SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE

Consideration of Legislation Referred to the Committee

CHILD SUPPORT LEGISLATION AMENDMENT BILL (No. 2) 2000

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CHILD SUPPORT LEGISLATION AMENDMENT BILL (No. 2) 2000

THE INQUIRY

1.1 The Child Support Legislation Amendment Bill (No. 2) 2000 (the Bill) was introduced into the House of Representatives on 30 August 2000. On 6 September 2000, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 14 of 2000), referred the provisions of the Bill to the Committee for report by 10 October 2000.

1.2 The Selection of Bills Committee, in recommending the reference of the Bill to the Committee, provided the following reasons for referral:

> To examine the provisions of the Bill which change the child support payment formula, particularly the lowering of the cap on non-custodial parents' taxable income; the impact of the departure prohibition orders; and changes to the review process.

1.3 The Committee considered the Bill at a public hearing on 4 October 2000. Details of the public hearing are referred to in Appendix 2. The Committee received 21 submissions relating to the Bill and these are listed at Appendix 1.

THE BILL

2.1 In the second reading speech on the Bill, the Minister for Community Services stated that the Bill would further improve the Child Support Scheme 'in a balanced way, resulting in a fairer scheme' that 'addresses the needs of parents and children alike, and that encourages parents to continue to be involved in the lives of their children'.[1] The Bill proposes amendments to various Acts as follows:

- Schedule 1 provides for amendment of the *Child Support (Assessment) Act 1989* to reduce the child support formula percentages where a non-resident parent has contact with his or her child for between 10 per cent and 30 per cent of the time. The Minister stated that 'this provides a modest acknowledgment of the costs to non-resident parents of ongoing contact…the measure will improve the ability of non-resident parents to *maintain* contact with their children'.[2] The proposed amendments are consistent with the treatment of shared care for family tax benefit under the *A new Tax System (Family Assistance) Act 1999;*
- Schedule 2 provides for the use of the same measure to set the upper limit (or 'cap') on payer taxable income that can be subject to child support formula assessment as that used in relation to the payee's income. The result will be a lower 'cap' (approximately $79,000);
- Schedule 3 proposes to create a new ground for exclusion of additional income from the child support formula assessment for a parent where that additional income can be

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1 Second Reading Speech, 30.8.00

2 Second Reading Speech, 30.8.00.

shown to have been earned for the sole purpose of providing support to children in the parent's new family. The additional income cannot be earned as part of the normal earning pattern and is limited to a maximum of 30 per cent of the parent's total income;

- Schedule 4 proposes to amend the *A New Tax System (Family Assistance) Act 1999* to allow for a full deduction of all child support paid under the means testing arrangements for the family tax benefit and child care benefit. This means that child support payers with children in new families will have their family tax benefit and child care benefit assessed on the actual income available to their new families;
- Schedule 5 proposes to amend a number of Acts to reflect the relocation of the Child Support Agency from the Australian Taxation Office to the Department of Family and Community Services. The General Manager of the Child Support Agency will become the Child Support Registrar, replacing the Commissioner of Taxation;
- Schedule 6 provides for amendment of the *Child Support (Registration and Collection) Act 1988* to establish a system of departure prohibition orders, similar to that existing under the *Taxation Administration Act 1953*, to prevent persistent child support defaulters from attempting to leave Australia;
- Schedule 7 proposes to amend the *Child Support (Assessment) Act 1989* to establish a regulation making power to allow certain amounts to be excluded from income so that the current $260 minimum child support liability will not apply;
- Schedule 8 proposes to amend the current requirement whereby supporting documents supplied by an applicant to depart from the child support formula assessment are to be supplied to the other party to the child support arrangements;
- Schedule 9 provides for a new definition of 'eligible carer'. This change will ensure that carers who are not parents or legal guardians of a child who has left home cannot be 'eligible carers' in relation to that child, and therefore cannot apply for child support from the parents unless a parent or guardian has consented to the arrangement, or it is unreasonable for the child to live at home; and
- Schedule 10 proposes a number of technical amendments will be made to correct and clarify minor matters in the child support legislation.

ISSUES

3.1 In evidence to the Committee, the Department of Family and Community Services (FaCS) noted that the package of measures put forward 'seeks to provide a fairer basis for determining assistance to children of second families and particularly to encourage parents to maintain contact with their children. The measures are designed to improve the scheme in a balanced and targeted way while not changing the scheme's basic parameters.'[3]

Reduction of the 'cap'

3.2 The Bill proposes to lower the 'cap' on payer income subject to child support formula assessment. At present the cap is set according to the Average Weekly Earnings of Full-time Employees, currently $40,461 per annum. The Bill proposes that the cap be set according to

3 *Committee Hansard,* 4.10.00, p.30 (FaCS).

Average Weekly Earnings of All Employees, currently $31,699 per annum. As a result assessable child support income will be capped at $78,378 instead of the present $101,153.

3.3 It was argued in evidence by some witnesses such as the Sole Parents Union and the National Council of Single Mothers' and their Children (NCSMC) that there was no data to support the change in the cap.[4] The Department did however detail extensive research that has been undertaken over a length of time.

3.4 The Partners of Paying Parents (PoPPs) supported the lowering of the cap but argued that the reduction did not assist the majority of paying families as the average taxable income of a paying parent is around $28,000.[5] The Lone Fathers' Association Australia (LFAA) stated that the measure was 'heading in the right direction' but a reduction at lower income levels was still required.[6]

3.5 FaCS, in its submission, provided background to the 'cap'. It was stated that the Child Support Consultative Group, which reported in 1988, had recommended an upper limit or 'cap' on child support liabilities for a number of reasons including that child-rearing expenses plateau at relatively high income levels. The Consultative Group, after consultation with researchers, reported that at that time the plateau effect took place at income levels of approximately twice average weekly full-time earning. The ensuing legislation increased this cap to 2.5 times average weekly earnings.

3.6 In 1994 the Joint Select Committee on Certain Family Law Issues recommended that the cap be lowered to two times Average Weekly Full-time Earnings to reduce the work disincentives experienced by non-resident parents as a result of high combined marginal tax rates and child support which occurred at these levels of income.

3.7 FaCS stated that the proposed change will align the AWE figure used to set the cap with the payee's disregarded income figure and this will effectively achieve the outcome recommended by the Joint Committee. FaCS also stated that the current level of the cap is not supported by recent research on the costs of children, for example, research by the National Centre for Social and Economic Modelling (NATSEM) shows that most payers with income above $65,000 are paying more than the total gross costs of their children.[7]

3.8 The Department also noted that the proposed changes do not preclude parents from paying more than the formula assessed amounts: parents may reach agreement on an amount that more appropriately reflects their circumstances; or they may apply to the Child Support Agency (CSA) for a change to the formula assessment where they believe special circumstances exist.[8]

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4 Submission No.8, p.7 (NCSMC); Submission No.13, p.3 (Sole Parent's Union); see also Submission No.5, p.1 (Family Law Practitioners Association of Tasmania); Submission No.9, p.4 (Law Council of Australia); Submission No.11, p.9 (WEL).

5 *Committee Hansard,* 4.10.00, p.9, see also Submission No.16, p.4 (PoPPs).

6 *Committee Hansard,* 4.10.00, p.24. (LFAA).

7 Submission No.2, p.5 (FaCS).

8 Submission No.2, p.6 (FaCS).

Lower formula percentages for payers exercising contact with their children

3.9 Currently, the child support formula is reduced by four percentage points where a non-resident parent has contact between 30 and 40 per cent of nights of the year. Under the proposed legislation this reduction will be extended to those parents who care for a child for between 10 and 30 per cent of the nights of the year with the formula generally reduced by three per cent for contact between 20 and 30 per cent and by two per cent for contact between 10 and 20 per cent.

3.10 Some witnesses and submissions put the case that such a system may create more conflict between parents than that which already exists. Some also argued that non-resident parents should pay the full amount regardless of the amount of contact they have.[9]

3.11 FaCS noted that this initiative is aimed at encouraging parents to maintain contact with their children by making some allowance for the costs which non-resident parents incur and 'draw the distinction that we believe should be drawn between the liabilities of those who have no or minimal contact, and those who exercise regular and ongoing contact with their children'. The Department went on to state that it did not see it as 'parents buying contact' rather that 'we are aligned here with general support for the family law principles which emphasise the right of parents to know and to be with their children'. Further, that the measure 'will improve the ability of non-resident parents to maintain contact with their children and we believe will result in better outcomes for children and increased payment of child support'.[10]

3.12 FaCS stated that this brings the child support arrangement into line with the provisions of the new family tax benefit, where parents who have care of their children for at least 10 per cent of the time have that level of contact recognised. The Department also indicated that most of the affected payees will have any reduction partially offset by an increase in the family tax benefit they receive and stated that 'in most cases where the liability of the custodial or the resident parent has been reduced in dollar terms 50 per cent of the shortfall will be made up by an increase in the family tax benefit'.[11]

3.13 In relation to the inclusion of an allowance for contact in the establishment of the original formula, FaCS stated that the Consultative Group, in arriving at the original formula percentages 'considered that parents would have small amounts of contact and that that should be included in the formula'. However, this was not specified and FaCS reported that the Joint Select Committee did not understand how the Consultative Group 'had taken into account the smaller costs of contact and how they were connotated in the formula'.[12]

3.14 FaCS provided the Committee with an outline of relevant research which indicated that contact with the non-resident parent is of benefit to the development of children and that contact also leads to a higher likelihood of payment of child support. Recent research has also

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9 Submission No.3, p.4 (Law Society of NSW); Submission No.5, p.1 (Family Law Practitioners Association of Tasmania); Submission No.12, p.3 (National Network of Women's Legal Services); Submission No.19, p.5 (Legal Services Commission of SA); Submission No.20, p.2 (Hobart Community Legal Services); *Committee Hansard,* 4.10.00, p.9 (PoPPs).

10 *Committee Hansard,* 4.10.00, pp.30, 31 (FaCS).

11 *Committee Hansard,* 4.10.00, p.32 (FaCS).

12 *Committee Hansard,* 4.10.00, p.35 (FaCS)

indicated that the costs faced by parents in order to have regular contact are often significant.[13]

Income earned for the benefit of resident children

3.15 NSCMA stated that this proposal 'further undermines the principle that children have the right to benefit from their parents' income according to the parents' capacity to pay'.[14] It was also believed by some that the proposal will encourage the manipulation of income to minimise support for children in first families.[15] Some submitters called for the rejection of the proposal, however, the Sole Parent's Union stated that it would be more willing to consider the proposal if guidelines were in place to ensure that work patterns could not be changed to lower child support liabilities.[16] The Committee notes that many witnesses and submissions did not seem to be aware of the eligibility criteria set out in the Bill.

3.16 FaCS stated that this measure will help parents better the position of their new families without unduly affecting their first family. It will also reduce workforce disincentives faced by payers who have new families. While there will be a reduction of child support paid for some families, this will be partially offset by additional family tax benefit payments. FaCS noted that additional income will be excluded from the assessment of child support only if the grounds for change are met. The Child Support Registrar will then determine the extent of any reduction in child support 'taking into account the circumstances of both parents and children'.[17] In addition, CSA has undertaken considerable work to establish guidelines, although these are not ready for public consultation.[18]

Post-separation counselling and support for non-resident parents

3.17 The child support package provides for improved post-separation counselling and support for non-resident parents. FaCS stated that a pilot program will provide intensive practical assistance and ongoing support by assisting non-resident parents to access existing community and Government programs. FaCS noted that 'through this program post-separation relations between parents will be improved, which will lead to better outcomes for children, and the continuing involvement of both parents in the lives of their children'. FaCS stated that it is also likely to result in improved child support payment rates and a decreased need for parents to have their child support collected by the CSA.[19]

3.18 Submitters supported this proposal, however, some argued that post separation counselling and support for resident parents should also be made available.[20]

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13 Submission No.2, p.8 (FaCS).

14 Submission No.8, p.9 (NCSMC).

15 Submission No.3, p.5 (Law Society of NSW); Submission No.9, p.4 (Law Council of Australia); Submission No.11, p.11 (WEL); Submission No.20, p.6 (Hobart Community Legal Service).

16 *Committee Hansard,* 4.10.00, p.20 (Sole Parent's Union).

17 Submission No.2, p.10 (FaCS).

18 *Committee Hansard,* 4.10.00, p.36 (FaCS).

19 Submission No.2, p.7 (FaCS).

20 Submission No.8, p.9 (NCSMC); Submission No.11, p.12 (WEL); Submission No.13, p.4 (Sole Parent's Union).

Departure Prohibition Orders

3.19 This proposed system of departure prohibition orders (DPOs) was supported by some submitters including ACOSS.[21] However, the Law Council of Australia raised a number of issues: there are many circumstances in which a child support debt might not be enforceable, for example, arrears do not really exist; the manner in which the Registrar may make an order including the lack of notice to the payer; the propensity to cause severe embarrassment, cost and inconvenience to a payer; and, that the proposed measure does not afford natural justice to the payer.[22] PoPPs also expressed concern about the potential adverse impact on payers who are required to travel overseas regularly.[23]

3.20 FaCS noted that the Child Support Registrar may make a DPO where all of the four specified conditions are satisfied. Application may be made to the Registrar to revoke or vary the DPO or to issue a departure authorisation certificate (DAC). A person aggrieved by the making of a DPO may appeal to the Federal Court of Australia against the making of the order while certain other decisions by the Registrar are subject to review by the Administrative Appeals Tribunal. FaCS noted that the system will closely mirror the existing departure prohibition order system in place under the Taxation Administration Act.

3.21 In response to concerns voiced by PoPPs, the Department stated that in such circumstances the CSA has an administrative measure available 'whereby we can ask the employer to deduct the child support from a person's wages. So, in fact, it is not a measure that is likely to be used in those circumstances at all'.[24]

Changes to the change of assessment (review) process

3.22 Several submitters argued that the proposed change to the current requirement whereby supporting documents must be supplied to the other party when a departure from the child support formula assessment is sought is a denial of natural justice.[25] The Law Society of Australia also argued that a parent may be able to influence a decision by secretly providing information. It noted, 'in many cases, the concealed information will relate to the details of the financial circumstances of a party even though assessment of these details goes to the heart of many child support departure applications, particularly those concerned with finding a just and equitable sharing of the support of a child'.[26]

3.23 FaCS noted that all relevant information regarding the request to change the assessment and any opposition to the request is provided in the application and response forms from the parents. FaCS argued that the change will assist the CSA's verification process as it is considered that parents are more likely to provide supporting documents when they know that such documents will not be forwarded to the other parent. Further, under the

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21 Submission No.15, p.4 (ACOSS), see also; Submission No.16, p.5 (PoPPs); Submission No.20, p.7 (Hobart Community Legal Service).

22 Submission No.9, pp.5-6 (Law Council of Australia).

23 Submission No.16, p.6 (PoPPs).

24 *Committee Hansard,* 4.10.00, p.32 (FaCS).

25 Submission No.5, p.2 (FLPAT); Submission No.18, p.2 (Women's Legal Centre (ACT)); Submission No.19, p.8 (Legal Services Commission of SA); Submission No.21, p.7 (LFAA).

26 Submission No.9, p.7 (Law Council of Australia).

present arrangements, if a parent is unwilling to have the supporting documents provided to the other parent, they cannot be taken into consideration in the decision. This may impact on the quality and fairness of the decision.[27]

3.24 In relation to general criticisms of the assessment process, FaCS stated that two reviews of the process have been completed, with many of the improvements recommended by the reviews already implemented. Further, that 'the evaluation also determined that, in general, the outcomes of that change of assessment process are sound'.[28]

Definition of eligible carer

3.25 Some submitters argued that the CSA does not have the resources or expertise to make the types of decisions, for example whether it is appropriate for a child to return home to live with one of their parents, required under this proposed provision.[29]

3.26 The Department commented that the legislation is modelled on that used by Centrelink to determine whether a young person is eligible to receive youth allowance at the independent rate. A Centrelink social worker makes an assessment in relation to the youth allowance and the CSA will request Centrelink social workers to undertake such as assessment for the purposes of this provision, 'so the agency will only be making a decision in those run away from home cases where a Centrelink or other social worker has made that assessment'.[30]

Increase in the Family Tax Benefit Income Test deduction for payers with a second family

3.27 This proposed amendment was generally welcomed as it was agreed that payers' households do not benefit financially from money paid in child support and their household should not assessed as if they did.[31]

RECOMMENDATION

4.1 The Committee reports to the Senate that it has considered the Child Support Legislation Amendment Bill (No. 2) 2000 and **recommends** that the Bill proceed.

Senator Sue Knowles
Chairman

October 2000

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27 Submission No.2, p.14 (FaCS).

28 *Committee Hansard,* 4.10.00, p.32 (FaCS).

29 Submission No.8, p.10 (NCSMC); see also Submission No.18, p.3 (Women's Legal Centre (ACT)); Submission No.19, p.10 (Legal Services Commission of SA).

30 *Committee Hansard,* 4.10.00, p.31 (FaCS).

31 Submission No.8, p.10 (NCSMC); Submission No.13, p.5 (Sole Parent's Union); Submission No.16, p.10 (PoPPs); Submission No.20, p.7 (Hobart Community Legal Service).

MINORITY REPORT

AUSTRALIAN LABOR PARTY

CHILD SUPPORT LEGISLATION AMENDMENT BILL (No. 2) 2000

While Labor senators are broadly supportive of a majority of the measures contained in this Bill we are unable to support a number of the conclusions and recommendations contained in the Committee majority report. In particular, the Inquiry has raised a number of concerns about the lack of research, evaluation and consultation which has underpinned the development of the proposed measures. We do not feel that the majority report presents an adequate response to these concerns.

The Child Support Scheme (CSS) was established in 1988 to ensure that children in separated families received financial support from their parents. The Scheme has been successful both in promoting this responsibility and in protecting children against poverty. Recent research published by NATSEM found that in the absence of the CSS, an additional 58,000 children would have been in poverty in 1997-98.

This is not to say that the CSS scheme is without its problems. It is the subject of valid criticisms from both resident and non-resident parents. This leaves policy makers with the difficult task of balancing interests in a way which is fair to both parties and which – above all else – protects the interests of children.

While the Scheme has responded to legitimate concerns about its operation, and has improved considerably in recent years, there is an ongoing need for review and reform. Labor senators note that submissions from organisations representing lone fathers, sole parents and second families are united in their support for a thorough reappraisal of the CSS. Such a reappraisal needs to be founded on rigorous economic modelling, and the monitoring and evaluation of what have been incremental, and frequently ad hoc, changes.

In broad terms, the proposed legislation has the aim of alleviating the financial pressures faced by non-resident parents, particularly those who have second families. While this objective has merit, Labor senators are concerned that the package will provide only limited benefits to those most in need. In addition benefits flowing to non-resident parents come at the direct expense of resident parents and serve to promote rather than diminish conflict. We are of the view that a more constructive and beneficial approach would have been to target benefits to those on low-to-middle incomes. The package instead distributes the greatest benefits to non-resident parents earning in excess of $78,000 per annum. Central to any capacity to address concerns about families in poverty is an active role for government. This role is not to retreat from the field leaving families under pressure in impoverished circumstances.

There has been a raft of changes to the child support scheme in the last two years. Labor senators would have been more comfortable participating in the debate if these changes had been monitored and evaluated for their impact on resident parents, non-resident parents and children before further changes were considered.

Shared care (Schedule 1)

The proposal to lower child support percentages for children with whom the non-resident parent has contact between 10 and 30 per cent of time, represents an extension of the 'shared care' arrangements which have applied to the Family Tax Benefit (FTB) since July 1.

Labor set out a number of concerns about 'shared care' in the course of debate on the new tax package. On April 11, 2000 Labor moved an amendment, which would have increased the sharing threshold from 10 to 30 per cent, and allowed sharing of FTB at lower levels of application, only with the agreement of both parents. Our primary concerns relate to three issues. First, the philosophical shift to linking child support and care. Second, the absence of research on costs of contact informing the proposal. Third, the impact on the living standards of resident parents and children of reduced child support payments.

Labor senators feel that in creating a strong link between child support payments and contact the measure contravenes a guiding principle of both the Child Support and Family Law acts. This principle is that decisions should be made in the best interests of children. The Law Council of Australia states in its submission "In direct conflict with the Family Law Act, parents will be encouraged to focus on the financial consequences of the sharing of care of the children rather than upon what is in the best interests of the child" (p.2).

We were concerned by the Council's view that a by-product of this change will be increased contact disputation based on financial considerations rather than the needs of the children. This will place an additional burden on an already strained Family Court system.

The undesirability of linking child support payments to contact and the likelihood of increased disputation was raised in a number of written submissions including those from the Law Society of NSW, Legal Services Commission of South Australia, National Network of Women's Legal Services, Hobart Community Legal Service, Women's Legal Centre ACT, Family Law Practitioners Association of Tasmania, and ACOSS.

Even where groups supported the outcome of this measure - that is a reduction in the child support liability of payers - they did not support the linking of money and contact. Partners of Paying Parents stated in the hearing "We do not support the linking of the two together. However, the fact that the percentage would be reduced we support as being beneficial to second families. So it is a catch 22 isn't it" (CA9)

The majority report sets out the Department's rationale for this measure. The initiative "is intended to encourage parents to maintain contact with their children…We want this to encourage parents to maintain contact with their children following separation by making some allowance for the cost that non-resident parents can incur in order to do so. This will improve the ability of non-resident parents to maintain contact with their children and we believe will result in better outcomes for children and increased payment of child support" (CA31)

Labor senators were keen to learn from the Department about research establishing a positive causal relationship between contact and payment of child support. It was agreed that the research cited established correlation rather than causation. Later in the hearing, the representative from the CSA argued that the measure acknowledged contact rather than providing an incentive per se:

"We did some research in the Child Support Agency a couple of years back which showed that something like 90 per cent of all non-resident parents had contact with their children. So we are already talking about a very high proportion of parents who have contact. The scheme at that time gave a person a reduction in child support if they had contact at the level of 30 per cent or higher. Less than five per cent of parents have contact at that level—at between 30 per cent and 50 per cent. It is hard to say that acknowledging that parents have costs when they have contact or when they share the care of their children is a major incentive for parents to push to have additional contact" (CA35).

There seemed to be some confusion about the assumptions concerning costs and contact built in to the original child support formula. A number of submissions stated that the formula assumed contact between the non-resident parent and his/her children of 22 per cent (a standard contact order of every second weekend and half the school holidays). Senator Evans asked the Department to stipulate the actual amount of contact or value of the adjustment allowed in the formula. While stating that it did include some assumption about contact the Department was not able to quantify it or to say whether a cost adjustment was made. This issue has not been clarified in the majority report.

Labor senators expressed concern about the absence of research to establish both the relative costs faced by resident and non-resident parents, and the nature of the relationship between costs and level of contact. Senator Evans asked the Department what evidence it had to support how costs vary with contact. The response provided was: "The truth is very little." (CA36).

We argue that it is difficult to make responsible and informed judgements if the proposals before us are not grounded in rigorous analysis. The majority report makes reference to work on costs of contact undertaken for the Department by Murray Woods and Associates. Labor senators are familiar with this reference and note that the purpose of the study was to establish the general expenditure behaviour involved in providing contact rather than to establish exact costs. The authors acknowledge that the research is exploratory and cannot be taken as representative. It did not seek to establish whether there was a proportionate relationship between costs and share of care.

Modelling provided by the Department suggests that the measure is poorly targeted and will provide little relief to non-resident parents in greatest need. The child support payments of a payer earning $25,000 per annum (one child and contact ranging from 10 to 20 per cent) will fall by $5 per week while a payer earning $75,000 will see their weekly liability fall by five times that amount ($24.82). Non-resident parents paying the minimum level of child support ($260 per annum) will not receive any additional assistance while the disposable income of 205,000 resident parents will fall as a result of this measure.

The impact of this change causing greatest concern to Labor senators is the effect on the poverty of sole parent families. Modelling tabled by the Department during the hearing showed that the impact of this measure is to redistribute income away from resident toward non-resident parents. The tables quantify the change in disposable income between 30 June 2001 and 1 July 2001. The calculations are based on the payee having no private income and show that for all levels of payer income above $15 000, resident parents and their children will have lower disposable income.

While we concur with views expressed in both the majority report and the broader community about the need to provide additional support to non-resident parents, we believe it is completely inappropriate to achieve this by taking income away from another group in

need. Labor senators cannot abide the robbing of Peta to pay Paul when research on relative poverty shows that Peta is more likely to experience socio-economic disadvantage.

It is of deep concern to Labor senators that the relative poverty of resident parents and their children was not a context in the development of this package. The submission provided by Associate Professor Linda Hancock of Deakin University sets out research findings from the Australian Institute of Family Studies Divorce Transitions Project. This recent and highly-regarded research establishes that there are continuing disparities in post-divorce household incomes and that the combination of being female, older and a sole parent provides the greatest likelihood of economic disadvantage regardless of the threshold of disadvantage adopted.

Lower income cap for payers (Schedule 2)

Witnesses who appeared at the hearing had different positions on the merits of this measure however there was broad support for the view that the measure is poorly targeted. Labor senators support the argument that lowering the cap from $102,000 to $78,000 will provide no assistance to child support payers on low-to-middle incomes. It will provide substantive benefits to the non-resident parents who have the greatest capacity to meet their child support liabilities. These gains translate to substantial reductions in the child support payments made to resident parents, as they will not be offset by any increase in Family Tax Benefit.

The Department has estimated that 4000 payers will have their child support liabilities reduced by $12.4 million or an average of $60 per week per payer. Scenarios provided by the CSA to illustrate the impact of proposed measures highlight our concerns. In Scenario 6 the non-resident parent has an assessable income of $105,000 pa while the resident parent (caring for one child) has zero private income. The effect of lowering the cap on child support would be to reduce the non-resident parent's child support payments and the resident parent's disposable income by $85 per week. The latter effect is of particular concern given the absence of research on sole parent poverty in the development of the measures proposed in the budget.

The Law Council of Australia argues that the consequences of the enactment have not been thought through. "This measure could lead to an increase in litigation by resident parents in the form of spousal maintenance applications to try and recoup the loss of income that they have sustained" (CA 2).

The submission from the Australian Council of Social Security (ACOSS) makes an important point about the longer term implications of setting the cap at 2.5 times average weekly earnings of all employees (rather than 2.5 times average weekly earnings of full-time employees). Given the increasing prevalence of part-time work this measure will lead to the actual dollar level of the cap reducing over time with a corresponding drop in the level of financial support payable to children.

The majority report sets out the Department's argument - supported by NATSEM research - that most payers with income in excess of $65,000 are paying more than the gross costs of their children. It is argued that a portion of child support payments are directed to 'extras' such as holidays or private school fees. Labor senators are sympathetic to the views expressed in a range of submissions that such benefits would have been afforded to children had the family unit remained intact.

Disregarding additional income earned for the benefit of second families (Schedule 3)

Labor senators are supportive of measures designed to relieve financial pressure on second families at the lower end of the income spectrum. The Lone Fathers' Association provided evidence to the hearing of the efforts made by some non-resident parents to support their second family without diminishing the resources provided to their other children. We are supportive of policy directions which will recognise and reward such efforts.

We similarly acknowledge the need for the development and administration of clear guidelines by the CSA to ensure that patterns of work and earnings cannot be manipulated with the objective of reducing one's child support liability. The Sole Parent Union's support for this measure is contingent on such guidelines. Senator Evans discussed with the Department and the CSA how it would determine, in practice, what constitutes a second job or overtime taken to support a second family. In a world where work patterns are increasingly precarious and employment histories fragmented, it may be difficult to establish what constitutes a deviation from an established or normal pattern of work.

As the majority report states, the CSA are in the process of developing the guidelines for administration of this departure provision. These will be finalised following public consultation with interested parties. The Department has provided quite detailed information about processes surrounding changes of assessment which leads Labor to feel confident that the measure will be fairly administered and not open to manipulation. The additional income must have been obtained by the applicant to benefit the children in the applicant's current family and must not be earned as part of the normal earning pattern established by the parent before the current family was established. Nor must additional income come from normally expected improvements in the parent's income earning pattern (e.g. mandatory overtime or normal incremental increases). As part of the decision making process, the Senior Case Officer will be able to examine taxation returns for details of past earning patterns; contact current or former employers for employment history; contact industry organisations for details of employment patterns; and check CSA records for child support being paid. In addition, the Senior Case Officer will compare the financial situation of the children for whom the applicant is paying child support with the position of children in the applicant's current family. The resources available to each will be examined, particularly any other sources of income that could adequately provide for the applicant's new children.

Labor acknowledges that there is a range of views on the merits of this measure. Both the Law Council of Australia and the National Council of Single Mothers and Their Children objected to this measure on the grounds that it is a departure from guiding principles of the Child Support Act. In particular, it is inconsistent with the notion of children sharing equitably and equally in he change in the circumstances of their parents. While the Lone Father's Association expressed their support for the measure, Partners of Paying Parents were concerned about the impact of extended working hours on the well being of second families.

Increase in deductible child maintenance expenditure for Family Tax Benefit and Child Care Benefit (Schedule 4)

Labor senators are highly supportive of this proposal for the reasons set out in the majority report.

Restriction of access to documentary evidence provided by the other party (Schedule 8)

Witnesses from the Law Council of Australia, National Council of Single Mothers and Their Children, Sole Parents' Union, Partners of Paying Parents and the Lone Fathers' Association opposed the restriction of access to supporting documents. We share the view that denying parties access to information, which may be considered by the CSA in the course of making an assessment determination, is a denial of natural justice. A central theme in the hearing related to the role of "perceived fairness" in determining client and community support for the Child Support Scheme. Labor senators feel that this measure serves to diminish the transparency and openness of the determination process. We were persuaded by the position of the Law Council of Australia who argue in their submission that "Instead of a reduction in the exchange of information as proposed in the Bill…there should be an improvement in the quality of the process so that there are means of ensuring that both parties and the CSA have, before hearing, information which is accurate and comprehensive."

Senator Chris Evans
(ALP, Western Australia)

Senator Kay Denman
(ALP, Tasmania)

October 2000

DISSENTING VIEW

AUSTRALIAN DEMOCRATS

CHILD SUPPORT LEGISLATION AMENDMENT BILL (No. 2) 2000

1. Schedule1 provides for amendment of the Child Support (Assessment) Act 1989 to **reduce the child support percentages** where a non-resident parent has contact with his or her child for between 10% and 30%. The 1988 report of the *Child Support Formula for Australia*, (a Report from the Child Support Consultative Group) at Chapter 11 included in the development of the formula, the access costs incurred by non-custodial parents, and weighed up the empirical evidence related to the percentages of family incomes devoted to children, both custodial and non-custodial. Thus, it is incorrect to state that the present formula disregards the costs to non-resident parents. For residence (with the non-primary parent) up to 40% there is no evidence that the primary parent's costs are reduced, and it is inappropriate to merge the principles of shared care with residence and contact. Resident parents are required to continue to meet accommodation, clothing, education, health, childcare and recreation costs for children even when they are on a contact visit with the non-resident parent. Thus 10% of time does not equate with 10% of costs.

   The measure will result in reduced income support for resident parents. FACS submits that sole parents can afford to lose this from tax gains from 1 July 2000. The Australian Democrats believe that tax gains to offset GST were for all Australians, and it is untenable that sole parents should be required to sacrifice these for the benefit of the non-resident parent.

2. Schedule 2 provides for the use of the same measure to set the **upper limit** or 'cap' on payer taxable income that can be subject to child support formula assessment, to $79,000 from the present $101,153. The 1988 report of the *Child Support Formula for Australia*, (a Report from the Child Support Consultative Group) at Chapter 11 included as its fundamental precept that all children of a parent share equally in that parent's income, and that during the children's financial dependency they should share in changes in parents' financial circumstances just as they would if they were growing up with both parents. The amendments undermine the principle of children of the marriage benefiting from the parent's capacity to pay; will result in a considerable reduction in income support to many resident parents, and are not supported by the Australian Democrats. There is no evidence that the present cap constitutes a disincentive for work, and it also inappropriate to assume that child support in excess of $6,000 per year is not used for the primary support of the child.

3. Schedule 8 proposes to amend the current requirement whereby **supporting documents** supplied by an applicant to depart from the child support formula assessment are to be supplied to the other party to the child support arrangements. The Australian Democrats do not support this measure which amounts to a denial of natural justice. It is unacceptable to create a situation whereby a party is required to argue a case when they are not given access to the documentation on which the other party is relying. They cannot respond to an application, which cannot be proven on the basis of that application. The provision directly contravenes basic legal principles of access and full and open disclosure.

Senator John Woodley, **Australian Democrats spokesperson for Child Support** Oct. 2000

APPENDIX 1

SUBMISSIONS RECEIVED BY THE COMMITTEE

1 Mr Wayne Caldwell

2 Department of Family and Community Services

Tabled at public hearing 4.10.00

- Budget Measure to Reduce Formula Percentages for Non-resident Parents Exercising Contact With Their Children - Modelling of Disposable Income

3 The Law Society of New South Wales

4 Ms Sarah Rososinski

5 Family Law Practitioners Association of Tasmania

6 Ms Yvonne Chani

7 Associate Professor Linda Hancock

8 National Council of Single Mothers and their Children

Tabled at public hearing 4.10.00

- The Family Law Reform Act 1995 - Has it made a difference?, Georgina Parker
- Lone Fathers Newsletter, 21 May 2000, p.28.

9 Law Council of Australia

10 Council of Single Mothers and their Children, Victoria

11 Women's Electoral Lobby Australia

12 National Network of Women's Legal Services

13 Sole Parent's Union

14 Ms Debra Jewell

15 Australian Council of Social Service

16 Partners' of Paying Parents

17 Mr Peter Bath

18 Women's Legal Centre (ACT & Region) Inc

19 Legal Services Commission of South Australia

20 Hobart Community Legal Service Inc

21 Lone Fathers' Association Australia Inc

Tabled at public hearing 4.10.00

- Cost of Child Support - Relative to Unemployed Males, Property Investment Research

APPENDIX 2

PUBLIC HEARING

A public hearing was held on the Bill on 4 October 2000 in Senate Committee Room 2S1.

Committee Members in attendance

Senator Sue Knowles (Chairman)
Senator Andrew Bartlett
Senator George Brandis
Senator Kay Denman
Senator Chris Evans
Senator Tsebin Tchen

Witnesses

Law Council of Australia

Mr Denis Farrar, Member of Executive, Family Law Section

Partners of Paying Parents (PoPPs)

Mrs Karen Caldwell, State Representative - ACT

National Council of Single Mothers and their Children (NCSMC)

Ms Elspeth McInnes, Co-Executive Officer

Sole Parent's Union

Ms Kathleen Swinbourne

Lone Fathers' Association Australia Inc

Mr Barry Williams, National President, and representative of **Parents Without Partners Association**

Mr James Carter, Adviser

Department of Family and Community Services

Mr Keith Henry, Assistant Secretary, Family and Children Branch

Mr Phil Alchin, Director, Policy Development, Family and Children Branch

Ms Sheila Bird, Assistant General Manager, Client and Community Branch,
Child Support Agency