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

The following is a supplementary submission by the LFAA to the above Inquiry.

Questions asked by the Committee

The Committee asked two questions at the hearing yesterday in relation to the material in the LFAA submission headed "Stages 2 and 3".

The LFAA submission stated that:

Stages 2 and 3

Re-establishment after separation

> "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.
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> "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.
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> "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."

This may be further explained by considering the case of two parents (A and B), both working to re-establish themselves after a separation, and working long hours at a second job or overtime in order to fund their re-establishment. One parent (B) has undertaken the extra work load only since the separation, whereas the other (A) had already been undertaking a second job or overtime prior to the separation.

Under the Government's present proposals, B would receive concessional treatment and be able to claim re-establishment expenses for three years, but A would not be. This is not equitable. There is no good reason why B should be regarded as more worthy to receive the concession, and it could be argued that, if anything, A is more worthy to receive it. While there may not be very large numbers of people involved, it is an important point of principle. The point has been raised with the Government on several previous occasions.

The FaCSIA response that a child support income is assessed under the formula and child support paid on that basis does not address the issue. The point is that concessions are available in this particular case to one group of individuals and not to another, although there is no good reason for discrimination.

The "cap", high effective marginal rates of "taxation", and inequity

> "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.)"

The point here is that having a "cap" in the formula, of the type at present in existence (and as proposed) produces a sharp kink in the effective marginal tax rate paid by payers at the point where the "cap" applies.

At present, at any income of around $120,000 per annum, for every extra $1,000 worth of work effort by the payer, he/she may retain maybe *$500* after income-tax, child support, and work expenses. At just below that level, he/she may retain a mere *$100* after income-tax, child support, and work expenses. The work disincentive for persons earning income below the cap is therefore many times higher than for persons earning income above the cap. The child support legislation is supposed to preclude work disincentives, but in the case of the "cap" it fails badly.

Shifting the "cap" from $120,000 per annum to $100,000 per annum does not solve the problem, other than (perhaps) for individuals with incomes in the range $100,000 to $120,000 per annum. It merely shifts the problem caused by the cap from one location to another. Under the proposed legislation there will be still be a massive work disincentive for people in the range below the $100,000 "cap". Research indicates that for most people in most circumstances an effective marginal taxation rate of more than about 75 percent will mean that they will not consider the extra effort to be worthwhile. It might therefore be expected that a marginal effective tax rate of 90% will be a near total disincentive to additional work.

The claim that at a certain point in the income range for intact families no more financial resources are allocated by the family to the needs/wants of children is wrong. A trip by the children to Saint Tropez for a skiing holiday may be a "discretionary expenditure", but so also are the type of marginal expenditures typically made in intact families at, say, the $70,000-$100,000 income levels. To claim that the latter are "costs of children" whereas the former is not is not correct.

This is not to deny that high income earners under the existing formula are paying far too much in child support, and that this problem needs to be fixed. But the method chosen in the new formula for dealing with the problem is, in economic terms, poor.

Claims made to the Committee that the reduction in the "cap" will mean that no child support payments for income between the new and old caps will be made in future may not be correct. Courts may in practice, if the issue is raised by a separating parent, simply decide that the extra payments should continue to be made. The fact that the new legislation indicates that courts should "take account" of the amounts specified under the formula may well be ignored by the courts in these cases. That will have implications for the supposed overall financial impact of the proposed changes to the Scheme.

Cooperation in the analysis of child support issues

At Wednesday's hearing, the National Council for Single Mothers and their Children (NCSMC) was asked whether they saw scope for cooperation between themselves and the LFAA in seeking out common ground between single mothers and single fathers in the design of reforms to the Child Support Scheme.

The NCSMC representative stated that the NCSMC does not wish to discuss issues with the LFAA, because (they claimed) the LFAA's analysis is "meaningless".

A similar question was not asked of the Lone Fathers Association at the hearing.

The LFAA's position is that it stands ready to consult with other organisations about possible design improvements to the Child Support Scheme and any other issues of relevance to family law. The Association has, in fact, from time to time proposed consultation of that kind with the National Council for Single Mothers and their Children, amongst other groups.

The LFAA's perception is that the NCSMC has little interest in testing their ideas or information in a broader context than just a "single mothers'" one.

The LFAA analysis of the Child Support Scheme has throughout been based on quality statistical sources, including ABS, AIS, IHW, and CSA data. This analysis was influential in the deliberations of the Child Support Task Force, and is well respected by government.

NCSMC views

The NCSMC stated in its evidence that it opposes the new child support formula, on the basis that the formula calculation of the cost of children omits the actual and opportunity costs of unpaid care provision.

As pointed out at Wednesday's hearing, there are many men who would be only too happy to have the opportunity to care for their children, if the family law system would permit them to. Time spent with one's children is not necessarily a negative, to be accounted as a "non-cash cost". Having the company of one's own children would be regarded by most people as very much a positive experience, during which they have the opportunity to love, guide, and to get to know their children, and to be part of their children's lives.

As also pointed out, the reference to "opportunity costs" including "lost access to training, professional development and career advancement from paid work" is not a justification for continuing with the very high figure for "disregarded income" for resident parents under the existing Child Support Scheme. What subsequently happens to a person's career after a period as a single-parent would often be difficult to predict. A single parent might have limited prospects of pursuing a well-paid career, or she or he may remarry, or be affected by any one of a number of other major life events. Property settlements, which usually markedly favour the residential parent, will be a usual way of taking into account any opportunity costs which ought to be allowed for.

The claim that "An estimated 60% of primary carer households will be worse off as a result of the formula changes" is questionable. "Primary carer" households will not, in general, be significantly worse off. There will in many cases be a reduction in the amount of time spent by children in one parental household and a corresponding increase in the amount of time spent in the other parental household - in the interests of greater shared parenting. The amount of funding required to support the children in each household will change to reflect the new reality of the time spent in each household. The children will usually be better off because of the better balance in their lives.

"The reductions in income in the households where children spend most or half of their time, countermand the primary goal of the child support system, which was to reduce poverty for children of separated parents." But both households of separated parents must come into the assessment, not just one.

"A child has been halved across households". The point of the judgment of Solomon was that a parent who loves her or his child will pursue the true best interests of the child. That will certainly include the need of the child for its other parent. It was the parent that loved her child who was supported by Solomon's law, not the one who was willing to harm the child to gain revenge.

"Because mothers continue to provide the majority of unpaid care, the provision (equal exempt earned income) is gender biased against women". Equally, it could be said that, because most separated fathers continue to be excluded from the major part of contact with their own children, the provision is gender biased against men.

ABS figures are quoted for the number of sole parents with dependent children who live in rental accommodation. But no numbers are quoted for non-residential parents who

live in rental accommodation. The re-establishment provision is needed to encourage maximum efforts to regain independence as a basis for assisting the children.

"The existing difference in exempt income in the formula recognises the different level of demand on incomes and primary care and non-resident parent households." But sharing one's income with a child in the same household is not a disadvantage, as claimed in the argument. It is an advantage, because of the *economies of scale* involved. The existence of economies of scale in intact families is why people live together in households, and why unnecessary divorces are not a good idea. If anything, the ability to share one's income with one's child would be a reason for lowering the amount of child support paid by someone living elsewhere, not a reason for increasing it. The other household may have no economies of scale.

We recommend the above comments for consideration by the Committee.

Yours faithfully

BC Williams
President

J. B. Carter
Policy Adviser

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