

# **Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Bill 2006**

FaCSIA Submission to the Senate Standing Committee on  
Community Affairs, September 2006

## ***Introduction***

The Department of Families, Community Services and Indigenous Affairs (FaCSIA), through the Minister for Families, Community Services and Indigenous Affairs, is responsible for child support policy. In this capacity, the Department assisted the Ministerial Taskforce on Child Support to review the Child Support Scheme, assisted the Government to develop its response to the Taskforce recommendations, and took primary responsibility for drafting the Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Bill (the Bill) to implement the Government's decision to reform the Child Support Scheme in line with the Taskforce recommendations.

On 28 February 2006, the Government announced that it would undertake, in three stages over two years, a major overhaul of the child support scheme to deliver a system that would act in the best interests of children. Stage 1 was implemented in July 2006 and this Bill provides the basis for implementation of Stages 2 and 3 of the child support reforms announced by Government.

The Bill was drafted in close consultation with all affected Government agencies.

This submission is presented in three parts. Part 1 details the process of the review leading up to the Government's decision to reform the Child Support Scheme. Part 2 outlines the elements of the reforms that have already been implemented in Stage 1. Part 3 then details the key elements of Stages 2 and 3 that are the subject of the Bill.

## **1. *Background to the reforms***

Prior to 2003 the Child Support Scheme (the Scheme) had been the subject of several policy reviews since its introduction in 1988–89. These reviews suggested various amendments to the Scheme but not all were accepted by Parliament. Some minor changes to the Scheme were made, but there has not been a major overhaul like the currently proposed reforms.

## **‘Every picture tells a story’**

*Every picture tells a story* was a report of the House of Representatives Standing Committee on Family and Community Affairs tabled in December 2003. In response to widespread community concern, it looked at issues faced by families after separation, including custody of children and child support, and received more than 1700 submissions. The Committee recommended certain limited changes to the Child Support Scheme and the establishment of a Ministerial Taskforce to conduct a detailed review.

## **Ministerial Taskforce on Child Support**

The Government established the Ministerial Taskforce on Child Support (the Taskforce) in August 2004 as part of the Government response to the *Every picture tells a story* report. The Taskforce was chaired by Professor Patrick Parkinson, Head of the School of Law at the University of Sydney, and comprised experts in the fields of research on separated families, the costs of raising children, social and economic policy, and family law. It was supported by a Reference Group that included members from organisations representing Child Support Agency clients and their interests. The Taskforce:

- conducted extensive research on the costs of children, post-separation parenting, and community expectations,
- analysed Ministerial correspondence and submissions to the House of Representatives Standing Committee, and
- examined the current impact of the scheme on the living standards of both resident and non-resident parents, and
- examined the child support systems of other countries in the light of social and economic developments in Australia since the establishment of the Scheme in 1988.

In its report the Taskforce recommended extensive reforms to the Scheme, including a new child support formula that is based on new research on the costs of children in Australia, that more fairly divides the costs between parents and that improves the recognition of the costs of contact for non-resident parents. It also recommended improvements to compliance and enforcement, enhanced flexibility for parents who wish to make agreements about child support payments, extra support to parents to help them agree about their parenting arrangements; and improved transparency and accountability of child support decisions.

## **Government response**

The Taskforce’s recommendations were examined in detail by an interdepartmental Steering Group comprising representatives from the FaCSIA, the Department of Human Services, Centrelink, the Child Support Agency and the Attorney-General’s Department. Other agencies including the Department of Prime Minister and Cabinet, the Department of Finance and Administration, Treasury, the Department of Employment and Workplace Relations and the Australian Taxation Office were also involved in Steering Group meetings.

The Steering Group found that the majority of the recommendations could and should be implemented, some with minor amendments to improve how they work.

The Minister for Families, Community Services and Indigenous Affairs announced on 28 February 2006 that it accepted the vast majority of the Taskforce's recommendations, which formed an integrated package that would reduce conflict between separated parents and encourage shared parenting by introducing a system that is fairer and puts the needs of children first.

Given the extensive nature of the recommendations, and the complex legislative and technological implications, Government announced that it would introduce the reforms in three stages – commencing on 1 July 2006, 1 January 2007 and 1 July 2008.

Stages 1 and 2 included changes that would address pressing concerns in the child support system, but which could be implemented with minimal legislative and systems-based changes. However, due to complex legislation and significant re-build of the Information Technology systems in the Child Support Agency and Centrelink, and the need to align the commencement of the new formula with the financial year, implementation of the new formula and associated changes is not possible until July 2008.

## **2. Reforms implemented 1 July 2006**

### **Stage 1 Reforms**

Stage 1 of the reforms was implemented on 1 July 2006 and included:

- **An increased minimum payment**

The \$5 per week minimum payment was increased to just over \$6 per week and it will be indexed yearly to the Consumer Price Index (CPI), ensuring that the minimum child support payments keep pace with inflation.

- **Recognising non-resident parents on income support who have contact with their children**

Non-resident parents on Newstart or related payments who have care of their child for one night or more per week are now eligible to receive the 'with child' rate of payment (an extra \$16.50 per week) to recognise the costs of care.

- **Introducing fairer assessment of the capacity of parents to earn income**

Parents can be required to pay additional child support (or be entitled to receive less) if the Child Support Agency determines they have a higher capacity to earn income than represented by their taxable income. The intention is to prevent parents from deliberately reducing their work hours to avoid paying child support. However, under previous arrangements, decisions were made even when there had been legitimate changes to a parent's circumstances such as new caring responsibilities or the loss of their job. This change limits the circumstances under which a parent's income for child support assessment purposes can be increased. Additional guidance is also provided for decision makers to improve consistency and clarity of decisions.

- **Reducing maximum payments**

Australian research on the costs of children shows that non-resident parents on high incomes pay child support in excess of the cost of their children under the current formula. The new child support formula to be implemented from 1 July 2008 will bring payments into line with the costs of children. In the interim, the amount of income above which no additional child support is payable was reduced from \$139,347 to \$104,702 for child support periods which commenced in 2006. Higher income earners still pay substantial amounts of Child Support. For example a non-resident parent with earnings of greater than the new cap with a low level of contact with his or her two children (both under 12 years) still pay around \$24,600 per annum in child support.

- **Enabling non-resident parents to spend a greater percentage of their payments directly on their children**

Previously, a non-resident parent could direct up to 25% of their child support to pay for specific items essential for their children such as school fees or essential medical costs. Increasing this to 30% has improved the balance between resident parents having enough money available and the wishes of non-resident parents to have their say about how child support payments are spent.

### **3. *The Child Support Legislation Amendment (New Formula and Other Measures) Bill***

#### ***Stage 2 Reforms***

Stage 2 is scheduled to commence on 1 January 2007. Most of the key features of the Stage 2 reforms are contained in the Bill. They include:

#### **Independent review of Child Support Agency decisions**

Currently, parents who are unhappy with Child Support Agency decisions can only appeal them to the courts. This is expensive and time consuming. The Bill provides for an expansion of the role of the Social Security Appeals Tribunal<sup>1</sup> to include review of Child Support Agency decisions. This will improve the consistency and transparency of decisions and will provide a mechanism of review that is inexpensive, fair, informal and quick.

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<sup>1</sup> Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Bill 2006 (Child Support Reform Bill) Schedule 3 (pages 106-178) and Explanatory Memorandum pages 89-133.

## **Improving the relationship between the Child Support Scheme and the courts**

The Bill simplifies the relationship between the courts and the new Child Support Scheme, making the process easier and more responsive to parents' needs. This will happen in three ways:

- Access to court enforcement by parents: At present a resident parent cannot enforce payment of a child support debt through the court system while the Child Support Agency is collecting the ongoing child support payment. The Bill allows the resident parent to pursue court enforcement of the debt while the Child Support Agency continues ongoing collection<sup>2</sup>.
- Powers of courts determining child support matters: The courts presently have limited powers when seeking information currently available to the Child Support Agency. The Bill provides that a court hearing an application for enforcement of child support has the same powers as the Child Support Agency to obtain information in relation to either parent<sup>3</sup>.
- Powers of case management: 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.

### **Stage 3 Reforms**

Stage 3 is scheduled to commence on 1 July 2008. Most of the key features of the Stage 3 reforms are contained in the Bill. They include:

#### **The new child support formula**

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<sup>4</sup>. Under the new formula:

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

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.

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<sup>2</sup> Child Support Reform Bill Schedule 4 (pages 194-197) and Explanatory Memorandum pages 143-148.

<sup>3</sup> Child Support Reform Bill Schedule 4 (pages 191-194) and Explanatory Memorandum pages 134-143.

<sup>4</sup> Child Support Reform Bill Schedule 1 (pages 5-70) and Explanatory Memorandum pages 1-74.

## Costs of children

The Taskforce conducted extensive research and consultation into the costs of raising children in Australia, and benchmarked its research against international studies.<sup>5</sup> The Taskforce found there is no one 'fixed cost' of raising children and that the costs of children can only be properly estimated by taking into account certain family or household characteristics. The key characteristics that must be accounted for are that:

- 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.

Informed by the evidence base from its research, the Taskforce produced its own gross costs of children estimates. The Taskforce then reduced the gross costs of children by the amount of government contribution to the children through Family Tax Benefit Part A. In this way, the Taskforce arrived at the net costs of children to be used in the child support formula.<sup>6</sup>

The Taskforce developed a Costs of Children Table using its findings and conclusions about the net costs of children. The Table, which is included in the Bill<sup>7</sup>, is used in conjunction with the child support formula to assess separated parents' financial responsibility for their children. The Table:

- incorporates two age ranges (one for children under 13 and one for children 13 and over),
- calculates the costs of children as a proportion of the combined incomes of both parents, and
- differentiates between the costs of raising children in families with one child, two children and three or more children.

## Costs of care

The Bill provides that from July 2008, the levels of parental care in shared care situations will be defined under two categories that accord with the parents' percentages of care.<sup>8</sup> The categories are:

- Shared care (35% to 65%)
- Regular care (14% to less than 35%).

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<sup>5</sup> Summary Report of the Ministerial Taskforce on Child Support pages 5-6.

<sup>6</sup> Report of the Ministerial Taskforce on Child Support page 134 and Summary Report page 31.

<sup>7</sup> Child Support Reform Bill Schedule 1 Division 9 (pages 68-70) and Explanatory Memorandum pages 28-29.

<sup>8</sup> Child Support Reform Bill Schedule 2 Part 1 Item 59 (page 81) and Explanatory Memorandum page 80.

Where the non-resident parent has regular care of the child, 24 per cent of the cost of the child will be taken to be met directly by that parent. Where a parent has care of 35 per cent, 25 per cent of the cost is taken to be met directly by the parent, rising to 50 per cent of costs when care is shared equally.

Another part of the reforms incorporated in the Bill is to allow resident parents to keep all of their Family Tax Benefit except where there is shared care (35 per cent or more)<sup>9</sup>. The ability to split Family Tax Benefit can be a source of conflict, where arguments can occur over every percentage point of care. The costs of care are now recognised in the amount of Child Support payable.

The Child Support Registrar will generally use nights of care to determine a parent's percentage of care by reference to the number of nights a parent has care of the child. This is because in most cases, the infrastructure costs associated with overnight care (such as accommodation) account for the greatest cost of providing care. However, there will be some circumstances in which the Registrar can also consider daytime care in determining care percentages. Where parents agree that a parent's level of expenditure is equal to an amount of care, the Registrar can reflect this agreement in the parent's care percentages.

### **Elements of the new formula**

The new income shares formula has six variations to cover commonly occurring family situations that determine parents' capacity to contribute financially to the costs of raising their children.

All six variations account for:

- shared or regular care arrangements where both parents have at least 14 per cent care of a child in the child support case,<sup>10</sup> and
- the costs to a parent of caring for resident dependent children outside the child support case.<sup>11</sup>

Variations 3, 4, 5 and 6 account for the costs to a parent of children in the parent's other child support cases.<sup>12</sup>

Variations 2, 4, 5 and 6 account for cases in which a non-parent carer has at least 35 per cent care of a child in the assessment.<sup>13</sup>

Variations 5 and 6 account for cases in which only one parent's income can be used to calculate the assessment.<sup>14</sup>

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<sup>9</sup> Child Support Reform Bill Schedule 8 (page 257-298) and Explanatory Memorandum page 198-220.

<sup>10</sup> Child Support Reform Bill Schedule 1 Division 2 (pages 6-18) and Explanatory Memorandum pages 19-24 (see also Taskforce Recommendations 1.10 to 1.18).

<sup>11</sup> Child Support Reform Bill Schedule 1 Division 3 Subdivision C (page 23) and Explanatory Memorandum pages 12-14.

<sup>12</sup> Child Support Reform Bill Schedule 1 Division 2 Subdivision C (pages 10-12) and Explanatory Memorandum pages 44-58.

<sup>13</sup> Child Support Reform Bill Schedule 1 Division 2 Subdivisions C, D and E (pages 10-18) and Explanatory Memorandum pages 44-58 (see also Taskforce Recommendations 1.20 to 1.23).

<sup>14</sup> Child Support Reform Bill Schedule 1 Division 2 Subdivision D (pages 12-15) and Explanatory Memorandum pages 53-57.

These elements ensure the income shares formula results in fair and accurate assessments of child support in as many different situations as possible. 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.

## **Care arrangements**

Because the new formula takes greater account of the levels of care provided by each parent, the Taskforce made a number of recommendations to improve the way in which parents' levels of care and contact are determined under the Scheme.<sup>15</sup> The recommendations are reflected in the Bill through a package of measures designed to enable fair and flexible operation of the shared care rules under the new Scheme.<sup>16</sup> The measures 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.

The new measures about care arrangements aim to reduce conflict between separated parents and to support them to reach agreement about the levels of care on which their child support assessments are based.

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.<sup>17</sup> 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<sup>18</sup>. 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, 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.

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<sup>15</sup> Taskforce Recommendations 1.10 to 1.18.

<sup>16</sup> Child Support Reform Bill Schedule 1 Divisions 4 and 5 (pages 25 to 34) and Explanatory Memorandum pages 19-25.

<sup>17</sup> Child Support Reform Bill Schedule 2 Part 1 (page 78) and Explanatory Memorandum page 79.

<sup>18</sup> Child Support Reform Bill Schedule 1 Division 4 Subdivision B (page 27) and Explanatory Memorandum pages 19-20.

If parents cease to agree about the care arrangements set out in a parenting plan or court order, the Registrar will continue to base the assessment on the parenting plan or court order until such time as one or both parents can show they have sought to reach agreement on the matter. Where a parent can show they have sought to reach agreement with the other parent and the parents still cannot agree about the care arrangements, the Registrar can make a factual determination of the parents' care percentages. However, in line with the Taskforce's findings that it is not appropriate for the Child Support Agency to make a decision as to parents' care arrangements into the future in cases where the parents themselves cannot agree about the arrangements<sup>19</sup>, the Registrar's decision must be reviewed every six months.

The exception to the limitations on the Registrar's power to make factual care determinations is where a parent whose assessment is based on regular care (14% to less than 35%) is demonstrably not exercising that level of care, despite the child being made available to them. In this situation the Registrar can make a determination based on the actual pattern of care occurring, without requiring the parents to seek agreement about the changed care arrangements. The Registrar may also apply the care determination retrospectively to the child support assessment if this is appropriate.

### **Minimum payment**

Stage 3 of the reforms will implement the remaining Taskforce recommendations in relation to the minimum payment of child support.<sup>20</sup> In addition to indexing the minimum payment by CPI (implemented in Stage 1), Stage 3 will apply the minimum payment to each child support case up to a maximum of three cases.<sup>21</sup> Currently, a paying parent pays one minimum payment, which is divided among their cases if they have more than one case. Parents who have regular or shared care of a child are not liable for the minimum payment in relation to that child's case.

### **Annual rate of child support for low income parents not on income support**

The principle that parents should pay child support in accordance with their capacity to financially support their children means that parents should be liable to pay child support based on their total income. However, the use of taxable income as the basis of child support means that those parents who legally or illegally manage to minimise their tax also pay unrealistically low levels of child support.<sup>22</sup> These parents who are apparently on a low taxable income but not in receipt of government benefits are likely to have access to other income that they do not, or need not, declare as their taxable income.

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<sup>19</sup> Report of the Ministerial Taskforce on Child Support page 161-162.

<sup>20</sup> Taskforce Recommendations 1.24, 1.25 and 1.26.

<sup>21</sup> Child Support Reform Bill Schedule 1 Division 8 Subdivision B (pages 56-59) and Explanatory Memorandum pages 65-67.

<sup>22</sup> Report of the Ministerial Taskforce on Child Support pages 170-171.

The Taskforce recommended that parents who are not in receipt of income support payments but report an income lower than the maximum annual rate of Parenting Payment (Single) should pay a fixed payment of \$20 per child per week, which will increase each year in line with CPI.<sup>23</sup> This change will commence with the new child support formula on 1 July 2008.<sup>24</sup> If a parent can show that the total income available to them is actually less than Parenting Payment (Single) then the \$20 per child per week rate will not apply. This acts as a disincentive to parents' reducing their child support liability by manipulating their taxable income.

### **New treatment of second jobs and overtime to help with re-establishment**

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.

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% of total income will be able to be excluded, to ensure adequate support for the children.

### **Step-children without other support**

Parents who have financial responsibility for a step-child (because no other person can provide support for them) will now be able to apply to have the child considered when their child support liability is being calculated for their first family.

### **Changes to agreements for Child Support and lump sum payments**

The new Child Support Scheme will improve the process for parents wishing to make agreements. There will be better legal protection for parents who want to make long-term agreements and it will be easier to make shorter term agreements.

In addition, there will be increased flexibility for parents wishing to make an agreement for a lump sum amount (for instance, parents who wish to transfer ownership of the family home instead of making regular cash payments).

### **Parents who want to reconcile**

Currently, if parents reconcile and then separate again the processes for child support liability are overly complex and may be an obstacle to parents who wish to reconcile.

The new Child Support Scheme will simplify the process and parents will be able to suspend child support payments for a period of six months when they get back together. If the reconciliation fails, the resident parent can reinstate the assessment without having to make a new application, further reducing conflict between parents.

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<sup>23</sup> Taskforce Recommendations 1.27 and 1.28.

<sup>24</sup> Child Support Reform Bill Schedule 1 Division 8 Subdivision B (page 54-55) and Explanatory Memorandum pages 63-65.