



Child Support Legislation Amendment (Reform of the Child Support Scheme - New Formula and Other Measures) Bill 2006

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Child Support Legislation Amendment (Reform of the Child Support Scheme - New Formula and Other Measures) Bill 2006

Date introduced: 14 September 2006

House: House of Representatives

Portfolio: Families, Community Services and Indigenous Affairs

Commencement: The various provisions in the Bill commence at different times as set out in the table under clause 2 of the Bill.

Purpose

To provide for the legislation necessary to change the Child Support Scheme (CSS) maintenance formula and other necessary consequential legislative changes. The Bill also contains provisions to allow appeal access to the Social Security Appeals Tribunal (SSAT) for persons affected by decisions made under the *Child Support (Assessment) Act 1989* (CSAA). There are also measures to modify the Family Tax Benefit (FTB) income test for maintenance income (MIT). There is a summary of the measures presented in this Bill in the Outline at the beginning of the Explanatory Memorandum.¹

Background

Government announces response to the In the Best Interests of Children report

The government announced major changes to the CSS child support maintenance formula on 28 February 2006.² The changes are the Government's response to the Ministerial taskforce report on Child Support. The former Minister for Children and Youth Affairs, the Hon. Larry Anthony, MP announced on 16 August 2004 the terms of reference and the membership of the Ministerial Taskforce and Reference Group to examine Australia's Child Support Scheme. Membership of the Taskforce can be found in Appendix 2 of the Taskforce's report released on 14 June 2005.³ The Taskforce's terms of reference were spelt out in the Minister's press release.⁴

Every picture tells a story: Inquiry into child custody arrangements in the event of family separation

The origins of the Government convening the Ministerial Taskforce into the CSS were in the report of the House of Representatives Standing Committee on Family and Community Affairs and its inquiry into child custody arrangements in the event of family separation. This report was called *Every picture tells a story: Inquiry into child custody*

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*arrangements in the event of family separation.*⁵ Recommendation 26 of the Committee's report was for the government to examine the CSS.⁶

Costs of the reforms

The Outline in the Explanatory Memorandum details that the proposed reforms to the CSS and other measures presented in this Bill will cost \$9.5 million in 2006-07, \$36.4 million in 2007-08, \$143.1 million in 2008-09 and \$131.3 million in 2009-10.⁷

Origins of the CSS arose from long-standing problems with maintenance and child support

The original impetus for the creation of the CSS arose from the same social pressures that produced the *Family Law Act 1975*; the support of children after family breakdown and the conflicts around this issue. The CSS was introduced in June 1988, and while partially based on overseas models, it was then unique in terms of the Child Support Agency (CSA) being originally located within the taxation arm of the central government. Since October 1998, the CSA has been within the Families, Community Services and Indigenous Affairs portfolio.

The Australian CSS become a model for other schemes developed since 1989, in particular those in New Zealand and in the United Kingdom.

Lengthy consultations and discussions before the CSS was introduced

The introduction of the CSS in Australia had a long gestation. At the time of implementation, the CSS was seen as a major and controversial reform, which might take up to ten 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 strength of feelings and emotion that can often be 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. Notwithstanding these concerns about the issues, by the late 1970s the impetus for a child maintenance scheme had become substantial. These pressures were evidenced by:

- the high cost, and delays, in applying to court for a child maintenance order, or to register an agreement,
- the low success rate and unsatisfactory nature of enforcement of child support orders,
- inadequate levels of court-ordered or privately agreed maintenance (payments averaged \$10 to \$30 per week per child),

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- little or no indexation of court-ordered payments to maintain their value,
- difficulties in enforcing maintenance orders and agreements – by the late 1970s only 30 per cent of non-custodial parents (payers) were making regular payments and only 26 per cent of sole parents were receiving maintenance,
- the lack of integration of the social security and child maintenance systems, and
- the extra cost to the taxpayer in providing welfare payments to custodial parents (payees), to make up for inadequate maintenance provision by payers.⁸

The other main impetus for the CSS and a maintenance formula was the increasing numbers of sole parent households, increasing numbers of children living in poverty and increasing numbers of divorces/separations.⁹

Concerns about the CSS before introduction

Prior to the introduction of the CSS in 1988, there were concerns expressed about the introduction of a national and compulsory government-imposed maintenance collection and payment scheme. Some of these concerns claimed such a scheme would result in increased levels of violence and confrontation between separated couples forced to seek maintenance and to pay maintenance. A scheme would worsen the problems of fear of violence, fear of harassment, access disputes etc. In regards to these concerns, most observers now agree that the CSS has not seen these fears realised and the CSS has given payees (resident carer parents) the flexibility to seek/obtain maintenance, without the necessity to maintain some sort of contact/relationship with the payer (non-resident parent).

'The Price Report' - The Joint Select Committee on Certain Family Law Issues - 1994

The first major examination of the CSS and also the CSA was undertaken by the Price Committee Report which was released in November 1994.¹⁰ It is called the Price Report after the Committee chairperson the Hon. Mr Roger Price, MP and it was certainly the most definitive and significant public document on the CSS and the CSA since the CSS started in 1988 and up until the recently released report *In the Best Interests of Children*.¹¹ The Price Report was such an important document for several reasons:

- it was the most comprehensive public examination of the CSS and the CSA since the inception the arrangements in 1988;
- it was the most recent large-scale review of the CSS and CSA arrangements; and
- being a Parliamentary Joint Select Committee Report, it has had significant status within Parliamentary considerations of the CSS, the CSA and maintenance issues.

The fact that there were as many as 163 recommendations in the Price Report reflected several elements:

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- 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 is 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.
- The legislative rules and administrative practices that apply under the CSS reflect the inherent difficulties of any scheme in collecting and paying maintenance, that is, there is probably no perfect child maintenance scheme that will please all parties and stakeholders.

Even though governments have since implemented many of the Price Committee Report recommendations, there are still ongoing issues and matters of contention about the CSS legislation and the administration of the CSA, the main ones being:

- the administrative arrangements of collecting and paying maintenance,
- the real cost of raising children,
- the construction of and perceived imbalances in the maintenance formula, and
- the capacity of some payers to avoid maintenance by legally minimising taxable income.

These problems and issues are still current, and this is manifest in the impetus for the recent Child Support Taskforce's report *In the Best Interests of Children*. The issues are probably inherent in any scheme to enforce the compliance of maintenance payments and to collect and redistribute these payments between separated parents. These issues will always be contentious.

Response by the Labor Government to the Price Report

As stated above, many of the 163 recommendations in the Price Committee Report generally referred to administrative and business arrangements in delivery of the CSS and the operation of the CSA. The previous Labor government, while not agreeing to all of the recommendations, responded to many. However, many of those responses only addressed the administrative issues, rather than what were seen as the outstanding core issues, being the maintenance formula and related issues. In all fairness, the previous government was still in the process of responding to the Price Committee Report when the March 1996 election overtook events.

The main impetus for the Price Committee Report in 1993-94 was the then considerable problems and concerns surrounding the performance of the CSA. Notwithstanding that there were many service delivery problems and issues, the then government considered the Price Committee Report's recommendations on the maintenance formula too premature

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and insufficiently supported by research. This is the main reason the government responded to many of the administrative issues, but not to many of the maintenance formula issues.

Commitment of the current Government to the Price Report

Prior to the March 1996 election, the then Opposition promised to examine and respond to the residual issues and recommendations in the Price Committee Report.¹² Initially no timetable was set, and in 1997 the government convened a backbench committee to examine and recommend reforms. The backbench committee's report was never made public, so it is difficult to guess its impact on government policy and actions since 1996. The current government has made a series of changes to the maintenance formula since 1996 which are discussed below.

The current CSS maintenance formula

The current CSS maintenance formula was introduced with the CSS in 1988 and was substantially unchanged until the first amendments were made with the passage of the *Child Support Legislation Amendment Act 1998*,¹³ which took effect from 1 July 1999.

The original formula was arrived at after community consultation and research into the cost of supporting children. The Price Committee Report referred to the consultations that occurred in the development of the maintenance formula.¹⁴ There were also several papers written on a potential maintenance formula, culminating in the *Child Support Consultative Group Report* chaired by Justice Fogarty, released in May 1988.¹⁵ There is also a good summary of the reports and consultations for the original maintenance formula on page 44 of the *In the Best Interests of Children* report.

The current maintenance formula – objectives and considerations

The percentage rates in the maintenance formula are not set to arrive at an exact cost of caring for a child or the costs of raising a child, or even half of any such costs. Rather the formula was constructed to take into regard a range of issues and aims:

- the additional costs of raising a child where parents do not live together,
- the extra indirect costs of children for payees,¹⁶
- access costs incurred by payers,¹⁷
- retention of appropriate incentives for payers to earn income from employment,¹⁸
- the views of the community on what would be considered a fair level of child support,¹⁹

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- achievement of a reasonable contribution amount, recognising there will be range of payer and payee income levels,²⁰
- by setting higher exempt income levels for payees, acknowledgment that payees bear the main financial and daily burden of child raising as the primary care givers,²¹ and
- by using percentages, an attempt to accommodate changes, as the costs of children rise.²²

The percentages that have been applied to the payer's gross taxable income (after the self-support amount is deducted) to determine the amount of child maintenance payable by a payer have been unchanged since the CSS was introduced in 1988 and are:

1 child	18%
2 children	27%
3 children	32%
4 children	34%
5 or more children	36%

For example, where a payer's is liable to pay for one child, they are required to provide 18 per cent of their residual child support income. Residual child support income is adjusted taxable income with the payer's self-support amount deducted.

Criticisms of the current maintenance formula by payees

Payees say the current formula does not arrive at a sufficient level of maintenance to reflect the real costs of children, especially hidden and/or unappreciated costs.²³ Hidden costs refer to the costs associated with having the child reside with you every day and being the primary care giver, for example, larger accommodation, extra travel and transport costs, health costs, heating, water and power, care of the child when sick etc. Unappreciated costs refer to the stress and social and work restrictions and isolation associated with being the daily primary carer/parent.²⁴

General criticisms of the current maintenance formula by payers

Payers say the current formula is too harsh on them, leaving them with little spare money to support themselves, or their new family.²⁵ Payers are concerned that the formula does not recognise children of de-facto relationships unless the children are formally adopted or are a natural children of the payer. Payers say this is inconsistent with other government rules where these children can be regarded as dependent and can attract financial assistance.

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Reforms to the current maintenance formula since 1988

The only changes to the original child maintenance formula since 1988 have been made by the current government. The *In the Best Interests of Children* report provides a useful description of the major changes to the maintenance formula that have been made by the current government since 1996.²⁶

General themes running through recent CSS reforms and formula changes

In the changes made by the government to the CSS and the maintenance formula since 1996, the influence of the Price Committee Report's recommendations is clear, and many changes are sourced to particular recommendations of the report. When the changes to the CSS and the maintenance formula made since 1999 are examined several themes emerge. These are:

- The CSS arrangements have been made more flexible and responsive to particular situations,
- The balance between the needs of payees and payers has shifted. Measures which assist second families of payers and adjustments to various parts of the formula, like the payer self-support amount, are features which favour payers and appear repeatedly, and
- Private arrangements have been encouraged and facilitated. This is partly due to the growth in workload for the CSS. Greater use of private arrangements makes sense where it works and reduces intrusiveness and cost.

Proposed changes to the maintenance formula

The Government announced its response to the report of the Ministerial Taskforce on Child Support on 28 February 2006.²⁷ Some of the major changes proposed to the formula and other CSS arrangements presented in this Bill are discussed below.

Increase the minimum child support maintenance liability from \$260 to \$312 a year and index this amount to the CPI

Originally, any payer in receipt of a government income support payment was not required to pay maintenance under the CSAA. Income support includes pensions and the main allowance payments like sickness allowance, newstart allowance, mature age allowance, partner allowance etc. This was changed with the *Child Support legislation Amendment Act 1998*.²⁸ This Act introduced a mandatory requirement that a payer on an income support payment had to provide a minimum of \$5 a week (or \$260 a year) in maintenance. The proposal to introduce a minimum child support liability of \$260 a year accorded with recommendation 122 in the Price Report.²⁹

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Support and justification for this initiative mainly stemmed from the symbolism it represented, that is, payers are not seen to be able to avoid some maintenance obligation when they are receiving a government income support payment. While there was some anecdotal evidence and comment that payers either became unemployed, or remained unemployed, to avoid maintenance liabilities, there is no empirical evidence available to identify or to quantify this as a fact.³⁰

Paying a minimum child support amount mirrored the United Kingdom (UK) child maintenance arrangements, under which payers on income support payment are required to pay a minimum fee. In the UK, where the payer is getting income support, is aged 18 or more, is fit for work and has no dependent children living with them, then they may be required to make a contribution to the maintenance of their child. The amount currently payable is £5.00 a week³¹

The change presented in this Bill is the one-off raising of the \$5 a week amount to \$6 a week from 1 July 2006 and the on-going indexation of this amount to movements in the Consumer Price Index (CPI) thereafter.³² This accords with recommendation 1.24 in the *In the Best Interests of Children* report.³³

Self-support amount

Background

The current maintenance formula has a self-support amount for the payer and an indirect self-support amount for the payee. The indirect self-support amount for the payee takes the form of an income limit above which excess income reduces the amount of child support payable by the payer.

Payer self-support amount

For the payer, the self-support amount (with no relevant dependent children) is 110 per cent of the annual amount of the unpartnered rate of social security pension. For the 2006 year this amount is \$13 983. Where the payer has a relevant dependant child, the self-support amount is 220 per cent of the annual amount of the unpartnered rate of social security pension. For the 2006 year this amount is \$23 349. There are additional amounts added to this for relevant dependant children aged up to 13, aged 13 to 15 and aged 16 or more. The appropriate self-support amount is deducted from the payer's adjusted taxable income to arrive at the level of child support income, against which a percentage is set to determine child support payable.

Payee self-support amount

For the payee, where income exceeds their income-disregarded amount, the excess income can reduce child support payable by the payer. For 2006 the disregarded income amount for payees is \$41 881.

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The reason the current formula has a higher self-support amount for the resident parent (payee) than the non-resident parent (payer) is to recognise the extra costs of providing care on a daily basis, the economic sacrifice the carer parent makes in providing care and the extra costs of childcare if the payee is in the workforce.³⁴

Proposed new formula provides for an equal self-support amount for payee and payer

The proposed new formula provides for an equal self-support amount for both payers and payees. This amount is to be one third of Male Total Average Weekly Earnings (MTAWE). The *In the Best Interests of Children* report recommended the same self-support amount for the payer and payee along with removal of the income-disregard amount for the payee.³⁵

The payee representative groups will not be in favour of the self-support amounts being the same for payees and payers, as this does not recognise the extra costs for the primary carer in having to be the daily carer of children.³⁶

Recognition of post-separation costs – the three year extra income exempt period

The proposed new maintenance formula proposes to have a three-year post-separation extra income exemption period. During the three years immediately post-separation, extra income earned over and above the normal earned income received is not to be taken into account in the maintenance assessment. The purpose of this income exemption period is to recognise the extra costs of re-establishment for separated parents.

The *In the Best Interests of Children* report recommended extra income earned in the five year period post-separation should be disregarded if it could be proved it was earned to prove for re-establishment costs.³⁷ The National Council of Single Mothers and their Children have criticised this three-year extra income exemption as they claim it will favour non-resident parents who will have a greater capacity to earn extra income.³⁸

Allow the resident parent to retain all of their Family Tax Benefit (FTB) payment except where the non-resident parent is sharing 35 per cent or more

Background

Currently, where there is shared care of a child by both parents, FTB for that child can be split between the two parents. The splitting of the FTB rate can recognise up to a 90 per cent - 10 per cent shared care arrangement. For example, where shared care is assessed as 70 percent with one parent and 30 percent with the other, the FTB payment rate for that child can be split 70/30 accordingly between the two parents.

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Recommendation to only recognise shared care of 35 per cent or more in the payment of FTB

The recommendation of the *In the Best Interests of Children* report is to only recognise shared care of 35 per cent or more in the split payment of FTB.³⁹ The main argument for this is recognition of costs and the claim that those parents with lesser amounts of care time (that is, less than 35 per cent) probably do not have the proportionally same level of costs as the main carer parent.⁴⁰ The costs of the child should be recognised in the CSS maintenance formula and not by FTB payments, unless the proportion of shared care by the lesser carer is substantial; that is for 35 per cent or more.⁴¹

Principle resident carer parents will probably support this proposal.⁴² Equally, non-resident carer parents will probably not support this proposal as it doesn't provide any financial support for non-resident parents unless they have the care of the child for a substantial period of time.

Proposed maintenance formula to be based on the costs of children

The costs of children as a basis for determining child support

The linking of child support payments to the costs of children has been a long-standing issue of interest and priority in the debate about appropriate levels of child support. For the original formula, the Child Support Consultative Group arrived at its recommended percentages of income based on several costs-of-children reports.⁴³ Likewise, the Price Committee Report recommended that an evaluation be undertaken into the costs of children to enable a critical evaluation of the child support formula percentages.⁴⁴ The *In the Best Interests of Children* report devoted a whole chapter to investigating the literature and studies that have tried to identify the costs of children in the past.⁴⁵

Proposed formula based on the costs of children

One of the *In the Best Interests of Children* report's major claimed innovations is that it has recommended a formula that recognises the cost of children.⁴⁶

What are the costs of raising/supporting children?

There probably isn't a definitive answer to the quest for the costs of raising/supporting children. The costs will vary with each parent or expert who has a view. The cost of raising a 12 year old girl in Kalgoorlie will be different for the same child in a family with the same income living in Sydney. Also, what are the essential or non-discretionary costs of a child as opposed to the non-essential or discretionary costs of raising/supporting a child? Again, the views on this will vary with each parent and expert. For example, not many would dispute that the costs of food, clothing and accommodation are essential non-discretionary costs in supporting/raising a child. However, should the costs of paying for the girl to attend the cinema once every four weeks with her friends, so that the child can

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share leisure time with her friends, be regarded as discretionary costs and therefore not included as reasonable non-discretionary costs?

The essential problems with determining the costs of raising a child are what costs should be in, what costs should be out, how to adjust for different costs in different locations and how and when to update these costs as they rise.

New formula not really using actual costs of children - just new percentages applied to residual income?

The *In the Best Interests of Children* report recommended that the child support maintenance formula be based on the costs of children.⁴⁷ In the proposed formula, it doesn't arrive at an actual figure/s for the costs of children, for example, that it costs \$8 000 a year for a 13 year old child. Rather it allocates a proportion of each parent's income (aside from equal self-support amounts for both parents) then allocates a percentage of this residual income as an amount to be paid as child support. This is set out in Table A in the report.⁴⁸ The percentage of residual income to be regarded as the level of child support payable then varies with the number of children, the age of the child, the amount of residual income and the level of contact the non-resident parent has with the child. This will realise different child support amounts payable for each family situation. So for any one child aged 13, the amount of child support payable will vary with the different incomes of the payer and the payee and the number and age of other child support eligible children and the degree of any shared care.

This proposed formula is not that much different to the current formula, which apportions percentages of income (aside from different self-support amounts for the non-resident parent and deductions for excess payee income) for the number of children involved. Where this proposed formula is more detailed is that it provides for different percentages of income for different aged children and for different levels of parental income.

In many ways this proposed formula is very similar to the current formula, except that the percentages to be applied to residual income (income after the self-support component is deducted) vary with each case and its make-up is based on costs-of-children research.

Social Security Appeals Tribunal (SSAT) - review of child support decisions

The Bill presents amendments to the CSAA to allow for the review of CSA child support decisions by the SSAT.

Background

For most decisions made by the CSA under the CSS there is no separate appeal body that an individual can approach to seek a review of a decision. Essentially, in most instances,

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the individual has to seek redress through the courts, which can be a very time consuming and expensive process.

No history of external review of CSA decisions

When the Price Report considered decision-making under the CSS in 1994, there was a group then called the Child Support Review Office (CSRO). The CSRO function was to review (on appeal) child support decisions made by the CSA. In 2000 the CSRO was renamed the 'Change of Assessment' process and the CSRO officers were renamed Senior Case Officers (SCO). Around 90 per cent of these SCO were contracted family law practitioners and quasi-external to the CSA. Notwithstanding that any appeal goes off to a SCO, the case decision still comes back to the CSA for final approval.

Current limited role for the AAT

Generally, there is no power under the CSAA for the AAT to hear applications. Essentially, under the CSAA, the AAT can only hear cases referring to:

- decisions to grant or refuse extensions of time to pay maintenance,
- the remission of late payment penalties, and
- the imposition of Departure Prohibition Orders – preventing payers with child support debts from leaving Australia.⁴⁹

These categories constitute a very small number of the decisions made by the CSA.

The Price Report recommended an independent appeal process

The Price Committee Report of 1994 recommended that appeals about CSA decisions should be able to be referred to a separate proposed Child Support Appeals Office (CSAO).⁵⁰ The CSAO would be a new independent statutory office, with the power to decide on CSA decisions and also the power to refer a case to the Family Court or the Administrative Appeals Tribunal (AAT), that is a person/body independent of the CSA.

The Price Committee Report was of the view that many of the decisions about the level of maintenance to be made under the formula by the CSA were 'administrative decisions' and were not 'law decisions', and these decisions did not need to be dealt with by the Family Court. The Price Committee Report felt that the SSAT model for the review of *Social Security Act 1991* (SSA) decisions was a good model and the CSAO could mirror the SSAT structure and function.⁵¹

This process is spelt out in a paper by Tammy Wolffs.⁵² In her paper, comment was made that, notwithstanding that any appeal about a CSA decision goes off to a SCO, the case and decision still comes back to the CSA for final approval. Wolffs considered this a little strange, given that the decision has gone externally for review but still needs approval

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internally.⁵³ Wolffs came to a very similar conclusion to the Price Committee Report: many of the CSA decisions are ‘administrative decisions’, not ‘law decisions’, which would be better dealt with administratively and need not go to a legal body like the Family Court. Wolffs also examined the possibility of having the existing SSAT deal with CSA decisions.⁵⁴

Other recommendations for an external review process for CSA decisions

Sandra Henderson-Kelly also examined the issue of the limited access to external review of CSA decisions for payers and payees.⁵⁵ Henderson-Kelly examined the CSA decision-making and the appeal process from a slightly different angle, taking into consideration more of the angst and grievances being expressed by payees and payers when they want to dispute a CSA decision. Henderson-Kelly comes to a similar position as the Price Committee Report and Wolffs, namely the administrative side of the decisions is not being adequately dealt with. Kelly advocated an external administrative tribunal⁵⁶ but also concluded there is still considerable scope for the current legal review process (Family Court) to deal with the issues, with some adjustment and modification.

The *In the Best Interests of Children* report recommended that the government should consider the introduction of an external review mechanism for CSA decisions.⁵⁷

Senate Community Affairs Committee’s considerations of the SSAT appeal role in CSA decisions

Generally, submissions to the Senate Standing Committee on Community Affairs inquiry into this Bill were supportive of the move to give the SSAT jurisdictional powers over CSA decisions.⁵⁸ There were some concerns that the SSAT was not being supplied with subpoena of evidence powers. The Law Council of Australia expressed concerns that the SSAT was not an appropriate form for the settlement of disputes between parties as opposed to settling disputes between citizens and government.⁵⁹

No appeal to the AAT and appeals on SSAT decisions only to a court on a matter of law

The provisions presented in this Bill do not provide for an appeal of a SSAT CSS decision to the AAT, as currently applies to SSAT decisions made under the SSA.

Likewise, appeals of SSAT decisions can only be made to a court on a matter of law, which again is different to SSAT decisions under the SSA, which allows appeals on matters of judgement by the SSAT. This proposal to only allow appeals of SSAT decisions on a matter of law is very similar to the appeal regime that was presented in the *Administrative Review Tribunal Bill 2000*.⁶⁰ That Bill was not passed by the Senate, being defeated at the second reading on 26 February 2001.⁶¹

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Changes to the Maintenance Income Test (MIT) for Family Tax Benefit (FTB)

The Bill proposes amendments to the MIT applied to child support payments received for determining the rate of FTB payable to a payee. These changes were recommended by the *In the Best Interest of Children* report.⁶²

Background

At present, income received in the form of maintenance is not lumped in with other sources of income, rather it is only counted against the more-than-minimum rate of FTB-A, with a special free area and taper rate. Maintenance received is not regarded as income for pensions or allowance income support payments and therefore has no effect on the rate of these payments. There are a few minor exceptions to this; maintenance received is regarded as income for youth allowance, ABSTUDY and Assistance for Isolated Children purposes.

The origins of the special test that applies to maintenance income lie in the significant reductions in assistance that some payees used to suffer, when receiving large amounts of maintenance, especially non-cash maintenance. Prior to January 1993, maintenance income was lumped in with all other income and applied under the general income test for pensions and allowances. This meant that in those cases where a large amount of maintenance income was received (commonly non-cash maintenance), the payee could have their income support payment significantly reduced or even precluded. This was an undesirable result, with the maintenance recipient left with no on-going means of support, having received a large amount of in-kind maintenance and little or no cash. Originally there were ceilings or caps allowed on the provision of non-cash maintenance, but later there were changes to the treatment of maintenance, in terms of the payments affected and the income test applied. A common example of non-cash maintenance received that precluded access to income support for the payee was expensive boarding school fees paid for several children.

From January 1993, maintenance received had a special income test (MIT) and only affected more-than-minimum rate of Family Allowance (FA), now more-than-minimum rate FTB-A. The partial or total loss of more-than-minimum rate FTB, being income supplement not income support, is less of a problem than the loss of income support. The MIT applies if a person is eligible to more than the base rate of FTB.

The current MIT has a free area of \$1 150 (plus \$383 for each extra child after the first) and thereafter income reduces the FTB rate by 50 cents in each dollar.

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Proposed change to the MIT

The proposed change to the MIT is to only have the maintenance received affect the FTB rate for the child in respect of whom the maintenance is paid for. This is a beneficial change for payees as it will not see the rate of FTB paid for other children reduced.

Main provisions

Schedule 1 – The formulas (commencing on 1 July 2008)

Item 1 inserts the new child support maintenance formula into the CSAA. There are six separate formulas to be used in prescribed circumstances.

Proposed **Section 40C in Subdivision E – general provisions** provides that a parent with care of a child for 65 per cent of the time or more is not liable for any child support maintenance for that child.

Subdivision B – Child support income and combined child support income.

Proposed section 41 sets out how the amount of child support income is calculated. Basically this is the level of adjusted taxable income minus the self-support amount, which is the same for the payee and the payer.

Section 42 provides for the combining of both parents' child support income from which a percentage is applied to determine the child support payable for the child. Once the level of child support income is calculated, the costs-of-children percentages can then be applied to determine the amount of child support payable.

Subdivision C – Working out the components of child support income

Proposed section 43 sets out the steps to arrive at adjusted taxable income for parents. **Proposed section 44** allows for the deduction of post-separation costs.

Proposed section 45 sets out that the self-support amount is to be one third of MTAWWE.

Proposed section 46 sets out how to calculate a parent's dependent child amount.

Proposed sections 47A, 47B and 48 set out how to set a percentage of care.

Division 6 inserts new sections into the CSAA to calculate the costs of the child based on the Table in the new Schedule 1 to be attached to the CSAA. This Table is provided on page 69 of the Bill.

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Division 7 inserts new sections to set the amount of adjusted taxable income. These sections are largely a rewrite of the existing sections in the CSAA.

Division 8 inserts new sections for assessing adjusted taxable income.

Section 66 provides for the proposed new minimum rate of child support payable of \$320 a year to be thereafter indexed to the CPI by **section 153A**.

Section 66A allows the Secretary to provide a lower rate of child support payable than this minimum, even a nil rate of child support. It can be set lower on application on a case-by-case basis where the Registrar is satisfied that the income of the applicant is less than the single rate of pension.

Item 2 of Schedule 1 inserts a new **Schedule 1** to be attached at the end of the CSAA to contain the Costs of the Children Table.

Schedule 2 – Consequential amendments and application and savings provisions relating to formulas

Part 1 – Consequential amendments

Items 1 and 2 amend the *A New Tax System (Family Assistance) Act 1999* (FAA). The items provide for a new definition of reportable fringe benefits and a new definition of target foreign income. This will align these definitions in the FAA with the same definitions in the CSAA.

Item 29 amends the CSAA to set out the definition of ‘last relevant year of income’, being the last completed tax year preceding the current calendar year.

Item 37 provides for a new definition of ‘net rental property loss’ in the CSAA.

Item 43 provides a new definition of relevant dependent child.

Item 59 inserts definitions of regular care and shared care. Regular care means care from 14 per cent to 34 per cent and shared care means care from 35 per cent to 64 per cent. The effect of this is that where care is 65 per cent or more, the parent is regarded as the principle carer parent.

Item 60 inserts a definition of annualised MTAW. **Item 60** also inserts a description as of how to work out the annualised value of target foreign income.

Item 66 inserts provisions describing who may apply for a child support assessment. This includes parents and also some non-parent carers of a child in prescribed circumstances.

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Item 73 inserts provisions that require the Registrar to make a new child support assessment once a new tax assessment is available. These provisions do not make any allowance for payers deliberately lodging a late tax assessment with the Australian Taxation Office, in the knowledge that the new assessment will result in a higher child support liability.

Item 97 provides for the annual indexation of the minimum child support rate (to be set at \$320 a year by new section 66 in this Bill). **Item 97** also provides for the annual indexation of child support amounts payable by low-income payers not on a government income support payment.

Part 2 – Application and savings provisions

Item 117 provides savings provisions, basically saving the child support assessments made prior to the date **Schedule 1** comes into force (1 July 2008).

Schedule 3 – SSAT review of child support decisions (commencing 1 January 2007)

Part 1 – Amendments

Part 1 of Schedule 3 inserts new provisions into the CSAA to allow for the review of CSA decisions by the SSAT. The SSAT will also take over the limited types of CSA cases that can be currently referred to the AAT.⁶³

Item 22 allows a person to appeal to a court where the Registrar has declined to make a child support assessment because of uncertainty about a child's percentage.

Item 69 allows for internal re-consideration of a decision prior to the matter being considered by the SSAT. **Proposed section 80** sets out the range of decisions that an objection may be lodged. **Proposed section 81** allows for 28 days in which to lodge an appeal against a decision. This is the same time limit that current applies to appeals against decisions under the SSA.

Item 71 sets out provisions for the appeal of a SSAT decision to a court. Essentially appeals can only be made on a matter of law, not on a matter of judgement. This is more restrictive than currently applies to the review of SSAT decisions to the AAT under the SSA, which are not restricted to a matter of law.

Likewise there is no provision for an appeal to the AAT, as currently applies to SSAT decisions made under the SSA. What this Bill provides for is SSAT decisions to be appealable only to an appropriate jurisdictional court.

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Schedule 4 – Other amendments commencing on 1 January 2007

Part 1 – Amendments

Item 4 inserts into the CSAA an outline of the backdating provisions for child support assessments by the Registrar proposed in this Schedule of the Bill. **Item 14** inserts provisions into the CSAA for the amendment of an administrative assessment that is more than 18 months old. **Items 16 to 23** inserts provisions for departure from an administrative assessment in special circumstances. **Item 36** inserts provisions describing the powers of courts in relation to assessments.

Part 2 – Application provisions

Items in this Part insert provisions applying to applications for departure from administrative assessments that are more than 18 months old.

Schedule 5 – Amendments relating to child support agreements and court orders (commencing on 1 July 2008)

Item 5 inserts into the CSAA an outline of the new provisions for child support agreements proposed between parents. **Item 28** amends the powers of a court to set aside or terminate an agreement. **Item 38** amends the provisions that set out what may be included in a child support agreement. **Item 71** inserts provisions describing notional assessments of child support.

Schedule 7 – Other amendments commencing on 1 July 2008

Items 1 and 2 insert provisions into the CSAA to allow for the suspension of child support payments on application where the parents are reconciling. **Items 8 to 10** insert provisions to provide for deductions of child support owed by a payer from his/her payments provided under the *Veterans' Entitlements Act 1986*.

Items 11 to 15 deal with the suspension of child support, when the parents are in the process of reconciling.

Schedule 8 – Amendments relating to family tax benefit (commencing 1 July 2008)

Part 1 – Regular care children

Item 8 inserts a new definition of a 'regular care child' into the FAA for a carer who has a child for at least 14 per cent of the time but less than 34 per cent of the time. This new definition of a 'regular care child' is required so that while the carer may not qualify for FTB, they may still be able to attract Rent Assistance (RA) in respect of the child. This is

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required as there is the potential to qualify for RA even though the carer is not on a government income support payment. RA can be paid to persons on low income who otherwise qualify for FTB. Government income support payments refers to the main pension and allowance payments like parenting payment – single, newstart allowance etc.

Item 16 inserts a new provision into the FAA to define a shared carer of a child as a carer providing care for at least 35 per cent of the time. **Item 25** inserts a provision detailing that where care provided is for less than 35 per cent of the time, the child is not an FTB child. **Item 77** inserts a provision detailing that the rate of FTB payable in a shared care situation is linked to the assessed level of shared care.

Part 2 – Maintenance income test

Item 155 inserts new provisions into the FAA to modify the maintenance income test so that maintenance received is only counted against the rate of FTB payable for the child for whom the maintenance is received.

Concluding comments

This Bill provides for the legislative amendments and new legislation to encompass the government's response to the Child Support Task Force report *In the Best Interests of Children*. The main feature of the legislative amendments is a new formula for calculating child support payable based on the estimated costs of a child. The Bill also provides access to persons to appeal to the SSAT in connection with decisions made about child support under the CSAA. There are also provisions altering the effect of child support on the rate of and qualification for FTB.

This Bill provides for the most substantive changes to the CSS since it was introduced in 1988. Concerns have been expressed by many of the submissions to the Senate Community Affairs Committee that the time that has been allowed for consideration of the provisions in this Bill has been too short. The Bill was tabled on 14 September 2006 and debate commenced in the Parliament on 12 October 2006. The Committee itself expressed concerns that the time allowed for consideration of the Bill has been too short.

The moves to allow appeal to the SSAT and the beneficial changes to the FTB maintenance income test will be welcomed. The new formula based on the estimated costs of a child will be seen a step forward by most parties. As to whether these estimated costs accurately reflect child caring and raising costs for separated parents will be matter for future debate.

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Endnotes

1. *Explanatory Memorandum*, Outline.
2. The Hon. Mr Mal Brough, MP, Minister for Families, Community Services and Indigenous Affairs, 'Child Support Reforms To Deliver Fairer System', *Media Release*, Canberra, 28 February 2006.
http://www.facs.gov.au/internet/Minister3.nsf/content/child_support_reform_28feb06.htm
3. Ministerial Taskforce on Child Support, '*In the Best Interests of Children*', Report of the Ministerial Taskforce on Child Support, Canberra, 14 June 2005.
<http://www.facs.gov.au/internet/facsinternet.nsf/family/childsupport.htm>
4. The Hon. Larry Anthony, MP, Minister for Children and Youth Affairs, 'Taskforce to examine child support scheme', *Media Release*, Canberra, 16 August 2004.

Terms of Reference - Review of Child Support Scheme

Following the Report from the House of Representatives Committee on Family and Community Affairs' Inquiry into Child Custody Arrangements in the Event of Family Separation, the Minister for Children and Youth Affairs has adopted the Report's recommendation to establish a Taskforce to provide advice on whether particular changes to the Child Support Scheme are warranted. The objectives of the scheme are to ensure that:

- parents share in the cost of supporting their children, according to their capacity;
- adequate support is available for all children not living with both parents;
- Commonwealth involvement and expenditure is limited to the minimum necessary to ensure children's needs are met;
- incentives for both parents to participate in the work force are not impaired; and
- the overall arrangements are simple, flexible and efficient.

The government continues to support these objectives and the current broad balance between private and public contributions to the support of children in separated families. In its work, the Taskforce (with the support of the Reference Group) is to have regard to contemporary work, parenting and family structures as well as the income profiles of child support payers and payees, and pay particular attention to the Government intention to support the active involvement of both parents in parenting after separation, where feasible. The Taskforce will:

- Provide advice around the short-term recommendations of the Committee along the lines of those set out in the Report (Recommendation 25) that relate to:
- increasing the minimum child support liability;
- lowering the maximum 'cap' on the assessed income of parents;

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- changing the link between the child support payments and the time children spend with each parent; and l the treatment of any overtime income and income from a second job.
2. Evaluate the existing formula percentages and associated exempt and disregarded incomes, having regard to the findings of the Report and the available or commissioned research including:
 - data on the costs of children in separated households at different income levels, including the costs for both parents to maintain significant and meaningful contact with their children;
 - the costs for both parents of re-establishing homes for their children and themselves after separation.
 - Advise on what research program is necessary to provide an ongoing basis for monitoring the child support formula.
 3. Consider how the Child Support Scheme can play a role in encouraging couples to reach agreement about parenting arrangements.
 4. Consider how Family Relationship Centres may contribute to the understanding of and compliance with the Child Support Scheme.
 5. House of Representatives Standing Committee on Family and Community Affairs, *'Every picture tells a story', Report into the inquiry into child custody arrangements in the event of family separation*, Canberra, 23 December 2003.
<http://www.aph.gov.au/house/committee/fca/childcustody/report.htm>
 6. *ibid.*

Recommendation 26

The committee recommends that a detailed re-evaluation of the Child Support Scheme be undertaken by a dedicated Ministerial Taskforce. The objectives of the re-evaluation should include:

- establishing the costs of raising children in separated households at different income levels that adequately reflect the costs for both parents having significant and meaningful contact with their children;
- adequately reflecting the costs for both parents of re-establishing homes for their children and themselves after separation;
- ensuring that the Child Support Scheme and the social security system work consistently to support and encourage both parents to continue to be involved in parenting their children after separation and does not act as a disincentive for workforce participation for each parent;
- ensuring the Child Support Scheme appropriately reflects significant developments in the taxation system since 1988 including company tax, trusts etc; and

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- ensuring as a matter of principle that exempt and disregarded income are adjusted to bring them closer together to reflect the changing work and parenting patterns now evident in the community.
 - The re-evaluation should be completed by 30 June 2004. (para 6.214)
- 7 *Explanatory Memorandum*, Outline, Financial impact statement.
 - 8 Joint Select Committee on Certain Family Law Issues, *The Operation and Effectiveness of the Child Support Scheme*, Canberra, November 1994, pp. 12–13.
 - 9 Ministerial Taskforce on Child Support, *In the Best Interests of Children*, Report of the Ministerial Taskforce on Child Support, op. cit., p. 43.
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 - 11 Ministerial Taskforce on Child Support, op. cit.
 - 12 Liberal and National Parties of Australia, *Child Support Policy, - the Child Support Agency*, Canberra, 22 February 1996.
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 - 16 Child Support Consultative Group, Chairperson Justice Fogarty, *Child Support – Formula for Australia*, op. cit., p. 71.
 - 17 *ibid.*, p. 72.
 - 18 *ibid.*
 - 19 *ibid.*
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 - 21 *ibid.*, pp. 81–82.
 - 22 *ibid.*, p. 70.
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 - 24 National Council of Single Mothers and their Children, *Submission to the Senate Community Affairs Committee Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Bill 2006*, point 8, pp. 5–7.
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Steven Wardill, 'Parental support no child play', *Courier Mail*, 18 June 2005.
- 26 Ministerial Taskforce on Child Support, op. cit., p. 50–55.
- 27 The Hon. Mr Mal Brough, MP, Minister for Families, Community Services and Indigenous Affairs, 'Child Support Reforms To Deliver Fairer System', *Media Release*, op. cit.
- 28 Chris Field, Child Support Legislation Amendment Bill 1998, *Bills Digest No. 174 1997-98*, Parliamentary Library, Canberra, 7 April 1998.
<http://www.aph.gov.au/library/pubs/bd/1997-98/98bd174.htm>
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- 30 Jerry Silvey and Bob Birrell, 'Financial outcomes for parents after separation', *People and Place*, Vol 12 No. 1, 2004, p. 54.
<http://elecpress.monash.edu.au/pnp/view/issue/?volume=12&issue=1>
- 31 Child Support Agency, Department of Work and Pensions, *Calculation of Child Maintenance*.
<http://www.csa.gov.uk/new/calculate/#S03>
- 32 The Hon. Mr Mal Brough, MP, Minister for Families, Community Services and Indigenous Affairs, 'Child Support Reforms To Deliver Fairer System', op. cit.
- 33 Ministerial Taskforce on Child Support, 'In the Best Interests of Children', op. cit., p. 24.
- 34 Child Support Consultative Group, *Child Support – Formula for Australia*, op. cit., pp. 78–80.
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- 36 National Council of Single Mothers and their Children, *Submission*, op. cit., pp. 5–7.
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- 38 National Council of Single Mothers and their Children, *Submission*, op. cit., p. 6.
- 39 Ministerial Taskforce on Child Support, op. cit., p. 160.
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- 42 National Council of Single Mothers and their Children, *Submission*, op. cit., p. 7.
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- 48 *ibid.*, p. 150.

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- 51 Joint Select Committee on Certain Family Law Issues, op. cit., Chapter 12, pp. 253–270.
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55. Sandra Henderson-Kelly, Does The Child Support Sacred Cow Milk Parents Of Administrative Justice? Australian Institute of Administrative Law, *Forum No. 44*, January 2005, pp. 26–43. <http://law.anu.edu.au/aial/Publications/PubQuartForum.html>
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