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Senate Community Affairs Committee
Parliament House
Canberra
ACT 2600

Attention: Mr Humphery
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Dear Mr Humphery

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

Please find a summary response by the LFAA to the invitation by the Senate Committee to provide a written submission relating to the above Bill.

Given the very short deadline available to consider 300 pages of complicated legislation and 220 pages of explanatory memoranda, the response by the LFAA is necessarily limited at this stage. We may be able to provide more detailed comments later.

***Relationship of the legislation to family law generally***

The new Child Support Scheme is potentially a large improvement on the previous scheme, and the Government deserves to be warmly congratulated for the courage it has shown in introducing major reform in such a controversial and difficult area.

The effective working of the new Scheme will, however, depend to a large extent on whether the new Family Relationship Centres being established by the Government as part of its family law reforms do what they have been set up to do, namely encouraging greater involvement in the lives of children by both their parents. At this point in time there must be some questions about whether the FRC's will do this effectively.

Some large counselling organisations were still attempting to persuade the Government to drop the idea of "equal or substantial parenting time" even as the shared parenting legislation was passing through the Parliament.

Those organisations indicated that they were strongly opposed to being required to inform parents that they could consider an option of a child spending equal time with

each parent. That is, they disagreed with substantially equal time being an *option*, but if it was an option they disagreed with the option being *considered*, and if consideration was contemplated they disagreed with the option being considered to be a *possibility*, and if it was considered to be a possibility they were opposed to parents being *informed* of the possibility.

Yet those organisations subsequently, within months, received a large amount of funding to establish and run FRC's in various parts of Australia.

By contrast, none of the groups that had advocating shared parenting time and had been instrumental in developing the concept of the FRC's received any funding at all. There were even some anti-father groups funded. The LFAA regards this situation as highly unsatisfactory, and likely to be counterproductive to the Government's intentions.

The LFAA is also concerned about the failure to do anything about the frequent reluctance of State DOCS organisations to act on reports of abuse by some mothers of their children.

***Relationship of the legislation to the Task Force Report***

The proposed legislation for Stages 2 and 3 of the Government's implementation plan for the new Child Support Scheme follows fairly closely the recommendations in the Task Force Report and the decisions made on those recommendations by the Government.

***The stages of the implementation program***

The Government has announced previously that, under Stage 2 of its implementation plan for the new scheme, changes will, as from January 2007, be made to establish an independent review of Child Support Agency decisions, improve the relationship between the Agency and the courts, and give separating parents more time to work out their parenting arrangements before their family payments are affected.

Under Stage 3, which will operate from July 2008, changes will be made to establish a new formula for calculating child support, ensure a minimum payment for all children, provide a new and different treatment of jobs and overtime to help with re-establishment, provide for stepchildren without other support, introduce new change of assessment rules, change the rules relating to agreement on child support and lump-sum payments, and help parents who want to reconcile.

***The Second Reading Speech***

The Second Reading Speech states that"… we *now* know that while people with higher incomes spend more on their children and people with lower incomes they spend less as a percentage of their income." However, this has always been well known, and was certainly known to the Committee which designed the scheme in 1989. For political reasons, it was decided in 1989 to ignore the realities on that point, thereby giving rise to a great many problems with the Scheme over the years.

The statement in the Speech that, "The new formula, on the other hand, will explicitly be based on the *costs of children*, as drawn from Australian research showing the real cost of children for the level of the parents income and the children's ages" also needs correction.

The new formula does takes into account the fact that as parents incomes increase the percentage of that income spent on children reduces, and this recognition has led to a considerable improvement on the previous formula. However it is not true that the ”real costs” as calculated relate directly to the costs faced by a family in separation. These estimates of so-called “real costs” are primarily based on *intact* families. They are in fact estimates of what parents at different income levels *choose* to *spend* on their children in an *intact* family. In a separated family, on the other hand, circumstances are usually very different, and parents therefore need to choose a quite different expenditure pattern to deal with this.

Usually separation means a sharp reduction in the standard of living of a family, even if money income levels remain the same, and it is this reduced standard of living that must then be distributed fairly. It is usually *not possible* to maintain the standard of living of the children or the parents at the same level as before the separation. Neither the assumption about “intact” or the assumption that the same choices would be made in a separated family any longer applies in a separated situation. It is essential that policymakers understand this fundamental point. Otherwise, serious and fundamental mistakes will continue to be made in policy in this area, as they have for the last 20 years.

***Stage 1***

The LFAA continues to be concerned about some of the features of the earlier legislation in Stage 1 of the Government’s implementation program - particularly as they relate to “deeming” on the part of the CSA of clients’ capacity to earn income”. See the earlier submissions by the LFAA on those points.

There is a fundamental question as to how the CSA can determine, on the so-called “balance of probabilities”, that a major purpose of the parent’s decisions in relation to employment was to “affect the child support assessment” - and why such a low standard of “proof” is required in what may turn out to be a life-and-death matter.

The reality is that the vast majority of people working base their decisions on the amount of work they do, at the margin, on the *total* likely return from their efforts (at the margin) compared to the *total* cost of those extra efforts (at the margin). The total cost of those efforts include the personal effort involved, plus the cost of earning a living, tax paid, child support, HECS, and any other payments based on gross income. *Child support is not singled out,* any more than any other individual component is singled out. The vast majority of men wish to provide properly for their children, and if not subject to excessive intervention by government agencies, will do so in the normal way, through the CSA or privately.

The notion that the CSA, or anyone else, can determine that a particular decision on working hours was taken by a person “to affect the child support assessment”, rather than some other reason or combination of reasons, is naïve, or worse. If the personal

costs of extra work exceed the perceived total benefits from that extra work, a person will not wish to do the extra work. There is a huge difference between deciding to do something and being forced to do it.

These concerns need to be seen also in the context of the statement by the Full Family Court in a 1998 decision that, "A parent may be required or expected to work long hours or at more than one job if the parent has the capacity and the opportunity to do so, and if the children need greater support than they would receive if the parent was only to work shorter hours". The Full Court went on to make the further astounding claim that it was within the jurisdiction of a trial judge to conclude that a parent *should continue to work 80 hours a week* if there was a proven work history of such long hours." The effect of such an inhumane direction by a court on the relationship between a father and his children can well be imagined.

***Stages 2 and 3***

Areas in Stage 2 and 3 in which the Government has significantly diverged from the Task Force recommendations include the recommendation that, during the first five years after separation, parents using income from second jobs and overtime to help re-establish themselves should be able to apply to have their child support calculated taking into account their re-establishment costs.

The Government's legislation has amended the Task Force figure of five years to three years without adequate justification. It may be expected that this amendment will considerably reduce the usefulness of the provision.

A question also arises of why the provision applies only to parents who have undertaken second jobs and/or overtime *after* a separation. There may be many worthy cases where a parent has undertaken a second jobs and/or overtime *before* a separation who is equally or more deserving of consideration. This point has been made on many previous occasions by the LFAA but has never been adequately taken into account by the Government.

High-income non-custodial parents were previously paying far too high an effective marginal rate of tax-plus-child-support previously, and that needed correction. However, shifting the "cap" on child support payments to a lower income level, as now proposed, merely shifts the inequity to a different income level, namely, some middle income earners. This poor design feature in the scheme therefore continues. There is no good reason why the new arrangements applying to other income earners could not have been extended to high income earners as long as the amounts payable were set at reasonable levels. (See, for example, what other countries do in this area.)

Comments on provisions in individual schedules of the new legislation are shown below.

*Schedule 1*

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 13 and over compared with children 0-12 is

rather extreme. There has been payment parity between the two age-groups for nearly 20 years.

Payers have for many years paid rates which were too high for younger children, in the expectation that payment of a more moderate rate when the children were older would balance out total payments, as envisaged in the original design of the scheme. Many of these payers are now approaching retirement and looking towards financing retirement. There is a likelihood that having paid rates that were too high in the early years they may now have to pay rates that are too high in later years. Marginal effective rates of taxation may remain too high in some cases, or even increase further.

*Schedule 2*

The amendments in this schedule propose that in applying for administrative assessment in the future there should no longer be a distinction between eligible carer and liable parent applicants. Applications may in future be made simply by parents or non-parent carers.

This would appear to be an improvement to the existing arrangements.

*Schedule 3*

This schedule introduces review by an independent external body, the Social Security Appeals Tribunal (SSAT), of child support decisions which have been reviewed under the child support agency's internal review procedures. It is envisaged that the new process, being an inquisitorial rather than an adversarial one, may assist in reducing tensions between separated parents when resolving child support issues. Parents and certain other people affected by child support decision may appeal a decision of the SSAT to a court on a question of law. Parents will be able still to appeal directly to the courts in a number of situations.

It will be necessary to ensure that this provision does not in practice interfere with the rights of individuals to take their case directly to courts in a way that was previously possible.

*Schedule 4*

Proposed changes under the schedule will limit the time period for which a change of assessment can be backdated to 18 months before the liable parent or carer lodged the application, or the Registrar notified the parties of his or her intention to make a determination. But there are also other provisions which allow both the registrar and courts to overrule this provision.

It will be necessary to ensure that this provision is not administered in such a way as to interfere with repayments of child support paid in cases where paternity has been disproven.

*Schedule 5*

This schedule is designed to provide more flexible arrangements, with better legal protection, for parents who want to make agreements between themselves about the payment of child support. It will also detail how lump sum payments are treated, and will provide for the effect of agreements on family tax benefit payments.

The new lump sum arrangements recommended by the Task Force Report must arise from a binding child support agreement and the lump sum must at least equal the value of the total annual child support payable under an administrative assessment.

In order to remove the current blocking of some inter-parent agreements by Centrelink, both the Child Support Assessment Act and the Family Assistance Act will be amended to provide that once a child support agreement has been accepted by the two partners, FTP Part A will be assessed on the notional assessed amount of child support. The notional assessed amount of support is the amount that would have been paid but for the existence of the agreement between the partners. The notional amount will be reviewed at least every three years. Parents can also advise on a change in the level of care on the basis of care for the 12 months from the date of the review.

It appears that this latter would help separating parents by removing barriers to the selection of options such as reduced child support payments balanced by the lump sum payment, for example by allocating the family home to one of the parents.

*Schedule 6*

This schedule simplifies the processes and rules and for determination of orders made under the child support assessment act to depart from the administrative assessment provisions (also known as changes of assessment), making them clearer for parents.

As the main area of costs due to contact our calculated to be included in the child support formula itself, it would not be appropriate to be double dipping in respect of many of the items in the regular assessment process. However, in view of the great significance of transport costs in some cases, it would be inappropriate for the regular formula to incorporate extreme values in some of those cases, and separate assessment limited to high transport costs therefore seems a reasonable approach.

*Schedule 7*

This schedule states that, "Section 39 of the Child Support Registration and Collection Act deals with applications for liabilities which the payee has been collecting privately to become again enforceable under the Act.

"This might occur if the payer and payee are finding a private collection arrangement difficult to sustain. Presently, subsection 39 (5) provides that the registrar must grant the application if the payer is taken to have an unsatisfactory payment record, or if the registrar is satisfied that special circumstances exist in relation to the liability which make it appropriate to grant the application. However, the situation does not adequately balance the interests of the payer and the payee.

"Accordingly, subsection 39 (5) is amended to reverse the onus in order to make it easier for the payee to opt for collection of child support amounts by the registrar."

It is not clear why the existing arrangement does not adequately balance the interests of the payer and the payee. It is a simple matter for the Registrar to revert an arrangement to direct collection by the CSA in any case where this is justified.

An area where there is at present a real lack of balance between the interests of the payer and the payee is the situation where a payer would be perfectly capable of (and reliable in) making payments directly, but the payee for no good reason declines to cooperate. That is situation that does need to be changed.

*Schedule 8*

Consistent with Recommendation 1.14 of the Task Force Report, the existing rules relating to shared care will be amended to ensure that FTP parts A and B will no longer be split where an individual is providing care for a child for less than 35% of the time. Where an individual has care for 35% or more of the time, then a new methodology would generally apply to determine how FTP should be split. This methodology is set out in the table in the new section 59 of the Family Assistance Act.

This was an important recommendation by the Task Force. Its acceptance will be likely to have the effect of encouraging the parent who has less time with the children to maximise the amount of that time, as far as practicable, while at the same time providing a reduction in the present financial incentive to the other parent to oppose this.

***Further information and comment***

The LFAA will be happy to provide any further information and comment requested by the Committee that it can. The involvement of the LFAA in the deliberations of the Task Force itself has provided opportunities to both shape the recommendations on which the government is now acting and to develop further close familiarity with the details on which those recommendations have been based.

We look forward to cooperating with the Committee.

Yours faithfully

BC Williams
President

J. B. Carter
Policy Adviser

25 September 2006