Submission to the Senate Community Affairs Committee Inquiry into the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Bill 2008 by Lucas Kallinosis

Putting SSAT decisions on the public record

I submit your committee should recommend that the proposed amendments be extended so that SSAT decisions are to be put on the public record following similar protocols that permit the publication of decisions made by the Family Law Court and Federal Magistrates Court in regards to family law and child support matters.

I note some SSAT decisions involving child support matters are already becoming public when SSAT decisions are appealed against (but only on a point of law) such as C.S.R & MMB &DEJ (SSAT APPEAL) [2007] FMCA Afam944 (29 November 2007).

As a citizen my expectation of the law in a fair democracy is best expressed by the following eminent jurists:

> *"The rule of law can only survive in our democracy if it can be seen that all persons are treated equally by it." (David Rolfe QC as quoted in Sydney's Daily Telegraph 11 March 2008)*
>
> *" The law must have clarity and predictability". (Retired High Court Justice Michael McHugh, 2007 Hal Wootton Lecture).*

Yet 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. To do so I risk heavy penalties and thus restricts the submission I wish to make to your hearing.

My understanding such secrecy is normally and understandably reserved for matters of national security, child abuse cases, protecting witnesses etc in mainly criminal matters.

This doesn't say much about Parliament's view of separated parents.

Discrimination further extends against separated parents in regards to their rights to appeal SSAT decisions. Centrelink customers can apply to the AAT and then the Courts. Child Support Agency customers have their rights curtailed with severe restrictions on what matters can be appealed to the AAT and the Courts.

Yet Centrelink customer success rates with appeals to the SSAT are virtually half of those that are appealed by CSA customers to the SSAT.

According to the SSAT's most recent published Annual Report for 2006 – 2007:

> *A total of 8,682 applications, involving review of 9,884 separate Centrelink decisions, were finalised in 2006-07, an increase of approximately 10% compared to the previous year.*
>
> *The SSAT changed (set aside or varied) the Centrelink decision under review in 25.3% of all decisions finalised. (p21).*

In regards to SSAT appeals involving child support matters the SSAT Annual Report stated:

> *As the SSAT has only recently commenced reviewing CSA decisions, it is not possible to report on lodgment or appeal outcome trends at this time (p19).*

Interestingly the Report also noted that:

> *Total expenses incurred to produce the 'finalised applications' output was $20.23 million. This corresponds to an overall average finalised decision cost of $1,981 (which includes all overheads and accruals), an increase of $397 compared to the previous year. This increase is mainly due to the introduction of child support appeals, the continued movement of responsibility and associated costs for a range of corporate governance functions from FaCSIA to the SSAT and increases in accommodation and leasing expenses (p23).*

At a CSA Stakeholders Meeting in mid-2007 it was reported that of the 21 decisions regarding child support matters the SSAT in Queensland handed down 7 (33%) approved the CSA review decision and 14 (67%) upheld the appeal. (About as statistically relevant and scientifically rigorous as the CSA's recent glowing customer satisfaction survey which was based on a sample of 300 payees and 300 payers from a population base of 1.4 million).

Figures for NSW were reported in Sydney's Daily Telegraph on 10 March 2008 by Kelvin Bissett's article headed **Dads the winners in new child support appeals process:**

> *"Thousands of separated parents – generally fathers – are making use of new appeal rights against the Child Support Agency, with many overturning decisions on payments and income assessments***.**
>
> *...Of the valid 581 valid appeals determined by the SSAT to date, about half, 280, resulted in the original Child Support Agency decision being changed, NSW parents lodged 246 appeals with 107 decisions rebuffing the agency."*

The Fatherhood Foundation Submission to the Inquiry into Shared Parenting dated 8 August 2003 (based on the submission by John Flanagan of the Fairness in Child Support Group) calculated that 41% of all child support payers were then effectively unemployed (with this figure continually increasing since then) and 76% of all unemployed men over the age of 20 were payer customers of the CSA.

Appellants rarely have legal representation at hearings. Taking into account the huge imbalance in ability and resources of an unrepresented CSA customer without legal training along with the likely lack of a tertiary education pitted against the trained Senior Case Officer specialist child support lawyer who made the review decision being challenged the high success rate by appellants should be causing Parliament serious concern from a social and natural justice point of view.

Considering the high number of successful appeals along with the high cost of each hearing to the taxpayer Parliament as custodians of the public purse should also be concerned about protecting government revenues by ensuring cost effective administration of its legislation.

It appears the CSA is simply transferring both the proper administration and cost of many cases to the SSAT (at an inflated cost compared to the cost CSA would have paid if it had discharged its duties diligently in the first place).

I suggest this is alluded to by SSAT in its Annual Report 2006 – 2007 when it reported that it was expecting its costs to continue to increase partly to *"... the continued movement of responsibility and associated costs for a range of corporate governance functions from FaCSIA to the SSAT (p23)."*

Further such high success rates of child support appeals to the SSAT appears to be also a consequence of governments of both persuasions doing every little if anything since 1994 to address the bulk of the similar issues raised in the "Price Report".

In the Parliamentary Library's Information Analysis and advice for the Parliament (18 October 2006 no.43 2006 -07 ISSN 1328-8091) referring to the "Price Report" of the Joint Committee on Certain Family Law Issues 1994 it noted:

> *...The track record of the CSA and the then Department of Social Security (DSS) being the two main arms of Government required to administer/deliver the CSS had been the subject of much criticism in terms of administration, efficient delivery and client service. This evident by the fact that recommendations 7 to 115 of the 163 recommendations generally refer to administrative and client service issues. A few of these recommendations referred to legislative amendments but the vast majority referred to improving the administration and service delivery of the CSS. (p6)*

I expect these unattended issues will be further exacerbated by inclusion of Part B – Remuneration in the CSA Collective Agreement 2008-2011:

> ***Additional pay increases for achieving CSA corporate objectives***
> *14. An additional pay increase of 0.5% will be paid with pay increase 3 if, in the 12 months prior to the pay increase:*
> *a) there has been an increase in either the cumulative collection rate or the percentage of parents who meet more than 75% of their child support liabilities;*
> *b) there has been a reduction in customer dissatisfaction with CSA service; and*
> *c) there has been a reduction in CSA's average annual unplanned leave figure.*

Productivity bonuses partly based on collections were already in place during the 2006 – 2007 year for the Senior Executive of the CSA.

It is hard to accept that a conflict of interest cannot be avoided as a culture of bias already exists within the Agency highlighted by the General Manager's own published undertakings in his media release dated 5 April, 2006:

> *...Mr. Matt Miller, General Manager of the Child Support Agency announced today that CSA has started reviewing operational policy and procedures to ensure that there are no systemic biases within CSA's operations.*
>
> *"Since taking up this role I have been speaking to a lot of parent groups and dads in particular have concerns that staff give more weight to claims made by the resident parent - usually the mother," Mr. Miller said.*
>
> *..."This review will ensure that our processes treat both parents equally and that there is a balanced approach to assessing information provided by both parties."*

Rachel Bacon whilst Senior Legal Officer in the Attorney-General's Department commented in an academic article "Rewriting the social contract? The SSAT, the AAT and the Contracting out of Employment Services" (Auslii Federal Law Review 2002):

> *The aim of tribunals such as the SSAT and AAT is to remind officials that they are under public scrutiny, and to provide a remedy against bad decision-making.*

For these reasons I urge your Committee recommend amendment to the proposed provisions and lift the restrictive publication of SSAT decisions by allowing them to be put on the public record as currently done for Court decisions regarding child support and family law matters.

Further I urge you recommend amendments that allow the feedback provided by the SSAT to the CSA regarding decisions also be placed on the public record similar to the reports the Commonwealth Ombudsman publishes on its reviews of complaints made by CSA customers.

I note in the SSAT's Annual Report 2006 – 2007 under **Policies and Procedures – Feedback to Departments** that**:**

> *Due to its ongoing role as a national organisation responsible for reviewing large numbers of social security decisions and its new role as a national organisation responsible for reviewing CSA decisions, the Tribunal is exposed to many difficult issues involving application of the law, procedural fairness and policy questions. Tribunal members are encouraged to draw the attention of their Director to perceived legislative anomalies or unintended consequences that they discover, or instances where the legislation is believed to operate in an unjust or unfair manner to any group or individual. Such matters can be referred to the Executive Director, who can in turn raise them with Centrelink, CSA or the relevant policy department.*
>
> *Similarly, where departmental procedures operate harshly or where expressed policy is not considered to be consistent with or supported by the legislation, this may be identified in the process of review and can be raised at the national level by the Tribunal with the appropriate agency or agencies.*

By putting on the public record SSAT decisions and their review of decisions as outlined above I believe Parliament has a golden opportunity to make the highly criticised CSA more accountable in an extremely cost effective manner for the taxpayer whilst ensuring the principles of natural justice are adhered to.

Lucas Kallinosis