

# **FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS LEGISLATION AMENDMENT (CHILD SUPPORT REFORM CONSOLIDATION AND OTHER MEASURES) BILL 2007**

## **THE INQUIRY**

1.1 The Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007 (the Bill) was introduced into the House of Representatives on 29 March 2007. On that day the Senate, on the recommendation of the Selection of Bills Committee (Report No.6 of 2007), referred the provisions of the Bill to the Community Affairs Committee (the Committee) for report.

1.2 The Committee received 13 submissions relating to the Bill and these are listed at Appendix 1. The Committee considered the Bill at a public hearing on 1 May 2007. Details of the public hearing are referred to in Appendix 2. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at [http://www.aph.gov.au/senate\\_ca](http://www.aph.gov.au/senate_ca).

## **THE BILL**

1.3 The Bill introduces several measures affecting the Families, Community Services and Indigenous Affairs portfolio legislation.

1.4 The Bill contains the following elements:

- consolidating and consequential amendments that clarify and refine the operation of the government's major 2006 reforms to the Child Support Scheme,<sup>1</sup> including those which:
  - establish a new method to calculate the cost of each child and the resulting child support payable where one or other of the parents has more than one child support case, and the children are of different ages;
  - clarify and refine the making of provisional notional assessments, and setting out the situations in which notional assessments may be amended;

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1 These reforms were included in the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006*. They restructured the Child Support Scheme in line with the recommendations of the Ministerial Taskforce on Child Support, chaired by Professor Patrick Parkinson.

- restrict the scope for the setting aside of binding child support agreements by specifying that exceptional circumstances must have arisen since the making of the agreement and that the child or party would suffer hardship if the agreement were not altered or set aside;
- amendments, relocated from the Child Support Legislation Amendment Bill 2004,<sup>2</sup> that are still required in light of the 2006 reforms to the Child Support Scheme, including those which:
  - move provisions currently contained in regulations relating to overseas maintenance arrangements into the primary child support legislation; and
  - aim to improve equity between the two parties to a child support case, in access to court for review of any decisions about parentage of a child, and streamline the internal review system for child support decisions generally;
- amendments to the maintenance income test provisions in the *A New Tax System (Family Assistance) Act 1999*;
- amendments to the maternity payment provisions of the family assistance law (to be known as the 'baby bonus' in the future) to ensure that claimants under the age of 18 are paid the baby bonus in 13 fortnightly instalments rather than a lump sum, and to ensure that all parents are required to formally register the birth of their child as a condition of receiving the baby bonus for births on or after 1 July 2007;
- changes to allow the family tax benefit (FTB) portability period of 13 weeks for full payment to be extended for members of the Australian Defence Force and certain Australian Federal Police personnel of the International Deployment Group who are deployed overseas as part of their duties and remain overseas for longer than 13 weeks;
- amendments to the remote area allowance provisions in the *Social Security Act 1991* and the *Veterans' Entitlement Act 1986* to ensure that an additional allowance is payable for each FTB child and regular care child of a person;
- amendments to the *Income Tax Assessment Act 1936* as a consequence of the 2006 reforms to the Child Support Scheme, which included changes to 'FTB child' and the introduction of a concept of 'regular care child'; and
- various amendments to the *Social Security Act 1991* and the *Veterans' Entitlement Act 1986*.

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2 This bill was introduced into Parliament in 2004 but did not proceed.

1.5 The financial impact of the Bill is:

Year	Total resourcing
2006-07	\$2.1 m
2007-08	\$0.8 m
2008-09	\$0.5 m
2009-10	\$0.4 m

## BACKGROUND

1.6 The Department of Families, Community Services and Indigenous Affairs (FaCSIA) provided some background information in relation to the amendments contained in the Bill.

### *Child support consolidation amendments*

1.7 The government's extensive reforms to the Child Support Scheme are being implemented in three stages – Stages 1 and 2 commenced on 1 July 2006 and 1 January 2007 respectively, and Stage 3 will commence on 1 July 2008.<sup>3</sup> However, these further 'minor' amendments are being made in the Bill to ensure that the reforms operate as intended. FaCSIA advised that the consolidation amendments contained in the Bill were drafted in close consultation with all relevant government agencies.<sup>4</sup>

### *Matters from the 2004 child support bill*

1.8 In 2004, a child support bill was introduced to incorporate into primary legislation provisions relating to overseas maintenance arrangements that are currently located in regulations. These provisions were included in regulations in 2000; however, due to time constraints on including them in primary legislation at that time, the intention was that the provisions be moved to primary legislation when the opportunity arose. FaCSIA advised that the 2004 bill did not proceed due to pressure on parliamentary schedules and the impending reform of the Child Support Scheme; the provisions from the 2004 Bill are now included in the current Bill.<sup>5</sup>

3 The *Child Support Legislation Amendment (Reform of the Child Support Scheme – Initial Measures) Act 2006* legislated for the Stage 1 changes and the *Reform of the Child Support Scheme (New Formula and Other Measures) Act 2006* legislated for the majority of the reforms in Stages 2 and 3.

4 *Submission 7*, pp.2&3 (FaCSIA).

5 *Submission 7*, p.2 (FaCSIA).

### ***Child support consequential amendments***

1.9 The child support reforms will change, from July 2008, the minimum level of care at which a parent can receive a child-related amount of FTB from 10 per cent to 35 per cent. This means that parents with more than 65 per cent care of a child will have access to the full amount of FTB. This is linked to the new recognition of the costs of regular care in the child support formula. Care between 14 and 34 per cent (between 2 and 4 nights per fortnight) will be known as 'regular care'. Consequential amendments in the Bill will ensure that an additional amount of Remote Area Allowance can be paid for a 'regular care' child on the same terms as it is paid for FTB children.<sup>6</sup>

### ***Other amendments***

1.10 The Bill contains provisions affecting various payments for which FaCSIA has responsibility. Some of these amendments have been announced by the government and have been made in response to community concerns.<sup>7</sup> These include the changes to the maternity payment; these changes recognise that 'young parents are not experienced in handling large sums and that smaller payments are more likely to be spent for the benefit of the new child'.<sup>8</sup>

## **ISSUES**

1.11 Submissions received by the Committee commented specifically on provisions of the Bill pertaining to child support and the baby bonus. Submissions and witnesses raised a number of concerns in relation to the Bill's child support provisions and offered some suggestions for improvement. The amendments relating to the baby bonus were generally supported.

### ***Child support amendments***

#### ***Complexity of the Bill***

1.12 The Non-Custodial Parents Party (NCPP) and the Lone Fathers' Association Australia (LFFA) argued that the Bill and the Explanatory Memorandum are too complex for the average person to understand.<sup>9</sup> The NCPP asserted that the Explanatory Memorandum to the Bill 'should have been made a lot simpler than what it currently is' so that all stakeholders are able to 'more readily have access to the reasoning behind the changes and their consequential effects'.<sup>10</sup>

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6 *Submission 7*, pp.2-3 (FaCSIA).

7 *Submission 7*, p.3 (FaCSIA).

8 *Submission 7*, p.3 (FaCSIA).

9 *Submission 9*, p.6 (Non-Custodial Parents Party); *Committee Hansard*, 1.5.07, p.11 (LFAA).

10 *Submission 9*, p.7 (Non-Custodial Parents Party).

1.13 FaCSIA informed the Committee that it is planning very comprehensive communication and customer service strategies to explain the magnitude and complexity of the changes to those affected. These communication and service strategies will 'ramp up over the next six months and become quite intense towards the end of the year and into the new year, with people interacting with the Child Support Agency and new assessments being issued to have effect well before July next year'.<sup>11</sup>

#### *Ongoing concerns*

1.14 The National Council of Single Mothers and their Children (NCSMC) reiterated many of the concerns it expressed previously during the Committee's inquiry into the 2006 reforms. The NCSMC was strongly critical of the outcomes of the Bill and argued that it goes further to implementing problematic changes developed or recommended by the Child Support Taskforce:

There is a huge amount of upset and concern in the community about how these changes will impact. Here we have another piece of legislation, making further changes and continuing the implementation of this policy, yet we are still waiting to find out what the actual financial ramifications will be so that people can have a reliable indication of what they will mean for them.<sup>12</sup>

1.15 FaCSIA advised the Committee that a national stakeholder group has been established and that ongoing discussion and consultation with stakeholders is taking place within that forum:

That stakeholder engagement group is an evolution of the stakeholder arrangements that the CEO of the Child Support Agency had had in place for some time. It is now an arrangement that is done jointly between our department and the Child Support Agency. It involved a similar membership and some additional membership to reflect...quite a broad range of stakeholders.<sup>13</sup>

1.16 The stakeholder group is aiming to ensure that it addresses 'the things that not only are of most benefit and value to the group but also will yield the most value to the government in terms of getting feedback from the stakeholders'.<sup>14</sup> However, FaCSIA noted that:

It would be fair to say that some of the issues that...members of the stakeholder group that represents the interests of women have raised have been the same issues that they have been raising since the government announced that it would proceed with the reforms. Whilst those issues have received an airing in that group, it is not the purpose of the stakeholder

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11 *Committee Hansard*, 1.5.07, p.23 (FaCSIA).

12 *Committee Hansard*, 1.5.07, p.4 (Ms J Taylor).

13 *Committee Hansard*, 1.5.07, p.19 (FaCSIA).

14 *Committee Hansard*, 1.5.07, p.19 (FaCSIA).

group to revisit the decisions on the formulation of the reforms that have been taken by government and then passed by the parliament. That said, we certainly are alert to issues that are coming up that are new, and there have been a number of things that are more of an implementation and service delivery nature, which we are very keen to continue to work on with the stakeholders.<sup>15</sup>

1.17 FaCSIA also advised the Committee that it will closely monitor and evaluate the impact of the reforms using, for example, actual administrative data that will flow once the new assessments are in place and other forms of qualitative information. FaCSIA pointed specifically to the government's acceptance of the Child Support Taskforce's recommendation that FaCSIA undertake ongoing research into, and monitoring of, the impacts of the reforms 'not just in relation to the impacts of the changes but also perhaps some ongoing capability to understand what is happening in relation to the child support scheme into the future'.<sup>16</sup>

#### *Costs of children and parents with multiple cases*

1.18 The Bill establishes a new method to calculate costs of children in multiple child support cases where the children are of different ages. Some submissions commented on the complexity of this proposed change<sup>17</sup> and the unfairness that the new formula's application will create for certain groups of both payers and payees.<sup>18</sup> In addition some submissions noted that, far from being merely technical, this proposed amendment represents a significant change to the formula embodied in the 2006 reforms, as it applies to multiple cases.<sup>19</sup> To that extent, it is not in accordance with the conclusions or the arguments in the report of the Ministerial Taskforce on Child Support, chaired by Professor Patrick Parkinson (Parkinson report).<sup>20</sup>

1.19 FaCSIA responded that it had given close consideration to the issue of multiple-case arrangements:

...upon further analysis of the way in which the formula was going to apply where there were multiple cases with children of different ages, we noticed that in those multiple cases—say a single payer paying more than one payee where the children were of different ages—the rules around the formula that resulted in averaging could lead to some inappropriate outcomes where an over 13-year-old child was in one household and an under 13-year-old child was in another. We raised those matters with government and, with the minister's agreement, with Professor Parkinson. We also reconvened a

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15 *Committee Hansard*, 1.5.07, p.19 (FaCSIA).

16 *Committee Hansard*, 1.5.07, p.20 (FaCSIA).

17 *Submission 8*, p.5 (LFAA); *Submission 9*, pp.7-8 (Non-Custodial Parents Party).

18 *Submission 12*, p.1 (Ms M Wingett).

19 *Submission 8*, p.5 (LFAA); *Submission 12*, p.1 (Ms M Wingett).

20 *Submission 8*, p.5 (LFAA); *Submission 11*, p.6 (Men's Rights Agency).

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couple of members of the task force to bounce some ideas around and we came up with their proposed approach that is here. The task force members acknowledged that this was something they had not thought of at the time and that this was an appropriate approach. Indeed, I think that Professor Parkinson described it as an 'elegant' solution to the problem.<sup>21</sup>

### *Setting aside binding agreements*

1.20 Although agreeing with the proposition that binding agreements should be more difficult to set aside than limited child support agreements, the Law Council of Australia (Law Council) argued that the proposal to restrict the scope for the setting aside of binding child support agreements to where there are 'exceptional circumstances' is unduly harsh.<sup>22</sup>

1.21 The Law Council suggested that, for the sake of consistency, the Bill should contain a requirement similar to that included in section 90K of the *Family Law Act 1975* which allows for the setting aside of a financial agreement where there has been a 'material change in circumstances' and, as a result of the change, hardship would be suffered if a court does not set aside the agreement. This 'would enable agreements to be set aside in appropriate circumstances but would preserve the intention that a binding agreement will, in all general circumstances, be binding on the parties'.<sup>23</sup>

1.22 The LFAA also expressed concern about this proposed amendment and agreed that it may be more appropriate to relax the rules as they apply to binding agreements:

The experience of the LFAA is that "non-custodial parents" may enter into unsatisfactory or even oppressive agreements through a failure to look far enough ahead. And in those cases, courts are likely to indicate that they are not disposed to alter such an agreement at the behest of one party only. This is, if anything, an argument for relaxing the rules as they apply to binding agreements. It is not an argument for making those rules any stricter, and further restricting the power of courts in dealing with these matters.<sup>24</sup>

1.23 The LFAA also queried the meaning of the term 'exceptional circumstances' and how it might be interpreted by a court.<sup>25</sup> The LFAA concluded that the proposed amendment relating to the setting aside of binding agreements should not be endorsed 'unless and until it has been fully explained and justified, and receives community understanding and acceptance'.<sup>26</sup>

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21 *Committee Hansard*, 1.5.07, p.18 (FaCSIA).

22 *Submission* 13, p.4 (Law Council).

23 *Submission* 13, p.4 (Law Council).

24 *Submission* 8, p.4 (LFAA).

25 *Submission* 8, p.5 (LFAA); *Committee Hansard*, 1.5.07, p.13 (Mr J Carter).

26 *Submission* 8, p.4 (LFAA).

1.24 FaCSIA responded that the matter of the setting aside of binding child agreements was raised by Professor Parkinson in his submission to the Committee's inquiry on the 2006 reforms and, after further discussions with him, the government agreed to proceed with a 'tweaking' of those arrangements.<sup>27</sup>

#### *Issues of parentage*

1.25 The 2006 reforms set out factors that a court should have regard to when considering whether an order for repayment of child support should be made in cases where the court finds that child support has been paid by a person who is not the parent of the child. One of these factors relates to the likely knowledge of both parents about the issue of parentage. The Bill contains amendments which aim to make it clear that a mere suspicion on the part of either parent that the payer was not the parent of the child is a factor relevant for the court to consider, even when this falls short of a reasonable doubt about parentage.<sup>28</sup>

1.26 The LFAA summarised its concerns about these proposed amendments as being primarily about how such a provision might be interpreted by a court:

...I am just thinking ahead to: what does that actually mean in practice? If a matter does come to a head and it is discovered that there is a problem about the actual biological parentage, does this mean that a court which is considering the matter in the context of, perhaps, repayment of child support—which is an issue which has emerged—should be able to say, 'We think that there was some suspicion that you may have had, and therefore the question of repayment should not arise'? That is a possible scenario.<sup>29</sup>

1.27 The LFAA raised the broader issue of paternity testing in this context, asserting that 'DNA testing should be a compulsory procedure at the birth of every child, to ensure that the correct father is registered. And to the extent that the procedure has not already been performed, it should be a compulsory procedure at the time of any application to the [Child Support Agency] for the collection of child support'.<sup>30</sup>

#### *Concept of 'regular care' child*

1.28 The NCSMC noted that the Bill's introduction of the concept of a 'regular care' child, in reference to a child who does not qualify for FTB under the changes to the Child Support Scheme, 'highlights the disjuncture between definitions used for income support and the intent and direction of the family law and child support changes'.<sup>31</sup> In particular:

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27 *Committee Hansard*, 1.5.07, p.18 (FaCSIA).

28 Explanatory Memorandum, p.22.

29 *Committee Hansard*, 1.5.07, p.13 (Mr J Carter).

30 *Submission 8*, pp.7-8 (LFAA).

31 *Submission 5*, p.7 (NCSMC).



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Family law changes now support child-splitting and the child support changes provide financial benefits to men who see their children regularly, yet for income support purposes only one parent can be a Principal Carer of a child. This means that the half-time children in the household of the person who is not deemed under Social Security law to be the Principal Carer will not attract the protections available to Principal Carers in the income support system. The impact of this disjuncture in definitions is most acute for young children whose parents are both dependent on income support and are thus likely to be highly disadvantaged.<sup>32</sup>

1.29 The NCSMC suggested that the definitions of children in the income support system be brought into line with changes in the family law and child support systems, particularly the way that these systems recognise and relate to children of separated parents, in order to overcome certain anomalies which are having a direct impact on the lives of those children.<sup>33</sup>

1.30 Noting that the Department of Employment and Workplace Relations has responsibility for this issue, FaCSIA advised that it had not done any additional work regarding the possibility of changing arrangements so that both parents could be deemed Principal Carers:

These issues were considered and, on balance, the government determined that in relation to situations where one or both parents were on Newstart or parenting payments, the primary focus was to be on participation objective, and hence at the time the government decided not to further change the arrangements that were in place for receipt of income support... (I)t was not done as a knee-jerk reaction. There was careful consideration given to different approaches that could be taken, and the government made the decision that it did.<sup>34</sup>

### ***Baby bonus***

#### *Registration requirement*

1.31 Currently, relevant State and Territory legislation requires the birth of a child to be registered (generally within 60 days of the birth) and it is usually the parents of the child who have joint responsibility for registration of the birth of the child. However, a proportion of parents delay registering their child's birth, sometimes for an extended period.<sup>35</sup> The Bill amends the *A New Tax System (Family Assistance) Act 1999* to link eligibility for the baby bonus with registration of the birth with the relevant State or Territory authority. It is not a requirement that registration has

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32 *Submission 5*, p.7 (NCSMC).

33 *Committee Hansard*, 1.5.07, p.4 (Dr E McInnes).

34 *Committee Hansard*, 1.5.07, p.25 (FaCSIA).

35 Explanatory Memorandum, p.83.

occurred in order to get payment, rather it is a requirement that a claimant make a declaration that an application for registration has been submitted.<sup>36</sup>

1.32 Professor Peter McDonald and Dr Rebecca Kippen from the Australian National University expressed strong support for a system of birth registration that leads to accurate and timely registration of all births in Australia. They argued that Australia does not have a complete and timely system of birth registration and that accurate birth registers form the basis of birth-rate calculations, which feed into projections of future population at a local, state and national level. In their view:

...as the law stands, there is little incentive for parents to register the birth of a child. Parental payments, including the Maternity Payment, can be claimed without proof that the birth has been registered. Proof of birth registration is not required for immunisations, school or childcare enrolment, or adding a child to the family Medicare card.<sup>37</sup>

1.33 Professor McDonald and Dr Kippen concluded that complete and timely registration of births could be guaranteed overnight if payment of the baby bonus was contingent upon production of proof of registration.<sup>38</sup>

1.34 The Australian Bureau of Statistics (ABS) advised that birth registration statistics are used to compile population, demographic and health statistics which are used for a wide range of purposes. In particular, population estimates 'are used in a wide range of important decisions such as the distribution of GST, revenue to the jurisdictions and apportioning the number of seats in the House of Representatives to the states and territories'.<sup>39</sup>

1.35 The ABS anticipates that the Bill will improve the quality of important statistics:

It is expected that the new requirement may result in a change in parents' behaviour, and improvements in the registration of births that would normally not be registered, or registered later than required by state and territory legislation. If this occurs, the ABS anticipates an improvement in the quality of birth and fertility statistics and population estimates for Australia and the States and Territories.<sup>40</sup>

### *Fortnightly payments*

1.36 The NCSMC described the proposal to make payments to under 18 year old mothers in fortnightly instalments as effectively amounting to 'age discrimination'.<sup>41</sup> It

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36 *Committee Hansard*, 1.5.07, pp.21&24 (FaCSIA).

37 *Submission 3*, p.1 (Prof P McDonald & Dr R Kippen).

38 *Submission 3*, p.1 (Prof P McDonald & Dr R Kippen).

39 *Committee Hansard*, 1.5.07, p.1 (ABS).

40 *Submission 4*, p.2 (ABS).

41 *Committee Hansard*, 1.5.07, p.4 (Dr E McInnes).

argued that such a measure may not be universally appropriate and may lead to adverse outcomes in some circumstances:

There are legal consequences around legal adulthood and decision making and capacity, but it does not go to the heart of the matter which, in our view, is whether it is good for families in particular circumstances to receive a lump sum—for example, a violent boyfriend who might run off with the money, a drug addiction, a gambling addiction or some kind of huge debt for which the money could be seized and used. These are the kinds of vulnerabilities that do not necessarily rest with age. A lump sum might be very important to a young mum, whether she is 17 or 18, in order to get a car if she does not have transport, to furnish a house if she has had to set up a household, to buy basic furniture for her baby if she has not got it already—and most do not.<sup>42</sup>

1.37 The NCSMC suggested that the format of the payment for mothers who are under 18 years old should be able to be varied on the recommendation of a qualified social worker and that, where lump sum funds are needed for major purchases, these could be paid by direct credit to ensure that the funds are directed to an appropriate purpose.<sup>43</sup> This would be 'a much more useful way to address the particular issues in each case and to protect vulnerable people without just arbitrarily discriminating against them or making judgements about them based on the fact that they are of a particular age'.<sup>44</sup>

1.38 FaCSIA responded that there was careful consideration of a range of options in relation to this issue:

The government took advice and representations from the community at large around these arrangements and took advice from the department, of course, and weighed up options like still having some scope to make the payment as a lump sum for under 18s, but on balance its decision was that it would prefer to have fortnightly instalments for under 18s.<sup>45</sup>

## CONCLUSION

1.39 The Committee supports the measures being introduced in the Bill. However, the Committee notes the concerns raised by submissions and witnesses in relation to the child support amendments. While the Committee considers that these amendments are important in continuing to ensure equity within the child support system, it also recognises that the true impact of many of the changes will not be fully known until they are operating in practice.

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42 *Committee Hansard*, 1.5.07, p.6 (Dr E McInnes).

43 *Submission 5*, pp.7-8 (NCSMC).

44 *Committee Hansard*, 1.5.07, p.6 (Dr E McInnes).

45 *Committee Hansard*, 1.5.07, p.22 (FaCSIA).

1.40 The Committee applauds FaCSIA's commitment to undertake ongoing consultation with relevant stakeholders and to monitor the impact of the changes following their implementation. The Committee encourages FaCSIA to continue its comprehensive work in this regard.

### **Recommendation 1**

**1.41 The Committee reports to the Senate that it has considered the Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007 and recommends that the Bill be passed.**

Senator Gary Humphries  
Chairman

May 2007