Men's Rights Agency

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

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Community Affairs Committee,
Parliament House,
Canberra, ACT

Via Email to: community.affairs.sen@aph.gov.au

Senators,

Re: Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Bill 2008

We will address two issues in the proposed Bill –

- Part 2 – Publication of reasons for decisions of the Social Security Appeals Tribunal and
- Terminating Events

Publication of SSAT Decisions:

Senators may recall we wrote to the Community Affairs Committee in May 2007 after the Inquiry into the Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007, when it became apparent that SSAT would not be publishing its decisions. The SSAT Manager of the Quality Analysis Unit, Troy Barty, advised there was no intention to publish any decisions as the "hearings are held in private".

In the intervening months nothing has occurred to persuade us that it is not vitally important for the decisions of the Social Security Appeals Tribunal to be published and open to scrutiny. In fact events brought to our attention have strengthened our resolve rather than alleviate our concerns. Decisions are being made in secretive Tribunals where the accountability level is almost zero apart from a very few challenges on appeal.

For example:

- procedural measures are ignored with parties required to participate in a hearing despite being at a disadvantage, because relevant material was not handed over;

- potential participants told they cannot have any support or representation for a SSAT Tribunal;

- SSAT extending its appraisal of matters to those not in dispute before the hearing

- an appellant father left feeling extremely intimidated by the barrage of questioning that exhibited considerable negativity towards men in general and fathers in particular. The known bias existing in the Child Support Agency is being replicated in some SSAT hearings. The father in question has still not recovered from the experience of being treated like a criminal and bombarded with questions that added nothing to the decision making process. He felt was a deliberate attempt to provoke and destabilise him;

- or unclear decision making which when referred back to CSA for action resulted in an outcome that was not intended by SSAT and led to the father being jeered at by a Newcastle Child Support Agency staffer who implied that he would have done better to accept the CSA's first decision rather than get smart in appealing the decision.

Australian separated parents have found themselves in a situation where the CSA can hold a review for a change of assessment in secret, with no legal representation allowed; have their objection heard by CSA's secret internal process; make an application to overturn a CSA decision to SSAT, the findings of which have been kept secret, unavailable for public scrutiny.

The original criticism from Federal MP Roger Price is still worth contemplating:
The 1994 Joint Select Committee on Certain Family Law Issues – Child Support Scheme chaired by Roger Price MP, found:

> "The accountability of the 'review officers' to the Child Support Registrar and the non-publication of decisions of the review officers are important issues. The lack of legislative structure means that the review officers are not accountable to the Child Support Registrar who cannot then ensure consistency in decision making by all review officers.

> **Furthermore, the failure to publish decisions means that there is no precedent to follow and accordingly parties do not have the ability to predict what may happen in their situation. It also means that parties cannot obtain advice as to what can be expected to happen to their application for a review. This causes uncertainly and a lack of confidence in the review system**,(s.163, p.56).

More recent criticism by FM Reithmuller suggests:

> "the brevity with which Senior Case Officers or Objection Officers commonly approach this part of their tasks (as first instance decision makers subject to a full merits review) will rarely be appropriate for the SSAT in its role as an independent inquisitorial tribunal that is the final arbiter of the facts." [1]

Figures released to the media[2] in March 2008 suggest nearly 50% of the 581 CSA decisions appealed to SSAT have been overturned. This in itself should be ringing alarm bells about the incompetancy of the CSA decisions. But there are relatively few cases taken to the next stage of an appeal - to the Federal Magistrates Court. Legal online publisher AustLii shows only 10 appealed decisions from SSAT hearings[3], but we suggest it is not because the majority of SSAT outcomes are acceptable, it is more likely that few in the population of separated parents have the capacity to represent themselves in an appeal hearing to the Federal Magistrates Court arguing only on questions of law.

Of the 10 published Appeals on AustLii, two were dismissed and eight were sent back to SSAT for re- determination according to the law. Nine fathers were unrepresented; five mothers were represented; in three cases the CSA was represented by the Australian Government Solicitors; of the five appellant father only one could be said to be successful, and one other only partially successful but, the three appellant mother's were successful.

Although Federal Magistrates have the power to re-determine the SSAT findings they unfortunately have not had all the relevant factual evidence put before them in hearing an application on errors in law only, so are returning the cases to SSAT for re-hearing. At this point we do not know the outcome of those cases because the SSAT findings, even ordered re-hearings, are not published. SSAT is able to bury its errors without consequence.

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[1] PJ & Child Support Registrar (SSAT Appeal) [2007] FMCAfam 829 Para 83.

[2] Daily Telegraph, Dads win in new child support appeals. Kelvin Bissett
March 10, 2008 02:58am, http://www.news.com.au/story/0,23599,23348112-421,00.html

[3] We acknowledge this number may not be the sum total of SSAT Appeals, just another problem caused by secrecy.

It is valid in our opinion, to suggest appeals of SAAT decisions to the Federal Magistrates Court should be expanded into a full review rather than restricted to questions of law only. Otherwise clients are on a merry-go-round within the system of courts and tribunals unable or unwilling to make a decision, with each body referring the matter back down the line until it arrives back in the CSA for a final decision.

Serious concerns have been raised with this Agency by many men's/fathers' groups that SSAT has been actively recruiting Tribunal members who have already worked with the Child Support Agency, thereby perhaps creating a situation where the much complained about bias against paying parents within the CS Agency may be transferred to SSAT

As might be expected we welcome the inclusion of Part 2 – Publication of reasons for decisions of the Social Security Appeals Tribunal but, we are cautious in accepting the proposal at face value. The legislation is, as usual, is deliberately vague about the actual publication of decisions. It tells us what can and cannot be published, but does not specify where the decisions will be published. 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). Access to the SSR requires a subscription payment of $77.00 per annum and may not be open to all-comers to register.

The SSR claims its primary aim is "to provide a short summary of Social Security cases in the Administrative Appeals Tribunal and Federal Court, which raise particularly topical and noteworthy legal or factual issues" to ensure that "practitioners can keep abreast of important case law developments". The interpretation of selected full decisions into shortened versions may well be influenced by SSAT wishing to portray the outcome in a particular way more suited to their overall agenda.

Australian separated parents, who may be faced with the choice of appealing a CSA decision to SSAT and those organisations/legal services that support and advise these parents are

the ones who need full access to the decisions made by SSAT, not the shortened version of decisions they want us to rely on.

The same people also need access to the outcome of Federal Magistrates Court decisions that are referred back to SSAT to be reheard according to the law.

The decisions can most likely be accommodated on the online service www.AustLii.edu.au a website managed by UTS and UNSW Faculties of Law. The Australasian Legal Information Institute (AustLII) provides free internet access to Australasian legal materials. AustLII's broad public policy agenda is to **improve access to justice through better access to information.** To that end, they have become one of the largest sources of legal materials on the net, with over 2 million searchable documents.

AustLII publishes **public legal information** -- that is, primary legal materials (legislation, treaties and **decisions of courts and tribunals**); and secondary legal materials created by public bodies for purposes of public access (law reform and royal commission reports for example) and a substantial collection of law journals.

http://www.austlii.edu.au/austlii/

AustLII relies on the generosity of its contributors to operate. I would suggest SSAT and CSA should be able to make a substantial contribution to AustLii in order to preserve the notion that their organisations are fully accountable and provide open and just decisions.

Terminating events

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 young apprentices are earning very good money. They remain living in an “at home” situation, but these young people should be regarded as being able to support themselves by contributing to their own board.

It is therefore disappoint to read of changes to “Terminating Events” without the inclusion that a young person being able to support themselves is a “terminating event”. If a person under 18 moves in with a ‘partner’ it is regarded as a terminating event. Here 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.

This ‘terminating event is a clear cut situation and the liable parent should no longer be liable for the support of the working teenager. CSA 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 most Departure from Assessment hearings are neither payer parent friendly or fair.

We would ask the Committee to reconsider including 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, enough to take responsibility for their own support, even though they chose to remain ”living at home”

We can see nothing wrong with teenagers supporting themselves by contributing “board” as soon as they are able.

Another issue:

We will take this opportunity to mention another factor which disadvantages Australian separated parents. Centrelink clients and others enjoy an advantage not available to Australian parents who happen to have been drawn into the Child Support Agency net, often without their permission. Centrelink and other clients who have a dispute with Social Security or Medicare etc are able to appeal an unsatisfactory internal review to first of all, SSAT and then the Administrative Appeals Tribunal. If they are still dissatisfied with the outcome they can proceed to the Federal Courts.

Not only do Australian parents find themselves treated in an inferior manner by this denial of access to the same judicial procedure, they are prevented from seeking a further review on the facts or merit of their case and can only proceed to the Federal Magistrates court on questions of law.

As can be seen from the information we supplied earlier in this submission the majority of self represented litigants are fathers and they are less likely to be successful in an appeal to the Federal Magistrates Court. This is hardly surprising, few have the funds to employ a solicitor; Legal Aid is only available to low income earners and almost never given to the paying parent for child support matters. Solicitors have always been discouraged from interesting themselves in child support and some clients have been led to believe that they are not

allowed to have anyone represent them in a SSAT hearing. The Child Support Agency in October 2007 were extremely pleased to report to date that in only two cases had the party been legally represented.

Without adequate legal representation, full accountability monitored by open publication of decisions, the situation for child support clients will deteriorate even more rapidly than is occurring at present. By closing off the avenue of full review in the Federal Magistrates Court parents are denied an opportunity to have their case decided on its merits and the opportunity will be lost to create legal precedents to guide future decisions makers.

The CSA has worked extremely hard to influence Parliamentary decisions and it is hardly surprising that legislation is passed with little understanding of the repercussions. The legislation is long overdue a rewrite to remove the confusion and complexity. The Agency has encouraged the Minister to embark on a 'dead beat dads' campaign to weight public opinion in favour of the draconian measures in operation under the CSA purview.

Where else would citizens of a country be denied an opportunity to change careers; to alleviate the stress of a high level job; be told how much they will spend to support their children; to find in a dispute with the other parent, the mother will, invariably, be believed without any proof whatsoever; and to have their bank account drained without notice for debts which have been created on a false premise that the person had a capacity to earn a higher income that may have been in evidence several years before, but is no longer available?

That's justice for Australian separated parents?

Sue Price, BSocSc
Director