Men's Rights Agency

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

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Community Service Awards 2001, 2002, 2003, 2005, & 2006

27th April, 2007

Committee Secretary
Community Affairs Committee
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Dear Committee Members,

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

To describe this bill as making "minor consolidating refinements to the child support scheme is a convenient understatement designed I believe to suggest to members of the House and the Senate or anyone else interested, that scrutiny is not needed. The author of the Explanatory Memorandum and the drafters of the Bill would have us believe the amendments are boring, only important to the smooth operation of the Agency, in other words not worthy of your time and effort.

However, belatedly I have decided to attempt to respond to the Bill as a result of a request to do so, despite there being little time available. My apologies for the lateness of this submission. By adding this contribution to others already submitted, perhaps we can at least claim that we tried to fulfill the role of "watchdog" and bring some sanity to this draconian, Kafkaesque legislation.

Schedule 2 proposes moving the regulations relating to the payment of overseas maintenance into the body of the parent Acts, but this is the third time these changes have been presented to Parliament in some form or another.

In 2000 the Child Support Legislation Amendment Bill introduced clause 163B into the Assessment Act and 123B into the Registration and Collections Act, for the first time enabling Regulations to be made that would supposedly subject Australian parents to demands made by those foreign governments who had entered into a "multilateral treaty or bilateral agreement", to the Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.

It is confirmed that the Bill was sought to enforce the provisions of the treaty Australia was in the process of negotiating with New Zealand. The Bill's Digest No. 141, 1999-2000 advises:

> The effectiveness of existing reciprocal arrangements in obtaining maintenance for Australian payees is variable. Delays and poor outcomes are common where an Australian payee has to go through the process of obtaining a provisional order from an Australian court and seeking confirmation of it by an overseas court ... Overseas payees [and] child support agencies have also been critical of the operation of existing procedures for obtaining maintenance for children overseas.[3]

The Bill's Digest also explains the thinking of the bureaucracy and the supposed gains that will be achieved if only they can find a way to overturn those pesky clauses in the child support legislation that prevents imposing assessments or collection on parents who do/do not live in Australia and/or for their children who do/do not live in Australia.

The easy solution was to introduce 2 simple clauses allowing Regulations to be made – "Henry VIII" clauses in fact. Though this description did seem to be causing concern, we all know Regulations do not come under scrutiny. Suddenly those pesky limitations contained in clause 12(1)(f) of the Assessment Act and the Registration & Collection Act were overridden, as can be seen in the following extracts:

- **Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000**
Statutory Rules 2000 No. 79 as amended

6 Events that are not child support terminating events

(1)In relation to Australia's international maintenance arrangements with a reciprocating jurisdiction, paragraph 12 (1) (f) of the Act does not apply.

Note Paragraph 12 (1) (f) of the Act states that a child support terminating event happens in relation to a child if none of the following paragraphs applies any longer in relation to the child:

(a) the child is present in Australia;

(b) the child is an Australian citizen;

(c) the child is ordinarily resident in Australia.

(2)In relation to Australia's international maintenance arrangements with a reciprocating jurisdiction (other than a reciprocating jurisdiction mentioned in subregulation (3)), paragraph 12 (3) (b) of the Act does not apply.

Note Paragraph 12 (3) (b) of the Act states that a child support terminating event happens in relation to a person who is a liable parent in relation to a child if the person ceases to be a resident of Australia.

- **Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000**
Statutory Rules 2000 No. 80 as amended

3 Purpose

(1)The purpose of these Regulations is to give effect to Australia's obligations under international agreements or arrangements relating to maintenance obligations arising from family relationship, parentage or marriage.

(2)The Act and these Regulations are intended to be construed and administered consistently with the purpose of these Regulations but, to the extent of any inconsistency, these Regulations prevail.

Note Paragraphs 124A (3) (a) and (b) of the Act state that these Regulations:

(a) may be inconsistent with the Act; and

(b) prevail over the Act (including any other regulations or other instruments made under the Act), to the extent of any inconsistency.

The 2nd Report of the Standing Committee containing The Alert Digest No 3 of 2000 reminded politicians of their responsibilities to not "inappropriately delegate legislative powers (1)(a)(iv).

However, the bill passed, despite warnings about Henry VIII clauses and has now been in operation for seven years.

At the time most interchange of child maintenance between parents living in different countries was actioned by private agreement or court order as it should be if necessary. At least then a court can consider the circumstances of both parents, their varying standards of living in respective countries, costs of living, income relevance to purchasing power, costs of contact and the sometimes unbelievable variation in exchange rates.

Two further failed attempts have since been made to introduce legislation to remove the Henry VIII clauses and reinsert the changes to enable the CSA to make assessment and collection decisions for people who did not fit into the existing specifications of the two CS Acts, i.e. in March 2004 and December 2004. In fact Parliamentary secretary Sussan Ley gave exactly the same second reading speech on 8th December 2004 as the Minister for Children and Youth Affairs Larry Anthony gave on 31st March 2004. Both speakers again attempted to convince their audience that the bill contained legislative amendments for **"minor policy measures in relation to child support"**.

The Explanatory Memorandum for the Child Support Legislation Amendment Bill 2004 indicates on page 8 that the treaty with New Zealand is still the only treaty in existence and proposes accommodating future treaties in the same way if and when they are initiated.

The Child Support agency seems to be at the centre of the moves to encourage world wide compliance with administrative assessments and collections. The individual states of the USA cannot comply; their system is structured around court ordered child maintenance orders. The arrangements now include the applicant in either country applying to a court for a "provisional" order that is then ratified by a court in the other country.

From comments made personally to me when meeting with members of the UK Works and Means Pension Committee, the British Government has little interest in collecting child support for the Australian government.

I would like to think the Committee would investigate exactly what treaties, agreements are in place now and what do they hope to achieve by introducing into the primary legislation variation to the principles to allow the CSA to collect and make assessments for parents who should currently be outside the purview of the CSA, apart from via the Regulations referred to.

In the current Explanatory Memorandum April 2007, Schedule 2 p.36, it is suggested the removal and replacement of the Henry VIII clauses, 163B in the Child Support Assessment Act, 1989 and 12 4A of the Child Support (Registrations and Collections) Act, 1988 which allow the CSA to use "regulations" that ignore the

basic principles establishing the two acts in question has been delayed, because of the "difficulty of drafting and passing primary legislation amendments within the timeframe necessary for the international arrangements".

The EM continues to remind the Government that it made a promise to bring the regulations, allowing the collection of child support payments from parents who may or may not still be resident in Australia for a child who may or may not still reside in Australia, "into the legislation as soon as possible".

Again on page 42 it becomes apparent that the only treaty in place is the one with New Zealand. If that is the case why do the CSA persist in trying to convince parents that agreements for the transfer of child support payments are in place with nearly 100 countries?

Are these changes necessary? Is seven years not long enough or is there some other reluctance to give this additional power to an administrative service whose decisions seem to escape normal scrutiny?

This section of this bill under consideration, certainly does not signify "minor" changes. They will alter the principles of the Act and continue to expose Australian parents/children to other countries' legislation where varying amounts of child support may have absolutely no relevance to the cost of raising a child in Australia or another distant country.

It may be of interest to note on pp 56-57 of the Explanatory Memorandum under the heading Rental **Property loss** it is proposed to insert further Henry VIII regulation clauses to allow CSA to add back into the child support income negatively geared property losses under $1000 that will become unidentifiable under ATO legislation, which will only show a lump sum comprising other items as well.

I would encourage the Committee to give careful consideration to this bill to ensure your decision to approve or reject has been considered in the light of the following terms and conditions in the Alert Digest No 3 of 2000 previously mentioned:

(1) (a) At the commencement of each parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:

(i) trespass unduly on personal rights and liberties;

(ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;

(iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;

(iv) inappropriately delegate legislative powers; or

(v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Other Comments:

Schedule 1

Allowing a parent to withdraw an application to the SAAT (p.3)

Suggests removing the original applicant as a party to the review if the applicant prefers to take no further part in the review.

Only providing the applicant wishing to withdraw, fully understands the case will still be decided and the outcome may affect them significantly and they will have lost their opportunity for input.

Provision of documents by the registrar to the SSAT (p.4)

Suggests "refinements' to the interaction between the SSAT and the Registrar are required ....

Sounds a little compromising and should only be allowed it all parties are notified and supplied with the same documents

Reporting Proceedings – identifying the Registrar (p.4)

So far no proceedings seem to be available at all – with parties identified or not. Surely initials will suffice as used by the Family and Federal Courts.

Jurisdiction of Courts (p.4)

It seems to be an appropriate place to raise the question of why parents with complaints about CSA decisions are being denied the opportunity given to other complainants, such as those about Centrelink, to appeal a SSAT decision to the AAT and are being restricted to an appeal to a Court on a matter of law only?

Provision of Documents (p.5)

Suggests that SSAT can be selective about the documents supplied to an Appeal Court hearing.

The Parties are entitled to have all documents submitted to the court. Certainly not subjected to a selection process carried out by staff employed by SSAT – who made the decision subject to appeal.

Effect of terminating events (p.8)

MRA has previously raised the anomaly of children who have left school and are working full time, earning in excess of the living away from home Centrelink allowance, often earning substantially more, who remain living with the previous payee parent. In these cases it should be regarded as a "terminating event" just as occurs if a person under 18 moves in with a 'partner'. This is a clear cut situation and the liable parent should no longer be liable for the support of the working teenager. CSA seem to think it is acceptable to retain the provision to decide whether the paying parent should continue to pay or not by resorting to the Review process, which is more likely to find a way to increase any payment amount for remaining children than to allow a decrease. In our experience Departure from Assessment hearings are often neither payer parent friendly or fair.

This is an ideal situation to include a subsection where it becomes a terminating event when teenagers who have left school and are earning an income greater

than the youth living away allowance, even though they chose to remain with the parent who was previously regarded as the payee.

We can see nothing wrong with teenagers supporting themselves as soon as they are able.

Costs of children and parents with multiple cases (p.11)

Confusing, departed from the Parkinson theories

Reflecting care changes in the assessment (p.16)

Again this is somewhat confusing. If the intention is now to limit recording changes unless there is a 7.1. increase or decrease in time spent, this will result in changes not being made that should be made. A matter of 2 or 3 days change a year can affect the level of payment. Parents may also have occasion to rely on CSA records to verify the extent of their previous agreements. That being the case the Registrar is I believe, obliged to update the Register details no matter how small or large the change.

Issues in Parenting Procedures (p.22)
Knowledge considered

Consideration of when a putative parent may have become suspicious they are not the parent would seem to have little to do with whether they are entitled to recover monies paid for a child that is not theirs. Suspicions can arise early, but understandably many men are reluctant to explore the issue of parentage for fear it will end their relationship with their family. They should not be penalized for their hesitation in seeking a DNA test. Also there is the matter of costs. Several men have delayed seeking paternity testing due to the exorbitant cost of a simple court hearing and the ongoing cost of DNA testing.

The only exception could be if the putative father is fully aware he is not the father yet still makes the decision to be responsible for the child.

Exclusion of costs from recovery of overpaid amounts in paternity cases (p.23)

It is suggested that because a payee cannot have a cost order, awarded as a result of action to vary or establish a maintenance liability, collected by CSA, is sufficient reason for a man subjected to paternity fraud and payment of child support for a child that is not his to be unable to seek collection of costs via CSA. He is to be regarded as being the same as a payee who is seeking recompense for costs from the parent of a child they have together. They are totally different situations and bear no relationship to each other.

Firstly I would suggest payees seeking to change an order would most often be funded by Legal Aid. A man proving he is not the father, funds his own action and is entitled to not only recover the overpaid maintenance, but to recover any costs incurred in proving non paternity. It is a shameful situation that CSA takes no responsibility in these cases and relies on claims, that it is "only acting as an agent" to avoid liability when their staff have ignored statements of non paternity

and continued to collect regardless. The least they could do is collect the costs as well. The men seeking return of funds will be lucky to recover a minimal weekly rate as many of the fraudsters are on pension benefits anyway.

Ongoing collections (p.23)

Difficulties will arise with the garnishee of child support from payments by contractors. How will the Agency determine if the conditions are a service contract only, does not include the supply of parts, is not payment for a another person employed by the person under contract, is a regular weekly, fortnightly or monthly payment? The payment could be as irregular as three monthly or six monthly or more and paid only on completion of the contract.

Schedule 2 Incorporation in primary legislation of matters dealt with by regulation (p.36)

See pp. 1 – 4

I hope you will give serious consideration to the points I have raised,

Kind regards

Sue Price
Director