FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND OTHER LEGISLATION AMENDMENT (FURTHER 2008 BUDGET AND OTHER MEASURES) BILL 2008

THE INQUIRY

1.1 The Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Bill 2008 (the Bill) was introduced into the Senate on 25 September 2008. On 18 September 2008, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 11 of 2008), referred provisions of the Bill to the Community Affairs Committee (the Committee) for report.

1.2 Although the Bill deals with a number of areas, the principal reason given for the referral was the effect of the changes to child support in Schedule 3 of the Bill. Major changes to the child support legislation were made in 1 July 2008 and the Bill addresses a number of aspects of those changes.[1] On 23 October 2008 the Committee decided that, in light of the correspondence it had received, it would also accept submissions relating to Schedule 2 of the Bill regarding changes to the partner service pension. While the Bill also deals with amendments to the maternity immunisation allowance (in Schedule 1) no submissions were received in relation to this aspect of the proposed legislation.

1.3 The Committee received 19 submissions relating to the Bill and these are listed at Appendix 1. The Committee also received a number of confidential submissions relating to the proposed changes to the partner service pension. The Committee considered the Bill at a public hearing in Canberra on 3 November 2008. Details of the public hearing are referred to in Appendix 2. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at http://www.aph.gov.au/senate_ca .

SCHEDULE 3 - CHILD SUPPORT

Provisions of the Bill

1.4 The child support sections of the Bill will make minor amendments to child support legislation, notably to address anomalies in relation to child support formula reforms that commenced on 1 July 2008. The legislation amended is the *Child*

1 Senate Selection of Bills Committee, *Report No. 11 of 2008*, Appendix 1.

Support (Assessment) Act 1989 (the Assessment Act) and the *Child Support (Registration and Collection) Act 1988* (the Registration and Collection Act).

1.5 The Explanatory Memorandum to the Bill outlines seven areas of the child support system which would be changed by the amendments.[2] These are:

- percentage of care;
- publication of reasons for decisions of the Social Security Appeals Tribunal;
- departure from assessments;
- terminating events;
- reducing rate of child support under minimum annual rate assessments;
- overseas liabilities;
- departure prohibition orders to enforce payment of overseas maintenance liabilities; and
- crediting prescribed payments.

1.6 The main areas of discussion during the inquiry were the changes in relation to percentage of care, the publication of reasons for decisions of the Social Security Appeals Tribunal and terminating events.

Percentage of care

1.7 In general, a carer's percentage of care of a child is determined by the most recent care arrangements agreed by the parents (or the parent/s and a non-parent carer). This agreement might take the form of an oral agreement, written agreement, parenting plan, or court order in relation to a child's care. In some circumstances, a carer's percentage of care will be determined by the Child Support Agency based on the actual care each parent or non-parent carer exercises.[3]

1.8 A number of changes will be made to provisions in Assessment Act which commenced on 1 July 2008 that enable the Child Support Agency to determine a new care period for the purpose of calculating a percentage of care.

1.9 Amendments will mean that a change in percentage of care of less than 7.1 per cent which is brought about by a new or varied agreement, plan or order as to care, will be able to be reflected in the child support assessment. This amendment ensures that, where parents come to a new agreement or obtain a new order about the care of a child, that care can be reflected in the child support assessment.

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2 *Explanatory Memorandum*, Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Bill 2008, p. 15.

3 Child Support Agency, *The Guide: CSA's online guide to the administration of the new child support scheme*, 2.2.5 Determining care percentages (accessed 5 November 2008).

1.10 A new care period will commence and a new percentage of care will be able to be calculated where a person's percentage of care has increased to, or risen above 35 per cent or fallen below 35 per cent.[4]

1.11 Amendments will change the date of effect of a change in a person's percentage of care, so that, in circumstances in which the Child Support Agency becomes aware of a change in a reasonable timeframe, care arrangements can be reflected from the date the care changed.[5]

1.12 Section 52 of the Assessment Act allows the Child Support Agency to make a determination of a parent's percentage of care in some circumstances where care is not occurring as ordered by a court or agreed by the parents. Amendments are made which will allow the Child Support Agency not to review a determination if satisfied there are special circumstances which justify the Child Support Agency in not doing so.[6]

Publication of reasons for decisions of the Social Security Appeals Tribunal

1.13 The Social Security Appeals Tribunal (SSAT) is an independent statutory body set up to review administrative decisions made by certain Commonwealth agencies. The Registration and Collection Act states that parents aggrieved by Child Support Agency objection decisions made after 1 January 2007 can apply to the SSAT for a review of those decisions.[7]

1.14 The SSAT is required to provide the reasons for its decision to the parties to the review, which include the Child Support Agency. It was anticipated that de-identified decisions of the SSAT would be published, and provision was made for such publication not to be a breach of the restrictions on the publication of review proceedings imposed by section 110X of the Registration and Collection Act. However, additional amendment of the secrecy provisions is required to allow this to occur.

1.15 The secrecy provisions will be amended to provide that the SSAT will not be prevented from communicating the reasons for its decision to the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), or a person authorised by the Secretary. Similarly, the Secretary will not be prevented from communicating the reasons for a decision to a person authorised to undertake publication. The authorised person will not be prevented from publishing such reasons in de-identified form. The Secretary is likely to authorise the publication

4 *Explanatory Memorandum*, p. 15

5 *Explanatory Memorandum*, p.16.

6 *Explanatory Memorandum*, p.16.

7 Child Support Agency, *The Guide: CSA's online guide to the administration of the new child support scheme*, 4.2.2 Decisions which can be reviewed by the SSAT (accessed 5 November 2008).

of SSAT child support decisions by particular bodies, such as universities, which already undertake publication and analysis of Tribunal decisions in other related fields, including social security and family assistance, or other interested legal publishers. De-identification of the published reasons will be sufficient to ensure the privacy of a party or witness to the proceedings.[8]

Terminating events

1.16 A terminating event occurs where, for example, the child of a child support agreement dies, turns 18 years of age or becomes part of a couple (living with a person of the opposite sex on a genuine domestic basis or with a person to whom they are legally married). The Child Support Agency must amend or end an assessment of child support to take into account a terminating event.[9]

1.17 In conflict with the new child support formula, which provides for the assessment of child support regardless of with whom the children live from time to time, the legislation still provides for an administrative assessment to end where the person who is the carer entitled to child support for a child ceases to be an eligible carer of that child. Amendments will remove this terminating event, and continue the assessment where the child's care continues to be provided by either of the parents or any non-parent carer who is a party to the assessment and entitled to child support. However, where both parents cease to provide care for the child, and the child is not cared for by a non-parent carer who is a party to the assessment, the administrative assessment of child support for the child will end.[10]

General issues

1.18 Some submitters raised general issues in relation to Schedule 3 of the Bill. The Non-Custodial Parents Party (Equal Parenting) made a general comment that the language and tenor of the Bill empowers administrators in the child support system rather than parents and questioned whether there had been adequate consultation with parents regarding the Bill.[11] Mr Mitchell noted that while the Explanatory Memorandum to the Bill indicates the Bill is intended to address 'anomalies', these have not been identified. He doubted the Bill was to address the effects of changes made on 1 July 2008 and pointed to the lack of research on how the changes are currently working.[12]

8 *Explanatory Memorandum*, p. 17.

9 Child Support Agency, *The Guide: CSA's online guide to the administration of the new child support scheme*, 2.10.3 Terminating events (accessed 5 November 2008).

10 *Explanatory Memorandum*, p. 19.

11 Non-Custodial Parents Party (Equal Parenting), *Submission* 4, p. 2.

12 Mr Mitchell, *Submission* 6, p. 1.

Percentage of care

1.19 Changes to percentage of care are significant in the child support system because a parent's or non-parent carer's cost percentage represents the percentage of a child's costs the person meets directly through care. The cost percentage is determined according to the person's percentage of care, using a cost percentages table.[13]

Child support care and cost table

Child support care percentage	Equal to number of nights a year	Equal to number of nights a fortnight	Care level	Child support cost percentage
0–13%	0–51 nights	1 night	Below regular care	Nil
14–34%	52–127 nights	2–4 nights	Regular care	24%
35–47%	128–175 nights	5–6 nights	Shared care	25% plus 2% for every percentage point over 35%
48–52%	176–189 nights	7 nights		50%
53–65%	190–237 nights	8–9 nights		51% plus 2% for every percentage point over 53%
66–86%	238–313 nights	10–12 nights	Primary care	76%
87–100%	314–365 nights	13–14 nights	Above primary care	100%

1.20 The Non-Custodial Parents Party (Equal Parenting) argued that the 'proposed legislation means that a 7.1 per cent premium will be added to each contact provision' disadvantaging some non-custodial parents. They stated:

> The child support changes have been sold to the politicians on the basis that the adjusted taxable incomes of both parents will determine the child support for which the non-custodial parent is liable.
>
> This is not true in many cases. For contact below 52 nights, the child support outcomes have been reworked. This is so that the custodial parent's income is irrelevant when determining the child support liability.
>
> The income of the non-custodial parent is the only determining factor when determining child support liability. The above proposed legislative changes make it more difficult by four (4) nights to have a reduction in child support liabilities.
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> Other issues such as which parent pays child support and the fixed child support income come into play at the 35 per cent contact level. The new legislation proposes to push out the 35 per cent target of 128 nights by an extra seven (7) nights.[14]

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13 Child Support Agency, *The Guide: CSA's online guide to the administration of the new child support scheme*, 2.4.2 Formula tables and values (accessed 5 November 2008). Table extracted from Child Support Agency, *A Parent's Guide to Child Support*, 2008, p. 64.

14 Non-Custodial Parents Party (Equal Parenting), *Submission* 4, pp. 3-4.

1.21 Mr Mitchell noted that changes to assessments of percentage of care could disproportionately affect child support liabilities for payer parents. He stated:

> As for limiting applications by a set percentage, in some cases a change of 1% could affect a persons ability to provide for a child when in their care or the other parents care. I don't remember this 7.1% variation being a recommendation by Professor Parkinson's committee in 2004 yet it has been introduced since then. In fact if you're above 35% care a 1% variation in care affects an assessment by 2%.[15]

1.22 Mr Ogden supported the changes in the Bill noting that the 'rule that a care percentage must change at least by 7.1 per cent before a change of assessment would be considered, was destined to cause more conflict between parties'. He stated:

> In my case I currently have a Family Tax Benefit assessment based on a actual care percentage of 42% and a Child Support care percentage assessment of 35%. The difference between these assessments is due to the above-mentioned rule. The Child Support assessment does not reflect actual care, but is based on a night count policy for calculating a care percentage. In my opinion this policy of the Child Support Agency is unfair and not equitable.[16]

1.23 However he also argued that further changes were needed to acknowledge actual care rather than the current use of night counts to arrive at a care percentage. He suggested that the use of hours of care to determine care percentages would be a more fair and equitable approach. This was crucial where the care percentage reaches 35 per cent, as every 1 per cent change of care over 35 per cent reduces the cost of care of the children liability by 2 per cent.[17]

1.24 Others such as Solomums Australia for Family Equity (SAFE) agreed with the changes in the Bill but argued further changes were needed. They stated that the 'actual contact time taken by payer parents is often less than the amount formally specified in agreements meaning that mothers receive less FTB [family tax benefit] and less child support but continue to provide the care when fathers don't show'. They stated:

> Changes to the percentage of care need to be scrutinised to ensure that nobody has been coerced into the new arrangements and that they fairly reflect the actual provision of care. When mothers or fathers allege that the care arrangements have been varied without their consent it is important that they have access to a safe process to establish the actual care provision accords with the agreed or ordered outcome.[18]

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15 Mr Mitchell, *Submission* 6, p. 1.

16 Mr Ogden, *Submission* 9, p. 1

17 Mr Ogden, *Submission* 9, p. 1

18 Solomums Australia for Family Equity, *Submission* 1, p. 4.

1.25 Dr McInnes, the Steering Committee Convenor of SAFE, highlighted problems where 'short-period increases in the level of care by the other parent [are] being used as an opportunity to vary child support'. SAFE recommended that that child support payers and payees receive education in the process of varying and verifying change of care patterns including advice on the impact of such variations on child support and Centrelink payments. [19]

1.26 Similarly the Victorian Council of Single Mothers and their Children highlighted that the 'connection between level of care and child support calculations has led to significant problems for payee parents'. They stated:

> For many mothers, the payer parent does not actually meet the care arrangements agreed in parenting plans or other agreements. While causing distress to children, it also places mothers in the position of providing care for children, but not receiving the child support to do so.[20]

1.27 They recommended that processes for determining that the actual (as opposed to the nominal) percentage of care is accurate are made more accessible and that the Child Support Agency processes be mindful of the impact of ongoing violence and intimidation and the role it can play in changes to care arrangements.

Publication of reasons for decisions of the Social Security Appeals Tribunal

1.28 The Men's Rights Agency raised a number of concerns with the disclosure of the SSAT decisions in relation to child support. In particular they highlighted a lack of clarity in the Bill regarding how SSAT decisions would be published. They stated:

> The Explanatory Memorandum states that the published decisions will be made available by the Secretary or authorised person to "particular bodies, such as universities, which already undertake publication and analysis of Tribunal decisions in other related fields, including social security and family assistance or other legal publishers". Does this mean the publication of SSAT child support decisions will be restricted to follow the pattern set by SSAT Centrelink hearings, whereby only short summaries of selected decisions are published in the Social Security Reporter (SSR).[21]

1.29 They argued that separated parents, as well as the organisations and legal services which supported them, needed full access to the decisions made by SSAT, 'not the shortened version of decisions'. They recommended that SSAT decisions should be available via an online service such as the Australasian Legal Information Institute (Austlii). [22]

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19 Dr McInnes, Solomums Australia for Family Equity, *Proof Committee Hansard*, 3 November 2008, p. 8.

20 Council of Single Mothers and their Children (VIC), *Submission* 5, p. 5.

21 Men's Rights Agency, *Submission* 3, p. 4.

22 Men's Rights Agency, *Submission* 3, pp. 4-5.

1.30 Mr Kallinosis noted the burden of the secrecy restrictions on those appealing Child Support Agency decisions to the SSAT. He stated:

> …SSAT members have impressed upon me that the law requires that I do not discuss matters outside the Tribunal that I bring before it other than to seek counsel from my legal advisors.[23]

1.31 He argued that making SSAT decisions public would make the Child Support Agency 'more accountable in an extremely cost effective manner for the taxpayer whilst ensuring the principles of natural justice are adhered to'.[24] Mr Mitchell also argued that SSAT decisions should be published. He noted:

> It is deplorable that a government tribunal set up to watchdog the CSA [Child Support Agency] can swear a member of the public to secrecy where their (SSAT) decisions can affect how they provide for their children when in that parents care.[25]

Terminating Events

1.32 The Men's Rights Agency argued situations where children have left school and are working full-time should be treated as a terminating event for the purposes of child support. They highlighted that that if a person under 18 moves in with a partner it is regarded as a terminating event in relation to child support obligations. They argued that where a 'young person has reach a level of maturity and has proved they have a capacity to earn enough to support themselves, then they should be allowed to do so and the paying parent should be absolved of this responsibility'.[26] Similarly Mr Mitchell considered that where children are self sufficient this should be added as a terminating event.[27]

Other comments in relation to Schedule 3 of the Bill

1.33 In relation to the reducing rate of child support under minimum annual rate assessments Mr Mitchell argued there was ambiguity in this part of the Bill regarding the use of 'period' in section 117.

> S117(2B)(b) refers to an undefined 'period' and from a laypersons point of view that refers to a contact period, where as the CSA determine it refers to a child support period. If your [sic] seriously looking for anomalies in this legislation you cannot look past this poor undefined reference. The same anomaly occurs later in s117…[28]

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23 Mr Kallinosis, *Submission* 12, p. 1.

24 Mr Kallinosis, *Submission* 12, p. 4.

25 Mr Mitchell, *Submission* 6, p. 3.

26 Men's Rights Agency, *Submission* 3, p. 5.

27 Mr Mitchell, *Submission* 6, p. 4.

28 Mr Mitchell, *Submission* 6, p. 3.

1.34 Regarding overseas liabilities Mr Mitchell raised the issue of how the current methodology would work with differing costs of care in different countries and currency conversions.[29]

Other comments in relation to the child support system

1.35 A number of submissions and witnesses raised issues regarding the child support system that were not directly related to the amendments in the Bill. These included:

- the lack of recognition in the child support assessment formula of the indirect costs of unpaid care provision;[30]
- the need to review the maintenance income test to allow payees to receive more child support before their family tax benefit is effected;[31]
- the role of the Child Support Agency in providing child support to payees in collect cases;[32]
- the access of non-parent carers to child care records;[33]
- the incidence of parents not submitting tax returns;[34]
- the adequacy of the three year re-establishment rule for non-custodial parents regarding income from second jobs and overtime;[35]
- the withdrawal of family tax benefits from parents with less than 35 per cent of care;[36]
- the lack of measures to address denial of access of non-custodial parents to their children; [37]
- the lack of understanding regarding the rights of parties to have representation or support during SSAT hearings;[38]

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29 Mr Mitchell, *Submission* 6, p. 5.

30 Solomums Australia for Family Equity, *Submission* 1, p. 3; Council of Single Mothers and their Children (Vic), *Submission* 5, p. 4;

31 Council of Single Mothers and their Children (Vic), *Submission* 5, p. 5.

32 Solomums Australia for Family Equity, *Submission* 1, p. 4; Council of Single Mothers and their Children (Vic), *Submission* 5, p. 6; Ms Zuzek, *Submission* 11, p. 1.

33 Solomums Australia for Family Equity, *Submission* 1, p. 4.

34 Dr McInnes, Solomums Australia for Family Equity, *Proof Committee Hansard*, 3 November 2008, p. 15.

35 Lone Fathers Association of Australia, *Submission* 2, p. 1.

36 Lone Fathers Association of Australia, *Submission* 2, p. 2.

37 Lone Fathers Association of Australia, *Submission* 2, p. 2.

38 Dr McInnes, Solomums Australia for Family Equity, *Proof Committee Hansard*, 3 November 2008, p. 8.

- the limited appeal and review options for parents regarding child support decisions compared to other areas of social security;[39]
- the need for more accurate assessments of parental income to determine child support liabilities through shorter assessment periods;[40]
- the lack of knowledge of many parents concerning family tax benefit payments and child support;[41] and
- the accountability of payee parents for child support payments.[42]

SCHEDULE 2 - PARTNER SERVICE PENSION

Provisions of the Bill

1.36 A partner service pension is payable under the *Veterans' Entitlements Act 1968* (the Act) to the eligible partner of a veteran who is in receipt of, or is eligible to receive, a service pension. A partner service pension can also be paid to the separated spouse or the widow or widower of a veteran in certain circumstances.

1.37 The proposed amendments to the Act in Part 1 of Schedule 2 the Bill will set the eligible age for partner service pension at 50 years for the partner of a veteran who is in receipt of the certain categories of 'above general rate' disability pension, or who has at least 80 impairment points under the *Military Rehabilitation and Compensation Act 2004*. The Department of Veterans' Affairs described these amendments as 'beneficial and aligns the eligible age of 50 for partners of seriously disabled veterans'.[43]

1.38 The amendments made in Part 2 of Schedule 2 of the Bill give effect to a 2008-09 Budget measure to cease eligibility for partner service pension for those partners who are separated but not divorced from their veteran spouse, and who have not reached age pension age. Partner service pension recipients who are separated, but not divorced from their veteran partner are defined as a 'non-illness separated spouse'. Under the existing provisions, a non-illness separated spouse loses eligibility for partner service pension only if they enter into another marriage-like relationship. [44]

1.39 To give effect to this amendment two additional criteria for loss of eligibility for partner service pension are proposed in the Bill if the person is under the age pension age:

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39 Men's Rights Agency, *Submission* 3, pp. 6-7; Mr Mitchell, *Submission* 6, p. 3; Mr Kallinosis, *Submission* 12, p. 2.

40 Mr Mitchell, *Submission* 6, p. 5.

41 Mr Mitchell, *Submission 6*, p. 6.

42 Mr Mitchell, *Submission 6*, p. 7.

43 Department of Veterans' Affairs, *Submission* 17, p. 2.

44 *Explanatory Memorandum*, p. 10.

- (i) if the partner and veteran separate, eligibility for partner service pension will cease 12 months after the date of separation; or,
- (ii) if the veteran enters into a marriage-like relationship, eligibility for partner service pension will cease from that date.

1.40 If the person reaches age pension age during the period of the 12 months of separation, the person will continue to be eligible for partner service pension. They will however, lose that eligibility if they enter into a new marriage-like relationship or legally divorce. [45]

1.41 Discussion during the inquiry focussed on Part 2 of Schedule 2 of the Bill relating to the withdrawal of access to the partner service pension for separated partners of veterans.

Rationale

1.42 Over the last decade a number of passive and/or dependency based income support payments have been phased out by government. These changes have been made so that income support is no longer provided to a person just because they are the partner (or former partner) of an income support recipient.[46] In explaining the rationale for the amendments to the partner service pension the Department of Veterans' Affairs noted that there has been an accepted government policy that members of the community of either sex should support themselves 'by working, if possible, or by claiming an appropriate income support payment where work is not an option'. They stated:

> The proposed amendments will mean that generally partners will access benefits on the basis of their own current circumstances, rather than on the basis of a relationship that has ended. It will also address the existing provisions which allow partner service pension being paid to more than one partner (ie. to the person in a marriage-like relationship with the veteran in addition to the former partner who is still legally married to the veteran).[47]

1.43 The financial impact statement in the explanatory memorandum to the Bill indicated a saving of $39.4 million over the period 2008-09 to 2011-12, however this was an estimate only and the final costing was yet to be agreed with the Department of Finance and Deregulation.[48] The Department of Veterans' Affairs also indicated that the effect of 'illness separated couples', who would not lose the partner service

45 *Explanatory Memorandum*, p. 10.

46 Peter Yeend, 'Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2008', *Bills Digest*, 23 June 2008, no. 150, 2007-08, p. 20.

47 Departments of Veterans' Affairs, *Submission* 17, p. 3.

48 *Explanatory Memorandum*, p. 1.

pension, was not taken into consideration when the initial costings were undertaken so that the budgetary saving would be reduced.[49]

Scope of amendment

1.44 The Department of Veterans' Affairs identified 580 separated partners who could potentially be affected by the proposed changes to the partner service pension as at 1 January 2008. Of the 135 separated partners which had contacted the Department since the amendments were announced, 15 had reconciled, or intend to reconcile with their veteran service pensioner. The remaining 120 were being assisted by the Department with 60 seeking re-assessment as an illness separated couple and 50 exploring their eligibility for Centrelink benefits.

Impact on partners of veterans

1.45 The Partners of Veterans Association noted that currently the partner service pension is $562.10 per fortnight and recipients are able to earn $132.00 per fortnight before the pension reduces. Income over $132.00 is reduced 40c in the dollar for every dollar above $132.00. They argued that if the Bill is passed, affected separated partners of veterans would have 'no choice other than to apply to Centrelink for an income support payment such as Newstart or Widows Allowance which will be a saving to the government a maximum of $112.80 per fortnight per wife'.[50]

1.46 The Partners of Veterans Association and Ms MacDonell argued that the Bill made no allowance for the fact that the partners of veterans had often given up long term careers and employment in order to be carers. As a result these partners do not have large savings, superannuation or employment opportunities.[51] They also argued that the Bill did not taken into account the 'immense savings that the carers of our disabled veterans provide' to the government.[52]

1.47 Ms MacDonell listed a large amount of research regarding the negative consequences for partners and families of veterans. These included:

- more marital problems for partners of veterans with post-traumatic stress disorder [PTSD] as well as children more likely to have behavioural problems;
- higher levels of psychological distress, anxiety and depression; and
- secondary traumatisation of partners of veterans.[53]

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49 Department of Veterans' Affairs, *Answers to questions on notice*, 6 November 2008, p. 4.

50 Partners of Veterans Association, *Submission* 15, p. 2.

51 Partners of Veterans Association, *Submission* 15, p. 1.

52 Partners of Veterans Association, *Submission* 15a, p. 2.

53 Ms MacDonell, *Submission* 7, pp. 2-3.

1.48 The Partners of Veterans Association stated that 'of 580 separated wives who will be seriously impacted by this legislation, 362 of these wives are married to war veterans suffering from war caused PTSD'. [54] The Partners of Veterans Association noted that the Department of Veterans' Affairs recognised that veterans can suffer PTSD and other mental illnesses as a result of their service and had 'a number of treatment programmes in place in an endeavour to ameliorate the effects…'. However they noted that 'it is the spouse and family of any veteran with war caused PTSD who are the ones who have borne the brunt of daily living with the affected veteran'.[55]

1.49 The Partners of Veterans Association argued that the separated partners who potentially will be affected by the changes to the partner service pension are 'still legally married to the Veteran and are to be penalised because they could no longer, for any number of reasons and often, after many years of marriage, continue to cohabitate with their veteran husband due to his war caused disability'.[56]

Illnesses separated couples

1.50 The Returned and Services League of Australia made the case that if a couple separates because of any form of abuse resulting from an accepted war or defence caused disability then the spouse should be entitled to an illness separated partner service pension unless he or she enters into another marriage-like relationship.[57] They noted that the provisions of the *Veterans' Entitlement Act 1986* allow members of a couple who live in separate accommodation due to illness (including mental illness) to continue to receive the partner service pension.

1.51 The Repatriation Commission is responsible under the *Veterans' Entitlements Act 1986* for granting pensions, allowances and other benefits, and providing treatment and other services to veterans, their dependants and other eligible persons. Section 5R(5) of the Act provides that:

> If the Commission is satisfied that:
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> (a) 2 people are members of a couple; and
>
> (b) they are unable to live together in a matrimonial home as a result of the illness or infirmity of either or both of them; and
>
> (c) because of that inability to live together, their living expenses are, or likely to be greater than they would otherwise be; and
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> (d) that inability is likely to continue indefinitely;
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> the Commission may make a written determination that the 2 people are members of an illness separated couple for the purposes of this Act.

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54 Partners of Veterans Association, *Submission* 15a, p. 1.

55 Partners of Veterans Association, *Submission* 15, p. 1.

56 Partners of Veterans Association, *Submission* 15, p. 3.

57 Returned & Services League of Australia, *Submission* 16, p. 2.

1.52 Under the provisions the couple must continue to be married or live in a marriage-like relationship, even though they may be living in separate accommodation. The Department noted that in determining whether a marriage-like relationship continues to exist a range of factors are taken into account. These include:

- the financial aspects of the relationship;
- the ownership of joint assets or any joint liabilities;
- the social aspects of the relationship;
- and the nature of the couple's commitment to each other such as any companionship and any emotional or caring support provided to each other.[58]

1.53 The Department of Veterans' Affairs noted that the order in which the factors are set out in the legislation does not imply an order of importance and does not place a limit on the factors that may be considered in a particular case. The combination of all aspects of the relationship, its nature, the history, the personal and financial circumstances of each person, expectations for the future, whether children are in the relationship, are assessed in arriving at a decision to consider two people as living in a marriage-like relationship.[59]

1.54 Information collected from both the veteran and their partner are taken into account in determining whether the couple are illness-separated. The Department also noted that:

> The medical reason for a couple's separation is not limited to service-related illness or infirmity of the veteran. The Bill does not intend to restrict the application of the illness-separation provision to couples who separate only because of an accepted War or Defence cause disability… The presence of a particular condition (eg PTSD, depression) of itself is not a predetermining factor. Presentation of conditions can vary greatly between individuals.[60]

1.55 The Partners of Veterans Association argued that the Department of Veterans' Affairs had not clearly identified how the rules in relation to illness separated couples would operate. They noted:

> "Separated due to Illness" was an area that most certainly was not explained clearly. As it stands now the veteran and the partner still have to have a 'marriage-like relationship' and in many cases this cannot happen if the wife wishes to remain safe. Most of these women live separately to their veteran, there are no intertwined financial arrangements, yet in quite a few cases these wives still support the veteran emotionally, whilst living apart.[61]

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58 Department of Veterans' Affairs, *Submission* 17, p 4.

59 Department of Veterans' Affairs, *Answers to questions on notice*, 6 November 2008, p. 2.

60 Department of Veterans' Affairs, *Answers to questions on notice*, 6 November 2008, p. 3.

61 Partners of Veterans Association, *Submission* 15a, p. 3.

1.56 The Vietnam Veterans Association of Australia (VVAA) highlighted that this was an area where opinion was divided and that the individual circumstances of each person needed to be taken into account. They understood the amendments to the partner service pension as being inflexible with no consideration of the circumstances or causes of a couple's separation, or a right of appeal. The VVAA recommended that some flexibility should be introduced to consider the circumstance of the separation and that where a person has 'been in a long duration marriage or had been separated for some years before this amendment was introduced then that person should be considered to stay on this pension'.[62]

Other assistance to partners of veterans

1.57 Submitters and witnesses also raised a number of other measures to assist partners of veterans, apart from the maintenance of the partner support pension. These included that:

- the government look at programmes that would assist partners of veterans to obtain work skills;
- more resources to be put into early intervention, education and rehabilitation of defence force families to lessen the negative effects on partners and veterans; and
- there be recognition of the contribution of partners to the care of veterans. [63]

1.58 The Department of Veterans' Affairs noted that separated partners of veterans have access to the Veterans and Veterans Family Counselling Service for up to five years after they are separated.[64]

CONCLUSION

1.59 The legislation setting out the child support system is extremely complex. The Committee does not consider FaHCSIA effectively outlined the rationale for the amendments or clarified how 'anomalies' were being corrected in the Explanatory Memorandum to the Bill. However the Committee agrees with witnesses that the amendments in the Bill are mechanical and do not significantly alter the existing policy framework in relation to child support.

1.60 The inquiry into the Bill allowed submitters and witnesses to raise broader issues with the child support system. It is clear from the submissions received that this continues to be a work-in-progress and the Committee recognises the ongoing

62 Vietnam Veterans Association of Australia, *Submission* 18, p. 1.

63 Ms MacDonell, *Submission* 7, p. 4.

64 Mr Farrelly, Department of Veterans' Affairs, *Proof Committee Hansard*, 3 November 2008, p. 30.

consultation and engagement undertaken by FaHCSIA with a range of stakeholder groups.

1.61 The Committee received a number of confidential submissions in relation to the amendments to the partner service pension which highlighted the sacrifices which spouses and families make when a veteran completes military service. While the Committee accepts the policy approach of the Bill, it is concerned that there is sufficient support for separated partners who may have a significant change to their income support payments. The Committee notes that the Department of Veterans' Affairs is committing significant resources to assisting the transition of these separated partners of veterans from the partner service pension and that individual case management has been provided for individuals identified by the Department of Veterans' Affairs as being special needs cases or especially vulnerable.

1.62 The Committee notes that the provisions of the *Veterans' Entitlements Act 1986* allow members of a couple who live in separate accommodation due to illness (including mental illness) to continue to receive the partner service pension. The Committee considers that these provisions should cater for partners who are forced to separate from veterans because of mental conditions which have resulted from their military service, such as PTSD, and not only for situations where couples are separated due to physical impairments, such as where one partner needs to move to aged care accommodation because of increasing frailty. The Committee also notes that the Department of Veterans' Affairs has committed to expediting all assessments of illness separated status.

Recommendation 1

The Committee recommends the Bill be passed.

Senator Claire Moore
Chair

November 2008