NON-CUSTODIAL PARENTS PARTY

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Committee Secretary,
Community Affairs Committee,
Department of the Senate,
PO Box 6100,
Parliament House.
CANBERRA. ACT. 2600.

Dear Sir,

Re. Submission to the Inquiry into the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007.*

We would like to make a submission to the Senate Standing Committee for Community Affairs.

This is with regard to the *Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007* (referred to in this submission as the *Bill*).

1. Introduction

The current Minister, the Hon Mal Brough MP, presented the *Bill* to Parliament on 29 March 2007. The Minister stated in the opening remarks to

his second reading speech that the *Bill* "*consolidates the government's major 2006 legislation*".

This "*legislation*" includes the just recently passed *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006.*

The *Bill*, for that particular Act, was before the Community Affairs Committee in October 2006.

The *Child Support Legislation Amendment Bill 2006* then consisted of 306 pages of legislative changes. In addition, the *Explanatory Memorandum* for that *Bill* consisted of 230 pages.

The undersigned attended the Community Affairs Committee's public hearing in Canberra on 4 October 2007. This was as a spectator. There were many significant criticisms raised by many of the witnesses.

However the Community Affairs Committee allowed the *Child Support Legislation Amendment Bill 2006* to go through the Committee. This is without recommending one single change to that particular *Bill.*

It is noted that this is with the exception of some minor legislative changes that were later put directly to the Senate by the Deputy Chairperson of the Community Affairs Committee.

To the casual observer, this would unfortunately indicate that the Community Affairs Committee does not really understand what this type of proposed legislation is all about.

The Current *Families, Community Services and Indigenous Affairs Legislation Amendment Bill 2007* consists of 184 pages. The accompanying Explanatory Memorandum consists of 117 pages.

To have so many amendments come so soon after the passage of the previous legislation indicates that, in this instance, there could be a high level of incompetence in the Government's legislative drafting review procedure.

This is regardless of the fact that the Minister said in his second reading speech that the *2007 Bill* is related to both the 2006 *Bill* and to other items of legislation.

This is also regardless of the fact that the Minister said that the proposed changes in the current *Bill* were to make "*consequential amendments and minor refinements*". One would think that there would be at least some significant changes in 184 pages of legislation!

This is also particularly significant because most of the 2006 amendments have not yet become effective and therefore not yet tested. It can be only assumed that substantial amendments will occur when the changes are actually tested (and based on the present need for changes, this could well be before then).

2. <u>General Concerns</u>.

a. <u>Fundamentals Are Not Being Changed</u>.

The Minister, the Hon Mal Brough, also stated in his second reading speech on 29 March 2007, that the current *Bill* is based on the Child Support Task Force's Report "*In the Best Interests of Children — Reforming the Child Support Scheme.*"

(The previous Minister, the Hon. Senator Patterson released this Report on 14 June 2005.)

It is well recognised that the existing Child Support Scheme does not work.

That is apparently why the Government wants to make changes to it.

However what the Government has apparently failed to realize is that without changing the fundamentals of the Scheme, the problems are not being fixed.

Unfortunately, as noted in our previous submission to your Committee dated 22 September 2006, paragraph 7.1 on page 102 of the Child Support Task Force's Report states that "*The Taskforce does not propose any change to the fundamentals of the Scheme.* "

b. <u>Payments Are Not Increasing</u>.

The Child Support Agency releases an annual publication titled "*Child Support Scheme. Facts and Figures*". This is a very detailed and informative report.

The Child Support Agency has just recently released the latest version. It is titled "*Child Support Scheme. Facts and Figures 2005-2006.*" As such, it provides statistical child support information for the financial year ending on 30 June 2006.

From that publication, it can be ascertained that the average amount of child support that the Child Support Agency collected in 2006 was only $44.00 per week per child. (ref. *Child Support Scheme. Facts and Figures 2005-2006*).

A copy of the calculation is provided in *Appendix A* of this submission.

The Parliamentary "*Joint Select Committee on Certain Family Law Issues*" said in 1994, that the average court order was for $26.00 per week per child in 1988. Based on Consumer Price Index figures, this figure would equate to around $45.00 per week per child in 2006 values.

This shows that despite the Government literally pouring billions of dollars into the Child Support Agency (via the clawback of Family Tax Benefits to custodial parents), parents are at the best no better off, i.e. since the inception of the Child Support Scheme in 1989.

At the worst, parents are far worse off, since the Scheme's inception.

c. <u>Unemployment Is Increasing</u>.

Table 5.2 of the CSA's *Child Support Scheme Facts and Figures 2005-2006* shows that 43.2 per cent of liable parents for child support were either unemployed or into below-taxable income levels. That is, as at June 2006

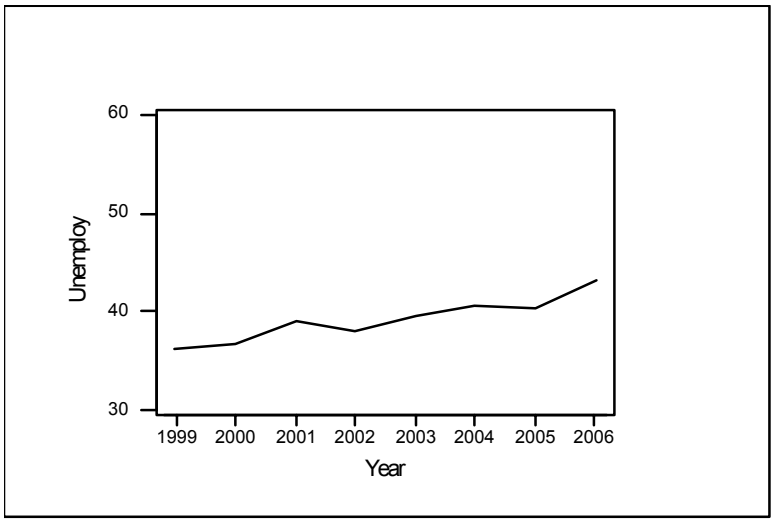
This equates to 311,953 people out of a total number of 722,113 child support payers being effectively unemployed. This is an absurdly high figure considering that the national unemployment figure is only about 5 per cent.

For comparison purposes, both last year's and previous seven (7) figures are provided below:

2005-2006	43.2 per cent
2004-2005	40.5 per cent
2003-2004	40.7 per cent
2002-2003	39.6 per cent
2001-2002	38.2 per cent
2000-2001	39.0 per cent
1999-2000	36.9 per cent
1998-1999	36.4 per cent

(ref. respective Table 5.2's in the CSA's '*Child Support Scheme. Facts and Figures'* for *2005-2006, 2004-2005, 2003-2004,* etc).

This trend is clearly upward, as is shown below:



The Child Support Agency's solution to the problem is to literally force liable parents into submission.

This solution has been outlined in several media releases (particularly coming out of the CSA's Brisbane enforcement office) and via many indirect "briefings" given to selected media journalists.

The above figures show that this "solution" has not worked.

On the other hand, the Child Support Agency apparently still believes that it needs more and more onerous legislation to achieve this objective.

History confirms that simply making onerous legislative changes to an already fundamentally flawed system does not work

The administrative procedures of the Child Support Agency are well below acceptable standards (ref "*Treating all Family Types Equally in Social Policy and Law*" by Pamela J Henry and Natalie J Gately, Edith Cowan University School of Law and Justice, 2006).

This should be a concern for any government. However for many Australians, this is actually a godsend.

Otherwise there would be probably more than 43.2 per cent of liable parents effectively unemployed.

3. Specific Concerns

a. The Child Support Legislation is Complex and Unworkable.

The current overall child support legislation (i.e. in both this *Bill* and in previously passed legislation) is overly complex and therefore unworkable.

This is emphasized, as noted above, by the fact that there are now a further 184 pages of amendments contained in this *Bill*. This is further emphasized by the fact that these proposed amendments mostly relate to just recently passed amendments.

There are also a further 113 pages in the *Explanatory Memorandum* to explain these changes.

b. The Perceived Lack of Transparency.

The proposed *Bill* is detailed and complex.

At the same time, the *Explanatory Memorandum* is too complex for most "outsiders" to understand the proposed changes.

The *Explanatory Memorandum* for this *Bill* should have been made a lot simpler than what it currently is. That is, so that all the stakeholders can more readily have access to the reasoning behind the changes and their consequential effects.

We understand that the *Child Support Policy Unit* of the *Department of Families, Community Services and Indigenous Affairs (FACSIA)* is responsible for drafting the proposed *Bill*.

Officers of the CSA will use the proposed legislation when it is implemented. These officers are located within the *Department of Human Services*.

Some of these officers would no doubt have already reviewed the contents of the draft *Bill* and passed their comments back to the *Child Support Policy Unit*.

This is entirely appropriate. However there is only a thin line of separation between both groups. This is a concern in itself.

Therefore there is a need to provide a thorough and independent overview of the current *Bill* as framed by the Child Support Policy Unit.

We understand that this is one of the reasons for the calling of public submissions by the Community Affairs Committee (otherwise the *Child Support Policy Unit* could simply call for submissions itself).

There is a concern, that with the swift review of the previous *Bill*, the current investigation by the Community Affairs Committee will not be as insightful as it could be.

4. Pages 11 to 16 of the *Explanatory Memorandum.* 'The "*Multi-Case*" Method'

The "*Multi-Case*" method is overly complicated and is also overly intrusive to those concerned.

For example, the *Explanatory Memorandum* states at paragraph 3 on page 13 that

"*The cost of this child … will be calculated…. by assuming that all the child support children of the parent are the same age, and then dividing this cost by the number of such children to obtain the cost of one child.*"

It may sound simple. However it will require the personal details of at least three (3) and possibly more families to be obtained and verified to achieve this result.

Unfortunately another solution is not readily apparent.

It simply shows that a complicated system causes more regrettable complications to occur.

5. Page 22 of the *Explanatory Memorandum*

The last paragraph on page 22 of the *Explanatory Memorandum* states that it is proposed that the Child Support Registrar will have a discretion to suspend child support payments.

As stated in the *Explanatory Memorandum*, this is "*to include all challenges to the assessment under Part VII, VIIA or VII of the Child Support Registration and Collection Act*" (presumably the second Part VII is a typographical error and actually refers to Part VIII of the said *Act*).

That is, in certain circumstances, where there are objections, reviews and appeals are being conducted.

This would include the following parts:

- Part VII, which covers "*Internal Objection Procedures for Certain Decisions*."
- Part VIIA that covers "*SSAT Review of Certain Decisions*."
- Part VIII that covers "*Court Review of Certain Decisions*."

The making of an application should be sufficient to act as a stay. This is in the same way that occurs in normal civil law and in some administrative law (unfortunately not in child support legislation).

The Registrar's mere discretion to suspend the making of payments is inadequate.

It should be mandatory to suspend both collection and the making of child support payments. (i.e. unless the application or appeal is found to be either frivolous or vexatious).

The same comments would apply to applications and appeals that question the parentage of children (currently no automatic stay is applicable).

6. Page 27 of the *Explanatory Memorandum*

Item 42 on page27 of the *Explanatory Memorandum* states that the proposed legislation '*makes amendments described above at "Administrative review – decisions on out of time applications*"'

Under the current child support legislation, the Administrative Appeals Tribunal (AAT) can only handle very limited types of child support applications. These include issues such as a refusal by the CSA to accept an out-of-time application or issues relating to disputes about child support penalties.

Due to these limited grounds for making an application, there are therefore very few applications made to the AAT, on child support issues.

The AAT should be made the first "port-of-call" after the Social Security Appeals Tribunal (SSAT). This option is available for disputes involving Centrelink.

The previous child support *Bill*, which was recently before the Community Affairs Committee in October 2006, effectively removed the right of appeal to a court.

The rules of evidence (unlike that applies to a court or the AAT) specifically do not apply to proceedings that are part of a departure application with the CSA or a review by the SSAT.

All disputes should be able to be placed before an independent forum where the rules of evidence apply e.g. the AAT.

7. Page 34 - 35 of the *Explanatory Memorandum*

Pages 34-35 refer to information that investigation officers can obtain.

Item 19 removes the current restriction applying to third parties. That is, that the information sought may not relate to the non-financial affairs of another person. By removing this restriction, privacy of third party individuals, such as friends, relatives and business associates will wrongly impinged upon.

As a result, the intent of the *Privacy Act 1988* will be further effectively by-passed.

Item 28 further expands the scope of access to information that can be obtained from an "*independent contractor*".

The definition of *independent contractor* is not provided in the new proposed legislation. So what is an independent contractor is not fully known.

However, whatever it is, the proposed legislation does further impingement upon the privacy of third parties

For example, taking an extract from the existing child support legislation and reading the word "*independent contractor*" in lieu of "*employer*'', an authorized officer the CSA (which includes most employees in the CSA) can approach and obtain access to almost any associate of the child support payer.

That is, as long as the authorized CSA person has the authorized paperwork that can be also self-authorised.

(Extract from *Child Support Registration and Collection Ac 1988*)

61 Access to premises etc.

(1) For the purposes of the application of this Part in relation to an employer, an officer authorised in writing by the Registrar to exercise powers under this section:

(a) May, at all reasonable times, enter and remain on any land or premises;

(b) is allowed free access at all reasonable times to all documents; and

(c) May inspect, examine, make copies of, or take extracts from, any document.

8. Page 57 of the *Explanatory Memorandum.*

The *Explanatory Memorandum* refers to a court case by the name "*Child Support Registrar and Z and T (21 March 2002)".*

In that decision, Z was found not to be the father of the child. However the court apparently found that the father could then not be refunded previously paid payments, made to the Child Support Agency.

It is not right that the Child Support Registrar should impose the administrative assessment. This is often without the consent of the payer. This is also very often without the consent of the payee (this is due to the requirements of the *Reasonable Action Test*).

Then the liable parent does not have recourse to obtain the funds from the Child Support Agency. This is, even if the administrative assessment was either inappropriately or incorrectly made in the first instance.

9. Page 63 of the *Explanatory Memorandum*

The definition of *sufficient interest* is proposed to be as follows.

4(A) A person has sufficient interest in protected information, if the Registrar, or the person authorized by the Registrar, is satisfied that, in the course of the communication, the person as a genuine and legitimate interest in the information.

This definition is too vague and therefore subject to possible misuse.

10. Pages 69 to 72 of the *Explanatory Memorandum*

These pages of the *Explanatory Memorandum* deal with notional assessments and non-periodic payments.

Although not specifically stated, these notional assessments will be used to take 50 cents in the dollar from the Family Tax Benefit A payments made to custodial parents (above a small exempt amount).

For custodial parents to receive up to the maximum Family Tax Benefit Part A payment, the Government states that the custodial parent must join the child support scheme (the "*Reasonable Action Test*"). Otherwise these parents only receive the minimum Family Tax Benefit payment.

Projected ABS Census data (no. 3310.0) shows that in 2006, custodial parents will number about 750,000. For the same period, the Child Support Agency's number of these parents registered in the Scheme is 720,459 (ref *Child Support Scheme. Facts and Figures 2005-2006*).

This shows that the Government has been "successful" in 96 per cent of the time, in its endeavours.

When the custodial parent then "participates" in the Child Support Scheme, the amount of 50 cents in the dollar is then deducted from the Family Tax Benefit A Payment. Last year, this resulted in $539 million being keep by the Government. (ref. *Child Support Scheme. Facts and Figures 2005-2006*).

Half of this money then goes to the cost of running the Child Support Agency ($278.0m to the Department of Human Services and $3.0m to FACSIA).

The other half simply goes back into the Government coffers.

It is noted that this clawback will increase significantly as from 1 July 2008.

This when the FTB payments will be taken off non-custodial parents with less than 35 per cent contact and the custodial parent will have more FTB payments that can be reduced.

It is further noted that, in some cases, as a result of these changes, the Government will keep part (and sometimes all) of the Family Tax Benefit

payment. This is where the custodial parent's income is higher than the non-custodial parent's income.

Non-periodic payments may be in a non-cash form (section 84(1)(d) of the *Child Support Assessment Act 1989*).

Therefore, under the current proposed legislative changes in the *Bill*, it is unfair for the Government to make a cash reduction to Family Tax Benefit payments. This is when the non-periodic payment may be in a non-cash form.

9. Conclusion

We would like to remind the Committee that rather than add to the problem by passing the current *Bill*, the Government should be considering repealing both the *Child Support Assessment Act 1989* and the *Child Support Registration & Collection Act 1988*, in their entirety.

Adequate legislation currently would exist under the *Family Law Act 1975* to replace this repealed legislation. For example, *Section 66* of the *Family Law Act 1975* covers child maintenance provisions.

The repeal of the above child support legislation would then result in the parents being involved in decisions that affect their children and not the Government as it is now.

Trusting that these details are satisfactory.

Yours faithfully

John Flanagan,
Deputy Registered Officer,
Non-Custodial Parents Party.

APPENDIX A

Amount of Child Support Collected as at 30 June 2006

(Ref *Child Support Scheme. Facts and Figures 2005-2006*.)

Total amount of CSA Transfers = $2,563.1 million

No of children affected by the CSA Scheme = 1,120,328
(Stage 2 cases only)

The average amount of child support that the Child Support Agency collected in 2006 can be determined by the following calculation:

= $2,563,100,000 / (1,120,328 children x 52 weeks)

= $44.00 per week per child