

# **Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill, 2007**

FaCSIA submission to the Senate Standing Committee on  
Community Affairs, April 2007

## **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.

This latest Bill makes minor refinements to the legislation for the new child support scheme, and minor consequential amendments to family assistance law. These are necessary to clarify and refine the operation of the Government's major 2006 child support legislation<sup>1</sup> that restructured the child support scheme in line with the recommendations of the Ministerial Taskforce on Child Support. It also includes a small number of amendments to address pre-existing issues or anomalies by adopting the provisions of a child support bill that was introduced to Parliament in 2004 but did not proceed.

The Bill also includes minor amendments to other legislation for which FaCSIA has policy responsibility, including Family Tax Benefit, Remote Area Allowance, Baby Bonus, and Disaster Recovery Payment.

This submission to the Senate Standing Committee on Community Affairs is presented in two parts. Part 1 provides key background information relating to the Child Support Scheme reforms and other matters relating to the Bill. Part 2 details the key elements of subject of this Bill.

## **1. Background**

### **Child Support Consolidation Amendments**

On 28 February 2006, Government announced that it would undertake a major overhaul of the child support scheme to implement the recommendations of a Ministerial Taskforce and deliver a system that would act in the best interests of children. The Ministerial Taskforce, chaired by Professor Patrick Parkinson, included 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 and recommended a substantial suite of reforms, including independent administrative review of Child Support Agency decisions and a new child support formula to reflect the costs of children and parenting

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<sup>1</sup> *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006*

arrangements in contemporary Australian society. Further detail about the Ministerial Taskforce and its recommendations is available in Attachment A.

Given the extensive nature of the reforms, and the comprehensive legislative, service delivery and systems changes required, the reforms 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. Stage 1 included changes to the minimum payment to ensure that it keeps pace with inflation and a reduction in the maximum amount of income considered for child support; Stage 2 introduced independent administrative review of Child Support Agency decisions and made some changes to streamline court procedures; and Stage 3 will implement the majority of the changes, including the new child support formula. Further detail about the implementation of the child support reforms is available in Attachment B.

*The Child Support Legislation Amendment (Reform of the Child Support Scheme – Initial Measures) Act 2006* legislated for the Stage 1 changes, and was given Royal Assent on 15 June 2006. 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. It was passed by Parliament and Royal Assent was given on 6 December 2006. As is often the case with major reform packages, further minor amendments are necessary to ensure that the legislation operates as intended, and this Bill makes such consolidating and consequential amendments.

### **Matters from the 2004 Child Support Bill**

In 2004 a child support bill was introduced to incorporate into primary legislation provisions that are currently in regulations, relating to overseas maintenance arrangements. These provisions were included in regulations in 2000, due to time constraints on including them in primary legislation at that time, but it was always intended to move the provisions to primary legislation when the opportunity arose. The 2004 Bill did not proceed due to pressure on parliamentary schedules and the reform of the child support scheme, and the provisions are now included in the current Bill.

Other matters included from the 2004 Bill make minor amendments to improve equity for parents in access to courts, and clarify or make technical corrections to various provisions. Details of these amendments are provided below.

### **Child Support Consequential Amendments**

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 Family Tax Benefit 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 Family Tax Benefit. 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 this Bill 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 Family Tax

Benefit children. Parents with regular care children will also be able to receive other payments such as rent assistance and a health care card as a result of legislation already passed by Parliament.

## **Other Amendments**

The Bill contains provisions affecting various payments for which FaCSIA has responsibility. Some of these amendments have been announced by Government and have been made in response to community concerns. For example, maternity payment, to be known as the baby bonus in the future, will be available only in fortnightly instalments for parents under 18 years of age, recognising 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. Other provisions are made to improve efficiency or effectiveness of programs, or to address technical matters. Details of these provisions are provided below.

## **2. Key elements of this Bill**

Drafted in close consultation with all affected Government agencies, most of the consolidation amendments in this Bill provide further detail of the new policies passed by the Parliament, such as clarifying some of the processes for review by the Social Security Appeals Tribunal of child support decisions and the changed arrangements with the courts. Technical details, such as how the two child support Acts interact are being addressed, and consequential amendments are being made to taxation, social security and veterans' affairs legislation.

- Schedule 1: Amendments consolidating previous child support amendments
- Schedule 2: Amendments adopted from the 2004 Bill
- Schedule 3: Amendments relating to access to courts and review process
- Schedule 4: Miscellaneous child support amendments of a minor policy and technical nature
- Schedule 5: Maintenance Income Test
- Schedule 6: Baby bonus amendments
- Schedule 7: Portability of Family Tax Benefit
- Schedule 8: Remote Area Allowance
- Schedule 9: Dependant and housekeeper rebates, and Medicare levy
- Schedule 10: Extension of the assets test exemption period
- Schedule 11: Amendments relating to income streams
- Schedule 12: Other minor and technical amendments

### **Schedule 1 – Main amendments<sup>2</sup>**

Schedule 1 of the Bill makes minor consolidating refinements to a range of operational areas within the child support scheme and also clarifies a small

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<sup>2</sup> Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, Schedule 1 (pages 7-51) and Explanatory Memorandum (pages 2-35)

number of pre-existing issues or anomalies. The detailed policy intent for each of the consolidating refinements in Schedule 1 is outlined in the Explanatory Memorandum, however a summary of amendments follows. While all of the amendments in the Bill are of a relatively minor policy nature, those that can be considered more substantive are presented first.

#### Substantive amendments

- *Costs of children and parents with multiple cases.* The amendment will establish a new method to calculate the cost of each child and 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.
- *Notional assessments.* The amendments clarify and refine the making of provisional notional assessments, and set out the situations in which notional assessments may be amended.
- *Setting aside binding agreements.* The amendment will 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.

#### Minor policy amendments

- *Administrative review.* The amendment will establish the requirements for some administrative review functions of the SSAT. This includes: exchange of information during internal review; attendance before the SSAT; decisions on out of time applications; return of documents by the SSAT; allowing a parent to withdraw an application to the SSAT; and provision of documents by the Registrar to the SSAT.
- *Grounds for departure from the formula.* The amendment will refine and clarify a number of items relating to grounds for departure from the formula. This includes amendments made by the *Family Law Amendment (Shared Parental Responsibility) Act 2006*; reflecting a parent's care for a step-child; and clarifying headings about capacity to earn.
- *Recognition of over 18 relevant dependent children.* The amendment will consolidate the new arrangements for relevant dependent children over the age of 18 years. This includes: a change to commencement date; and the dates from which and to which the child is considered.
- *Reflecting care changes in the assessment.* The amendment will refine the circumstances in which the Registrar must either amend or not make amendments to assessments due to changes in parents' caring arrangements.
- *Incomes where no tax return lodged.* The amendment will clarify the determinations available to the Registrar where a parent has not lodged a tax return.

- *Parental estimates of income.* The amendment will clarify the circumstances allowing an estimate of income for child support purposes and the process of checking the accuracy of such estimate.
- *Minimum assessments.* The amendment will remove the provision requiring the automatic reduction to the minimum rate and will allow the Registrar to amend an assessment in order to reverse a determination of a nil assessment.
- *Information about carer's pension or benefit receipt in assessment notices.* The amendment will remove the requirement to give information about whether a carer receives an income tested pension, allowance or benefit.
- *Lump sums and non-periodic payments.* The amendment will modify terminology about how payments affect a liability, clarify variations to crediting orders by the courts and define the crediting period and payment options.
- *Issues in parentage proceedings.* The amendments will clarify the issues that a court should have regard to in parentage proceedings, including the likely knowledge of both parents about the issue of parentage. It will also set out when a decision of the Registrar becomes final, set out payment options, and exclude costs from recovery of overpaid amounts in paternity cases.

Amendments of a technical or very minor nature

- *Reporting proceedings – identifying the Registrar.* The amendment will make it clear that the restriction upon identification of parties to all proceedings does not apply to the Registrar.
- *Jurisdiction of courts.* The amendment will establish and clarify a range of provisions within the jurisdiction of courts. This includes: jurisdiction of Magistrates courts to hear appeals on questions of law; formulation of appeal bench; provision of documents; access to court where a matter is too complex to determine administratively; frivolous or vexatious applications; and retrospective determinations.
- *Payee private enforcement.* The amendment will establish provisions to ensure courts order payment to the Registrar as recommended by the Taskforce, and will clarify such payments are excepted from rules governing apportionment to a number of payees.
- *Interaction between the Child Support Acts.* The amendment will maintain consistency and coverage between the Acts. This includes: allowing amendment of assessments; effect of terminating events; coverage of stay orders; and consistent information gathering powers.
- *Issues in parentage proceedings.* The amendments will clarify the issues that a court should have regard to in parentage proceedings, including the likely knowledge of both parents about the issue of parentage, and set out

when a decision of the Registrar becomes final, payment options, and exclude costs from recovery of overpaid amounts in paternity cases.

- *Ongoing collections.* The amendment will provide the Registrar with the power to attach regular periodic payments to child support payers under contract for service arrangements, provide clarity on ongoing garnishee notices to third parties, and establishment of payment periods.
- *Reconciliation – effect of suspension determinations.* The amendment will ensure that the child or children in the reconciled family are treated as though they have not been assessed in respect of the costs of the child for child support.
- *Post-separation costs.* The amendment will clarify the provisions under which higher costs to a parent after a separation may be taken into account in the child support assessment, to deal with multiple reconciliations and re-separations.
- *Terminology changes for new formula.* The amendment will update old terminology in time for the commencement date of the new formula on 1 July 2008.
- *Transitional arrangements.* The amendment institutes a provision to establish regulations that will set out rules for transitioning parents' assessments to the new formula.

## **Schedule 2 – Incorporation in primary legislation of matters dealt with by regulation<sup>3</sup>**

Schedule 2 of the Bill moves into the primary child support legislation, the provisions currently contained in regulations relating to overseas maintenance arrangements (thus, honouring a commitment made by the government during passage of the enabling provisions for the regulations). The Schedule also makes minor or consequential amendments to the family law legislation.

Complementary regulation changes will follow enactment of this Bill. These changes will mostly be to remove provisions that will now appear in the primary legislation, to avoid duplication and to ensure that the new provisions work correctly.

As a general principle, the provisions in the regulations that are to be relocated into the primary legislation are not being amended, apart from necessary technical and style changes. However, there are some specific improvements and rationalisations being made to some of the provisions in a number of areas, including the meaning of 'reciprocating jurisdiction', applications from overseas and role of overseas authorities, and access to courts by residents of a reciprocating jurisdiction.

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<sup>3</sup> Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, Schedule 2 (pages 52-92) and Explanatory Memorandum (pages 36-50)

### **Schedule 3 – Amendments relating to access to courts and review process<sup>4</sup>**

Schedule 3 of the Bill makes amendments to improve equity between parents in access to court in relation to decisions about parentage of a child and to streamline certain review processes.

The *Child Support Registration and Collection Act 1988* provides a system of internal reconsideration ('objections') for decisions made by the Child Support Registrar and first tier external review by the SSAT. That Act and the *Child Support Assessment Act 1989* also deal with access to court in child support matters.

Essentially, any appeal against a decision relating to parentage of a child must be made to a court – that is, there may be no objection, nor review by the SSAT. As a general principle, any decision other than relating to parentage may be reviewed on objection and then by the SSAT, with possible further review by a court on a question of law alone. Notably, if an objection has been lodged by one of the parties to a child support assessment, SSAT review may be pursued by either party, not just the one who lodged the objection.

Despite this comprehensive general structure, there are some inequities in the current system, whereby one party affected by a parentage decision may have a lesser right of access to a court. This streamlining initiative is largely to make the system of court access in parentage decisions fairer. Certain minor refinements to the objection procedure are also made. The amendments fall into three areas.

- *Equal court access – disputed parentage.* The amendments will make sure either party has access to a court if the issue is that the party, or the other party (as relevant), is, or is not (as relevant), a parent of the child concerned.
- *Serving copy of objection on other party.* The amendments will provide that the Registrar now *not* be required to serve a copy of an objection and the accompanying documents on the other party to the case if satisfied that the other party's rights will not be affected by any possible decision in relation to the objection.
- *Applications for extension of time to lodge objection.* The amendments will allow the Registrar to specify, and so broaden the manner in which an application for extension of time to lodge an objection may be made.

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<sup>4</sup> Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, Schedule 3 (pages 93-106) and Explanatory Memorandum (pages 51-54)

## Schedule 4 – Miscellaneous amendments<sup>5</sup>

Schedule 4 of the Bill makes various child support minor policy refinements and technical corrections including:

- *Inclusion in child support assessment, after initial assessment, of a 'relevant dependent child'*. The amendment will more fairly address the situation in which the Registrar finds out, after an assessment comes into force, that the payer has a relevant dependent child who was not taken into account in the assessment.
- *Notices of assessment – information given about other children, and information given in child support agreement or court order cases*. The amendments will clarify that the Registrar must provide the parent concerned with the information necessary to have a full appreciation of the basis of the assessment that affects him or her (and so inform any decision to object, or respond to an objection), but not with unnecessary information. The amendments attempt to balance the need to give sufficient information against the need to preserve privacy.
- *Rental property loss*. The amendment will exclude rental property loss, claimed from a low value pool deduction, from the child support income amount. The more clearly identifiable rental property components will continue to be treated as they are currently have been.
- *Recovery of overpayments between payers and payees*. The amendment will ensure clarity of the legislation for the courts, and provide clarification to safeguard the intended operation of the provisions.
- *Recovering lesser amounts of child support related debts from third parties*. The amendment will allow the Registrar flexibility when requiring a third party who owes money to a child support debtor to pay that money to the Registrar instead. The Registrar will be able to request an amount from the third party that is less than the whole child support debt or less than the whole amount held by the third party.
- *Duty of payee to notify change of name or address*. The amendment will impose the same obligation on payees as currently applies to payers, to notify the Registrar of change of name or address so that the liability can be properly administered and incorrect payments avoided.
- *Application of certain amounts to child support debts*. The amendment will provide capacity to recover from a person's tax refund, any debt due to the Commonwealth (for example, a debt owed by a payee), and not just a 'child support debt' (that is, only a payer debt).

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<sup>5</sup> Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, Schedule 4 (pages 107-124) and Explanatory Memorandum (pages 55-68)

- *Secrecy amendments – disclosure to ministers, threats of self-harm and disclosure for the purpose of certain proceedings.* The amendment will mirror the extensive protection of personal information that applies in, for example, the social security law, while enabling the two ministers who jointly administer the child support legislation to fulfil their respective roles.

### **Schedule 5 – Maintenance Income test<sup>6</sup>**

Schedule 5 of the Bill makes a number of minor amendments of a technical or consequential nature to the maintenance income test provisions for family tax benefit (FTB) Part A. The amendments:

- clarify the meaning of ‘amount received’ and ‘amount payable’ in the formula used to work out the notional amount of maintenance income an individual is taken to have received under a child support agreement or court order where there is an underpayment of child support that is registered for collection by the Child Support Agency;
- clarify that maintenance income received by a payee for one or more children will reduce the payee’s amount of FTB Part A above the base rate for those children only;
- ensure that the benefits of the maintenance income credit (MIC) are available only where FTB is claimed through Centrelink or Medicare Australia and not through the tax system from the Australian Taxation Office;
- refine the MIC provisions so that they operate as intended; and
- update the MIC provisions to accommodate the new FTB treatment under the Child Support Taskforce reforms of child support agreements and lump sum child support.

### **Schedule 6 – Baby bonus amendments<sup>7</sup>**

In November 2006 the Government announced it would move to introduce payment of the Baby Bonus by instalment for mothers under 18, in response to community concern about the vulnerability of younger mothers.

Since January 2007, payment by instalments has been the preferred option for this age group, but implemented by changed Centrelink guidelines. Schedule 6 of the Bill amends the family assistance law to:

- ensure that under-18 year olds are paid the baby bonus in 13 fortnightly instalments;
- require registration of the birth with the relevant state/territory authority as a condition of eligibility for the baby bonus; and
- rename the maternity payment to ‘baby bonus’.

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<sup>6</sup> Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, Schedule 5 (pages 125-133) and Explanatory Memorandum (pages 69-80)

<sup>7</sup> Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, Schedule 6 (pages 134-141) and Explanatory Memorandum (pages 81-85)

### *Baby bonus payments to those under 18 years of age*

These changes to legislation will make payment of the baby bonus by instalment mandatory for under 18 year olds from 1 July 2007. Since 1 January 2007, maternity payment has generally been paid by instalment under policy guidelines. This is the Government's preferred payment option for parents under the age of 18 years.

In the case of under 18 year olds, there needs to be a balance between the program's objective of assisting with costs around the time of the birth and recognising that young parents are not experienced in handling large lump sums.

The 13 fortnightly payments are more manageable for young people, and more likely to be used for ongoing expenses in the first six months of the baby's life, which is the intended purpose of the payment.

Young parents under 18 years of age will also be referred to a social worker, to assess their needs and their required level of support, as well as to provide them with information on available services and appropriate referrals to other support groups.

The Government has retained lump sum payments for other recipients of the baby bonus. Payment by instalment for other parents is available on request. Vulnerable parents are referred to social workers who may determine that payment by instalment is the appropriate form of payment.

### *Registration of birth*

This legislative amendment will mean 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.

The requirement will only apply to natural parents for live births, and will not apply to stillbirths, adoptive parents or parents claiming from overseas.

Payment will be made on a declaration from the parents that they have lodged their child's registration form with the relevant Births, Deaths and Marriages Registrar. This will help ensure payments to parents are not delayed.

Registrars support linking birth registration to the baby bonus payment. A number of parents delay registering births, in some cases until many years later. This measure will improve the timeliness of birth registrations and the accuracy of birth statistics and population estimates. This will help governments to plan for future service delivery and the funding of schools and health services.

### *Name change to baby bonus*

This legislative amendment will ensure that from 1 July 2007 the maternity payment will be renamed the baby bonus. The payment is commonly referred

to as the baby bonus and there will be less confusion in communication with parents.

### **Schedule 7 – Portability of Family Tax Benefit<sup>8</sup>**

Changes are being made to allow the 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, as a result, remain overseas for longer than 13 weeks.

### **Schedule 8 – Remote area allowance<sup>9</sup>**

Schedule 8 of the Bill amends the remote area allowance (RAA) provisions in the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* from 1 July 2008, to ensure that an additional allowance is payable for each FTB child and regular care child of a person. This is because the Child Support Reforms have redefined the definition of an 'FTB child'. This measure ensures that children in a parent's care for between 14 and 34 per cent of the time will continue to attract additional remote area allowance.

As part of the child support reforms that come into effect from 1 July 2008, the concept of 'FTB child' will be redefined to mean a child in respect of whom an individual has 35 per cent or more care, provided the child also meets all other relevant eligibility criteria such as Australian residence. An individual with this level of care will continue to attract all relevant existing components of FTB (Parts A and B) including the child specific rates.

A child in respect of whom an individual has 14 per cent or more and less than 35 per cent care, where the child meets all other relevant eligibility criteria, will be a 'regular care child' of the individual.

These changes to the concept of FTB child and the introduction of the concept of a regular care child have implications for RAA.

For most social security income support payments, an additional RAA allowance is currently payable for each FTB child of the person. For youth allowance and AUSTUDY payment, an additional RAA allowance is currently payable for each FTB child that attracts more than the base rate of FTB. Without amendment, regular care children would not attract the additional allowance.

The RAA provisions are therefore amended to ensure that each FTB child and regular care child attracts an additional RAA allowance, consistent across all relevant payment types.

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<sup>8</sup> Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, Schedule 7 (page 142) and Explanatory Memorandum (pages 86-87)

<sup>9</sup> Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, Schedule 8 (pages 143-153) and Explanatory Memorandum (pages 88-90)

Similar amendments are made to the RAA provisions in the *Veterans' Entitlements Act 1986*.

### **Schedule 9 – Dependant and housekeeper rebates, and Medicare levy<sup>10</sup>**

Schedule 9 of the Bill makes consequential amendments to the *Income Tax Assessment Act 1936* following the recently enacted Child Support Taskforce reforms that included changes to 'FTB child' and the introduction of a concept of 'regular care child'.

Amendments are made to the dependant and housekeeper rebates to update references to shared care percentages. Medicare levy provisions are amended to ensure that prescribed persons who are eligible for FTB Part A for a child (whether an FTB child or a regular care child) continue to have their exemption apportioned according to their share of care for the dependent child, even if that care is for less than 35 per cent of the time.

### **Schedule 10 – Extension of the assets test exemption period<sup>11</sup>**

The measure addresses community concerns about the 12 month assets test exemption period for principal home sale proceeds being insufficient, in some cases, to purchase or build a new principal home. This is particularly the case in Western Australia where demand on the building industry has led to some pensioners being unable to build new homes within 12 months of the sale of their former home. Cyclone Larry has also shown that 12 months may not be long enough to rebuild or repair a person's home where rebuilding efforts of a disaster-affected community are stretched.

Currently, under the Social Security Act, the proceeds from the sale of the principal home can be exempt from the assets test if the person is likely to use the proceeds to build or buy another home within 12 months. Consequently, after the 12 months have passed, the proceeds of the sale, and the unfinished home and land on which the home is being built, become assessable assets.

The Bill provides for a discretion to extend the assets test exemption of principal home sale proceeds from 12 months to up to 24 months. This change will assist people who, for reasons beyond their control, cannot purchase or build a new home within 12 months, provided the person continues to have an intention to purchase or build a new home. The change will mean that the sale proceeds, the value of the partially finished home, and the value of the land on which the home is being built may be exempt from the assets test for up to 24 months. However, the maximum asset value that may be exempt is the value of the proceeds of the sale of the old principal home.

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<sup>10</sup> Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, Schedule 9 (page 154) and Explanatory Memorandum (pages 91-93)

<sup>11</sup> Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, Schedule 10 (pages 155-164) and Explanatory Memorandum (pages 94-101)

Currently, under the Social Security Act, the value of insurance proceeds that will be used to rebuild or repair a home that has been damaged or lost can be exempt from the assets test past 12 months. However, temporary absence from the principal home rules cannot be extended beyond 12 months. This means that after the 12 months temporary absence period ends, the value of the unfinished home and land become assessable assets.

The Bill provides for a discretion to extend the current 12 month temporary absence from the principal home rule to up to 24 months for people who have suffered a loss or damage that has forced them out of their homes. This change will mean that the value of the damaged home, and the value of the land on which the home is being rebuilt or repaired may be exempt from the assets test for up to 24 months.

For a person, and their partner, to benefit from the amendments they must have made reasonable attempts, within a reasonable timeframe, to purchase, build, rebuild, or repair a new home, and have experienced delays beyond their control.

The Bill does not amend the income test rules relating to financial investments. Therefore, while the proceeds of the sale of the principal home are not counted as an asset, those funds while held as financial investments will continue to be deemed to earn an income.

### **Schedule 11 – Amendments relating to income streams<sup>12</sup>**

Schedule 11 of the Bill amends the *Social Security Act 1991* and *Veterans' Entitlements Act 1986* to make a number of minor amendments aimed at enhancing and improving the efficiency and effectiveness of various income streams rules. This includes two technical amendments to align the provisions of the means test with the Government's new Super Plan and to ensure that no customers are disadvantaged by new arrangements flowing from the Plan. There is a third technical amendment to correct the definition of a defined benefit income stream to ensure that certain recipients of these products continue to receive a 100 per cent exemption from the assets test.

There are three other amendments designed to ensure the integrity of the means test through reinforcing current policy settings. These amendments:

- restore certain limitations, removed inadvertently on 20 September 2004, regarding the conditions under which life expectancy income streams purchased before that date could retain asset test exempt status on reversion to a reversionary beneficiary.

This measure will not disadvantage recipients who purchased their life expectancy income streams before 20 September 2004;

- ensure that foreign pensions/annuities that are not subject to Australian prudential regulation do not qualify as income streams for social security purposes; and

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<sup>12</sup> Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, Schedule 11 (pages 165-173) and Explanatory Memorandum (pages 102-110)

- prevent members of small superannuation funds from exploiting the use of 'unallocated reserves' in the funds to inappropriately increase income support entitlements.

## **Schedule 12 – Other minor and technical amendments**<sup>13</sup>

Schedule 12 of the Bill makes various amendments of a minor or technical nature to social security and child support legislation. The amendments correct technical errors such as repealing redundant provisions, correcting errors in cross-references, adjusting notes to provisions and similar matters.

There are two minor amendments applicable to the Australian Government Disaster Recovery Payment (AGDRP) in this Schedule. The first amendment is of a technical nature and corrects a reference in paragraph 1061K(1)(b)(iv) of the *Social Security Act 1991*, which enables the Minister to determine in writing that a specified class of Australian citizens that are not Australian residents can qualify for an AGDRP. The second amendment is to subsection 31(1) of the *Social Security Administration Act 1999* and clarifies that a person who is an Australian citizen but not an Australian resident, where covered by the Minister's written determination, is able to lodge a claim for the AGDRP in relation to a disaster that occurred *in* Australia. This amendment amends the rule that a person be 'an Australian resident' and 'in Australia' to make a claim for a social security payment (section 29 of the *Social Security Administration Act 1999*). Subsection 31(1) currently provides that section 29 does not apply where the person wishing to lodge a claim for the AGDRP is not an Australian resident and where the claim relates to a disaster that occurred *outside* Australia. Both amendments are beneficial in nature and give effect to the original intent of the AGDRP measure. This change will thus allow the AGDRP to be made to Australian citizens, resident or non-resident, in the event of disasters that occur both within and outside of Australia.

A further minor amendment is to provide for the Executive Director of the Social Security Appeals Tribunal (SSAT) a power to delegate his or her powers under the social security law to a member of staff of the SSAT. The powers likely to be delegated are those relating to practical matters for arranging hearings, such as setting the time and place for hearings and sending out correspondence. The capacity to delegate some of these powers will considerably assist the Executive Director, particularly in managing an increasing caseload of reviews. The intention would be to delegate such powers to SSAT Office Managers, who are senior administrative staff. The new delegation power is comparable to the Secretary of many Commonwealth departments being able to delegate powers to 'an officer', including under social security law. Powers that go to the substance of the consideration of reviews would continue to be exercised strictly by SSAT members.

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<sup>13</sup> Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, Schedule 12 (pages 174-176) and Explanatory Memorandum (pages 111-113)

## **The Ministerial Taskforce on Child Support**

In August 2004, the Australian Government established the Ministerial Taskforce on Child Support (the Taskforce) 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 included 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.

On 28 February 2006, following acceptance of the report from the Ministerial Taskforce on Child Support, the Government announced that it would undertake a major overhaul of the child support scheme to deliver a system that would act in the best interests of children. Given the extensive nature of the recommendations, and the comprehensive legislative, service delivery and systems changes required, the reforms are being implemented in three stages – commencing on 1 July 2006, Stage 2 in January 2007 and Stage 3 in July 2008.

*The Reform of the Child Support Scheme (New Formula and Other Measures) Act 2006* was passed by Parliament and Royal Assent was given on 6 December 2006, all changes will be implemented by July 2008.

## **Implementation of the child support reforms**

Stages 1 and 2 of the reforms included changes that would address pressing concerns in the child support system, but which could be implemented with minimal legislative and systems-based changes. Due to comprehensive legislative changes 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 will commence in July 2008.

### **Stage 1 Reforms – from 1 July 2006**

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.

- *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 per cent 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 per cent 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.

## **Stage 2 Reforms – from 1 January 2007**

Stage 2 commenced on 1 January 2007 and included:

- *Independent review of Child Support Agency decisions.* Previously, parents who were unhappy with Child Support Agency decisions could only appeal them to the courts. This was expensive and time consuming. Stage 2 reforms now provides for an expansion of the role of the Social Security Appeals Tribunal<sup>14</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.
- *Improving the relationship between the Child Support Scheme and the courts.* There is now a simplified relationship between the courts and the new Child Support Scheme, making the process easier and more responsive to parents' needs. This happens in three ways:
  - *Access to court enforcement by parents:* Previously, a resident parent could not enforce payment of a child support debt through the court system while the Child Support Agency was collecting the ongoing child support payment. The reforms allow the resident parent to pursue court enforcement of the debt while the Child Support Agency continues ongoing collection.
  - *Powers of courts determining child support matters:* Previously, the courts had limited powers when seeking information currently available to the Child Support Agency. The reforms provide 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.
  - *Powers of case management:* Previously, courts had limited powers to make stay orders. This meant that debts and penalties would build up even when a court was examining the case. The reforms provide for courts to have increased powers to make temporary arrangements about child support.

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<sup>14</sup> Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006 Schedule 3 (pages 106-178) and Explanatory Memorandum pages 89-133.

### **Stage 3 Reforms – from 1 July 2008**

Stage 3 is scheduled to commence on 1 July 2008 and will include:

- introducing a new child support formula that will change the way child support payments are calculated, to ensure more balanced assessments, encourage shared parenting and recognising the costs of contact;
- ensuring a minimum payment is made for each child support family;
- treating more fairly income from second jobs and overtime that assists with re-establishment after separation;
- ensuring balanced treatment of parents with dependent step-children when calculating their child support liability;
- improving the arrangements for parents who wish to make arrangements for ongoing child support or lump sum payments; and
- making the child support rules easier for those parents who are trying to get back together.

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>15</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.

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<sup>15</sup> Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006 (pages 5-70) and Explanatory Memorandum (pages 1-74).