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Standing Committee on Community Affairs

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

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THE INQUIRY

1.1 The Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Bill 2006 (the Bill) was introduced into the House of Representatives on 14 September 2006. On the same day, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 10 of 2006), referred the provisions of the Bill to the Community Affairs Committee (the Committee) for report.

1.2 The Committee considered the Bill at public hearings in Melbourne on 29 September 2006 and Canberra on 4 October 2006. Details of the public hearings are referred to in Appendix 2. The Committee received 31 public submissions and one confidential submission relating to the Bill and these are listed at Appendix 1. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at http://www.aph.gov.au/senate_ca

THE BILL

1.3 The Bill amends the *Child Support (Assessment) Act 1989* and seven other Acts, to provide the legislative basis for stages 2 and 3 of the Commonwealth's major overhaul of the Child Support Scheme.[1]

1.4 Stage 2 will commence on 1 January 2007, and introduces:

- expansion of the role of the Social Security Appeals Tribunal (SSAT) to include independent review of child support decisions; and
- simplification of the relationship between the courts and the new Child Support Scheme.

1.5 Stage 3 will commence on 1 July 2008, and introduces a new child support formula that:

- is based on recent Australian research on the costs of caring for children;

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1 Information relating to the content of the Bill has been drawn largely from the relevant Explanatory Memorandum, available at http://parlinfoweb.aph.gov.au/piweb/TranslateWIPILink.aspx?Folder=EMS&Criteria=BILL_ID:r2620%3BEM_TYPE:EM%3BSOURCE:House%3B

- takes account of both parents' incomes after equal self-support amounts are deducted;
- recognises care of a child for more than 14 per cent of the time; and
- treats first and second families more equally.

1.6 Stage 3 also includes the measures set out below:

- the Family Tax Benefit Part A maintenance income test will be changed so payments are reduced only for those children in the family for whom child support is paid;
- more flexible arrangements, with better legal protection, will be made for parents who want to make agreements between themselves about the payment of child support and for how lump sum payments are treated;
- the income definitions for certain tax-free amounts, foreign income and fringe benefits, as used to calculate child support on the one hand and family tax benefit and child-care benefit on the other, will be aligned;
- resident parents will keep all of their family tax benefit where a non-resident parent has care of their child for less than 35 per cent of nights in a year. Non-resident parents who have care of their child for at least 14 per cent will continue to be eligible for the rent assistance component of family tax benefit Part A and will continue to be eligible for a health care card;
- the minimum child support payment of about $6.15 per week will now, for non-resident parents who pay child support to two or more families, have to be paid to each of those families, rather than being divided between them. Parents who deliberately minimise their income to avoid paying child support will generally have a $20 per child per week minimum payment;
- parents who are using income from second jobs and overtime to help re-establish themselves during the first three years after separation may have that income excluded from child support calculations;
- a simplified process will allow parents to suspend child support payments for a period of six months if they reconcile, and then resume the payments should they separate again, without having to apply anew;
- parents who have financial responsibility for a step-child in a second family will now be able to apply to have the step-child considered when calculating child support for the parent’s first family, if no-one else can financially support the step-child; and
- the processes and rules for 'changes of assessment' will be made simpler and clearer for parents.

1.7 The financial impact of the Bill is:

Year	Total resourcing
2006-07	$9.5 m
2007-08	$36.4 m
2008-09	$143.1 m
2009-10	$131.3 m

BACKGROUND

1.8 On 28 February 2006, the Hon Mal Brough MP, Minister for Families, Community Services and Indigenous Affairs (the Minister), announced a major overhaul of the Child Support Scheme,[2] based on the recommendations of the Ministerial Taskforce on Child Support, chaired by Professor Patrick Parkinson.[3] The Taskforce's review of the scheme was initiated in response to the 2003 House of Representatives Committee on Family and Community Affairs inquiry into child custody arrangements in the event of family separation.[4]

1.9 Announcing the overhaul of the Child Support Scheme, the Minister stated:

> These changes aim to reduce conflict between separated parents and, in particular, encourage shared parenting by introducing a system that is fairer and puts the needs of children first…Importantly, the new formula reflects the value of shared parental responsibility and treats children more equally.[5]

1.10 On 1 July 2006, the *Child Support Legislation Amendment (Reform of the Child Support Scheme – Initial Measures) Act 2006* commenced. This Act provided the legislative basis for Stage 1 of the overhaul of the Child Support Scheme. The Act:

- amended the *Child Support (Assessment) Act 1989* to:
  - increase and index the minimum annual child support payment;
  - provide for a new method of assessing a parent's capacity to earn; and
  - reduce the cap on adjusted income for child support assessment purposes, and make a consequential amendment to the proposed Child Support Legislation Amendment Act 2006;

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2 The Hon Mal Brough MP, Minister for Families, Community Services and Indigenous Affairs, 'Child Support Reforms to Deliver Fairer System', *Media Release,* 28 February 2006.

3 P Parkinson, *In the Best Interests of Children – Reforming the Child Support Scheme. Report of the Ministerial Taskforce on Child Support*, May 2005.

4 House of Representatives Standing Committee on Family and Community Affairs, *Every Picture Tells a Story: Report on the Inquiry into child custody arrangements in the event of family separation,* December 2003.

5 The Hon Mal Brough MP, Minister for Families, Community Services and Indigenous Affairs, 'Child Support Reforms to Deliver Fairer System', *Media Release,* 28 February 2006.

- amended the *Child Support (Registration and Collection) Act 1988* to increase the limit on prescribed nonagency payments from 25 per cent to 30 per cent; and
- amended the *Child Support (Assessment) Act 1989* and *Child Support (Registration and Collection) Act 1988* to address a constitutional issue with the application of the Child Support Scheme to ex nuptial children in Western Australia.[6]

Social Security Appeals Tribunal

1.11 Currently, parents who are unhappy with Child Support Agency decisions can only appeal them to the courts, which is expensive and time-consuming. The Minister described the expansion of the role of the Social Security Appeals Tribunal to include independent review of child support decisions as follows:

> The new arrangements will improve the consistency and transparency of child support decisions and will provide a review mechanism that is inexpensive, fair, informal and quick.[7]

Relationship between the new Child Support Scheme and the courts

1.12 The Bill proposes three significant changes to the relationship between the Child Support Scheme and the courts:

- enabling access by parents to court enforcement of child support debts;
- enhancing the powers of courts determining child support matters; and
- increasing the case management powers of courts.

1.13 Resident parents cannot currently enforce payment of a child support debt through the court system while the Child Support Agency is collecting ongoing child support payments.

> The present amendments allow the payee to take private enforcement action, in relation to child support debts, while the Registrar may undertake other enforcement action at the same time. This results in benefits for payees, is efficient in terms of court time and saves administrative costs.[8]

1.14 Courts have limited powers to obtain information currently available to the Child Support Agency. The Bill provides that a court hearing an application for

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6 Information relating to the content of the *Child Support Legislation Amendment (Reform of the Child Support Scheme – Initial Measures) Act 2006* has been drawn largely from the relevant Explanatory Memorandum, available at http://www.comlaw.gov.au/ComLaw/Legislation/Bills1.nsf/framelodgmentattachments/EE601B7897E087A1CA25716B001D42B8

7 The Hon Mal Brough MP, Minister for Families, Community Services and Indigenous Affairs, *Second Reading Speech*, 14 September 2006.

8 Explanatory Memorandum, p.136.

enforcement of child support has the same powers as the Child Support Agency to obtain information in relation to either parent.[9]

1.15 Currently, if a person who has paid child support in respect of a child later discovers that they are not the parent of that child, and wishes to recover the amount paid to the child's carer, they must seek a declaration from a court that a child support assessment should not have been made. They must then make a separate application seeking repayment. The Bill provides that, after making a declaration that a child support assessment should not have been made, a court must proceed as soon as practicable to consider making an order about repayment. It also:

- clarifies the factors a court must consider when deciding whether or not to order that child support should be repaid; and
- amends the definition of a registrable maintenance liability, so that a court order for repayment can be administered by the Child Support Registrar using the same powers as are currently available to recover debts from a payer subject to a child support assessment.[10]

1.16 Courts currently have limited powers to make stay orders. This means that debts and penalties can build up even when a court is examining the case. The Bill provides for courts to have increased powers to make temporary arrangements about child support.[11]

New child support formula

1.17 The basis of the current Australian child support formula is 'continuity of expenditure'. This principle is based on the proposition that:

> …wherever possible, children should enjoy the benefit of a similar proportion of the income of each parent to that which they would have enjoyed if their parents lived together.[12]

1.18 The new child support formula proposed in the Bill is based on an 'income shares' approach, whereby:

- the costs of children are based on the parents' combined incomes;
- both parents will have the same self-support amount exempted from their income before child support is calculated;
- the costs of the children are distributed between the parents in accordance with their capacity to meet those costs; and

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9 *Submission* 13, p.5 (FaCSIA).

10 Explanatory Memorandum, pp.135-136.

11 *Submission* 13, p.5 (FaCSIA).

12 P Parkinson, *In the Best Interests of Children – Reforming the Child Support Scheme. Report of the Ministerial Taskforce on Child Support*, May 2005, p.5.

- the costs incurred by parents who provide regular or shared care of their children are recognised.[13]

1.19 The formula is based on the findings of the Ministerial Taskforce on Child Support (the Taskforce),[14] who conducted extensive empirical research and consultation into the costs of raising children in Australia, and benchmarked its research against international studies.[15] Key characteristics of the costs of raising children identified by the Taskforce are:

- the costs of raising children generally increase as the children get older;
- the costs of children vary depending on the parents' incomes – parents with higher incomes spend a lower proportion of their income on their children than parents with lower incomes, although the expenditure of parents with higher incomes is more in dollar terms; and
- due to economies of scale and household budget constraints, the cost of raising each child is lower in larger families – for example, the costs of two children are less than double the costs of one child.[16]

1.20 On the basis of its research, the Taskforce developed a Costs of Children Table (the Table), which is included in the Bill at Schedule 1. The Table acknowledges the findings above by:

- incorporating two age ranges (one for children under 13 and one for children 13 and over);
- calculating the costs of children as a proportion of the combined incomes of both parents; and
- differentiating between the costs of raising children in families with one child, two children and three or more children.[17]

1.21 The costs shown in the Table in the Bill are expressed as a percentage of Male Total Average Weekly Earnings (MTAWE). It is intended that a user-friendly table populated with dollar figures will be gazetted each year.[18]

1.22 The self-support amount under the current scheme is 'considered too low, arguably creating a disincentive for paid work'.[19] Under the Bill, the self-support

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13 *Submission* 13, p.5 (FaCSIA).

14 P Parkinson, *In the Best Interests of Children – Reforming the Child Support Scheme. Report of the Ministerial Taskforce on Child Support*, May 2005.

15 *Submission* 13, p.5 (FaCSIA).

16 *Submission* 13, p.6 (FaCSIA).

17 *Submission* 13, p.6 (FaCSIA).

18 Explanatory Memorandum, p.74. An example of a populated Table is shown at p.73.

19 Explanatory Memorandum, p.12.

amount to be exempted from each parent's income before child support is calculated is to be increased to an amount equal to one third of MTAWE.[20]

1.23 The Bill sets out six variations of the new income shares formula, to be used to determine parents' capacity to contribute financially to the costs of raising their children. The variations cover a range of commonly occurring family situations.

> The broad coverage of the new formula means that an administrative assessment will be appropriate for nearly all cases and a diverse range of parents can clearly understand how the formula applies to their individual circumstances. As is presently the case, however, there are some circumstances in which the administrative formula may not result in an appropriate assessment of child support and in these cases parents can seek a departure from their assessment through the Change of Assessment process.[21]

1.24 All six variations recognise shared care (35% to 65% care of the child during a specified care period) and regular care (14% to less than 35% care of the child during a specified care period) as contributing to the costs of the child. The Minister noted in his second reading speech that:

> The current formula…does not take account of contact by the non-resident parent with the children for up to 29 per cent of the time…In the new formula, parents who care for their children for 14 per cent or more of the time will be recognised as contributing to the costs of the children through their care. This will encourage non-resident parents to stay involved with their children.[22]

1.25 All six variations also account for 'the costs to a parent of caring for resident dependent children outside the child support case'.[23] This amendment seeks to correct a situation whereby '[s]econd families are…unfairly and inconsistently taken into account under the current formula'.[24]

> Under the new scheme, all biological and adoptive children are to be treated as equally as possible. Consequently, where a parent has a biological or adoptive child living with them, who is not the subject of a child support assessment, an amount is deducted from the parent's adjusted taxable income to recognise the parent's costs for supporting this child. This amount is called the relevant dependent child amount. In determining the costs of the relevant dependent child, the parent's income only is taken into

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20 Explanatory Memorandum, p.12. For illustrative purposes only, based on the September 2005 MTAWE, the nominal self-support amount for 2006 would be $16,793.

21 *Submission* 13, p.8 (FaCSIA).

22 The Hon Mal Brough MP, *Second Reading Speech*, p.2.

23 *Submission* 13, p.7 (FaCSIA).

24 The Hon Mal Brough MP, *Second Reading Speech*, p.2.

> account, not the income of a new partner, as it is only the parent's share of that child's costs that need to be deducted from their income.[25]

Family Tax Benefit

1.26 Currently, a person who has at least 10% but less than 30% care of a child is eligible to claim Family Tax Benefit (FTB) in respect of that child, but has the option to waive their eligibility for FTB for some or all days in the period of the pattern of care. Eligibility for FTB has a flow-on effect to eligibility for other payments (for example: childcare benefit and rent assistance).[26] FaCSIA noted that 'the ability to split Family Tax Benefit can be a source of conflict, where arguments can occur over every percentage point of care'.[27] The Bill addresses this site of potential conflict by allowing resident parents to keep all of their FTB except where there is shared care (35% or more).

> However, individuals who have at least 14% but less than 35% care of a child (a regular care child) would continue to have access to FTB Part A in the form of income tested rent assistance and a regular care child will continue to attract a health care card under the social security law. Child care benefit (CCB) will also continue to be available in relation to care provided to a regular care child by an approved child care service or registered carer.[28]

Agreements between parents

1.27 The Bill attempts to support parents to reach agreement between themselves about the payment of child support. A number of measures in the Bill establish mechanisms:

> …for encouraging parents to agree, for recognising non-standard care and contact arrangements, and for ensuring that child support liabilities fairly reflect changes in actual patterns of care…A key element of the new care and contact measures is an increased emphasis on encouraging parents to set out their care arrangements in written parenting plans. These parenting plans are defined with reference to the Family Law Act. The key element of the parenting plans is that they set out the care arrangements in writing and are signed by both parents.
>
> In determining parents' percentages of care for child support purposes, the Child Support Registrar (the Registrar) will abide by the terms of any written parenting plan between the parents, or by the terms of a court order that sets out the arrangements. Parents can also agree verbally on the care arrangements. If parents agree verbally that regular contact or shared care is taking place, this verbal agreement, when communicated to the Registrar,

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25 Explanatory Memorandum, p.12.

26 Explanatory Memorandum, pp.198-200.

27 *Submission* 13, p.7 (FaCSIA).

28 Explanatory Memorandum, p.198.

> will form the basis of the child support assessment regardless of the arrangements under the parenting plan or court order. However, if parents cease to agree to the subsequent verbal agreement, the child support assessment will revert back to being based on the parenting plan or court order. This encourages parents to formalise any agreements they make about care arrangements in a parenting plan and to submit the parenting plan to the Child Support Agency.[29]

Alignment of income definitions

1.28 Currently, income definitions used to calculate child support and family tax benefit lead to different treatment for certain tax-free amounts, foreign income and fringe benefits.

> The child support income definition will be broadened to include certain tax-free pensions and benefits that already apply for family tax benefit. The foreign income definitions for child support and family tax benefit will be broadened and aligned. The gross value of reportable fringe benefits, rather than the net value, will apply for family tax benefit, as it already does for child support. The changes to income for family tax benefit will also apply for childcare benefit.[30]

Minimum child support payments

1.29 Minimum child support payments were indexed to the Consumer Price Index during Stage 1 of the overhaul of the Child Support Scheme. Currently, a paying parent pays one minimum payment, which is divided among their cases if they have more than one case. The Bill will apply the minimum payment to each child support case up to a maximum of three cases.[31]

> Those parents who deliberately minimise their income to avoid paying child support will have to pay $20 per child per week, up to a maximum of three children, unless they can prove their incomes are in fact very low.[32]

ISSUES

Timeframe

1.30 Many witnesses commented on the very short timeframe in which the Committee had to undertake this inquiry. Men's Rights Agency commented:

> I have to say that the lack of time is really quite appalling. I will not say anymore; I think everyone else has covered it. But three days to produce a

29 *Submission* 13, p.8 (FaCSIA).

30 The Hon Mal Brough MP, *Second Reading Speech*, p.3.

31 *Submission* 13, p.9 (FaCSIA).

32 The Hon Mal Brough MP, *Second Reading Speech*, p.3.

> submission after 300 pages and 200 pages of explanatory memorandum is quite impossible.[33]

Complexity of the Bill

1.31 A number of submissions and witnesses referred to the complexity of the Bill's provisions and drafting, particularly in relation to the time available for public comment that 'the changes that are to be made are extremely complex and difficult'.[34]

1.32 Others noted that complexity was unavoidable, given the nature of the matters addressed by the Bill:

> Many of the Taskforce's proposals are intrinsically complex and controversial. This is because child support policy necessarily involves a set of interlinking conundrums that are tied to balancing the complex and competing needs of children, resident parents, non-resident parents, and the State...Matters affecting children's wellbeing in particular typically arouse strong feelings in all of us.[35]

1.33 Professor Patrick Parkinson suggested that legislative complexity would not necessarily translate into greater administrative complexity for users, particularly in relation to accessing information about the new formula:

> Although the formula will be legislatively more complex than the current formula, I do not believe there will be any greater complexity for members of the general public. At the present time, people can use a calculator available on the Child Support Agency website to obtain an estimate of a child support liability if they know the father's income, the mother's income, and the number of children. With the addition of the requirement to enter the ages of the children, it will be as simple for most parents to obtain an estimate of the new child support liability as at present. The Agency has an advanced calculator for more complex cases at present, and I would expect them to be able to devise a similar advanced calculator for the cases where the simple formula is inapplicable under the new legislation.[36]

1.34 However, the Family Law Section of the Law Council of Australia (LCA) was concerned that the Bill was difficult to understand and did not meet the Taskforce's recommendation that the legislation be re-written in plain English:

> We as lawyers…have the gravest difficulty working out a great number of the clauses…It is also fair to say, from the clients we see across our desks day by day, that the present scheme is almost impenetrable to the average person. The new scheme is going to be no less transparent and possibly even more complicated. It may achieve better outcomes, but in being able to understand and follow how it gets to those outcomes it is going to be a

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33 *Committee Hansard* 4.10.06, p.17 (Men's Rights Agency).

34 *Submission* 24, p.1 (Mr S Brown).

35 *Submission* 3, Attachment p.2 (AIFS).

36 *Submission* 14, pp.1-2 (Prof P Parkinson).

> considerable challenge, not only for the payers and payees but also for those who are advising them at each level, including their legal advisers.[37]

1.35 FaCSIA responded that priority in drafting this Bill has been to implement the reforms, and that the amendments have been carefully framed to achieve the intended Government policy:

> While Government accepted the recommendation to rewrite the legislation in plain English, priority has been given to implementing the reforms. The intention is to undertake a plain English rewrite at the earliest possible opportunity. The amendments contained in the bill clearly deal with very complex matters, are necessarily large in number and involve intricate interactions between related concepts and rules. The amendments have been carefully framed by Commonwealth drafting experts to achieve the intended Government policy. The Explanatory Memorandum provides more detail on the operation of the provisions.[38]

1.36 The cumulative complexity of interacting legislation was taken up by the National Council of Single Mothers and their Children (NCSMC):

> …we are getting far more complexity in this system, and one of the things we are already finding is that Centrelink, which has to administer a lot of this, is drowning in complexity. When you go through how things are applied, there is a great deal of confusion at the coalface, at the bureaucracy face and at the legislation and implementation face around how all of these things interact. The change is not well understood by any of the levels of people who are supposed to be implementing it, let alone the poor people in the community who are subject to it.[39]

1.37 FaCSIA responded that the commencement dates contained in the Bill allowed time for both families accessing the scheme and service providers to prepare for the Bill's implementation:

> …one of the good things about having an implementation period of the next couple of years is that we will be able to work through the significant complexity that is reflected in the legislation, to put it into legislation, as well as implement that in terms of the service delivery implications, the new systems that need to be built and the very extensive communication that will of course need to occur with families to explain to them how the changes are going to be implemented—what they will need to do and how the changes will affect them.[40]

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37 *Committee Hansard*, 4.10.06, p.8 (LCA).

38 *Submission* 13, Supplementary Information 5.10.06, p.4 (FaCSIA).

39 *Committee Hansard*, 4.10.06, p.26 (NCSMC).

40 *Committee Hansard*, 4.10.06, p.39 (FaCSIA).

The child support formula

1.38 The new child support formula, which will commence on 1 July 2008, adopts an 'income shares' approach to calculate and share the costs of children fairly between separated parents.[41] These changes were both criticised and welcomed by witnesses.

1.39 Lone Father's Association Australia (LFAA) commented that the proposed amendments will result in a fairer scheme.[42] LFAA stated that high-income non-custodial parents were previously paying far too high an effective marginal rate of tax-plus-child-support previously. However, LFAA went on to argue that shifting the cap on child support payments to a lower income level 'merely shifts the inequity to a different income level, namely, some middle income earners'.[43] LFAA stated that below the cap the marginal effective rate of tax can be very high 'because you are adding tax to extra child support via the formula which could lead you to perhaps 90c in the dollar as a marginal payment'. Above the cap only tax is paid, 'so you could be going from an effective tax rate of 90 per cent to 60 per cent'.[44]

1.40 Some submitters expressed concern that the new arrangements will diminish the financial position of residential parents, who tend to be women, in favour of non-residential parents. NCSMC argued that 'most single parent households will be financially worse off as a result of the formula changes. An estimated 60% of primary carer households will be worse off as a result of the formula changes'. At the same time, NCSMC commented that the wealthiest non-resident parents would receive large financial gains.[45]

1.41 Professor Parkinson clarified reports on the estimated number of households worse off under the proposed changes:

> In the press conference to launch the report in June last year, I was asked to give such an estimate. I replied to the effect that it was hard to estimate, but that I thought between 55% and 60% of assessments would be lower. The press then reported that as 60%.
>
> It is indeed hard to give a reliable estimate. The reason is that we do not have data on the patterns of contact for those paying child support unless the level of contact reaches either the 30% or 40% threshold (when it becomes relevant under the existing child support legislation). It is possible to get some further data from the patterns of FBT-splitting, but this data also gives an incomplete picture.

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41 *Submission* 13, p.5 (FaCSIA).

42 *Committee Hansard* 4.10.06, p.1 (LFAA).

43 *Submission* 17, p.4 (LFAA).

44 *Committee Hansard* 4.10.06, p.3 (LFAA).

45 *Submission* 11, pp.3-4 (NCSMC); see also *Submission* 16, p.1 (Spark Resource Centre); *Committee Hansard* 4.10.06, p.26 (NCSMC).

> My best guess is that the majority of assessments will go down. My estimate of 55% is probably much closer to the mark than 60%. It is nonetheless, just a very general estimate.[46]

1.42 It was also argued that households with children aged 0-12 years will receive less financial support under the proposed arrangements. NCSMC commented:

> The argument that costs are lower for younger children only holds true as long as the costs of non-cash inputs of unpaid care work are ignored. The higher expenditures on teenagers are accompanied by a reduced direct load of unpaid care, enabling parents to more easily increase hours of paid work.[47]

1.43 LFAA commented the costs of children for the purposes of calculating child support should reflect the fact that expenditure on children rises with age. However, the ratio proposed in the new formula for the cost of children aged 13 years and over compared with children aged 0-12 years is 'rather extreme. There has been payment parity between the two age-groups for nearly 20 years'.[48] Men's Confraternity Inc welcomed the change but commented that many parents of teenagers will be expected to pay a greater amount of child support even after up to a dozen years of paying an excessive rate previously. It was suggested that consideration be given to 'an exemption from the higher rate for anyone who has been paying under the current formula for younger children for more than 5 years'.[49]

1.44 Submitters noted that the calculations were extremely complex and difficult to understand.[50] Men's Rights Agency, like other witnesses, commented on the derivation of costs of children. Men's Rights Agency stated that while 'the biggest single issue with child support obligations is the relevancy of the child support numbers to actual costs', no method outlined as to how the numbers were derived. It pointed to the many studies undertaken over the past 10 years to determine the costs incurred by non-resident parents in meeting the contact needs of their children and concluded that 'it is totally invalid to assume that the standard of living as defined by the previous intact household must be maintained'. Further, it argued that costs and expenditures are confused. The Men's Rights Agency concluded:

> We believe that there is a complete lack of credibility in the data that is being proposed. Despite the attention to clever formulae for differing family configurations, it is a situation of: if you put rubbish in you will get rubbish out. Any sensible approach to child support must start with a

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46 *Submission* 14, Supplementary Information, 9.10.06, p.1 (Prof P Parkinson).

47 *Submission* 11, p.4 (NCSMC); see also *Committee Hansard* 4.10.06, p.24 (NCSMC).

48 *Submission* 17, pp.4-5 (LFAA).

49 *Submission* 30, p.2 (Men's Confraternity Inc).

50 *Submission* 5, p.1 (Dr M Lawrence).

> properly designed data-gathering exercise focusing on both costs and associated behaviours.[51]

1.45 The Council of Single Mothers and their Children (CSMC) also commented that other costs formulas are available and pointed to the Family Court's table which includes the costs of accommodation, transport and education. However, with the child support formula, 'because accommodation transport and education are variable experiences we will put them in the too-hard basket and we will not count them and we will assume that they are zero, whereas your biggest expenses are where you live, what car you drive, where your send your children to school'.[52]

1.46 A further concern was the use of surveys for intact households to determine the cost of raising a child. Witnesses stated that it costs more for separated families and that living standards decline when parents separate 'so failing to take this consequence into account is one of the most obvious failures of the Taskforce's report and its recommended formula'.[53] LFAA, while noting that the new formula is a considerable improvement on the previous formula, also commented that the estimates of so-called 'real costs' of children are primarily based on intact families. LFAA noted that they are 'in fact estimates of what parents at different income levels choose to spend on their children in an intact family'. However, in a separated family 'circumstances are usually very different, and parents therefore need to choose a quite different expenditure pattern to deal with this'.[54]

1.47 Australian Institute of Family Studies (AIFS) noted that the Taskforce took the view that the child support formula should reflect the true costs of raising children. In order to establish true costs, all Australian research was examined, a literature reviews were undertaken and new research was commissioned from National Centre for Social and Economic Modelling (NATSEM), and from Paul Henman, a Taskforce member from the University of Queensland. The Taskforce then arrived at its view as to the best estimate of the cost of raising children that could be derived. AIFS concluded that:

> That led to the formula. It is true that one of the consequences is that there will be some reductions in the amount of child support paid to resident parents, particularly where the non-resident parent has a higher income. The reason for that related to the costs of raising children…Where there is a reduction it will be small in the majority of cases.[55]

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51 *Committee Hansard* 4.10.06, pp.17-18 (Men's Rights Agency).

52 *Committee Hansard* 29.9.06, p.20 (CSMC Vic).

53 *Submission* 6, p.1 (Mr D Hardidge); see also *Committee Hansard* 4.10.06, p.20 (Men's Rights Agency).

54 *Submission* 17, p.3 (LFAA).

55 *Committee Hansard* 29.9.06, p. 2 (AIFS).

1.48 AIFS also noted that since the original scheme was introduced in the late 1980s, the level of government support to families with children has increased very substantially in real terms, and the proportion of families receiving support has increased. Professor Parkinson quantified this increase in government support at 250 per cent in real terms since 1988.[56] In particular the family tax benefit has provided increases in incomes for residential parents and 'so the task force took that into account when deciding on what its view as to the costs of children would be'.[57]

1.49 Professor Parkinson also responded to comments about the formula:

> We began really with no preconceived views at all. We had an inkling from previous research that at the highest end the child support rates were too high. But what we discovered when we actually looked at all the figures was that the child support rates were too high across a lot of the spectrum. The simple reason why is that it is a fixed percentage. And so the more that one earns, the more one spends on one's kids but the less as a percentage of income that one spends on the kids; and because of the marginal tax rates, one does not have the same percentage of one's income to spend. So what we found was that it was simply too high across much of the spectrum.
>
> Once we decided to have two age ranges, from nought to 12 and from 13 to 17, it meant that inevitably there would be less for younger children and more for the older children, and the net effect was that overall there will be a greater reduction in child support than an increase but there will be some cases where there will be an increase in child support. We were very concerned to offset that by ceasing to split the family tax benefit. So the primary carer will now receive all the family tax benefit under 35 per cent of care. The father may well be paying less child support, but that was, as we say, the fairest result we could reach on the evidence.[58]

1.50 FaCSIA stated that assessments derived from the new formula provide a simple solution to the complex issue of determining the financial contribution that parents should make towards supporting their children after separation. The formula is based on the Taskforce's findings about the circumstances of families in Australia. FaCSIA went on to note that for most people the changes are small and that:

> Very often, the way in which a particular family will be affected will not just be because of one thing. It will not just be because they have older children—for example, children over the age of 13. It could be a combination of the age, the number of children and the levels of income of both their parents. The other thing I would say about it is that it is very hard to predict exactly what the impact will be two years down the track. People's circumstances are changing all the time.[59]

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56 *Committee Hansard* 4.10.06, p.35 (Prof P Parkinson).

57 *Committee Hansard* 29.9.06, p.2 (AIFS).

58 *Committee Hansard* 4.10.06, p.33 (Prof P Parkinson).

59 *Committee Hansard* 4.10.06, p.46 (FaCSIA).

Impact on Family Tax Benefit

1.51 A further reform incorporated in the Bill is a change to allow resident parents to keep all of their Family Tax Benefit except where there is shared care (35 per cent or more).[60]

1.52 Men's Rights Agency argued that the formula will produce some reductions for non-residential parents, 'but for low income earners what they gain will be lost when Family Tax Benefit is no longer shared between the parents'.[61] Men's Rights Agency commented further that the interaction of the child support reductions and the reductions in Family Tax Benefit A and B to paying parents who do not have more than 127 nights is a 'very serious issue'. Men's Rights Agency provided an example of a non-custodial parent earning $40,000 with one child over 13 years whom they see for 51 nights will pay $634 more in child support and they will also lose $745 in family tax benefit A. So they have a net loss of $1,379. Men's Rights Agency concluded:

> This tends to be what happens with the lower income people and with all income people who have 13-plus age children whom they do not see very often. They will be paying quite a considerable amount more.[62]

1.53 Men's Confraternity Inc commented that the removal of non-residential parent's (with less than 35 per cent residency) right to claim a proportional percentage of the Family Tax Benefit does not recognise the costs of providing for two households. A separated parent with 34 per cent care currently receives no other income support in recognition of their costs of providing primary care to their children. Removal of the Family Tax Benefit would leave them receiving no additional assistance whatsoever.[63]

1.54 In relation to Family Tax Benefit, Professor Parkinson informed the Committee that:

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

60 *Submission* 13, p.7 (FaCSIA).

61 *Submission* 8, p.1 (Men's Rights Agency).

62 *Committee Hansard* 4.10.06, p.18 (Men's Rights Agency).

63 *Submission* 30, pp.1-2 (Men's Confraternity Inc).

> carefully and we are comfortable that the trade-off between the payee getting all the FTB and the child support changes did create a fairly equitable balance.[64]

Welfare to Work

1.55 Submitters noted that the work of the Taskforce was completed before the Welfare to Work proposals were implemented. NCSMC argued that the impact of the Welfare to Work changes would adversely affect residential parents when their youngest child turns eight. Under Welfare to Work, parents granted 'principal carer' status move from Parenting Payment (PP) to Newstart Allowance. NCSMC noted that this results in sole parents' incomes dropping between $30 and $100 per week. Where care is shared (46-54 per cent) their income support payment may be further reduced if they are not designated 'principal carer'. A parent with half-time care of a child who is not designated 'principal carer' cannot claim Parenting Payment Single, and can only claim the lower Newstart 'with child' payment, and is not eligible for the Pensioner Concession Card, or telephone and pharmaceutical allowances.[65] NCSMC noted that access to these concessions have been factored in to the child support formula.[66]

1.56 NCSMC also commented that Newstart is subject to activity testing and resident parents in receipt of lump sum payments from property settlements or payment of child support arrears will also be subject to the liquid assets waiting periods, further reducing the financial resources available to the household where children primarily reside.[67] NCSMC concluded:

> The combination of the child support policy changes and Welfare to Work income cuts will further increase the incidence and severity of child poverty in single parent households.[68]

1.57 Professor Parkinson responded to criticism in relation to Welfare to Work changes and stated that the Taskforce was very well aware of the Government's plans for Welfare to Work. The Taskforce was able to align policy across various areas: family law policy, Welfare to Work and child support. While not aware of the fine detail of the Welfare to Work proposals, Professor Parkinson stated that he had meet with the Minister for Employment and Workplace Relations in relation to the Welfare to Work proposals and concluded:

> I saw no inconsistency between them. The reason is simply that the basis of the Child Support Scheme in this country and in many parts of the world is that you should contribute roughly the same proportion to the care of your

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64 *Committee Hansard* 4.10.06, p.36 (Prof P Parkinson).

65 *Submission* 11, p.3 (NCSMC).

66 *Committee Hansard* 4.10.06 pp.24-25 (NCSMC).

67 *Submission* 11, p.3 (NCSMC); see also *Committee Hansard* 4.10.06 pp.24-25 (NCSMC).

68 *Submission* 11, p.4 (NCSMC).

> children as you would do if you were living together…So in a sense the level of support that government gives to parents from the public system is irrelevant to the issue of what the costs of raising children are and how best they can be shared between the mother and the father.
>
> Obviously, though, we were aware of the context. We were doing modelling very carefully on the interrelationship between things like child support, FTB and Newstart to make sure that the outcomes we had were as fair as they could be. In our final decision, where we set the final formula, it was all of those different factors that we took into account.[69]

1.58 Professor Parkinson added further:

> In the work that we did...we did not factor the Welfare to Work changes into the modelling in a financial sense…We knew the rough direction in which the government was going and we were able to have some neutral input into that. But, at the end of the day, what the figures were telling us was that for families at the bottom end of the spectrum—about whom we should be the most concerned—the government support was really quite generous, particularly because family tax benefit is paid per child. So the economies of scale which are built into the child support system are not there in the FTB system. By the time you add in rent assistance, pharmaceutical allowance, telephone allowance and all these other things, all the evidence we had was that families were being really quite well supported…Very roughly, there has been a real increase of 250 per cent in payments for children since 1988.[70]

Unpaid care and forgone earnings

1.59 NCSMC stated that it opposed the new funding formula as the formula omits the actual and opportunity costs of unpaid care provision. NCSMC argued that the actual costs of unpaid care include the time forgoing earnings in order to provide the care, while opportunity costs include lost access to training, professional development and career advancement from paid work. NCSMC commented that 'the formula is focused only on calculating monetary expenditure on children and thus misses the costs of non-cash inputs'. Further:

> Because women undertake the majority of unpaid care work…the failure to acknowledge the costs of unpaid care inputs embeds a structural gender bias against women within the formula and the provision of unpaid care work is further socially devalued.[71]

1.60 Men's Rights Agency put the view that this was not an issue in the debate on child support:

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69 *Committee Hansard* 4.10.06, pp.32-33 (Prof P Parkinson).

70 *Committee Hansard* 4.10.06, pp.34-35 (Prof P Parkinson).

71 *Submission* 11, p.2 (NCSMC); see also *Committee Hansard* 4.10.06, pp.28,29-30 (NCSMC).

> We are talking about child support. We are talking about support for the child, not support for the mother while she is caring for the child instead of being out working…
>
> We do not have the luxury of saying to mum: 'You can stay at home now.' Very few families are able to do that now. I think we have to start looking at the realism of the situation, and I do not see that as being part of child support.[72]

1.61 AIFS informed the Committee that it had done a great deal of work on valuing unpaid work of parents, particularly mothers. AIFS stated 'in terms of the work of the Child Support Taskforce, some allowance has been made for what you might call the forgone earnings'. The forgone earnings tend to be greatest for primary carers, usually mothers with preschool children, which is when it has the greatest impact on labour force participation, 'so some allowance has been made'. AIFS concluded:

> The costs of children estimates show that the costs of children increase with the age of the children in terms of monetary expenditure. If you include the forgone earnings, you will get a different picture. The task force came to the view, for a number of reasons, that the formula should have the same rate for children aged zero to four and children aged five to 12. One of the reasons was administrative simplicity. A second reason was to take some account of childcare costs. The third reason was to take some account of the forgone earnings, which are usually greater for the resident parent. The task force came to the view that the formula should be based primarily on the monetary costs of children and not the indirect costs.[73]

1.62 AIFS also commented:

> The task force came to the view that it did not wish to change some of those fundamentals, one of which relates to forgone earnings.[74]

1.63 Professor Parkinson noted that unpaid care is a very complex set of issues and that unpaid care is valued in the family law system: it is uncommon for assets to be split fifty-fifty as property settlements are weighted very heavily in the favour of the primary carer. Professor Parkinson went on to state that:

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

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72 *Committee Hansard* 4.10.06, p.20,22 (Men's Rights Agency).

73 *Committee Hansard* 29.9.06, pp.2-3 (AIFS).

74 *Committee Hansard* 29.9.06, p.5 (AIFS).

> working then under the formula they are sharing that equitably and there is an allowance for childcare costs.[75]

1.64 Professor Parkinson explained that the formula being proposed is entirely different to the previous formula:

> What we are saying—and this is the way things have moved around the world—is that in an intact family you typically have two incomes. One partner may be working part time, but the majority of mums of young children today have at least some part-time income. So, if you are trying to replicate what is happening in the intact family and say child support should be about the same level as it was, it makes logical sense to take account of both incomes. That is why we have the same self-support formula, because you are taking both of them into account.[76]

Regular care

1.65 Under the proposed arrangements, where the non-resident parent has regular care (14 per cent to less than 35 per cent of time) of the child, 24 per cent of the cost of the child will be taken to be met directly by that parent.[77] NCSMC commented that 14 per cent of care equates to one night of care per week and that will not necessarily reduce the primary carer's costs. Therefore, the loss to the residential parent will be disproportionate to the time and resources of care provision. NCSMC also argued the child support 'saved' by the payer having the child for one night may far exceed actual expenditure on the child during the visit, thereby systematically short-changing the child from their assessed child support. For example a payer parent with a child support liability of $100 per week can 'save' $24 per week by seeing the child for one night, but bear no health, clothing, education or recreation costs of the child. NCSMC noted that the costs of providing a place to sleep and two home-cooked meals for the child are unlikely to equal or exceed $24 per week, yet the household where the child's ongoing costs are being met, has less to spend on the child.[78] NCSMC concluded that for 14 per cent of care, the payer's obligation is decreased by 24 per cent.[79]

1.66 FaCSIA noted that the most common arrangements for contact are around 24 per cent (every second weekend and half the holidays). The 52 days is about one night a week, which is about 14 per cent. FaCSIA concluded:

> It goes back again to what Professor Parkinson said about constructing a new principled approach, which was to recognise that the costs of contact particularly increased, on average, once there is one night a week—that is,

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75 *Committee Hansard* 4.10.06, pp.33-34 (Prof P Parkinson).

76 *Committee Hansard* 4.10.06, p.37 (Prof P Parkinson).

77 *Submission* 13, p.7 (FaCSIA).

78 *Submission* 11, p.5 (NCSMC).

79 *Committee Hansard* 4.10.06, p.29 (NCSMC).

> there are infrastructure costs associated with overnight stays on a regular basis. The task force found, and the government accepted, that that actually created costs that were greater than 14 per cent. Those costs did increase in the range between 14 and 34 per cent contact, but not hugely.
>
> Hence the judgement of the task force, accepted by the government, was that it made sense to pick a figure in the middle, which was 24 per cent in terms of the cost, and to have that at one night a week and not have scope for arguing, if you like, about every night over the course of a year in that range. That was on the understanding that, if a tally had to be done—whether it was 65 nights, 68 nights, one week missed or whatever—that would potentially lead to a lot of argument and a lot of change, rather than having a more reasonable level of stability across the range, which is defined as contact as opposed to shared care[80]

Second incomes

1.67 For the first three years after separation parents will be able to have income from second jobs and overtime excluded from child support calculations, when the extra money they are earning is used to help with re-establishment costs. FaCSIA stated that this will be a simple administrative process where parents who show they have started working overtime or a second job after separation can have the income from that work excluded from child support calculations. A maximum of 30 per cent of total income will be able to be excluded, to ensure adequate support for the children.[81]

1.68 NCSMC commented in its submission that it opposed the exemption of income, typically non-residential father's incomes from second jobs and overtime, from being taken into account in calculations in the first three years after a separation. NCSMC pointed out that many residential parents are equally struggling to establish themselves in new households and dealing with the consequences of the trauma of a separation.[82]

1.69 LFAA commented that the Taskforce recommended that the income from second jobs and overtime not be taken into account for five years. The reduction to three years was expected to 'considerably reduce the usefulness of the provision'.[83]

1.70 AIFS responded that there are a number of fundamental shifts in the direction of the reforms:

> …one of the fundamental shifts is around a shift from a one-home, one-parent model to a two-home, two-parent model. That is quite a sizeable conceptual jump. That reflects social change and policy in many other

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80 *Committee Hansard* 4.10.06, p.42 (FaCSIA).

81 *Submission* 13, p.10 (FaCSIA).

82 *Submission* 11, p.6 (NCSMC).

83 *Submission* 17, p.4 (LFAA).

> countries around the world, not just in Australia, and so, as you work your way through some of the task force's recommendations, sitting underneath some of these bits and pieces are moves towards helping keep both parents involved in their children's lives in a practical and meaningful way. I would be suggesting as a starting point that that would be towards that shift from a one-home to a two-home model.[84]

1.71 LFAA also suggested that the extra income which parties earn before a separation, such as that obtained from second jobs and overtime, ought to be assessed with respect to the after-separation division of costs in the formula for the care of children.[85] FaCSIA responded that those assets that are on hand at the time of the separation would be considered as part of the settlement, that is, part of family law processes. Under the child support system:

> …it is really only the income that is being earned post separation that would be applied to the child support assessment, being mindful that if there were any dramatic changes in the patterns of people's earning post separation, if there was a suggestion that someone might be deliberately reducing their income to avoid child support, that would also be taken into consideration in determining what an appropriate assessment of child support was.[86]

1.72 The Law Council of Australia also argued that the wording of this provision in the Bill is unnecessarily vague and imprecise and that terms like 'reasonable' and 'in the ordinary course of events' are unclear, and could lead to conflict.[87] FaCSIA responded that:

> The calculation of child support liabilities excluding income earned for the purposes of re-establishment is a simple administrative process, rather than a Change of Assessment process. Consequently, the drafting provides for a range of additional income, not derived in the ordinary course of events, to be considered as being earned or derived for the purpose of meeting re-establishment costs. More restrictive drafting would increase the likelihood of dispute about the income to be excluded.
>
> Terms such as these are well established in law. More detail on the intended operation of the provisions is included in the Explanatory Memorandum (p10).[88]

Shared care

1.73 AIFS commented that the intent of the proposed changes is to improve the perceived fairness of the Scheme and to encourage active involvement of both parents

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84 *Committee Hansard* 29.9.06, p.6 (AIFS).

85 *Submission* 17, p.4 (LFAA).

86 *Committee Hansard* 4.10.06, pp.41-42 (FaCSIA).

87 *Submission* 22, pp.4-5 (LCA).

88 *Submission* 13, Supplementary information, 5.10.06, p.4 (FaCSIA).

in their children's lives after separation.[89] Some submitters questioned whether the latter outcome would be achieved. Men's Rights Agency argued that the lowering of the number of nights of contact from the current 108 to 52 as the point where a reduction in child support will occur will lead to more problems and less contact by non-resident parents: 'When the bar is lowered to 52 nights, as is proposed, non-custodial parents will find their time cut by half'.[90]

1.74 FaCSIA responded that it would have 'wait and see' whether this turns out to be a problem. However, FaCSIA noted that the most common arrangements for contact are higher, usually every second weekend and half the holidays, which is around 24 per cent contact.[91]

1.75 Professor Belinda Fehlberg and Ms Lisa Young commented that the possibility certainly exists for increased expectations that both care and child support payments will be more equally shared. However, 'both of these outcomes would seem unlikely to occur in most cases, due to fathers' much greater participation in paid work, and mothers' lesser workforce participation due to child care responsibilities'. Professor Fehlberg and Ms Young also pointed to research which suggests that share care arrangements are tenuous with the outcome over time in many cases being for children to live with one parent – usually their mother.[92]

1.76 Professor Fehlberg and Ms Young also noted that shared care arrangements appear to facilitate the work patterns of payers. Thus, whilst there might be more care by payers, shared care is likely to be structured so as to allow payers to work, whilst still depriving payees of the opportunity for significant paid employment. An example cited was 50/50 shared care arrangements where one parent works 'fly-in, fly-out' on the mines. The payee parents in such cases cannot easily find paid employment at the same time child support is reduced.[93] Even in lesser shared care arrangements, shared care is very often achieved by the payer having more chunks of time outside of their work hours, rather than working less. Professor Fehlberg and Ms Young concluded:

> We would suggest that the twin goals of promotion of shared parenting AND the fair sharing of parenting costs conflict when shared parenting does not involve some sharing by payers of the loss of income that parenting normally brings payees. Empirical research has already pointed to payees as being more financially disadvantaged by separation and this gap is most likely to be widened by these changes.[94]

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89 *Submission* 3, p.2 (AIFS).

90 *Submission* 8, p.1 (Men's Rights Agency); see also *Submission* 9, p.3 (Non-Custodial Parents Party).

91 *Committee Hansard* 4.10.06, p.42 (FaCSIA).

92 *Submission* 10, p.3 (Prof B Fehlberg & Ms L Young).

93 *Submission* 10, p.3 (Prof B Fehlberg & Ms L Young).

94 *Submission* 10, p.4 (Prof B Fehlberg & Ms L Young).

1.77 NCSMC also voiced concern that with shared care there is an increased risk of children not having their costs met 'in one, either or both households'.[95]

Low-incomes

1.78 Section 65A of the Bill requires people subject to a child support assessment who have a taxable income below the maximum amount of Parenting Payment (Single), but who did not receive income support, to either pay $20 per week per child, or justify their low income to the Registrar.

1.79 Professor Parkinson pointed out that, as drafted, Section 65B may allow the payer to rely upon an assessment notice from the Commissioner of Taxation as evidence of their low taxable income that has been accepted at face value and not investigated further by the Commissioner. Professor Parkinson recommended that the provision be amended to exclude taxation assessment notices, for example:

> (2) The parent making the application must provide evidence to the Registrar concerning the parent's income (within the meaning of s.66A(4)) to demonstrate that his or her current income is:
>
> (i) actually less than the pension PP (single) maximum basic amount **and**
>
> (ii) that it would be unjust and inequitable to expect him or her to pay the amount assessed under this section.
>
> (3) An assessment issued by the Commissioner of Taxation for the last relevant year of income shall not be sufficient evidence of the income of the parent for the purposes of this section.
>
> (4) *[Insert]* Current wording of (2) – Registrar may make a determination.[96]

Agreements between parents

Binding Agreements

1.80 In line with current provisions under the *Family Law Act 1975,* it is a requirement under the Bill for each party to a binding child support agreement to receive legal advice before entering or terminating the agreement. Some submissions questioned the capacity of independent legal advice to overcome the structural inequalities between parties negotiating an agreement:

> The proposed changes place considerable emphasis on the desirability of private agreement, and in doing so are over-optimistic regarding the role of independent legal advice in overcoming inequality of bargaining power likely to exist between parents, and provide inadequate procedural protections, to the likely detriment of women and children…Women often have less ability than men to pay legal expenses, less information about the parties' overall financial circumstances, less sense of entitlement to

95 *Committee Hansard* 4.10.06, p.23 (NCSMC).

96 *Submission* 14*,* p.2 (Prof P Parkinson).

> financial assets, and are more likely to be the victims of domestic violence, and to feel that they should behave cooperatively in the negotiation process. Unsurprisingly, there is a lack of evidence suggesting that independent legal advice resolves these issues. Rather, it seems that the most likely impact of independent legal advice is to sure up the interests of more powerful parties to agreements by making the agreement more enforceable.[97]

1.81 It was suggested that because these inequalities can be accentuated by the act of separation, short term binding agreements may be more appropriate:

> Family law assumes that people are equal. But they are never equal after a separation. One person is always economically superior, they might be more articulate or they might have more personal power. They are not equal after a separation and you get very unfair agreements because of coercion, threats and violence. You might agree to something in order to get out of a situation but it would be better if it lasted only a year or two years because then the children would not be disadvantaged.[98]

1.82 Another option proposed was the provision of a cooling-off period.

> Better (although still not failsafe) options for improving procedural protections for vulnerable parties might have included the provision of a 30 day cooling off period, and strict disclosure requirements with heavy sanctions for non-disclosure in all cases (in addition to non-disclosure being a ground for setting aside binding child support agreements, as proposed).[99]

1.83 The Law Council noted that binding agreements can be too easily set aside, to the extent that they might not be sufficiently binding.[100] Professor Parkinson concurred, recommending that the provisions under Section 136 of the Bill for setting aside agreements be different for limited and binding agreements. Specifically, he recommended that the provisions for binding agreements should read:

> In the case of a binding child support agreement, that as a consequence of exceptional circumstances that could not have been foreseen at the time that the agreement was made, the child will not have adequate financial support unless the agreement is set aside.[101]

1.84 Because the agreement which is set aside may have made provision for the payee to receive property that would not have been received but for the agreement, Professor Parkinson also recommended that a new provision be included that recognises the exchange which has already taken place as the result of the previous agreement, and proposed the wording:

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97 *Submission* 10, pp.4-5 (Prof B Fehlberg & Ms L Young).

98 *Committee Hansard,* 29.9.06, p.24 (CSMC).

99 *Submission* 10, p.5 (Prof B Fehlberg & Ms L Young).

100 *Submission* 22, p.18 (LCA).

101 *Submission* 14, p.5 (Prof P Parkinson).

> (5) If:
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> (a) the court sets aside a child support agreement under this section; and
>
> (b) the court is not satisfied as mentioned in paragraph 117(1)(b) (departure orders);
>
> the court may still may make an order that departs from the administrative assessment where it is just and equitable to do so having regard to the benefits that the payee has already received pursuant to the agreement.[102]

1.85 FaCSIA is currently considering whether amendment of this section is required to provide greater certainty to parents who enter into binding child support agreements.[103]

Limited Agreements

1.86 To provide greater flexibility, parents who have not had legal advice about the effect of a child support agreement can enter a limited agreement about payment of child support. Limited agreements:

- do not require legal advice;
- can be terminated or set aside by the courts; and
- can be terminated by either parent if the notional amount of child support payable changes by more than 15%, or after three years.

An administrative assessment must be in place before a limited agreement can be accepted by the Registrar. The annual rate of child support payable under the agreement must be at least the annual rate that would be otherwise payable under the formula or a change of assessment or court order.[104]

1.87 The Law Council noted that 'neither a binding child support agreement nor a limited child support agreement can be varied' and suggested that 'in the case of limited agreements there may be merit in providing an option for limited variation in defined circumstances.'[105]

1.88 FaCSIA responded that parents can effectively vary agreements by substituting a new one that contains the varied provisions. In the case of binding agreements, legal advice is required; where the agreement is limited, they can do so by mutual agreement. FaCSIA noted that an agreement can deal with changing

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102 *Submission* 14, p.5 (Prof P Parkinson).

103 *Submission* 13, Supplementary Information, 5.10.06, p.1 (FaCSIA).

104 Explanatory Memorandum, pp.150-151.

105 *Submission* 22, p.17 (LCA).

circumstances within the terms of the agreement itself. Parents will be encouraged to consider appropriate flexibility when formulating the terms of agreements.[106]

Percentage of care – oral agreements

1.89 Under Sections 49 to 50 of Part 5 of the Bill, the Registrar must determine the percentage of care of a child that each parent has. The Law Council considered that relying on an oral agreement between the parents is problematic and raises evidentiary issues as to the existence or details of an agreement. They therefore recommended that 'oral agreements only be recognised for the purpose of determining percentage of care if the parties acknowledge that there was such an agreement'.[107]

1.90 FaCSIA responded that where notice is given to the Child Support Agency of an oral agreement, the Agency will confirm the agreement with both parents. Following notification to the Agency of an oral agreement, a notice will be issued to both parents, who (usually) have 28 days to object to the assessment. Acceptance of the basis of the assessment is understood as a second acknowledgment of the terms of the agreement. Where parents cease to agree, the onus is on them to show that they have sought to reach agreement. The effect of this provision is that the Registrar will make less factual decisions about care, or about agreements between parents in relation to percentage of care, than is currently the case.[108]

Step-children

1.91 The Law Council claimed that Item 9 of Schedule 6, which makes provision for a departure order to be made on the grounds of provision for step-children, 'invites manipulation. It is almost impossible to see how a payee could test an assertion by a payer that he/she has the financial responsibility…for someone else's child.'[109]

1.92 Professor Fehlberg and Ms Young noted that the inclusion of responsibility for stepchildren in the departure order provisions contributed to a compounding effect that prioritised the children of later families:

> The risk that second families will be prioritised over first families would seem to arise from the proposed approach in the new formula of subtracting liability to support new dependants from the parent's income before calculating the cost of child support for the first family. The prioritising of second families may be further reinforced by proposals to take greater account of re-establishment costs and liability to support step-children.[110]

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106 *Submission* 13, Supplementary Information, 5.10.06, p.3 (FaCSIA).

107 *Submission* 22, p.6 (LCA).

108 *Submission* 13, Supplementary Information, 5.10.06, p.5 (FaCSIA).

109 *Submission* 22, p.6 (LCA).

110 *Submission* 10, p.5 (Prof B Fehlberg & Ms L Young).

1.93 FaCSIA responded that the payer can claim that they have responsibility for a step-child only in very limited circumstances, where neither of the child's natural parents can earn income. Such claims would be made through a Change of Assessment process, and be subject to consideration by a senior case officer. Any decision on the matter would be subject to objection by either parent and external review by the SSAT.[111]

Social Security Appeals Tribunal (SSAT)

1.94 A number of submissions expressed support for the expansion of the role of the SSAT to include review of Child Support Agency decisions.

1.95 The Law Council expressed concern that the SSAT was an inappropriate review body for these decisions:

> The proposed procedures encompassed by the amendments are suitable for the resolution of administrative disputes between the government and citizens but are unsuitable for the determination of *inter partes* disputes such as child support liability.[112]

1.96 In response to this concern, which also informed comments by others, FaCSIA clarified that the role of the SSAT was to review administrative decisions made by the Child Support Agency, not to adjudicate *inter partes* disputes.

> One very specific thing that is worth being clear about is that the parties to a review of a Child Support Agency decision, in respect of a child support determination, will be the person who applies for the review and the Child Support Agency…Does that mean that the other parent will not be involved in any way? No, of course not. They are likely to have some interaction with the process, although in some instances they might not.[113]

1.97 Professor Parkinson noted that, when making orders by consent where the parties agree, under Section 103W, the SSAT should be bound by similar provisions as those under Section 116 of the *Child Support (Assessment) Act 1989*. He recommended that a new clause along the following lines be added to the Bill:

> The SSAT shall not make a decision by consent under subsections (2) or (3) in relation to a departure from administrative assessment of child support in accordance with Part 6A of the Act, unless it is satisfied that it is just and equitable, and otherwise proper to do so having regard to the matters set out in s.117(4) and (5).[114]

1.98 The Council of Single Mothers and their Children expressed reservations about the Tribunal's limited power to subpoena evidence:

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111 *Submission* 13, Supplementary Information, 5.10.06, p.5 (FaCSIA).

112 *Submission* 22*,* p.9 (LCA).

113 *Committee Hansard*, 4.10.06, p.46 (FaCSIA).

114 *Submission* 14, p.3 (Prof P Parkinson).

> CSMC welcomes the expansion of the role of the Social Security Appeals Tribunal to review child support decisions. However, in order to be able to properly assess decisions, the Tribunal should have the power to subpoena documents such as tax and business records where it is suspected that income minimisation has occurred.[115]

1.99 This question was pursued in more detail by the Law Council:

> Many documents which are relevant to change of assessment applications might be considered to be of a 'confidential nature'. They would include tax returns, bank statements, new spouse's tax returns, medical reports, balance sheets and financial statements of businesses. It is submitted that unless the document would be privileged from production in court proceedings then production should be compellable for SSAT proceedings. Full and frank disclosure of all relevant information and documents is fundamental to the proper resolution of all aspects of financial issues between former partners, including liability for or eligibility to receive child support.[116]

1.100 In response to these concerns, FaCSIA stated that the SSAT can test facts, and require people, including the Registrar, to provide evidence through documentation or personal appearance. There is provision for the SSAT to pay the costs of people who are required to provide evidence.[117]

1.101 The Law Council was also concerned about possible effects of being able to initiate application procedures for review by the SSAT by telephone as proposed in subsection 94. The Law Council commented that this does not require sufficient consideration of the implications of beginning a process of review:

> This is particularly the case where the decision for which review may be sought will have been made in relation to a dispute between a separating or separated couple…It is important that applicants are required to give careful thought to what their application should be and whether they should proceed with it.[118]

1.102 FaCSIA responded that SSAT review is intended to be an accessible process, and telephone application is consistent with current procedures for review of Centrelink decisions.[119]

1.103 Section 110X of the Bill imposes restrictions on the publication of SSAT review proceedings. The Non-custodial Parents' Party submitted that the proceedings of the SSAT should be publicly available:

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115 *Submission* 19 (CSMC Vic).

116 *Submission* 22, p.10 (LCA).

117 *Submission* 13, Supplementary Information, 5.10.06, p.3 (FaCSIA).

118 *Submission* 22, p.10 (LCA).

119 *Submission* 13, Supplementary Information, 5.10.06, p.3 (FaCSIA).

> People are often ruined financially as a result of family law and child support decisions. The general public should have the right to have access to information about what the SSAT will be doing.[120]

Technical issues

1.104 Responses by FaCSIA to a number of additional matters raised by the Law Council are included at Appendix 3.

Compliance issues

1.105 Witnesses raised a number of issues arising from non-compliance by payers with child support assessments. AIFS noted that a major issue which exercised the minds of the Taskforce was the issue of non-compliance:

> The task force view was that that is a very serious issue. It goes to the heart of perceived fairness of any child support scheme. It is all very well in theory to talk about what people ought to be paying; it is also very important to know what they actually pay.[121]

1.106 Ms Kathleen Ng also raised concerns about late payment penalties imposed by the Child Support Agency. Ms Ng stated that the Child Support Agency has a discretion to remit late payment penalties in part or in full but, if it refuses to remit that penalty, the payer can object to the refusal and appeal to the Administrative Appeals Tribunal. From 1 January 2007, those appeals will go to the SSAT. The court has no power to deal with the issue of late payment penalties. Although the current Bill states that the court is to be given broad powers, it still does not provide the court with the power to make orders in relation to late payment penalties. Ms Ng concluded that 'this is a huge obstacle to the resolution of arrears in child support or to obtaining finality'.[122]

1.107 FaCSIA responded that:

> There are already significant provisions in relation to the remitting of late payment penalties.
>
> CSA imposes a late payment penalty on a payer whenever they fail to pay their child support debt by the due date. The purpose of a late payment penalty is to encourage payers to comply voluntarily with their obligation to pay child support and discourage late payment.
>
> A late payment penalty is a debt due and payable to the Commonwealth. Any late payment penalties CSA collects are paid into consolidated revenue. They are not paid to the payee.

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120 *Submission* 9, pp.3-4 (Non-custodial Parents Party).

121 *Committee Hansard* 29.9.06, p.6 (AIFS).

122 *Committee Hansard* 29.9.06, p.15 (Ms K Ng).

> CSA calculates late payment penalties on the unpaid balance of a payer's child support debt after the due date for each payment period. The rate of the penalty is linked to the annual rate of the penalty for unpaid income tax under the Income Tax Assessment Act 1936.
>
> CSA will vary the Register to remove any late payment penalties applied because a payer failed to pay an amount of child support that is no longer due.
>
> CSA has discretion to remit a late payment penalty in part or in full. CSA will use this discretion in a way that will further the objectives of the child support scheme, according to the particular circumstances of each case.
>
> The parent can object (and subsequently seek review of the decision) if CSA declines to remit the penalties.[123]

CONCLUSION

1.108 The Committee considers this legislation to be of fundamental importance to ensuring equity within the child support system. However, the legislation is complex, detailed and the timeframe for consideration of the legislation was very short. The Committee would like to thank the organisations and individuals who provided submissions and gave oral evidence to Committee in the very short time available.

Recommendation 1

1.109 The Committee reports to the Senate that it has considered the Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Bill 2006 to the extent possible in the available time and recommends that the Bill proceed.

Senator Gary Humphries

Chairman
October 2006

123 *Submission* 13, Supplementary Information, 5.10.06, pp.5-6 (FaCSIA).

Additional comments by Labor and Greens Senators

Overview

While Labor and Greens Senators support the recommendation of the Chair's report on the Inquiry into the Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Bill 2006 (the Bill) that the Bill be passed, we consider that the report raises significant issues that should be addressed through amendments to the Bill.

The Bill represents an opportunity to implement fundamental change to the child support scheme.

Labor and Greens Senators do, however, hold serious concerns about the potential impact of the Bill on low income households. These concerns are particularly acute when considered alongside income cuts that many of these same households are already experiencing as a result of welfare changes implemented by the Government earlier this year.

A number of other issues were raised during the public hearings, including the need for some amendments proposed by the chair of the Ministerial Taskforce, Professor Parkinson. While these are noted in the Chair's report, it stopped short of actually recommending that they be pursued. Labor and the Greens believe that they should be.

Conduct of the Inquiry

Labor and Greens Senators are seriously concerned about the unacceptably short timeframe for this Inquiry. All witnesses appearing before the Committee were critical of the timeframe.[1]

Labor and the Greens believe that it is unreasonable for the Government to expect witnesses to respond and express their views on such a complex and lengthy piece of legislation in such a short period of time.

While Labor and Greens Senators are mindful that there are major implementation issues with aspects of the Bill, these issues are not serious enough to have warranted the restricted timeframe imposed on the Committee by the Government.

[1] See for example Men's Rights Agency, Submission No. 8, page 1; National Council of Single Mothers and their Children, Submission No. 11, page 1; and Committee Hansard, Canberra, 4 October 2006, page 1.

Labor and the Greens are also concerned by the failure of the Child Support Agency (CSA) to either appear before the Inquiry or to lodge a submission. As the agency responsible for administering the new system, and the beneficiary of substantial additional funding under the Bill, Labor and the Greens consider that the CSA had a responsibility to give evidence to the Inquiry.

The need for child support reform

Fundamentally, Labor and the Greens accept the need to reform the child support scheme. The existing scheme has been in place since 1989, and most witnesses appearing before the Inquiry accepted that circumstances had changed to the point where change was needed.

Labor and the Greens' approach to child support reform are guided by a set of core principles. Central to these is a belief that the interests and wellbeing of the children must always come first. As far as possible, child support policy should serve to support the child in secure and economically sustainable and acceptable conditions.

Labor and Greens Senators take the view that policy should aim to ensure that both parents contribute to the wellbeing of the children and, as far as possible, maintain active and ongoing roles in their lives. Labor and the Greens believe that shared parenting is beneficial to both children and their parents and that there should be a fair balance between parents in meeting the costs of a child's upbringing.

To serve the interests of children and parents, the CSA needs to be competently administered and sufficiently resourced. Labor and the Greens advocate strong enforcement and compliance measures so that the obligations of parents are met.

Labor and Greens Senators note that the Parliament and the Government have undertaken a number of reviews of the scheme in recent years, culminating in the report of the Ministerial Taskforce on Child Support which was handed down in 2005.

Labor and the Greens consider that the work of the Taskforce provided a strong basis for reform, and notes that its recommendations form the basis of the Bill.

Financial impact of changes in the Bill

Labor and the Greens have previously expressed its concern about the financial impact of the Government's reform package on low income households.

These households are among the most financially disadvantaged group in our society. In their submission to the Inquiry, the National Council of Single Mothers and their Children (NCSMC) cite research that 46 per cent of sole parents with dependent children live on very low incomes, and that these families are at the highest risk of poverty of all family types.[2]

[2] National Council of Single Mothers and their Children, Submission No. 11, pages 4 and 5.

The Committee also heard evidence that single parents – predominantly women – now face further cuts in income on top of the reductions that occurred as a result of the welfare changes implemented by the Government on 1 July 2006.[3]

Labor and Greens Senators are concerned that the combined effect of the Government's welfare cuts and the new child support scheme could result in these families being pushed further into financial hardship, and in the worst case scenario, into poverty.

Witnesses from the Australian Institute of Family Studies (AIFS) indicated that no work had been done on modelling the combined impact of the welfare changes and the prospect of reduced child support payments on single parents.[4] This is a significant concern for Labor and Greens Senators, given the already dire financial circumstances confronted by these families.

Labor and Greens Senators acknowledge the concerns of single mothers' groups that up to 60 per cent of resident parents will receive lower child support payments under the new formula for calculating these payments.[5] We also note that Professor Parkinson does not disagree that a significant proportion of single parents will receive lower payments as a result of the Bill, claiming in additional information to the Committee that:

> 'My best guess is that the majority of assessments will go down. My estimate of 55 per cent is probably much closer to the mark than 60 per cent. It is nonetheless, just a very general estimate'.[6]

However, Labor and the Greens acknowledge other evidence from Professor Parkinson and AIFS that reduced income due to the formula itself may be offset by other aspects of the reform package and the 250 per cent real increase in family payments since the current formula commenced in 1989.[7]

However, calculations by NCSMC that take into account the drop in income due to reduce child support and the expected increase in family payments still result in an overall drop in income of between $10 and $20 per child week – and this is without the impact of welfare to work factored in.[8]

It is further noted that the 250 per cent real increase in family payments since 1989 could simply reflect that these payments came off a low base. The fact that a large

[3] See for example Committee Hansard, Melbourne, 29 September 2006, page 22; and Committee Hansard, Canberra, 4 October 2006, pages 24-25.

[4] Committee Hansard, Melbourne, 29 September 2006, page 4.

[5] National Council of Single Mothers and their Children, Submission No. 11, page 3.

[6] Professor Patrick Parkinson, Additional Information, 9 October 2006, page 1.

[7] Committee Hansard, Melbourne, 29 September 2006, page 2; and Committee Hansard, Canberra, 4 October 2006, pages 33-35.

[8] National Council of Single Mothers and their Children, Submission No. 11, page 6.

number of single parent families live below the poverty line still remains, and the question of how many more may be doing so as a result of these changes needs to be addressed by the Government.

Labor and the Greens are very concerned, however, that there is no publicly available modelling to estimate the impact of the new system on existing child support recipients and payers. The lack of analysis is doubly concerning given that the Government has made no provision to protect low income families who may lose income as a result of the Bill.

It is our understanding that the CSA will reassess all clients' payments under the new formula once the Bill is passed and before it comes into effect on 1 July 2008.[9]

The Department of Families, Community Services and Indigenous Affairs, as the agency with policy responsibility for the Bill, should produce modelling to quantify the impact on existing child support customers, and make provision to protect low income households who may lose income. Such protections are critical given the risk of poverty already confronted by these families.

Labor and Greens Senators are also concerned that only one parent under the welfare to work changes can be registered as a 'principal carer', and that this could result in further reduction in income for low income shared parenting.

While the Department did not produce any analysis of the impact of the Bill, it noted that work was in progress to establish monitoring and evaluation systems once the new formula is introduced.[10] The Department indicated that it would work with other agencies to monitor the combined impact of the child support reforms and other recent policy changes, including the cuts to income support for single parents that occurred as part of the Government's welfare changes.

Labor and Greens Senators take the view that ongoing monitoring and evaluation is critical to the successful implementation of the new scheme. If the changes do lead to income reductions for low income families, it would undermine any other improvements that may occur in the operation of the overall child support scheme.

[9] Committee Hansard, Canberra, 4 October 2006, pages 43-44.

[10] Committee Hansard, Canberra, 4 October 2006, page 45.

Other issues

Unpaid care

Labor and Greens Senators acknowledge the ongoing concern of single mothers' groups that the proposed new child support formula does not adequately recognise the costs of unpaid child care which is typically borne by single mothers.[11]

Labor and the Greens note in particular the view of the NCSMC that unpaid care is accounted for, at least in part, by the different self support component for resident and non-resident parents under the existing child support formula.[12]

In evidence to the Inquiry, Professor Parkinson noted that the sliding scale effect of the new formula meant that if the resident parent has a very low income, then typically the non-resident parent will pay more child support. As the income of the resident parent rises, child support from the non-resident parent reduces. [13]

However, Labor and the Greens consider that Professor Parkinson's comments on this issue were in a sense contradictory. Elsewhere he argued that the primary concern of the formula was financial and that it was difficult, if not impossible, to effectively account for the value of unpaid care. It is unclear how the value unpaid care or forgone income was in fact incorporated into the formula.

The argument put forward by Professor Parkinson when further questioned on this issue was that the main way in which financial provision was made for unpaid care was in the way that the Family Court assigned assets on separation, effectively implying that this dealt with the issue and hence it was of lesser or no concern to child support calculation. However, this provision in effect only applies where there are significant assets to divide – meaning that this only benefits divided families who had significant assets prior to separation, thus impacting more unfairly on those on a low income who have few or no assets.

Labor and Greens Senators note that measuring the monetary value of unpaid care has always been problematic for policy makers. For this reason, Labor and the Greens commend the work undertaken in this important area by AIFS, which was briefly outlined in evidence to the Inquiry.[14]

[11] National Council of Single Mothers and their Children, Submission No. 11, pages 2-3; and Council of Single Mothers and their Children, Submission No. 19, page 3.

[12] Committee Hansard, Canberra, 4 October 2006, page 28.

[13] Committee Hansard, Canberra, 4 October 2006, page 38.

[14] Committee Hansard, Melbourne, 29 September 2006, pages 2-3.

Strengthened compliance regime and new minimum payments

Labor and the Greens welcome the long overdue enhancement of the Child Support Agency's compliance capabilities, which will better enable the agency to pursue non-resident parents who fail to provide any support for their children. The fact that only half of all non-resident parents meet their child support obligations in full and on time is a problem that has needed to be addressed for some time.

Labor and Greens Senators also welcome the introduction of a minimum payment for parents who deliberately minimise their income to avoid paying child support. However, Labor and the Greens recognise the concerns of Professor Parkinson that these provisions of the Bill may need to be strengthened to remove doubt.[15]

Concluding comments

Labor and Greens Senators support the Committee's recommendation that the Bill be passed, subject to amendments that address issues raised, and our concern that low income single parents are not worse off as a result of the Bill.

Labor and Greens Senators reiterate their serious reservations about the Government's decision to proceed with the Bill without proper provision to protect low income families who may lose income as a result of the changes, and the failure of the Government to quantify the impact of the Bill on existing child support recipients.

Labor and the Greens also believe that some significant issues are raised in the Committee's report and consider that these need to be addressed through amendments to the Bill.

Senator Claire Moore
Deputy Chair
Labor Senator for Queensland

Senator Rachel Siewert
Australian Greens Senator for
Western Australia

Senator Carol Brown
Labor Senator for Tasmania

Senator Helen Polley
Labor Senator for Tasmania

[15] Professor Patrick Parkinson, Submission No. 14, page 2.

APPENDIX 1

Submissions received by the Committee

1 Hogan, Mr Brian

2 Mallard, Mr Robert (QLD)

3 Australian Institute of Family Studies (VIC)

4 Mitchell, Mr Ross C (NSW)

5 Lawrence, Dr M C (VIC)

6 Hardidge, Mr David (QLD)

7 Hancock, Mr Tony

8 Men's Rights Agency (QLD)

Supplementary information

- Graph on 'Step Change in Cost of Child(ren) at 13 years' tabled at hearing 4.10.06
- Additional information provided following hearing 4.10.06, dated 10.10.06

9 Non-Custodial Parents Party (NSW)

10 Fehlberg, Professor Belinda and Young, Ms Lisa (VIC)

11 National Council of Single Mothers and their Children Inc (NCSMC) (SA)

12 Kallinosis, Mr Lucas (NSW)

13 Department of Families, Community Services and Indigenous Affairs (ACT)

Supplementary information

- Response to issues raised at hearing 4.10.06, dated 5.10.06

14 Parkinson, Professor Patrick (NSW)

Supplementary information

- Additional information provided following hearing 4.10.06, dated 9.10.06

15 Mitchell, Mr Ross (NSW)

16 SPARK Resource Centre Inc (SA)

17 Lone Fathers' Association Australia Inc (LFAA) (ACT)

Supplementary information

- Supplementary submission provided following hearing 4.10.06, received 5.10.06

18 Oorloff, Mr Henry St Clair (WA)

19 Council of Single Mothers & their Children (CSMC) (VIC)

20 Himelfarb, Mr Jerry (NSW)

21 Hickey, Mr James (VIC)

22 Law Council of Australia, Family Law Section (ACT)
23 Caroll, Mr Martin
24 Brown, Mr Steven (QLD)
25 Royal, Mr Steve (SA)
26 Barrow, Ms Jane
27 Summers, Kimbal
28 Csacalc.com
29 Roy, Ms Nicola
30 Men's Confraternity Inc (WA)
31 Pitt, Mr Michael (SA)

Additional information

Australian Family Support Services Association

Booklet - *Wake Up! Marriage Breakdown,* Geoff Brayshaw, tabled at hearing 4.10.06

Ms Kathleen Ng

Transaction Statements relating to child support tabled at hearing 4.10.06

APPENDIX 2

Public Hearings

Friday, 29 September 2006
Stamford Plaza Hotel, Melbourne

Committee Members in attendance

Senator Humphries (Chair)
Senator Moore (Deputy Chair)
Senator Adams
Senator Patterson
Senator Siewert

Witnesses

Australian Institute of Family Studies

Professor Allan Hayes, Director

Dr Matthew Gray, Deputy Director (Research)

Dr Bruce Smyth, Senior Research Fellow

Australian Family Support Services Association

Mr Geoff Brayshaw, Founder

Ms Kathleen Ng

Council of Single Mothers and their Children

Dr Katrina Haller, Member, Management Committee

Ms Jessica Permezel, Project Worker

Wednesday, 4 October 2006
Parliament House, Canberra

Committee Members in attendance

Senator Humphries (Chair)
Senator Moore (Deputy Chair)
Senator Adams
Senator Siewert

Witnesses

Lone Fathers' Association Australia Inc

Mr Barry Williams, National President

Mr Jim Carter, Vice President

Law Council of Australia

Mr Ian Kennedy AM, Chairman, Family Law Section
Mr Denis Farrar, Treasurer and Executive Member, Family Law Section

Men's Rights Agency

Ms Sue Price, Director

National Council for Single Mothers and their Children

Dr Elspeth McInnes, Convenor
Ms Jac Taylor, Executive Officer

Professor Patrick Parkinson

Department of Families, Community Services and Indigenous Affairs

Mr David Hazelhurst, Group Manager, Families Group
Dr Pamela Kinnear, Branch Manager, Child Support Policy Branch
Ms Allyson Essex, Director, Child Support Policy Branch

APPENDIX 3

DEPARTMENT OF FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS RESPONSES TO MATTERS RAISED BY THE LAW COUNCIL OF AUSTRALIA[1]

Social Security Appeals Tribunal (SSAT)

1. The SSAT is not an appropriate forum for inter partes disputes.

Response

The SSAT is to review administrative decisions made by the CSA, not to adjudicate inter partes disputes. A parent is objecting to a decision by the Registrar or delegate of the Registrar – they are not actually disputing with the other parent, although the other parent may be joined as a party to the review.

FaCSIA has received advice that there is no constitutional impediment to the SSAT reviewing CSA administrative decisions. It is currently an anomaly to not have these government decisions reviewable by a tribunal.

2. It is inappropriate for inter partes proceedings to be able to be initiated by telephone, as this does not require sufficient consideration of the implications of beginning the review process.

Response

SSAT review is intended to be an accessible process. Application by telephone is currently available for review of Centrelink decisions. In most cases, existing SSAT procedure has been adopted for review of CSA decisions, as these are established and tested processes that work well for a similar client group. Centrelink decisions may also involve two separated parents, for example in FTB matters. How these processes work in practice will be monitored by the SSAT and FaCSIA.

3. It should be made explicit that parties can be represented by lawyers, and that there should be provision for a party (or their representative) to question another party.

Response

There is no restriction on parents' being accompanied to SSAT hearings, including by a legal representative. This is explicitly stated in SSAT documentation, including on their website and the forms for application for review. However, the use of the SSAT

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1 *Submission* 13, Supplementary Information, 5.10.06, pp.2-4 (FaCSIA).

as a review mechanism is a deliberate step away from adversarial court proceedings. Allowing cross-examination would be likely to make parents feel that they need to have legal representation, which is in conflict with the SSAT's aim of providing economical, informal and quick review. SSAT members are experienced in fact-seeking on their own initiative.

4. The SSAT should be able to make cost orders against the other party for legal representation.

Response

As noted above, the use of the SSAT as a review mechanism is a deliberate step away from adversarial court proceedings to review an administrative decision. The respondent party is the CSA, not the other parent (who may be joined as an additional party). In these circumstances the awarding of costs is not appropriate.

5. There is no provision for the SSAT to test factual assertions or compel the production of evidence – this is a denial of natural justice.

Response

The SSAT can test facts and require people, including the Registrar, to provide evidence through documentation or, more rarely, personal appearance. There is provision for the SSAT to pay the costs of people who are required to provide evidence.

6. Written reasons for decision should always be given.

Response

Parties can request written reasons within 14 days of the oral decision and the SSAT must provide written reasons on request (s.103X of the Bill). The SSAT has indicated that it will provide full written reasons in all but the simplest cases. Parties can request written reasons where they are not given, and the possibility of requesting these will be indicated on the documentation provided. These provisions will be reviewed during 2007.