Men's Rights Agency

Family Law | Pre Mediation Advice | Child Support
Domestic Violence | False Allegations | Discrimination

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Community Service Awards 2001, 2002, 2003 and 2005

10th October, 2006.

Senate Committee on Community Affairs,
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Canberra, ACT

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

Dear Senators,

Since the conclusion of the Senate hearings into the above legislation I have had an opportunity to review some of the information provided to the Senate Committee.

Two immediate issues have come to my attention – one concerning the very basic situation of who are the 'parties' involved in a child support dispute - the other concerning the termination of liability for a child under the age of 18 years when he/she is earning more than the youth allowance.

Parties to a child support dispute:

Contained in the Report into Child Support, completed as a result of the Ministerial Taskforce, chaired by Professor Patrick Parkinson, we find the following acknowledgement on page 67:

> ***3.18.2 External review***
>
> Courts with Family Law jurisdiction may review most child support decisions once they have been reconsidered internally by the Child Support Agency. Courts also have original jurisdiction to make orders departing from a formula assessment in some instances. **The parties to an appeal against a Child Support Agency decision, and an application for departure from a formula assessment are the payer and payee parents. The Child Support Registrar is not a party and is not required to justify their decision.** However, the Registrar may choose to intervene in a case.

It is understood by this Agency and the solicitors we work with that disputes relating to child support are between the parents, and it is the parents who are the parties involved in any court applications.

This position has been endorsed over the years by CSA themselves, in not turning up for hearings in the Family Court, the Federal Magistrates Court or State Magistrate courts

when served with copies of Applications for Departure from Assessment. All documents (applications) have consistently shown the applicant to be one parent and the respondent, the other.

However, David Hazelhurst, the Group Manager, Families, from the Department of Families, Community Services and Indigenous Affairs gave a conflicting account during the Senate Hearing on Wednesday October 4th, 2006 as follows:

Taken from pages CA 46-47 of the Hansard copy of the hearing before the Standing Committee on Community Affairs into the proposed **Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Bill 2006**
WEDNESDAY, 4 OCTOBER 2006
CANBERRA

HAZLEHURST, Mr David, Group Manager, Families, Department of Families, Community Services and Indigenous Affairs

Senator MOORE—I just want a couple of comments from the department's point of view on the SSAT.

Mr Hazlehurst—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.**

Senator MOORE—So, from the point of view of the department, it is not between the person applying for the review and the person who is making the payment.

Mr Hazlehurst—Correct.

Senator MOORE—It is between the person who is making the request for the review and the Child Support Agency.

Mr Hazlehurst—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.

Senator MOORE—They are likely to have an opinion about what is going on.

Mr Hazlehurst—Sure, but just to be really clear about it: it is still an administrative decision that is being reviewed.

Senator MOORE—I think I can actually see that—for the sake of this process, which does not seem to have had wide understanding by a number of people who have put evidence to us—

Mr Hazlehurst—We have noticed that. So that needs to be clarified.

Senator MOORE—So we are talking yet again about an administrative decision. It is the administrative decision that it is the role of the SSAT, as opposed to the interaction between people.

Mr Hazlehurst—That is correct.

We might wonder why Mr Hazelhurst has stated this as fact, when it is contrary to the views expressed in the official report (see above) and I would suggest contrary to the intention of the current legislation. Perhaps Mr Hazelhurst was presuming too much at this stage, with the new bill as yet to be passed. Certainly, the new Bill contains a significant amount of "shuffling" provisions between the Child Support Assessment Act and the Child Support Registration and Collection Act. These moves could be seen as essential by the Department in order to i) overcome by some deviousness, the inability of the Child Support Registrar to be able to enforce liabilities created under the Assessment Act, (Luton v Lessels), or ii) to ensure appeals from decisions made under both child support acts are directed to the Social Security Appeals Tribunal rather than the independent jurisdiction of a court, or both.

In the first instance, the normal procedure for collection of any liability created would be for the payee parent to apply for a court order (See Luton V Lessels). This 'nicety' of common law practice seems to have been ignored by the CSA bureaucracy and the legislature. The UK Pensions Committee, who oversee their version of child support collection visited Australia to find ways to improve their own service. They acknowledged problems with the collection of child support, but expressed considerable horror when I explained the procedure here involved 'garnishee without court order'. Sir Archie Kirkwood confirmed this could not occur in the UK and a court application and subsequent order would be required.

In the second instance, the Department's keenness to claim 'party' involvement suggests acceptability of review of decisions by SSAT depends on CSA being a party to those decisions. A number of objections to SSAT being the only avenue for a full review (appeal) were made, including ours, because it is considered that child support disputes are between the two parents and this has been the historical context. There can be no other explanation for the CSA's new claim of being a party to the disputes, in the light of their continual denial of responsibility for the monies they collect, usually on the grounds that they are only acting as an agent. (Z & T [2002] FamCA 182).

Clarification of these matters would seem to be sensible prior to enactment of the Bill under discussion to avoid the necessity of further challenge in a court.

The termination of liability for a child of school leaving age, yet under the age of 18 years, when he/she is earning more than the youth allowance:

Finally, I wish to turn to the issue of youth who having reached 16 or17 years of age who are now working full time or as an apprenticed employee are not recognised as capable of supporting themselves.

The answer given by Ms. Essex from the Department of Families, Community Services and Indigenous Affairs in response to the question in my opinion failed to address the reason why this set of circumstances cannot be regarded as a "terminating event".

> **CHAIR**—The point was made, I think by the Men's Rights Agency, that, in calculating the cost of raising a child, when a 16-year-old moves off into the workforce as an apprentice and earns $200, $300 or $400 a week, that does not come off the amount that parents have to contribute to the cost of raising that child. Firstly, is that the case and, secondly, why isn't it factored into the formula?

Ms Essex—A formula assessment is designed to deal with most cases most of the time, but there do need to be certain circumstances, as allowed for in the legislation, where a departure from the formula assessment is appropriate. One of the grounds for departure in section 117 of the act is that the child has financial resources.
The sorts of circumstances that the Men's Rights Agency were speaking about would be the kinds of things that we would anticipate that parents would use to seek a change to the assessment. It will depend on the earning capacity of the child, whether the child has any special needs, what contribution the child is able to make to the household and so forth.
Senator MOORE—Is that provision in the current act?
Ms Essex—Yes. It is one of the 10 reasons for a change of assessment.
CHAIR—So, if a child is earning money in that way, a parent who wants an adjustment made can go back to the registrar and ask for a change of assessment?
Ms Essex—Yes. They can make an application for a change to the assessment, bearing in mind that a range of other factors will be taken into account in that, including the financial resources of both the parents, the financial resources of the child and whether it is equitable and proper to change the assessment in those circumstances. I am saying that there is flexibility in the scheme currently to deal with that specific situation and that parents can avail themselves of that flexibility.

Ms Essex suggests using the Departure from Assessment process. We would point out that there is no reasonable expectation of success via this process having found that many Review Officers are more focused on maintaining collection amounts for CSA than delivering fairness via just and equitable decision making.

The process is intrusive and unnecessary in these circumstances.

Terminating Events in the current Assessment Act are determined to be as follows:

12 Interpretation—happening of child support terminating events

(1)A child support terminating event happens in relation to a child if:
(a)the child dies; or
(b)the child ceases to be an eligible child under regulations made under subsection 22(1); or
(c)the child turns 18; or
(d)the child is adopted; or
(e)the child becomes a member of a couple; or
(f)none of the following subparagraphs applies any longer in relation to the child:
(i)the child is present in Australia;
(ii)the child is an Australian citizen;
(iii)the child is ordinarily resident in Australia.

Note: Paragraph (1)(c) may be affected by section 151C (which deals with continuing administrative assessments and child support agreements beyond a child's 18th birthday in certain situations).

If it can be found that a child is living as "a member of a couple" surely it is just as easy to determine a child is working and earning enough to support themselves. If you agree, then a clause to this effect should be placed into the "Interpretation" of 'terminating events'.

This Government, quite rightly, has encouraged young people to consider moving into apprenticeships, where they now earn good money', rather than staying on at school. To continue to enforce child support collection, we suggest the Government is interfering with the relationship between the parents and the youth in suggesting that they are incapable of

paying for their own board. As part of the 'growing up' process most parents wish to instil in their children a responsibility to support themselves from their own efforts. Continuing to collect child support sends exactly the opposite message to the youth and if they have already made arrangements to pay board then the money paid to the residential parent by the payer must be seen as a continuation of surreptitious spousal maintenance.

In submitting these comments I would like to receive a reply from the committee as to how they view the issues I have put forward. I do hope you will find the comments I have made helpful to your decision making process.

I will shortly forward details of the information requested by Senator Moore in regards to ongoing research into the costs of children in separated families and each families' needs.

Kind regards

Sue Price
Director