



Child Support Legislation Amendment (Reform of the Child Support Scheme — Initial Measures) Bill 2006

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Child Support Legislation Amendment (Reform of the Child Support Scheme — Initial Measures) Bill 2006

Date introduced: 10 May 2006

House: House of Representatives

Portfolio: Families, Community Services and Indigenous Affairs

Commencement: Most of the Bill commences on the later of the day after Royal Assent or 1 July 2006. A detailed table of commencement information is provided in clause 2 of the Bill.

Purpose

The Bill contains the first stage of the child support reforms to be implemented by the Government in response to the report of the Ministerial Taskforce on Child Support (the Parkinson Report).¹

Background

The Child Support Scheme has been in place since 1988. The introduction of the Scheme was a major, controversial reform. It was expected that it would take many years to refine and become accepted. The CSS represented the government intervening in one of the most sensitive and traumatic points in the family life cycle. Given the acrimony and emotions associated with family breakdown, the proposal for a government administered maintenance collection process could not avoid being the focus for dissatisfaction and also grief and anger for individuals caught up in the turmoil of loss of family life and children.

The Scheme was examined by the Joint Standing Committee on Certain Family Law Issues in the early 1990's. The Committee's report (usually referred to as the Price Report) was the basis for considerable refinement of the scheme over the last twelve years.² The Scheme was again examined more recently by the House of Representatives Committee on Family and Community Affairs. A report was released on 29 December 2003 entitled, *Every picture tells a story: Inquiry into child custody arrangements in the event of family separation*.³ Amongst other things the report recommended that a comprehensive re-evaluation of the Scheme should be set in train.

On 16 August 2004, the then Minister for Children and Youth Affairs, Larry Anthony announced the establishment of a ministerial taskforce headed by Professor Patrick Parkinson, of the Faculty of Law, University of Sydney, and Chairperson of the Family

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Law Council. The taskforce was to examine Australia's Child Support Scheme and recommend reforms.

The Parkinson Report was released on 14 June 2005 and recommended fundamental reforms to the Child Support Scheme. On 28 February 2006, the Minister for Families, Community Services and Indigenous Affairs, Mal Brough, announced the Australian Government would reform the Child Support Scheme and aspects of family assistance in order to implement many of the recommendations of the Parkinson Report.⁴

The changes proposed were to be implemented in stages from July 2006 to July 2008. They were summarised in the Minister's announcement as follows;

'From **July 2006**, the Australian Government will:

- increase the minimum payment to ensure that child support payments keep pace with inflation;
- strengthen the Child Support Agency's capacity to ensure non-resident parents pay their child support payments in full and on time;
- recognise non-resident parents on Newstart and related payments (Newstart Mature Age, Sickness Allowance and Youth Allowance) who have contact with their children by paying them a higher rate of payment;
- reduce the maximum amount of child support payable by high income earners to ensure these payments are better aligned with the actual costs of children;
- introduce fairer arrangements for assessing the capacity of parents to earn income;
- enable non-resident parents to spend a greater proportion of their payments directly on their children; and
- help separating parents agree on arrangements for their children, including Child Support, by providing access to Family Relationship Centres, the Family Relationship Advice Line and other expanded services.

To support the introduction of the new Scheme, the Government will also be investing more resources to improve the service delivery of the Child Support Agency. Changes will include wider availability of intensive assistance to parents with difficult or complex circumstances, better training and improved quality control. For example, introducing call recording will ensure that individual Child Support Agency staff are accountable for information and advice they provide to parents.'

'From **January 2007**, the Australian Government will:

- introduce independent review of all Child Support Agency decisions by the Social Security Appeals Tribunal to improve accountability and transparency;

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- broaden the powers of the courts to ensure that child support obligations are met, and strengthen the relationship between the courts and the Child Support Scheme, making the process easier and more responsive to parents' needs; and
- allow separating parents more time to work out parenting arrangements before their Family Tax Benefit is affected.'.....

'From **July 2008**, the Australian Government will:

- introduce a new Child Support formula that will change the way Child Support payments are calculated, to ensure fairer assessments, encourage shared parenting, and recognise the costs of contact;
- ensure a minimum payment is made for each Child Support family;
- treat more fairly income from second jobs and overtime that assists with re-establishment after separation;
- ensure fairer treatment of parents with dependent step-children when calculating their child support liability;
- simplify the 'Change of Assessment' rules for altering the amount of Child Support that is payable;
- improve the arrangements for parents who wish to make agreements for ongoing Child Support or lump sum payments; and
- make the Child Support rules easier for those parents who are trying to get back together.'

Further details of the changes are provided in fact sheets released at the time.⁵

This Bill contains some of the first set of changes to be implemented in July 2006.

Increase and index the minimum annual rate of child support

Schedule 1 of the Bill provides for an increase in the minimum rate of child support from \$5 per week to \$6 per week. The minimum rate was introduced in 1999 and was one of the first changes to the operation of the Child Support Formula since its introduction by the passage of the *Child Support (Assessment) Act 1989*. Before 1999 any payer in receipt of a government income support payment such as a pension or an allowance such as Newstart Allowance was not required to pay maintenance. The introduction of a minimum child support liability implemented recommendation No 122 in the 1994 Price.⁶

The minimum payment has not been indexed since its introduction. The rate increase restores its value and the new indexation provisions ensure that it will be increased in line

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with movements in the CPI. These changes are in line with recommendations 1.24 and 1.29 of the Parkinson Report.

‘1.24 All payers should pay at least a minimum rate equivalent to \$5 per week per child support case, indexed to changes in the CPI since 1999. The increased amount should be rounded to the nearest 10 cents.

1.29 The minimum rate and the fixed payment should be indexed to the CPI from the end of the 2004–05 financial year. The increased payment should be rounded to the nearest 10 cents.’

The report had further recommendations on the minimum rate.⁷ They included the waiver of the minimum rate where the payer had regular contact or shared care (1.25). Also an increased minimum payment of \$20 per child was recommended for parents not in receipt of income support who report an income below the Parenting Payment Single maximum rate (1.27).

These recommendations appear to be on the agenda for the third stage of the Government legislative program to be implemented in July 2008.⁸

Reduce the maximum income for payers under the child support formula

Schedule 2 of the Bill reduces the cap on the income to be assessed for child support purposes under the child support formula. The original report that the formula was based on, *Child Support: Formula for Australia* suggested that the cap be set at twice average weekly earnings (AWE).⁹ However, the cap was set at two and a half times AWE in the original legislation. The 1994 Price Report recommended that the cap be reduced to twice AWE. In the Child Support Legislation Amendment Bill 2001 the Government attempted to lower the cap by substituting the lower All Employees Average Weekly Earnings (AEWE) for the Full-time Adult Average Weekly Total Earnings (AWE), but was blocked in the Senate. This Bill includes the same amendment for a second time. The February 2006 levels for these average weekly earnings measures indicate that this change will lower the cap to about 75% of its present level.¹⁰

The Parkinson Report recommends a new formula for assessing child support. The cap as it presently exists will have no place if that formula is introduced. Under the Parkinson formula child support is assessed on the basis of the combined income of both parents. A cap is involved but it is a cap on the level of combined income above the self support components of the parents. Recommendation 1.8 provides for a cap of 2.5 times Male Total Average Weekly Earnings. This translates to \$160,386 in 2005-06.¹¹ That is about \$30,000 higher than the present cap, but its effect is not directly comparable due to the changed formula proposed by the Parkinson Report. The present change to the cap may well be an interim measure that is superseded by the new formula to be introduced in 2008.

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Assessing the earning capacity of parents

Under the *Child Support Assessment Act 1989* a grounds for departing from a formula assessment under the Act, is that a parent has a capacity to earn that is greater than they are exercising. The amendments in schedule 3 of this Bill closely follow the recommendations of the Parkinson Report (Recommendations 15.1 and 15.2). The present provisions were considered to be too broad and should be specified in more detail to ensure that:

Parents should only be deemed to be earning more than they are in fact earning, based on unutilised earning capacity, where, on the balance of probabilities, a major motivation for reduced workforce participation is to affect the level of child support payments.¹²

Prescribed non-agency payments

At present up to 25% of a payer's child support liability can be provided through the payment of such things as child care costs, school fees and medical costs amongst others, even where the payee does not agree. The Parkinson Report recommended that the limit be increased to 30% (Recommendation 20.1). Schedule 4 of the Bill implements this recommendation. The reasoning behind this change was as follows:

Such payments allow the paying parent to be confident that the children are benefiting and to have some sense of control over how his or her child support is used, without impinging upon the payee's discretion about how most of the payment is applied..... The limit on credit is a balance between ensuring that the carer has sufficient ongoing cash-flow to cover the everyday requirements of the children and adequately maintaining the paying parent's sense that he or she has an involvement in how his or her child support payments are expended. Given the generous nature of the government contribution to children through FTB, there is less need now for a substantial majority of child support to be paid in cash¹³

Ex-nuptial children in Western Australia

Schedule 5 of the Bill includes amendments to ensure that there is no legal doubt that ex-nuptial children in Western Australia are covered by the Child Support Scheme. The Explanatory Memorandum gives a good explanation of this technical legal issue.

Financial implications

The financial impact of these changes is negligible with saving to the Government of \$2.3 million over 4 years.

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Main provisions

Item 7 of Schedule 1 inserts **new subsections 66(4), (5) and (6)** into the *Child Support (Assessment) Act 1989*. They provide for an increase in the rate of the minimum payment to \$320 per annum and for the annual indexation of that rate according to movements in the CPI.

Schedule 2 removes references to ‘AWE’ from the *Child Support (Assessment) Act 1989* in respect of the cap on child support income and substitutes ‘AEWE’. This ensures that the cap will be calculated using All Employees Average Weekly Earnings (AEWE) rather than Full-time Adult Average Weekly Total Earnings (AWE). The resulting cap will be only about 75% of the existing cap.

Item 8 of Schedule 3 inserts **new subsections 117(7A) and (7B)** into the *Child Support (Assessment) Act 1989*. They specify the situations where the earning capacity of a parent can be used as a reason to depart from the assessment formula.

Item 1 of Schedule 4 omits ‘25%’ from Subsection 71C (1) of the *Child Support (Registration and Collection) Act 1988* and substitutes ‘30%’. This change increases the proportion of a child support assessment that can be paid as prescribed non-agency payments such as school fees, child care costs or medical fees.

Schedule 5 addresses a technical legal issue with regard to the coverage under *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* of ex-nuptial children in Western Australia.

Endnotes

1. *In the Best Interests of Children - Reforming the Child Support Scheme - Report of the Ministerial Taskforce on Child Support*, 14 June 2005. Full text available at: <http://www.facs.gov.au/internet/facsinternet.nsf/family/childsupport.htm>
2. Joint Standing Committee on Certain Family Law Issues, *Child Support Scheme: An Examination of the Operation and Effectiveness of the Scheme*, November 1994.
3. House of Representatives Committee on Family and Community Affairs, *Every picture tells a story: Inquiry into child custody arrangements in the event of family separation*, 29 December 2003. For the full text see: <http://www.aph.gov.au/house/committee/fca/childcustody/report.htm>
4. The Hon. Mal Brough, ‘Child Support Reforms To Deliver Fairer System’, *Media Release*, 28 February 2006. Full text at: http://www.facs.gov.au/internet/Minister3.nsf/content/child_support_reform_28feb06.htm
5. For full text see: <http://www.facs.gov.au/internet/facsinternet.nsf/family/childsupport.htm>

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6. Recommendation 122

the child support legislation be amended to:

- (a) introduce a minimum child support payment of \$260 per annum where the formula results in an assessment less than this amount; and
 - (b) allow the Child Support Registrar to waive the minimum payment of \$260 in special circumstances.
7. 1.25 A minimum payment should not be required if the payer has regular contact or shared care.
- 1.26 Payers on the minimum rate should be allowed to remain on that rate for one month after ceasing to be on income support payments or otherwise increasing their income to a level that justifies a child support payment above the minimum rate.
- 1.27 Parents who are not in receipt of income support payments but report an income lower than the Parenting Payment (Single) maximum annual rate should pay a fixed child support payment of \$20 per child per week and this should not be reduced by regular contact.
- 1.28 The fixed payment of \$20 per child per week should not apply if the Child Support Registrar is satisfied that the total financial resources available to support the parent are lower than the Parenting Payment (Single) maximum annual rate. In those cases, the minimum rate per child support case should apply.
8. See *Fact sheet Five: Stage Three - Changes to the Child Support Scheme from July 2008* at: [http://www.facs.gov.au/internet/facsinternet.nsf/via/child_support_scheme/\\$file/fact_5_child_support_stage3_2008.pdf](http://www.facs.gov.au/internet/facsinternet.nsf/via/child_support_scheme/$file/fact_5_child_support_stage3_2008.pdf)
9. Child Support Consultative Group, *Child Support: Formula for Australia*, May 1988.
10. Australian Bureau of Statistics, *Average Weekly Earnings: Australia, February 2006*, No. 6302.0.
11. *In the Best Interests of Children - Reforming the Child Support Scheme - Report of the Ministerial Taskforce on Child Support*, 14 June 2005, p. 151–2.
12. *ibid.*, p. 14.
13. *ibid.*, p. 186–7.

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