Child Support Amendment Bill (No.5)

Officials' Report to the Social Services Committee on Submissions on the Bill

17 May 1999

CONTENTS

OVERVIEW OF SUBMISSIONS

The amendments contained in the bill are intended to improve the efficiency of the administration of the child support scheme. They take up, and in some cases build upon, a number of the recommendations of the review by the Child Support Review 1994 Working Party (the Trapski Review).

Thirteen written submissions were received. Six of the submitters also made oral submissions.

Most of the submissions supported the proposed amendments, with several commenting favourably that recommendations of the Trapski Review were finally being acted upon. However, some submitters did express disappointment that the changes do not, in their view, go far enough in addressing some of the problems they have experienced with the scheme.

WRITE-OFF OF PENALTIES

Clause 27

PROPOSED POLICY

Penalties will be written off when:

- Liable parents keep to debt repayment arrangements entered into within three months of when Inland Revenue first assessed their liability.
- An initial penalty is more than the arrears to which it relates and the liable parent concerned has no history of late payments.

Additional provisions will allow Inland Revenue the discretion to write off penalties when, under the circumstances, it would be unjust or unreasonable to charge penalties.

These measures are expected to encourage voluntary compliance with the child support law by giving Inland Revenue greater flexibility to write off penalties, particularly when the liability first arises.

Submission
(2 – New Zealand Federation of Family Budgeting Services (Inc.), 11 - Family Law Section of the New Zealand Law Society, 13 – Des Eyre)

Submissions 2, 11 and 13 support the proposed changes.

Issue: Income and assets to be criteria for write-off

Submission
(7 – National Council of Women of New Zealand (Inc.))

Penalties should not be written off when liable parents have substantial income and have deliberately adjusted their circumstances to reduce taxable income to reduce liability. The write-off of penalties should be subject to an asset test.

Comment

The proposed write-off provisions are intended to encourage voluntary compliance with child support liabilities. They introduce more flexibility to deal with penalties incurred when liability is first established, and in prescribed circumstances which indicate no intent on the part of the liable parent to avoid meeting his or her liability for child support, and the non-payment of child support has been corrected as soon as possible. The proposals do not allow for write-off in all cases.

The extent to which taxable income produces an assessment that reflects the real capacity of a liable parent to contribute financial support is separate from decisions relating to write-off of penalties. The administrative review process provides for consideration of the inclusion of other than taxable income in the assessment of child support liability in individual cases.

The proposed changes are modelled on the current provisions for the write-off of penalties for non-payment of income tax and GST. Officials consider that it would be inappropriate that the write-off of penalties be subject to an income or asset test. Such a test would increase compliance and administrative costs. In addition, such a test depending on the financial circumstances of the liable parent may lead to inequities. This would arise when the reason for the non-payment is the same but the write-off is not available because of the financial position of the liable parent.

Inland Revenue proposes to issue a standard practice statement that will set out guidelines for staff to use to ensure consistent application of the proposed write-off provisions.

Recommendation

That the submission be declined.

Issue: Extension of write-off provisions to cases of double payment

Submission
(13 – Des Eyre)

The provisions of clause 27 (write-off of late payment penalty) should be extended to cases where the application of the Child Support Act 1991 has had the effect of causing the liable parent to pay maintenance for a child more than once.

Comment

The submitter suggests an extension to the power of the Commissioner to exempt a liable parent from payment of child support. This would arise when the Child Support Act 1991 has the effect of overriding an agreement relating to matrimonial property which was endorsed by the Family Court before enactment of the Child Support Act.

The Child Support Act 1991 already provides for previous settlements under the Matrimonial Property Act 1976 or otherwise to be considered as grounds for an application for departure from the formula.

The bill does not provide for the write-off of the underlying child support liability, only penalties for late payment. The submission is outside the scope of the bill.

Recommendation

That the submission be declined.

INCOME YEAR OF ASSESSMENT AND INFLATION FACTOR

Clauses 2, 3, 5, 6, 7, 23, 26, 36, 37 and 38

PROPOSED POLICY

The changes are designed to achieve a closer match between the income on which an assessment is based and the current ability of a liable parent to provide financial support. They involve changing the child support year so that, from the 2001-02 year, it will begin in July rather than in April. Recently enacted tax simplification measures will provide Inland Revenue with earlier income information. All these changes will enable Inland Revenue to base the assessments of about 75% of liable parents, those who have income tax deducted from their wages, salaries or benefits, on their income for the year ending on the 31 March before the start of the child support year.

Other liable parents, those who do not have all their income tax deducted at source, will also move to a child support year that begins on 1 July, but will continue to have their assessments based on their income of two years earlier. An inflation factor will be added to the income of this group to bring them into line, as closely as possible, with the rest.

For both groups there will be a transitional period covering 1 April to 30 June 2001.

Submission
(2 – New Zealand Federation of Family Budgeting Services (Inc.), 7 – National Council of Women of New Zealand (Inc.), 11 - Family Law Section of the New Zealand Law Society)

Submissions 2, 7 and 11 support the changes proposed, with submission 2 commenting specifically on the intention to base assessment on the previous year's income.

Issue: Sudden decline in income

Submission
(10 – New Zealand Association of Citizens Advice Bureaux Inc)

The proposed amendments do not provide for liable parents whose income has suddenly declined dramatically, such as following redundancy.

Comment

At present, liable parents whose current year income is expected to be at least 15% less than the income on which their assessment is based may elect to have their assessment based on their estimated income for the year.

Officials consider that the estimation provisions adequately provide for situations where there has been a sudden and dramatic decline in income. The ability to base assessments on the previous year's income rather than on income of two years previously is also expected to reduce the need for liable parents to estimate their income.

Recommendation

That the submission be declined.

ESTIMATION OF INCOME

Clauses 9-17, 25 and 30

PROPOSED POLICY

The provisions governing the estimation of income for child support purposes are being amended to make them fairer and easier to use. The changes:

- allow reconciliation assessments to be issued when liable parents who have estimated their income fail to furnish tax returns;
- stop those liable parents from estimating their income again until they furnish their outstanding returns;
- cap child support at what would have been payable had income not been estimated;
- ensure that those who estimate their income part-way through the year will not have to continue paying the minimum amount of $10 a week when the amount they have already paid covers their liability for the year;
- provide for the state to waive its entitlement if the preceding change results in a custodian moving on to a social welfare benefit;
- provide that when liable parents revoke an estimation or no longer meet the criteria for estimating income, their liability will revert to what it would have been had they not estimated, with the resulting shortfall being spread over the rest of the year;
- make it no longer necessary that an application to estimate income be in the "approved form";
- remove the child support use of money provisions.

Submission
(7 - National Council of Women of New Zealand (Inc.), 11 - Family Law Section of the New Zealand Law Society)

Submissions 7 and 11 support the changes proposed. The NCW submission is particularly supportive of the expected effect of encouraging voluntary compliance.

EXEMPTIONS FOR LONG-TERM PRISONERS AND HOSPITAL PATIENTS

Clauses 19, 20, 21 and 22

PROPOSED POLICY

Exemptions from paying child support will:

- cover the full period of a liable parent's imprisonment or hospitalisation if more than 13 weeks; and
- be extended to long-term hospital patients who are on a reduced social welfare benefit, and patients in private hospitals and residential care institutions.

Submission
(2 – New Zealand Federation of Family Budgeting Services (Inc.),)

Submission 2 supports the proposed changes.

Issue: Exemption to be subject to an asset test

Submission
(7 – National Council of Women of New Zealand (Inc.))

The changes proposed are supported but the exemption should be subject to an asset test.

Comment

At present the exemption available to prisoners or hospital patients is subject to an income test. Income may only be from investments and must not exceed $520 in the child support year in which the exemption is sought.

Under the proposed amendments that income test will be modified so that income is calculated on a weekly basis ($10 per week) when liable parents are in prison or hospital for more than 13 weeks but less than a full child support year.

The exemption provisions recognise the limited opportunity that liable parents, who are long-term hospital patients or prison inmates have to earn an income. The current provisions allow those liable parents to retain sufficient income from investments only to meet their ongoing personal expenses while in hospital or prison.

The addition of an asset test to the processing of applications for exemption would increase both the administrative cost of this activity and compliance costs incurred by

liable parents. Custodians who believe that liable parents have assets that could be better used to meet their child support liability may have grounds for an application for departure from the formula.

Recommendation

That the submission be declined.

Issue: Extend exemption to shorter stays in hospital or prison

Submission
(11 – Family Law Section of the New Zealand Law Society)

The proposed changes are supported but the exemption should also be extended to those who have very limited income and whose stay in hospital or prison is less than 13 weeks.

Comment

Exemptions are already limited to those who have very limited income.

Treating stays in hospital or prison of more than 13 weeks as "long term" is consistent with the treatment under the Social Security Act 1964, which provides for a reduction in benefit payable when a beneficiary is a patient in a hospital for more than 13 weeks.

Extending the exemption provisions to those whose stay in hospital or prison is less than 13 weeks would advantage those liable parents over other liable parents who have suffered a short-term loss of income for other reasons.

Recommendation

That the submission be declined.

NOTICES OF ASSESSMENT

Clauses 24 and 28

PROPOSED POLICY

The changes are intended to allow more flexibility in the content of the notices of assessment that Inland Revenue issues to liable parents. They also allow the department not to issue a new notice of assessment when the amount of child support to be paid does not change as a result of a reassessment. This means that notices of assessment do not need to contain irrelevant information, and they will be issued only when there is a change in the amount of child support to be paid.

A further minor amendment ensures that liable parents are notified of their right to apply for an administrative determination.

Submissions
(2 – New Zealand Federation of Family Budgeting Services (Inc.), 11 – Family Law Section of the New Zealand Law Society)

Submission 2 supports the greater flexibility of the proposed amendment.

Submission 11 supports the reduction in the quantity of notices of assessment that the average liable parent will receive as a result of the proposed amendment.

REFUNDS

Clause 34

PROPOSED POLICY

The amendments remove the requirement that applications for refunds of excess child support must be in writing, and allow Inland Revenue to refund excess child support without a prior application in some circumstances. This will speed up refunds and reduce paperwork.

Submission
(2 - New Zealand Federation of Family Budgeting Services (Inc.), 13 – Des Eyre)

Submission 2 supports the provision for greater flexibility.
Submission 13 supports the provision because of personal experience of difficulty in obtaining a refund.

Issue: Refund when payment has been passed to a custodian

Submission
(11 - Family Law Section of the New Zealand Law Society)

The proposed changes address most of the concerns with refunds of overpayments.

However, the Commissioner should also be able to refund liable parent credits when payment has been passed on to the custodian (payee).

Comment

The existing provision which allows the Commissioner to decline to refund an overpayment when payment has been passed on to the payee provides protection against intentional collusion between a liable parent and a custodian that results in a custodian receiving payments to which she/he was not entitled. It is invoked only in those circumstances.

If the Commissioner declines to make a refund, the former liable parent may choose to take action through the District Court for the recovery of the overpaid child support. Equally, the liable parent may accept that the payment has been for the benefit of the children and choose not to seek recovery.

It should be noted that when the Commissioner refunds overpaid child support to a liable parent, and the amount paid had already been passed to the custodian (payee), that creates a corresponding debt which must be recovered from the custodian.

Recommendation

That the submission be declined.

DEDUCTION OF CHILD SUPPORT FROM WAGES AND SALARIES

Clauses 31 and 32

PROPOSED POLICY

Liable parents will be able to choose to have more than 40 percent in child support deducted from a single wage or salary source when they have more than one employer or source of income. This will simplify their paying arrangements.

Employers will be able to deduct child support according to the pay period under which they operate.

Submissions
(2 - New Zealand Federation of Family Budgeting Services (Inc.), 9 – New Zealand Employers Federation Inc.)

The submissions support the proposed changes for the greater flexibility they will provide and the removal of current difficulties with the application of the legislation.

"UPLIFT" OF DEBT AND FUTURE ENTITLEMENT

Clause 33

PROPOSED POLICY

At present, custodians who are not social welfare beneficiaries may withdraw from the child support scheme and take over responsibility for collecting current arrears of spousal maintenance and/or child support. The amendment allows them to take over future entitlement also.

A further amendment allows social welfare beneficiaries who are entitled to spousal maintenance to take over responsibility for collecting both arrears and any future entitlement. (Social welfare beneficiaries cannot take over responsibility for collecting child support because it is generally retained by the state to meet the cost of the benefit provided.)

Submission
(2 - *New Zealand Federation of Family Budgeting Services (Inc.), 11 - Family Law Section of the New Zealand Law Society)*

The proposed changes are supported for the greater flexibility they will provide.

Issue: Responsibility for recovery of financial support

Submission
(7 - National Council of Women of New Zealand (Inc.))

Recovery of financial support should be the responsibility of Inland Revenue Child Support rather than a cost to the custodian/payee.

Comment

In making this submission NCW is concerned that there are no checks in the child support legislation to ensure custodians are not put under undue pressure to compromise their rights in order to retain custody of the child(ren).

The amendment is proposed to enable custodians to voluntarily take over collection of amounts that are owed to them. They may still choose, as at present, to have Inland Revenue Child Support to enforce collection for them.

The Child Support Review 1994 Working Party considered that the limitations imposed by the current legislation create an unnecessary frustration for custodians who may wish to make their own arrangements. It is also inefficient for Inland Revenue Child Support to continue enforcing collection of financial support against the wishes of the payee. The proposed amendments follow the recommendations of the Working Party.

Recommendation

That the submission be declined.

CUSTODIANS' BANK ACCOUNTS

Clauses 4, 18 and 29

PROPOSED POLICY

The amendments will preserve the administrative efficiency of requiring payments to be direct-credited to a bank account but achieve more flexibility by allowing custodians to choose any account for payments. To eliminate unnecessary delay in the start of child support, processing of an application will not be delayed because a custodian has failed to provide details of the bank account to which payments are to be made.

Submission
(2 - New Zealand Federation of Family Budgeting Services (Inc.))

The greater flexibility that the proposed amendments will offer in respect of custodians' bank accounts is welcomed.

OVERSEAS TAXABLE INCOME

Clause 8

PROPOSED POLICY

Inland Revenue Child Support will have the discretion to include income that is taxable outside New Zealand in the child support assessment base when a liable parent is not resident in New Zealand for income tax purposes. (Any overseas income should already be included in the parent's tax return if he or she is resident in New Zealand for income tax purposes.) This will ensure that assessments more accurately reflect that parent's ability to pay child support.

Issue: The discretionary power to include overseas income

Submissions
(6W – Karen Monet, 7 – National Council of Women of New Zealand (Inc.), 11W – Family Law Section of the New Zealand Law Society)

The submissions supported this amendment, but raised the following points:

- Instead of a discretionary power to include overseas taxable income, inclusion should be mandatory, with a discretionary power to exclude overseas income in certain circumstances.

- The discretionary power should be subject to appropriate internal Inland Revenue controls.

Comment

The amendment arose in the context of the proposed agreement between New Zealand and Australia for the collection of child support. Under the agreement each country will provide to the other information relating to a liable parent's taxable income and location. Using this information, Inland Revenue Child Support will issue an assessment.

The amendment is discretionary and not limited to Australian income to allow an assessment to include overseas income from other countries[1] when it is known and there is an expectation that payment can be enforced. As drafted, the amendment means that a further modification will not be necessary if reciprocal agreements are negotiated with other countries in the future.

[1] One of the submissions made the comment that the amendment would apply only to liable parents residing in a country with which New Zealand has entered into a child support reciprocal agreement. In addition, child support is also payable if the child is a New Zealand citizen or is ordinary resident in New Zealand, no matter where the parent resides when the parent is a New Zealand citizen.

It is expected that the amendment will have a deterrent effect on liable parents who leave New Zealand to avoid their child support liability.

Recommendation

That the submissions be declined.

RECIPROCAL AGREEMENT WITH AUSTRALIA

Clause 39

PROPOSED POLICY

In anticipation of a reciprocal agreement being entered into between New Zealand and Australia for the enforcement of collection of child support and spousal maintenance, the Family Proceedings Act 1980 is being amended so that, once the agreement comes into effect, people residing in New Zealand or Australia will not be able to seek maintenance using the United Nations Convention for the Recovery of Maintenance Abroad. The amendment will be given effect by the Order in Council that gives effect to the reciprocal agreement.

Issue: Effectiveness of the provision

Submission
(7 – National Council of Women of New Zealand (Inc.))

Although the submission supported the proposed child support reciprocal agreement, it was sceptical about the effectiveness of this change, given the time that negotiations have already taken.

Comment

The child support reciprocal agreement is to be considered by the Prime Ministerial Taskforce on Closer Economic Relations with Australia. It is expected that the Taskforce will not be reporting to the respective Prime Ministers until the end of June. The implementation date will not precede that report and will also be dependent on Australia enacting the legislative changes necessary to their Child Support Act to give effect to the agreement.

Recommendation

That the submission be noted.

ISSUES OUTSIDE THE SCOPE OF THE BILL

Issue: Value of fringe benefits to be included in taxable income

Submission
(1- James Darkins)

The value of fringe benefits should be included when assessing the taxable income of liable parents. The current method of determining the taxable income of a liable parent discriminates against parents whose sole source of income is wages from which PAYE is deducted at source.

Liable parents who receive fringe benefits as part of an employment package or their remuneration from a business gain a financial benefit which is not reflected in the amount paid to the custodian.

Comment

The submitter believes that while the ability to structure remuneration from employment to maximise non-cash benefits has a negative impact on the collection of income tax, there is a greater impact when that reduced income is used to determine child support liability. The loss of entitlement creates inequity for custodians, most of whom are women.

Taxable income is used as the basis for formula assessments of child support because it is administratively simple, is subject to audit and does not add compliance costs for liable parents. It is an accurate basis for the majority of liable parents.

The Child Support Act does recognise that assessment based on taxable income may not always produce an appropriate level of liability. It does this through the departure provisions. Liable parents and custodians can seek the determination of a more appropriate assessment of liability, initially by applying for an administrative review. These reviews, carried out by independent contractors, follow precedents set in past court cases and allow for other than taxable income to be taken into account in setting the level of liability.

A recent determination granted a departure from the standard formula assessment by making a nominal assessment of the value of a company car available for private use. The review officer stated: “As personal transport is a standard living expense, it must be brought into account in assessing (the liable parent’s) ‘real income’.”

The formula assessment based on taxable income produces an equitable level of liability for the majority of liable parents. Officials consider it appropriate that special circumstances that lead to an inequitable result should continue to be considered independently on a case-by-case basis.

Recommendation

That the submission be declined.

Issue: Lower estimation threshold to 10%

Submission
(3 – New Zealand Federation of Family Budgeting Services (Inc.))

The threshold for an estimation of income to be accepted should be 10% rather than 15%, as it is currently.

Comment

Whatever level of threshold is used, boundary problems will occur for those who do not quite meet it.

Alternative thresholds were considered both at the time of the development of the Child Support Act 1991, and by the Child Support Review 1994 Working Party. The Working Party concluded that the 15% threshold should be retained for the following reasons:

- The lower the threshold, the more likelihood there is of income being underestimated. This could lead to more liable parents incurring underestimation penalties at the end of the year.

- A low threshold would lead to an increase in the number of liable parents having to re-estimate their income at regular intervals to take account of fluctuations in income and to avoid underestimation penalties. This would increase compliance costs for liable parents and employers and administrative costs for Inland Revenue Child Support.

- There would be increased uncertainty for custodians about the level of support they could expect to receive.

The threshold was also set at a level which it was believed would discourage liable parents from misusing the estimations provisions to reduce or defer their child support payments.

Liable parents who are genuinely facing hardship through a drop in income that does not meet the 15% threshold are still able to seek a departure through the administrative review process. There is case precedent for this.

Recommendation

That the submission be declined.

Issue: Explicit liability for same sex partners of custodians

Submission
(4 – Commissioner for Children)

There should be specific wording in the Act to include liability for same sex parents to pay child support.

Comment

This issue was recently considered in a High Court appeal against a Family Court declaration that the former partner in a long-standing lesbian relationship is the "step-parent" of the children born to the partner. It was noted in that judgment that the wording of the Child Support Act 1991 should be taken to be gender-neutral unless otherwise stated, and that an inclusive interpretation would promote the protection of children's rights. In this particular case, however, other factors were taken into consideration before a conclusion was reached. The case focussed on parental status rather than on the wider issues of the status of same-sex relationships.

Officials consider that the court is the appropriate forum for consideration of all the factors that should be taken into account in reaching a conclusion on whether a person who is neither a natural parent nor an adoptive parent should be declared to be a step-parent and consequently liable for the payment of child support.

Recommendation

That the submission be declined.

Submission
(5 – Dara Walsh)

This comprehensive submission proposes a radical change to the child support system. Specific issues raised are described below.

Issue: A state-guaranteed system under which both parents are equally liable for the costs of raising their children

(Points 12 – 17, 40, 43, 48, 51 and 52)

Under the proposed system a standardised cost of raising children would be set. Parents would each be liable to meet half that cost. Parents who were unable to pay their share could apply for financial assistance. The level of that assistance would be determined by a formula, as at present, with parties having recourse to the Family Court to obtain orders for additional financial assistance.

Comment

The proposal suggests a total reform of the child support system. Officials therefore have not undertaken detailed analysis of the merits of the proposal as it is outside the scope of the bill.

Recommendation

That the submission be declined.

Issue: Automatic inclusion of a partner in living allowance

The comment is made that child support liability automatically reduces when a non-custodial parent has a live-in partner, regardless of whether or not that person is dependent.

Comment

Living allowances are provided in an attempt to balance the needs of a liable parent's absent family and current family. Providing an allowance for the spouse and/or children in the current family ensures that the basic needs of that family can be met. At the time of introduction of the Child Support Bill 1991 it was considered too complex administratively to distinguish between dependent and non-dependent spouses.

It is recognised that the automatic inclusion of a spouse in the living allowance can create an inequity for the custodian and children when the new spouse is not dependent on the liable parent. When that inclusion does produce an unfair result a custodian may seek a departure from the formula by applying for an administrative review.

Officials believe that the independent consideration of individual cases through the administrative review process or Family Court is the appropriate approach.

Recommendation

That the submission be declined.

Issue: Tax deductibility of child support payments

The submission questions whether child support payment should be tax-deductible.

Comment

It is a general principle of New Zealand income tax law that there is no deduction for income tax purposes of private or domestic expenditure. The costs incurred by a family raising children are not deductible for tax purposes. As a corollary child support payments received are not treated as taxable income.

Child support payments are taken into account in calculating a family's entitlement to family support, the independent family tax credit and the guaranteed minimum family income.

Recommendation

That the submission be declined.

Issue: Liable parents' taxable income

Submissions
(5 – Dara Walsh, 7 – National Council of Women of New Zealand (Inc.))

- Child support should be based on children's financial needs rather than on a liable parent's taxable income.
- Some liable parents can reduce their child support liability by the use of trusts, companies and self-employment.
- Some liable parents use either legal or illegal methods to reduce their taxable income.
- By basing child support on taxable income, a liable parent's tax-deductible expenses are taken into account.
- A large percentage of liable parents pay only the minimum.
- Liable parents should be asset tested.

Comment

Child support is based on taxable income because this information is readily available from Inland Revenue's computer system. With over 130,000 liable parents, the assessment process needs to be fully automated.

The Child Support Act recognises that the use of taxable income may produce an inappropriate result in some situations by allowing a departure from the formula to be granted if it has produced an unjust or unfair result when the income, earning capacity, property or other financial resources of the liable parent or the custodian or the child are taken into account. As the first step in the departure process, custodians and liable parents can ask the Commissioner of Inland Revenue to make an administrative determination. This is a low-cost, informal process which is carried out by independent people, experienced in law and contracted to Inland Revenue, who follow precedents set by past court cases. Court precedents have established that avoidance arrangements, such as transferring assets to a trust, can be "looked through" and a person's true economic position taken into account when setting the level of child support. Any custodian or liable parent who is unhappy with an administrative determination can apply to the courts for a departure order.

Officials are currently reviewing the results of child support administrative review decisions made in the 12 months to 28 February 1999. The purpose of the review is to establish whether the administrative review process is successful in addressing the issue of liable parents attempting to avoid or minimise their child support liability.

A self-employed person's taxable income allows a deduction for expenditure legitimately incurred in deriving that income. Any modification to that income is currently best addressed through the administrative review and court processes.

Approximately 35 percent of liable parents are themselves beneficiaries. For other liable parents with modest incomes, the living allowance means that those who have new partners and/or children will also often be assessed at the minimum rate. The following table shows the maximum amounts of taxable income which result in $520 being payable under the standard formula for the 1999-2000 child support year.

INCOME AT WHICH MINIMUM CHILD SUPPORT AMOUNT PAYABLE

	Number of children for whom child support is payable			
Living Allowance	**One**	**Two**	**Three**	**Four**
Single	$14,292	$13,569	$13,328	$13,136
Married	$18,333	$17,610	$17,369	$17,177
Single/Married plus one child	$24,817	$24,094	$23,853	$23,661
Single/Married plus 2 children	$27,261	$26,538	$26,297	$26,105
Single/Married plus 3 children	$29,705	$28,982	$28,741	$28,549
Single/Married plus 4 children	$32,149	$31,426	$31,185	$30,993

Although Inland Revenue is not in a position to asset test liable parents, the property of a liable parent can be taken into account in granting a departure from the formula assessment.

Recommendation

That the submissions be declined.

Issue: Differences in income-earning capacity

"The law maintains both parents are equally liable for the support of their children. However, income-earning capacity is not yet gender-neutral and child support payments are often a token gesture, an insult."

Comment

Although the Child Support Act 1991 creates an expectation that both parents will contribute to the financial support of their child(ren), it does not require equal financial contributions from them. Rather, it is implied that some at least of the contribution provided by the custodian will not be in a monetary form.

The purpose of the Child Support Act is to ensure that parents not living with their children contribute in a monetary form based on their capacity to pay.

Recommendation

That the submission be declined.

Issue: Value of full-time care

Parent who are full-time caregivers (regardless of whether or not they have a partner), should have the value of this recognised in a monetary form.

Comment

Family support and the independent family tax credit are paid fully to principal caregivers. This means that many partners who stay at home to care for the child(ren) do receive a payment in their own right.

The object of the child support scheme is to ensure financial support is paid for children. Additional financial support for caregivers, when needed, is more appropriately considered under the Social Security Act 1964.

Recommendation

That the submission be declined.

Issue: All custodial parents to receive payment towards cost of children

All custodial parents should receive at least 50% towards the minimum cost of raising children.

Comment

The Government's policy is to provide assistance to families who are in need of financial assistance. Depending on their circumstances, there are a number of social assistance programmes available to custodians to assist with the raising of children.

Recommendation

That the submission be declined.

Issue: Income splitting for tax purposes and paid parental leave

The state could endorse the validity of caregiving for all parents via income splitting for tax purposes and paid parental leave in households where other state assistance is not sought.

Comment

This submission is outside the scope of the bill. Officials have not undertaken any detailed analysis of this submission.

The Select Committee is currently considering the Paid Parental Leave Bill.

Recommendation

That the submission be declined.

Submission
(7 – National Council of Women of New Zealand (Inc.))

This submission, in addition to commenting on specific aspects of the bill, considers there are a number of omissions.

Issue: Delays in receiving child support following cessation of benefit

Some custodians experience unnecessary delays when transferring off a benefit.

Comment

The delay between cessation of benefit payments and commencement of child support payments is an inevitable consequence of the payment cycle.

The following is an example of how the payment cycle applies:

Child support liability is assessed for the month of May. Payment of that assessed liability is due by the 20th June. Payment received by the 20th is passed on to the custodian by the 7th July, or earlier if possible.

Although custodians experience a delay when they move off benefit, those who move onto a benefit continue to receive their child support for the first month.

Recommendation

That the submission be declined.

Issue: Maximum for assessable income

The maximum assessable income level should be removed or at least increased. The existence of the maximum exacerbates the discrepancy in standards of living between parents following break-up of a marriage or long-term relationship.

Comment

The rationale for placing an upper limit on formula assessed child support payments is that where a family income is very high, the opportunity exists for discretionary spending over and above the costs of maintaining the children. After separation the parent who earns the high income should still have the right to decide upon discretionary spending.

When the formula does produce an unfair outcome it is appropriate that consideration of all the factors which could lead to a departure from the formula be carried out independently. There is case precedent for setting a higher level of liability when a liable parent's income is much larger than the maximum amount allowable under the formula.

Recommendation

That the submission be declined.

Issue: Voluntary agreements entered into under duress

The bill should provide for checks to ensure custodians are not put under undue pressure to compromise their rights in order to retain custody of the children or other interests.

Comment

It is one of the principles of family law that wherever possible the parties to domestic disputes should be encouraged to reach their own agreements. Agreements that are reached voluntarily are generally more likely to be adhered to. The Child Support Act 1991 provides some safeguards in that the parties to a voluntary agreement can ask Inland Revenue Child Support to enforce payment, or either party can ask for a formula assessment when the terms of the agreement are no longer appropriate.

The Child Support Act does provide for a party to a voluntary agreement to apply to the Family Court to have that agreement set aside. One of the grounds for such an application is that the concurrence of the applicant was obtained by undue influence.

Recommendation

Note that the Child Support Act 1991 already provides controls in the situation suggested by the submission.

Issue: Liability to pay while an objection is considered

The Child Support Act allows for suspension of liability by the Family Court while an objection is considered. The penalties when applications are lost should be sufficiently high as to deter frivolous or vexatious intent.

Comment

Suspension of liability is not automatic following an objection or an application to the Family Court. Liable parents must make a separate application to the Court for a suspension order. Very few such applications are made.

In considering applications for suspension orders, the Family Court must make a judgment about the chances of the substantive application being successful, the ability of the applicant to make payments pending the outcome and any disadvantage that would be caused to the custodian and the child(ren).

Officials consider that the Family Court is the appropriate forum in which such judgments should be made.

Recommendation

That the submission be declined.

Issue: Discrimination against larger families

The bill should address the discrimination against larger families which arises from the maximum percentage under the formula being reached at four children.

Comment

Increasing the child support percentages to take account of liability for more than four children might, for some liable parents, have produced an unacceptably high level of payment to meet out of their disposable income.

In addition, to maintain a balance, if percentages were increased for the fifth and subsequent children, a similar adjustment in the living allowance would be proper for liable parents. This might have the effect of reducing the amount of child support available to custodians.

Officials consider that consideration of all the factors which may determine a higher level of liability than that produced by the formula, should be carried out independently.

Recommendation

That the submission be declined.

Issue: Termination of liability on the death of the liable parent

When the liable parent has substantial assets, the liability should be forward assessed, as a debt of the estate before any testamentary disposition.

Comment

The law already provides for children to make a claim against the estate of a deceased parent when there has been a breach of that parent's moral duty to maintain and support the child.

To enact a provision as suggested would create a greater obligation for a parent not living with his/her children at the date of his/her death than exists for a parent whose children are living with him/her at that time.

Recommendation

That the submission be declined.

Issue: Adequacy of support within a marriage or long-term relationship

All custodial parents, irrespective of marital status, should be able to obtain support from a benefit if the support received from a partner is inadequate. Their partners would then become liable for child support.

Comment

A custodian is specifically precluded from applying for child support if he or she is "living with the person from whom payment of child support is sought as the legal spouse of that person or in a relationship in the nature of marriage."

Family support and the independent family tax credit are paid fully to the principal caregiver. This means that many partners who stay at home to care for children do receive a payment in their own right.

It would be regarded by many as an unwarranted intrusion in people's lives if the state were to become involved in the way in which families choose to allocate their financial resources within a marital relationship.

Recommendation

That the submission be declined.

Issue: Relationship between assessed income and actual earnings in rural situations

A number of rural women report that assessed income often has little relevance to the actual earnings of the liable parent.

Comment

The Child Support Act recognises that the use of taxable income may not produce an appropriate result in some situations. It does so by allowing for an application for departure from the formula in those situations.

There is case precedent for departure from the formula where taxable income does not justly or equitably reflect financial ability to provide financial support.

Recommendation

Note that the Child Support Act 1991 already provides, through the departure provisions, for a liable parent's true economic position to be taken into account in setting the level of child support.

Issue: Liable parents who were granted "nil orders" under the former scheme

Submission
(13 – Des Eyre)

The cases of liable parents who were granted "nil orders" by the Department of Social Welfare under the liable parent contribution scheme should be reconsidered.

Comment

This submission refers to those liable parents who were affected by the retrospective application of the Child Support Amendment Act 1993. The amendment was made to reflect the intention of Government, at the time of enactment of the Child Support Act 1991, that this legislation was to introduce a totally new child maintenance regime. However, through a drafting error it was possible for earlier administrative decisions to override the new legislation.

The provisions of the amendment act did not apply to any judgment given on the effect of the original legislation prior to the enactment of the amendment. Consideration was given to those who would be adversely affected by the retrospective nature of the amendment. They could apply to the Family Court if the assessment was inappropriate in their particular circumstances, or to Inland Revenue to make arrangements for payment of arrears. The Child Support Review 1994 Working Party further considered their situation. The Working Party concluded that the retrospective nature of the legislation was not universally appropriate, but that further "retroactive interference in the lives of these parents and children" could not be justified.

Officials consider that since many people affected by the Act have adjusted to new arrangements it would be even more inequitable to create exceptions for some of them now.

Recommendation

That the submission be declined.

Issue: Liability in respect of children "abducted" from New Zealand

Submission
(14 – Peter Shannon)

There should be an exemption from liability when qualifying children are "abducted" from the country or other illegal means are used to facilitate their removal.

The submitter believes that the Government is implicitly supporting an illegal activity by enforcing payment of child support when the qualifying children have been "abducted" from this country.

The Child Support Act 1991 provides for the financial support of children when either or both parents do not live with those children. It is not concerned with issues relating to custody and access.

The Hague Convention on the Civil Aspects of International Child Abduction is given effect in New Zealand through the Guardianship Amendment Act 1991. However, regardless of the outcome of an application under that Act in respect of a child(ren) removed from New Zealand, the Child Support Act places an absolute obligation on absent parents to support their children. That obligation is not removed or abated on grounds of "fault" of either parent.

Recommendation

That the submission be declined.

Issue: What constitutes "income, earning capacity, property and financial resources"

Submission
(7 – National Council of Women of New Zealand (Inc))

In relation to the ground which allows a departure from the formula assessment to be granted on the basis of *the income, earning capacity, property, and financial resources of either parent or the child*, clear guidelines are needed to simplify and reduce compliance costs, and to make the legislation simpler, fairer and easier to use.

Comment

The courts have considered this provision (section 105(2)(c)(i) of the Child Support Act 1991) on a number of occasions. Their decisions establish precedents for Review Officers to follow when granting a departure from a formula assessment[2]. Comment on the court decisions can be found in *Family Law in New Zealand.*

Recommendation

That the submission be declined.

Issue: Extend the coverage of the Child Support Act

Submission
(8 – Mary Speller)

The Child Support Act should be extended to cover all parents who have a qualifying child in New Zealand.

Comment

To be liable to pay child support a person must be:

- a parent of a qualifying child[3]; and
- a New Zealand citizen, or ordinarily resident in New Zealand or in a country with which New Zealand has entered into a child support reciprocal agreement.

[2] Since 1 July 1994 custodians and liable parents have been able to ask the Commissioner of Inland Revenue to make an administrative determination as the first step in the departure process. Any custodian or liable parent who is unhappy with an administrative determination may apply to the Courts for a departure order.

[3] A qualifying child is one who is:

- under 19 years of age;
- not a married person;
- not financially independent;
- a New Zealand citizen, or is ordinarily resident in New Zealand.

A person is ordinarily resident in New Zealand if he or she:

- has a permanent place of abode in New Zealand;
- is personally present in New Zealand for an aggregate of 183 days in any 12-month period; or
- is absent from New Zealand while in the service of the New Zealand Government.

To do as this submission suggests could result in New Zealand attempting to apply its domestic law to residents of another country. Even if a child support assessment were to be made, it could be enforced only in a country with which New Zealand had a reciprocal agreement for the collection of administrative assessments. An alternative to a child support assessment may already exist. For example, if the liable parent resides in a country that is a signatory to the United Nations Convention for the Recovery of Maintenance Abroad, an order for maintenance may be sought from the courts. Such orders are enforceable in these countries. The following table shows the countries that are signatories to the Convention.

COUNTRIES WHO ARE SIGNATORIES TO THE UNITED NATIONS CONVENTION ON THE RECOVERY ABROAD OF MAINTENANCE

Algeria	Argentina	Austria	Australia
Barbados	Belarus	Belgium	Bolivia
Bosnia and Herzegovina	Brazil	Burkina Faso	Cambodia (Kampuchea)
Cape Verde	Central African Republic	Chile	China
Croatia Republic	Cuba	Cyprus	Czech
Denmark	Dominican Republic	Ecuador	El Salvador
Estonia	Finland	France	Germany
Greece	Guatemala	Haiti	Hungary
Ireland (Republic)	Israel	Italy	Luxembourg
Macedonia	Mexico	Monaco	Morocco
Netherlands	New Zealand	Niger	Norway
Pakistan	Philippines	Poland	Portugal
Romania	Slovak (Republic)	Slovenia	Spain
Sri Lanka	Suriname	Sweden	Switzerland
Tunisia	Turkey	United Kingdom	Uruguay
Vatican	Yugoslavia (Serbia And Montenegro)		

Recommendation

That the submission be declined.

Issue: Extension of the child support enforcement provisions

Submission
(8 – Mary Speller)

- The present provision that allows for the arrest of a liable parent believed to be leaving New Zealand to avoid his or her child support liability should be extended to liable parents with arrears.

- It should be possible to arrest liable parents for reasons other than child support avoidance.

Comment

Officials do not consider that the existence of child support arrears is, of itself, sufficient reason to stop a liable parent from leaving the country. Over half of liable parents with child support arrears have entered into an arrangement with Inland Revenue Child Support to clear those arrears.

The submission does not indicate in what other situation(s) that arrest to stop a liable parent leaving New Zealand would be appropriate. Officials cannot envisage any situation, other than where a person is intending to leave New Zealand to avoid payment of child support, that would warrant depriving a person of his or her liberty.

Recommendation

That the submission be declined.

ISSUES RAISED BY INLAND REVENUE

Clauses 3, 5, 7, 8, 10, 11, 12, 13, 16, 17, 20, 21, 22, 26, 30, 36 and 37

Issue: Dates from which amending provisions are to apply

Submissions
(Matter raised by officials)

Comment

Because of the delay between approval for the introduction of this bill and the actual date of introduction, and consequently the delayed likely date of enactment, it is necessary to make some changes in applications dates to ensure that the law, when enacted, is not retrospective in effect.

Recommendation

That the revised implementation dates set out in the table below be included in this bill.

CLAUSE NUMBER	APPLICATION DATE (As currently drafted)	ACTION REQUIRED
8	Child support year commencing on 1 April 1999	Delete subclause 8(2) – to apply from the day after the date of Royal assent (Subclause 1(2)).
11	1 April 1999	To apply from 1 April 2001
12	1 April 1999	To apply from 1 April 2000
13	1 April 1999	To apply from 1 April 2000
17	Child support year that commenced on 1 April 1998, and subsequent years	The reference in subclause 17(4) to 1 April 1998 should be amended to read: "1 April 1999"[4].
20	1 April 1999	Delete subclause 20(4) – to apply from the day after the date of Royal assent (Subclause 1(2)). Delete subclause 1(5).
21	1 April 1999	Delete subclause 21(2) – to apply from the day after the date of Royal assent (Subclause 1(2)).
22	1 April 1999	Delete subclause 22(2) – to apply from the day after the date of Royal assent (Subclause 1(2)).
30	1 April 1999	**The reference in subclause 30(2) to 1 April 1999 should be amended to read: "1 April 2001".**

[4] This effectively means that interest that would have been payable from 21 April 2000 will not be imposed.

Issue: A minor drafting amendment

Submissions
(Matter raised by officials)

Comment

A drafting change to section 208(a) of the Child Support Act 1991 was approved by Government in May 1997. However, that change was overlooked when the Child Support Amendment Act (No.3) 1997 was drafted and enacted.

It is an offence under the Child Support Act if a person fails to notify the Commissioner that he or she has ceased to be eligible for an exemption from the payment of child support. It is not currently an offence if a person fails to notify the Commissioner that he or she has ceased to be eligible for an exemption from the payment of spousal maintenance.

This anomaly can be corrected by amending the reference to "child support" in section 208(a) of the Child Support Act to "financial support" because financial support is inclusive of both child support and spousal maintenance.

Recommendation

That "child support" in section 208(a) of the Child Support Act 1991 be amended to "financial support", to apply from the day following the date of Royal assent.
