Submission Senate Enquiry into Child Support changes
Ross C Mitchell

Reasons provided for referral of the Bill and the issues for consideration by the Committee are:

The effect of changes to Child Support legislation. The new Child Support legislation has been in operation since 1 July 2008. The Bill identifies a number of areas to address anomalies. The changes to child support legislation were significant and have affected many parents.

My first question is just what are these "anomalies" and how has the Government (FACSIA) identified these "anomalies"?

The changes to Child Support legislation were significant and have had massive effects as to how parents can provide for their children, with variations making reductions in Child Support received by some parents along-side increases in Family Tax Benefit payments, to increases in Child Support payments as high as 450% of what they were prior to the changes, for some parents.

For parents with such high increases, even if the actual monetary amount does not seem like much, it can affect how they provide for their children when in their care, or the children of second families.

Part 1- Percentage of care

1 Paragraph 48(1)(b)

How does an anomaly in the current CS scheme, relate to locking parents out of applying for changes in care below 7.1% variations, as per 48(1)(b)(i) or 48(1)(b)(ii) in the proposed legislation. The only good part about s48 (1) changes is the recognition of changes occurring prior to notification (48(1)(b)(vii)).

I have personally been in a situation prior to the 1 July 2008 changes that would have seen my children recognised in my care for 4 extra days in 2004 that the agency has refused to recognise, due to wording in the old legislation.

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%.

In looking at this subsection in operation, you can change from 42% care level to 49% care level and not have it affect an assessment, not exactly meeting the "best interest of the child" criteria that the UNCRC holds our legislature to.

In 2004, in the report "The best interest of the child", Professor Parkinson called the scheme fundamentally flawed. The changes that have occurred since then have done little to remove the fundamental flaws that professor Parkinson outlined.

The proposed 48(1)(b)(i) and 48(1)(b)(ii) should not be introduced.

2 At the end of section 52

Add:

(5) However, the Registrar is not required to review a determination as mentioned in subsection (4) if the Registrar is satisfied that there are special circumstances that justify the Registrar in not doing so.

The standard of determination should not be left at the Registrar (technically CSA public servants) discretion but by the same "reasonable" standard that a court would set. There would be no way to challenge a decision made under the above proposal, as it would be CSA's (the Registrar's) word on what constitutes a special circumstance that justifies the CSA not making a decision. Therefore 5 should read

(5) The Registrar is not required to review a determination made under subsection (4) if a court would be reasonably satisfied that special circumstances exist or existed, which would justify the Registrar not reviewing a determination.

3 Before subparagraph 74A(b)(i)

Insert:

(ia) a person's percentage of care for the child has changed by less than 7.1%, and the change is because of an agreement, plan or order mentioned in paragraph 49(a) or (b) (including a variation of such an agreement, plan or order); or

As per my comments at item 1, this proposed change would not and should not be required if s48 (1)(b)(i) and 48(1)(b)(ii) are not introduced. Changes below 35% do not affect a CS assessment, until they reduce the assessment below 14%. Changes above 35% should be regarded by their percentage change.

Changes 4, 5, 6 and 7 are reasonable, when viewed with the current legislation, however the proposed change 8 falls under the same reasoning as 1 and 3.

Items 9, 10 and the explanation at 11 are reasonable providing the above outlined 7.1% variation is removed.

What was the purpose of having stakeholder groups involved in the senate committee into Child Support that produced the report "In the best interest of the child" if recommendations in that report were ignored and changes like the 7.1% variation were introduced without the input of the stakeholder groups. It would seem to this member of the public and as a member of a stakeholder group, that the purpose was to make these groups think they had some input into the changes, and the government was going to

introduce changes like this no matter what the report said. That makes the original enquiry and report a complete waste of taxpayer dollars.

Part 2 Publication of reasons for SSAT decisions and Secrecy

It is deplorable that a government tribunal set up to watchdog the CSA 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. SSAT decisions should be published and reviewed by the Attorney General or a court should be making these decisions.

I found the SSAT process a complete waste of my time, where they backed CSA saying they had total discretion under s98K (assessment act) without any investigation into the criteria set out under 98K relating to special circumstances, effects on the assessment, and upholding the objects of the act.

The Tribunal quoted me as saying "must" when I said "should" and failed to outline how the decision applied the objects of the act, or how the decision was in my children's best interest as per Article 3 of the United Nations Convention on the Rights of the Child (Minister for State and Immigration v Ah Hin Teoh). Our executive government signs these international treaties and yet our laws give no respect to that.

In fact the legislature spent 10 years trying to introduce Teoh legislation that would over-ride the decision of the full bench of the court and further over-ride rights and the expectations of Australian citizens.

As per Family Law, SSAT decisions should be published, and since it is a new process, review of all decisions should be via AAT at no cost to a parent, to promote the object of keeping parents out of court.

Further to this, the parties to any SSAT case should always include the Registrar, as he is the one factually making decisions taken to SSAT. He should be the one defending those decisions, not a parent who may have had absolutely no involvement in the making of the decision.

If decisions are not reviewed, the Ombudsman's office should be able to look at questions on law about decisions rather than a parent having to appeal via court, to promote keeping parents out of court.

Part 3 - Departures from Assessment

Changes 14 thru 26 all appear reasonable, however I have a great deal of problems deciding whether the "period" discussed in s117 refers to a contact period or a child support period.

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 seriously looking for anomalies in this legislation you cannot look past this poor undefined reference. The same anomaly occurs later in s117; perhaps the legislature should look at defining this “period” to avoid any confusion.

Trying to meet the CSA determined 5% multiplied by the number of number of days in a CS period, can be almost impossible, where as the 5% multiplied by the number of days in a contact period, which for me is far more reasonable an expectation and far more likely to be determined in the best interest of the child.

There is also a need to remove ambiguity from this legislation, yet still allow for individuality of each cases circumstance. S98K needs the word “may” removed from it and replaced with the word “should”, and the word “can” replacing “may” in the title, once again meeting the “best interest of the child standard” that seems to abound our family law principles.

Part 4 – Terminating events

I can see areas in Section 12 that are lacking, for example, my 16 year old works full time in paid employment after completing yr 10 at school, yet a child being self sufficient is not a reason for a terminating event? Subsection 12(1) should have this criterion added, as this was why my children’s mother removed our 16yr old from assessments, however some parents may not be that reasonable.

Section 12 would be a lot easier to read without the discriminatory determinations between 2 parents, as in “liable parent” and “carer entitled to child support” as the act at section (3) states both parents have a primary duty to maintain their children. This would make both parents liable parents, which I shall discuss further after the discussions on proposed changes.

I can see no problems with the proposed changes.

Part 5 – Reducing rate of CS under minimum annual rate

My first comment on this is how is one meant to comment on methods of making calculations shown in images at (3) and (3A) when those images are unavailable for viewing over the internet? For a government website that is very unprofessional.

My only concern with the proposed other than the undefined/unavailable calculation methods is S61A (1)(a) defies the purpose of S25C of the Acts Interpretation Act 1901, in that the CSA (the Registrar) can set his own strict compliance measures, which does happen already with regards to S117 application made to the Registrar.

Part 6 – Overseas Liabilities

My only concern here relates to changes that are not proposed. How does the current methodology work with the Cost Of Children tables and overseas maintenance? Is there a currency conversion done as children in the USA would cost less in $AU than children in the UK in $AU. These factors are relevant and should be taken into account for the purposes of assessment; the cost of a child in Indonesia would vary greatly to the cost of a child in England. It would be Orwellian (Orwell's 1984 at its apex) to expect a parent to be assessed the same for any child anywhere in the world (or in reciprocating jurisdictions) at the same rate as an Australian child, and it could reduce or increase amounts assessed for Australian children.

Part 7 – Crediting prescribed payments

55 After paragraph 71C(1)(b)

Insert:

(ba) at the time the payment is made, the payer does not have at least regular care of any of the children to whom the relevant administrative assessment relates; and

This proposed piece of legislation is almost repetitive of s71(1)(d) which reads about the time the Registrar makes a decision, however looking at the proposed change in working with the rest of the section it appears to be a necessary change.

Suggestions for future Child Support changes

Assessment Periods

Using past incomes to assess future periods is unavoidable with our current methodology of Child Support assessments. This method of assessment can create huge debts for payers or payees when after the assessment based on a provisional income; the period is reassessed based on factual income.

In 2004 the government set out to amend our child support system, they had an opportunity to lead the world in child support methodologies for Australian children. From my point of view, being both a payee and payer of CS and most importantly a parent of children in shared care, the government failed my children.

I would like to see introduced a scheme that allows for much shorter assessment periods, with parents inputting via web based forms, their income amount earned during that period and the care level, that could be re-evaluated after Income Tax Returns are placed.

I personally would like to see a scheme that could give parents the option available to have 2-week assessment periods similar to how Centrelink assess welfare payments and

also an option in line with our taxation systems where an annual financial year period is available or a three (3) month period in line with Business Activity Statements.

From a payer point of view, changes as I suggest would promote a mentality to pay as assessed where as the 15-month assessment periods that are proven to create debt and promote an attitude to not want to pay. It places a mental strain on someone like myself who was raised with the ideology that fathers should support their children post separation yet when the assessment methods imposed on me don't appear just or equitable they don't promote the same mentality.

Family Tax Benefits

The above is almost the same as the FTB debacle. Professor Parkinson's report found a large number of parents entitled to FTB were not claiming that entitlement. Rather than seeing if the number of claims changed by promoting the availability of FTB to non-custodial parents, the report just suggested raping that availability away from those who would otherwise be entitled to claim. There was no alternative option suggested to senate as an alternative that would have seen the FAO promoting that availability.

The committee never looked into reasons why those who would otherwise be entitled to claim FTB were not claiming it. I can tell you from being involved with non-custodial parents that the two main reasons are

a) no knowledge of availability
b) other parent claiming 100%

The majority of non-custodial parents (b) who were aware the entitlement existed thought that because the other parent was claiming 100% that they couldn't claim the entitled percentage.

Twice I have heard a parent say "If I claim my percentage of FTB, my access to my children will reduce" so there were parents out there using FTB as bribery for access, which I find absolutely disgusting. Even now I hear parents with over the 35% level that have no knowledge that FTB is available to them.

As a parent who was claiming at 18%, before shifting to shared care, that entitlement helped me to provide for my children when in my care, and I can not see any justification in removing that entitlement just because a percentage of those entitled were not claiming, I can not see how it is in the best interest of Australian children either, when in the care of a non-custodial parent.

Accountability as a liability

There is a great need to introduce some form of accountability for moneys paid in child support to show the recipient is meeting their liability and that moneys paid is being spent on children, otherwise the entire Child Support scheme is a farce. This should mean, that if a parent is assessed to pay $150 in CS, at 76% of the cost of the child, the recipient

should be spending $186 on the child. Without accountability there is no way to ensure the recipient parent is meeting their legislated liability (primary duty).

For any parent paying child support, there is no incentive to pay if they know the money is not going to the children. I know several parents who have no incentive to pay because they know their CS is going towards the other parents bad habits (drugs, alcohol, gambling) or overseas holidays. The legislation fails to meet the "best interest" principle while there is no accountability.

The Maintenance Income Test and Discrimination

Being a twin, and growing up in a large family, I very quickly learnt to distinguish fair from unfair, and at this stage of my life, my twins family situation is very similar to mine, the only difference being his family is intact where mine is separated. His family is not subject to the same MIT that my children's mother is, nor are they subject to any interference as to how much they must spend on their children.

That says to me, our children are being discriminated against by the government and legislation based on my marital status, compared to my brothers children based on his marital status. The only conclusion left is that the MIT and Child Support are discriminatory.

Effects of the 1 July 2008 changes

I have huge doubts these proposed changes are to address the effects of changes made on the 1st July, there has been no research done that I am aware of, presented to government to identify the effects of the changes, how the changes are working for situations not shown in the "Best interest of the child" report or how the 1 July changes are working in the "best interest" principle.

The Parkinson report failed to scenario potential situations that could have been taken from the Child Support files on a random basis to see just how these changes affect certain family situations. In fact they only looked at basic scenarios, which I find lacking in integrity.

In closing I would like to say, we need to work on a Child Support scheme that will work not only now, but when our children are adults potentially facing the same circumstances, after all, it could be your children facing the thug tactics I have faced by public servants acting in the name of my children.