the Family Law Act in Australia. One of the Select Committee's recommendations was that the scope of child support, including overseas child support arrangements, be extended and modernised. To this end:

Australia entered new child support arrangements with New Zealand in 2000 and also ratified the Hague convention on

---

1 Unless otherwise specified the material in this and the following section was drawn from the National Interest Analysis (NIA) for the *Agreement between the Government of Australia and the Government of the United States of America for the enforcement of maintenance (support) obligations*. The full text of the NIA can be found at the Committee's website on [www.aph.gov.au/house/committee/jsct](http://www.aph.gov.au/house/committee/jsct).

enforcement of maintenance obligations, which covers child support enforcement arrangements with most European countries.<sup>2</sup>

- 3.3 Currently, Australia has arrangements for the enforcement of child support and spousal maintenance with almost every individual state in the United States.<sup>3</sup> However, arrangements with individual states are of non-treaty status and devised on the basis that all maintenance liabilities occur in the form of orders made, or agreements registered, by a court.
- 3.4 The proposed Agreement improves the current situation in three ways. First, it provides treaty obligations for the reciprocal enforcement of administrative assessments of child support, as well as enforcement of court orders and registered agreements (agreements made between parents and lodged with a court or administrative authority), with the whole of the United States. Second, it recognises that, in Australia, maintenance ordered by a court is gradually being replaced by administrative assessments of child support that are issued by the Child Support Agency (CSA) (which is an agency of the Commonwealth Government's Department of Family and Community Services). Third, it will help overcome shortfalls in resources experienced by some states in the United States that have inhibited the enforcement of Australian support orders. It does so by making federal funds available to state authorities in the United States. The Agreement achieves this because:

US federal legislation provides that, where the US government has a treaty arrangement with another country, US federal funds are to be made available to US state authorities to assist them to progress cases received from foreign countries.<sup>4</sup>

## **Proposed treaty action**

- 3.5 Under the Agreement each country is obligated to set up a Central Authority that will coordinate all agencies and be charged with the transmission of applications, supporting documents and the recovery of monies payable under maintenance and child support liabilities. Any monies collected will be transmitted to the Central Authority of the other

---

2 John McGinness, *Transcript of Evidence*, 12 July 2002, p. 9.

3 John McGinness, *Transcript of Evidence*, 12 July 2002, p. 10.

4 John McGinness, *Transcript of Evidence*, 12 July 2002, p. 10.

country for payment to the claimant. The service is to be free of charge to the claimant.

- 3.6 In Australia the Central Authority will be the CSA, which is already established.
- 3.7 In the past Australian courts and claimants have been concerned about wide variations in the effectiveness of laws and procedures for obtaining maintenance across government agencies in the United States. The Agreement will assist Australian parents by providing for the appointment in the United States of a federal Central Authority, which will have responsibility for coordinating action by the individual state government agencies that enforce support obligations.
- 3.8 No additional legislation is required to implement the Agreement. Provisions implementing the terms of the Agreement are already in force under the *Child Support (Assessment) Act 1989* (section 16B), the *Child Support (Registration and Collection) Act 1988* (section 12A) and the *Family Law Act 1975* (sections 110-110B and 124A).

## **Evidence presented and issues arising**

### **Certainty of enforcement of support obligations in the United States by individual states**

- 3.9 The United States has a federal system of government in which the determination and enforcement of support obligations are the responsibility of individual states. The Committee inquired as to the degree of certainty with which the federal government of the United States could enforce Australian administrative decisions and court orders at the state level. It expressed concerns at the variance in the types and levels of support to which Australian claimants are entitled because of differences in legislation and enforcement mechanisms at the state level in the United States.
- 3.10 An instance of the type of federal reservation that concerned the Committee occurs in Article 2(1) of the Agreement which states that:
- a maintenance obligation towards a spouse or former spouse where there are no minor children will be enforced in the United States under this Agreement only in those States and other jurisdictions of the United States that elect to do so.

This clause specifies a reservation in relation to spousal maintenance. The Committee explored this and the possibility that similar variances may also accompany the enforcement of child support orders.

- 3.11 The Agreement establishes Australian liability as having the same effect as a liability established by authorities in the United States.<sup>5</sup> It also encourages a more standardised situation across American states, for instance, by introducing standard documents that meet the legislative requirements of both Australia and the United States. This standardisation of documents between Australia and the United States means that states in the United States are made familiar with overseas cases and will process international cases in the same way as they would domestic cases.<sup>6</sup>

### Right to challenge decisions

- 3.12 The Committee sought to establish what procedures the Agreement provided for in the event that the recipient of a support assessment decision challenged the order. It also inquired whether residing in the country that made a decision on levels of support might advantage the claimant because the assessment would be based solely on the evidence of the claimant.
- 3.13 The CSA maintained that the same appeal procedures would be available to both parents. The mechanisms for all appeals against Australian decisions are the same regardless of whether the enforcement order is made upon a person who is overseas or in Australia.<sup>7</sup> If individual states of the United States in which the overseas person resides allows them a right to challenge a registered foreign maintenance liability claim, the terms of the Agreement are such that Australia would recognise the determination of the United States court.<sup>8</sup>
- 3.14 In response to the suggestion that residing in the country from which a claim originated could advantage the claimant, the CSA pointed out that the procedures used to determine the level of support payment did not rely upon information from the claimant. The CSA would use information from the Australian Tax Office. In the case of a longer term resident of the United States who had a claim lodged against them, the CSA would

---

5 John McGinness, *Transcript of Evidence*, 12 July 2002, p. 12.

6 John McGinness, *Transcript of Evidence*, 12 July 2002, pp. 16-17.

7 Sheila Bird, *Transcript of Evidence*, 12 July 2002, p. 14.

8 John McGinness, *Transcript of Evidence*, 12 July 2002, p. 16.

attempt to contact the overseas person to get information directly from them.<sup>9</sup>

## Costs

- 3.15 The NIA states that the Central Authorities of Australia and the United States will provide services to claimants without the imposition of fees upon them. The Committee sought clarification about the level of claims in the respective jurisdictions.
- 3.16 The CSA informed the Committee that that there are between 800 and 1,000 Australian claimants in the United States and about an equal number of United States claimants in Australia.<sup>10</sup> The Department reiterated that the Central Authorities would not charge claimants for the provision of services, but observed that this did not preclude some authorities in the United States at State level seeking to be reimbursed for monies already paid to claimants.<sup>11</sup>

## Conclusions and recommendations

- 3.17 The Committee acknowledges the federal limitations imposed on the administrative abilities of the United States federal government when negotiating international agreements. The Committee is of the view that Australians ought to be better informed of their rights to support payments from residents of the United States. To this end it has requested and received an undertaking from the Attorney-General's Department and CSA that they provide information on the laws of individual states and territories of the United States that may work against a person in Australia trying to have orders or assessments enforced.
- 3.18 The CSA has informed the Committee that the Central Authority in the United States does not possess the requested information. Enforcement arrangements within an individual state in the United States may vary across counties.

---

9 Sheila Bird, *Transcript of Evidence*, 12 July 2002, p. 15.

10 Sheila Bird, *Transcript of Evidence*, 12 July 2002, p. 13.

11 John McGinness and Sheila Bird, *Transcript of Evidence*, 12 July 2002, p. 17.

- 3.19 However, the CSA pointed out that all states in the United States:  
have passed the Uniform Interstate Act and that legislation requires each state to enforce orders for spousal support ... The office of Child Support Enforcement [the Central Authority in the United States] is reasonably confident that the orders will be able to be enforced, however, how that will be done will be determined when a particular case arises.<sup>12</sup>
- 3.20 The Committee recognises that the Agreement updates existing arrangements between Australia and authorities in the United States by making provision for the enforcement of administrative decisions as well as court orders. The Committee considers that the Agreement will make the enforcement of assessments and orders for the payment of child and spousal support more certain for Australian claimants.
- 3.21 Therefore the Committee makes the following recommendation:

---

**Recommendation 3**

- 3.22 **The Committee supports the *Agreement between the Government of Australia and the Government of the United States of America for the enforcement of maintenance (support) obligations* and recommends that binding treaty action be taken.**