

## NON-CUSTODIAL PARENTS PARTY

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22 September 2006.

Committee Secretary,  
Community Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA. ACT. 2600.

Dear Sir,

**Re. Submission to the Inquiry into the Provisions of the Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Bill 2006.**

We would like to make a submission to the Senate Standing Committee for Community Affairs.

This is with regard to the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Bill 2006* (referred to in this submission as the *Bill*).

### **1. Introduction**

The *Bill* is heavily based on the Child Support Task Force Report “*In the Best Interests of Children — Reforming the Child Support Scheme.*” The previous Minister, the Hon. Senator Patterson released this report on 14 June

2005. The current Minister, the Hon Mal Brough MP, presented the *Bill* to Parliament on 14 September 2006.

Unfortunately the Child Support Task Force only looked at the child support issue on a very narrow basis - i.e. how to make the child support formula work better. (Refer page 102 of the Report which states at the start of paragraph 7.1 “*The Taskforce does not propose any change to the fundamentals of the Scheme*”)

The fundamental issue that should have been addressed was whether child support should be controlled by the parents or whether the Government should control child support.

The Government has in place the second approach through the use of a child support formula. This is supported by registration system imposed by the Family Tax payment system. This forces both parents to participate in the Scheme.

Australia’s child support scheme does not work. It creates an artificial disincentive for both parents not to work. In 2005, at least 294,887 liable parents for child support were forced in either unemployed or into below-taxable income levels (refer page 33 of the CSA’s *Child Support Scheme Facts and Figures 2004-2005*). A similar number of custodial parents see receiving Centrelink payments as a more attractive option.

Prior to the establishment of the Child Support Scheme in 1989, the level of child support had been determined on a case-by-case basis. This worked and it could have been made to work better. However the Government then became very much involved. This is by dictating what the liable parent should pay. Now the system does not work at all.

This is emphasized by the fact that there are now currently 306 pages of legislative changes contained in the proposed *Bill*. There are also a further 230 pages in the *Explanatory Memorandum* trying to explain these changes. Unfortunately Professor Parkinson and his Child Support Task Force did not consider the fundamental issue to the child support scheme – it is the parents.

Our specific comments on the proposed *Bill* and the *Explanatory Memorandum* are provided below:

## **2. Page 20 of the Explanatory Memorandum**

### **The Fourteen (14) Percent Threshold Level**

It has to be recognised that child support is not just a bill to be paid. Child Support should be based on the relationships that underpin it. The *Bill* fails to recognize this as an issue.

The changes to the Formula will make the current child support system worse. For example, it will provide incentives for the custodial parent to reduce contact to below the new fourteen (14) per cent threshold level (currently 30 percent).

Normally less contact equates to less child support paid.

## **3. Page 132 of the Explanatory Memorandum.**

### **Restriction of Publication of SSAT Proceedings.**

(Sections 103K and 110(X) of the Proposed *Bill*).

Freedom of the Press is one of the hallmarks of our democratic society. The current secrecy of our family law proceedings is anti-democratic. At the same time, it perpetuates judicial errors.

Family law proceedings always used to make for good press coverage in Australia. Section 121 of the *Family Law Act 1975* now states that it is an offence to publish any family law proceedings.

Sections 103K and 110(X) of the proposed *Bill* follow the same line

There is no justification for the effective media “*blackout*” of the proceedings conducted by the proposed Social Security Appeals Tribunal (SSAT).

It is proposed that if anyone who is convicted of that offence could be imprisoned for a period not exceeding one (1) year. This is a very harsh penalty. As a result, it can be presumed that publication of proceedings

before SSAT (or any appeals) will be effectively stopped in the mainstream Australian press

Open debate and discussion of judicial and administrative decisions should be vital to our democratic process. The press should be allowed to report these types of proceedings in Australia.

At the same time, there would need to be some restrictions to prevent sensationalism of some cases from occurring.

For example, in the Magistrates Court in the United Kingdom (and we note not in all family law courts in the UK), journalists can provide the following details in relation to family law matters:

- The names, addresses and occupations of the parties and witnesses.
- The grounds of the application and a concise statement of the charges, defences and counter-charges in support of which evidence is given.
- Submissions on any point of law arising in the course of the proceedings and the decision of the court thereon
- The decision of the court and any observations made by the court in giving it.
- The publication of childrens' names and the place of schooling are not permitted.

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. Under the proposals contained in Sections 103K and 110(X), they will not have this right.

#### **4. Pages 198 and 199 of the *Explanatory Memorandum*.**

**Link between Family Tax Benefit payments and Child Support and the De-Facto Child Support Registration System.**

Australia has a range of policies with the objective of providing income security to families with children. One of these systems is Centrelink's Family Tax Benefit Part A payments. These payments were originally called child endowment payments and then subsequently family allowance payments before falling under the present title.

Jack Lang introduced child endowment payments into New South Wales in 1927. Sir Robert Menzies later introduced it nationally in 1941. This payment system was meant to contribute to the cost of bearing and raising children. This was very admirable.

Unfortunately this system is now being used as a de-facto child support registration system. It is also being used to contribute to the ever-increasing size of our government bureaucracy.

For custodial parents to receive up to the maximum Family Tax Benefit Part A payment (\$5,029 per year per child), the Government has said that they have to apply to join the child support scheme. Otherwise these parents only receive the minimum Family Tax Benefit payment (\$1,733 per year per child).

It can be estimated that the number of custodial parents in Australia in 2006 is 750,00 (Census statistics and ABS 3310.0).

Similarly the number of payees in the Child Support Scheme is about 700,000. This is based on there being 630,701 payees in 2003, 661,243 payees in 2004 and 680,815 in 2005 (refer page 7 of the CSA's *Child Support Scheme Facts and Figures 2004-2005*).

The percentage of custodial parents in the Child Support Scheme is therefore  $700,000 / 750,000$  or 93 per cent of the target group.

This de-facto registration process has been very effective.

Once in the Child Support Scheme, the non-custodial parent is deprived of freedom of negotiation. The non-custodial parent just cannot leave the Scheme. That is not without the permission of the custodial parent.

Similarly, the custodial parent will only receive the minimum Family Tax Benefit Part A payments should she or he try to leave the Child Support Scheme.

Deductions are also made from the Family Tax Benefit Part A payments. These deductions are used to pay for the cost of running the Child Support Agency and to provide employment in 2005 for 3,249 public servants in that organisation. In 2005, this cost was \$274.7 million. Refer pages 59 and 7, respectively, of the *Child Support Scheme Facts and Figures 2004-2005*.

The Child Support Scheme closes the doors of opportunity to the non-custodial parent. Even obtaining a mortgage becomes an impossibility for the non-custodial parent. Hope is lost and unemployment soon follows.

#### **5. Page 199 to 211 and 218 of the *Explanatory Memorandum*.**

#### **Levels of Contact to increase to obtain the Health Care Card.**

We specifically refer to pages 199 and 218 of the *Explanatory Memorandum*.

Under current legislation, health care cards are available to obtain access to the *Pharmaceuticals Benefits Scheme (PBS)* and free ambulance travel. Access to health care cards is based on income levels (and not on asset levels). As a result, many non-custodial parents have health care cards.

However also under current legislation, the non-custodial cannot have their children included as dependent. That is unless they are in receipt of Family Tax Benefit payments (refer section 27 of the *Family Assistance Act*).

Currently to be in receipt of the Family Tax Benefit, the non-custodial parent has to have contact at least 10 per cent of the time (as arbitrarily determined under the rules of the *Family Assistance Act*).

Many non-custodial parents have contact with their children less than 10 per cent. Often it is necessary for them to purchase prescribed medicines for their children during this contact period. Perhaps even sometimes they may even have to take their children to hospital by ambulance.

However these parents are not covered for these payments in the usual way.

It is noted that provision may or may not exist for the children to be covered under the custodial parent's health care card. However it is not always practical for non-custodial parents to make use of this provision for obvious reasons.

Unfortunately and with possible dire consequences, it is now proposed that the threshold level of contact will be increased to 14 per cent (refer pages 199 and 218 of the *Explanatory Memorandum*).

It is noted that this also coincides with a probable push by the custodial parent to reduce contact to below fourteen (14) per cent (refer our comments on page 20 of the *Explanatory Memorandum* contained on page 2 of this submission)

Therefore, while the non-custodial parent may be able to access the *PBS* system and free ambulance for themselves, a lot more non-custodial parents will find that they cannot access the same services for their children.

The threshold for this contact should be zero. Children do have contact with non-custodial parents from zero to 14 per cent of the time.

## **6. Conclusion**

Former US President, Ronald Reagan once said that the scariest thing was to hear someone saying, "*I am from the Government. I am here to help you*".

The Australian Government has forgotten this piece of home-spun logic.

Instead, the Government has recently announced the employment of 120 investigators by the Child Support Agency with a budget of \$143 million over four (4) years.

One of the chief tasks of the investigators will be to trawl through the tax returns of child support payers. As stated in a media release by the Child Support Agency, this is to search for assets that may be able to be liquidated to provide for increased child support payments.

The Laffer Curve holds that government revenues actually diminish when tax rates are set too high. Basically, people lose their incentive to work.

They earn less money and therefore pay less in the way of taxes.

On the other hand, when you lower the tax rate, you unleash people's entrepreneurial zeal and the government's tax receipts increase and welfare payments reduce.

For the same reason, no one benefits from a formula-based Child Support Scheme – neither the parents, the children, the taxpayer nor the Government, which receives less taxes and pays more welfare.

We believe that the best solution is to repeal the existing child support legislation and abolish the Child Support Agency. The specific child support legislation that needs to be repealed is the *Child Support (Assessment) Act 1989* and the *Child Support (Registration & Collection) Act 1988*.

Adequate legislation currently exists under the *Family Law Act 1975* to replace this repealed legislation. For example, *Section 66* of the *Family Law Act* covers child maintenance provisions.

This will result in the parents being involved in decisions that affect their children and not the Government as it is now.

Trusting that these details are satisfactory.

Yours faithfully

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