

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

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

## **Introduction**

As requested by the Committee, the Department of Families, Community Services and Indigenous Affairs provides the following additional information relating to the submission to the Committee from the Non-Custodial Parents Party (the NCPP submission).

## **Legislative process**

In relation to concerns in the NCPP submission about the legislative process, FaCSIA notes that both this Bill and the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006* (the 2006 Act), have been prepared in the usual way.

Commonwealth legislation is written by experienced drafters at the Office of Parliamentary Council, in close consultation with the relevant departments. FaCSIA, as lead department in this process, also consulted with relevant service delivery agencies. This is the standard method of drafting a bill, ensuring that the legislation is in accordance with the policy intent of the desired changes, and is workable in implementation.

## **Size of Bill**

The NCPP submission also comments on the size and complexity of this Bill. It is not unusual for significant legislative change to require a subsequent bill to consolidate the amendments. FaCSIA also notes that this Bill includes other, unrelated amendments. Only around 45 pages of the Bill and 34 pages of the Explanatory Memorandum relate to consolidating amendments. A large portion of the child support-related provisions in this Bill originate from a bill that was introduced in 2004 for a range of service delivery improvements, mostly in relation to the operation of international child support arrangements. That bill did not proceed due to pressure on parliamentary schedules and the reform of the child support scheme.

## **Content of the Bill**

The NCPP submission raises various issues, including commenting that the child support reforms are not sufficient. While the fundamental principle of the Child Support Scheme remains the same – to ensure that children of separated parents benefit from the financial support of both their parents, according to their parents' capacity to provide that support – the structure and mechanics of the scheme, especially the formula, have been extensively reformed by the 2006 Act.

Most of the comments in the NCPP submission relate only tangentially to the content of this Bill, and refer rather to longstanding facets of the scheme, considered but not varied by the recommendations of the Ministerial Taskforce.

Alternatively, they relate to matters contained in the 2006 Act. For example, the submission comments on the operation of the Maintenance Income Test. Notional assessments, which are necessary for the appropriate operation of the Maintenance Income Test, are refined by amendments in this Bill, but the comments in this submission do not relate to the amendments in the Bill.

The following additional information is provided in relation to NCPP comments which do relate to the Bill.

### **Multiple cases**

The NCPP submission suggests that personal details will be available to third parties where parents have multiple cases, that is, the suggestion is that where a parent has one case with parent A and one case with parent B, parent A's details will be available to parent B and vice versa. This is not correct, as the income details of parents are only relevant for the calculation of their biological children's case, and are not available to the parent in the other case.

The NCPP submission also criticises the complexity of the legislation relating to multiple cases. Provisions for calculating child support in multiple cases are necessarily more complex than for simple child support cases, as the circumstances of more people must be taken into account. The complexity of the provisions is due, in part, to the need to calculate appropriate amounts of child support without involving the income of the parents in other cases and thereby infringing the privacy of parents.

### **Suspension of child support payments**

The NCPP submission questions why the Child Support Agency (CSA) will have discretion to suspend collection of child support when a parent challenges whether a child support assessment should have been made. The submission misunderstands the amendments in this Bill. CSA will always suspend disbursement to the payee while an assessment is challenged through the courts on the ground that the payer is not the parent of the child. Collection will continue, to ensure that the payer does not face a debt if they are found to be the parent. If they are found not to be the parent, the withheld amount can be refunded to the payer. This was legislated in the 2006 Act. Amendments in this Bill provide that a court may consider the "mere suspicion" on the part of either parent that the payer is not the biological parent of the child, allowing a court to make an appropriate ruling considering all the circumstances of a case.

This Bill also ensures that CSA will have a discretion to suspend collection where the making of an assessment is challenged for other reasons, such as a child being ineligible (eg, because they were born before the introduction of administrative assessment in 1989). In this regard, the Bill is maintaining the existing operation of the Act.

The NCPP submission states that the act of challenging an assessment should be sufficient to trigger a stay order, and that the collection and payment of child support should be suspended. The submission suggests that stay orders are generally automatically available upon application in other areas of law, which is not the case. It would not be appropriate to automatically suspend the collection of child support, as such challenges may be groundless or vexatious, and significant arrears could result, as well as possible hardship for the child(ren).

## **Appeals to the AAT**

The NCPP submission comments that review by the Social Security Appeals Tribunal (SSAT) is not sufficient in relation to production of evidence, and suggests that review by the Administrative Appeals Tribunal (AAT) should be available where parents disagree with an SSAT decision. The AAT functions more like a court, with more formal rules relating to evidence and other procedure. Government considered having a second tier of review through the AAT of SSAT decisions for child support. This was rejected on the grounds that it would provide an additional forum for parental dispute. Allowing additional review by the AAT would also be contrary to the principles of the child support and Family Law reforms, which aim to reduce the involvement of adversarial processes. A parent with lesser access to financial or legal support could also be disadvantaged in the AAT where the other parent is able to more significantly influence the Tribunal's consideration of their case by obtaining expert legal representation.

SSAT members are experienced in using an inquisitorial approach to gather information and resolve disputes without the need for legal representation or formal rules of evidence (although parents may be represented should they prefer it). The 2006 Act legislated for this approach, and the Attorney-General's Department, which reviewed the bill, were satisfied that a single-tier approach did not infringe upon rights to review.

## **Information-gathering powers**

It is sometimes necessary for CSA to seek information from third parties, where accurate information cannot be obtained from parents. The NCPP submission states that the powers to obtain non-financial information from third parties contained in this Bill are excessive.

This Bill aligns CSA's information-seeking powers for original decisions with those they have when making objection decisions (passed in the 2006 Act). Having different powers for the two processes could lead to unnecessary objections and anomalous outcomes.

These powers, including the ability to seek non-financial information, are in line with Centrelink's powers.

## **Parentage and overpayments**

Where a person has paid child support and later finds out that they are not the parent, they are not able to recover the overpayment from the Child Support Agency, as the money is disbursed to the payee. This was confirmed by the case mentioned in the NCPP submission, and this Bill simply clarifies this to avoid confusion.

The NCPP submission states that the CSA should not impose administrative assessment. The system of administrative assessment was introduced in 1989, and this approach was supported by the Ministerial Taskforce on Child Support. On occasion, it is found that an administrative assessment should not have been made, as the person named as the child support payer was not a parent of the child. The 2006 Act made various provisions to improve outcomes for people in this situation, including:

- automatically suspending disbursement of child support when paternity is challenged through the courts (allowing undisbursed funds to be repaid if non-paternity is proven), and
- allowing the CSA to collect any disbursed payments which are overpayments as the result of a court order, on behalf of the person. This places the former payer in the same position as the former payee, allowing the overpaid amount to be collected without further recourse to the courts.

### **Sufficient interest**

The NCPP submission states that the definition of “sufficient interest” in the Bill is too vague and subject to possible misuse. The definition relies on the satisfaction of the CSA that the person has a genuine and legitimate interest in the information. A stringent test will be applied to exclude casual, vexatious, and other unwarranted requests for information. In addition, information will only be released for the specific purposes listed in the Bill, and only where the information cannot reasonably be obtained from another source. Using a more precise definition in legislation would be unwieldy and could lead to information being withheld from legitimate enquirers.

The use of the term “independent contractor”, also criticised in the NCPP submission, extends provisions applying to employees in receipt of salary and wages to those employed or engaged through other forms of contract.

The Bill was reviewed and approved by the Attorney-General’s Department. The Attorney-General’s Department is satisfied that the definition of “sufficient interest” is not too vague and will not impinge upon people’s rights.

### **Notional assessments**

The NCPP submission criticises legislation relating to Family Tax Benefit (FTB), especially the Maintenance Income Test, in the context of the provisions in this Bill to refine notional assessments. The substantive legislation for notional assessments was passed in the 2006 Act, and the Maintenance Income Test is an existing part of Family Assistance legislation, which recognises the resources available to parents through child support. The majority of the issues raised in the submission do not relate to the provisions contained in this Bill.

Notional assessments allow parents more flexibility in making agreements, while giving them access to the same amount of FTB as if they had not made the agreement. This approach is in line with the requirement for parents to seek child support in order to receive more than the base rate of FTB Part A.

This includes arrangements where the agreement may include non-cash payments of child support. The Maintenance Income Test currently applies to non-cash payments. The new approach is expected to make outcomes clearer for parents, allowing them to make better informed agreements. It is appropriate to continue this application to non-cash payments in order to consider the total resources transferred as child support.

It is untrue, as claimed in the NCPP submission, that reduction of FTB due to child support will increase after 1 July 2008 as a result of ending FTB splitting for care of less than 35 per cent. While resident parents will have access to 100 per cent of the FTB, the child support payable will be reduced to recognise the costs of regular care for the non-resident parent. In many cases, this will

result in more FTB being available to parents. Overall, almost half of the \$730.4 million allocated over four years through Budget measures for the child support reforms is for additional FTB expenditure.