Child Support Amendment Bill (No 4)

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

3 May 2006

Prepared by the Policy Advice Division of the Inland Revenue Department

CONTENTS

INTRODUCTION

The Child Support Amendment Bill (No 4) amends the Child Support Act 1991. The principal changes are:

- new provisions for the write-off of penalty debt;
- the introduction of two new exemptions from liability and the restructuring of the exemption provisions in a new Part 5A;
- the introduction of a new administrative review procedure;
- the introduction of new appeal rights; and
- new provisions relating to the acceptance of overseas birth documentation.

When the child support scheme was introduced to replace the previous systems of court-ordered maintenance and the liable parent contribution scheme, it was the intention of the government that it would be a simple scheme, and relatively easy to understand and administer, using taxable income as a consistent basis on which to assess the capacity of a liable parent[1] to provide support for their children.

As a safeguard for liable parents who consider that the amount they are expected to pay, or for custodians who consider the amount they are entitled to receive, is unfair, either party could seek consideration by the Family Court of the special circumstances of their case. The administrative review process was subsequently introduced as a more informal, low-cost means of obtaining individual consideration.

Many of the submissions on this bill advocate a reversal of that position. The proposals submitted would, in many cases, require individual consideration of the appropriate level of support with consequent high compliance and administrative costs.

Thirty-four written submissions were received on the Child Support Amendment Bill, of which 18 were supported by oral submission.

Very few of the submissions relate to specific provisions in the bill. Several submitters oppose the reporting of the bill back to the House. Instead they advocate a full review of the child support scheme.

Of the submissions that do relate to specific provisions in the bill, the majority relate to the proposed new Part 6B of the Act. The report on that Part and the related submissions is contained in Part 1. Other matters raised are contained in Part 2, which is arranged by submission. Part 3 contains issues raised by officials.

[1] The term "liable persons", when it is used, is inclusive of payers of child support and domestic maintenance, whereas liable parents are payers of child support only.

Part 1: Departure from formula assessment of child support initiated by Commissioner (proposed new Part 6B)

OVERVIEW

Clause 24

The bill introduces a new Part 6B to the Child Support Act 1991 which will allow the Commissioner of Inland Revenue to initiate a departure from a formula-based child support assessment. Apart from the initiation being made by the Commissioner rather than the liable parent or custodian, all other aspects of the administrative review process remain unchanged. Court decisions have already established precedents that "look through" legitimate tax structures adopted by liable parents if the effect has been to significantly reduce the amount of child support payable.

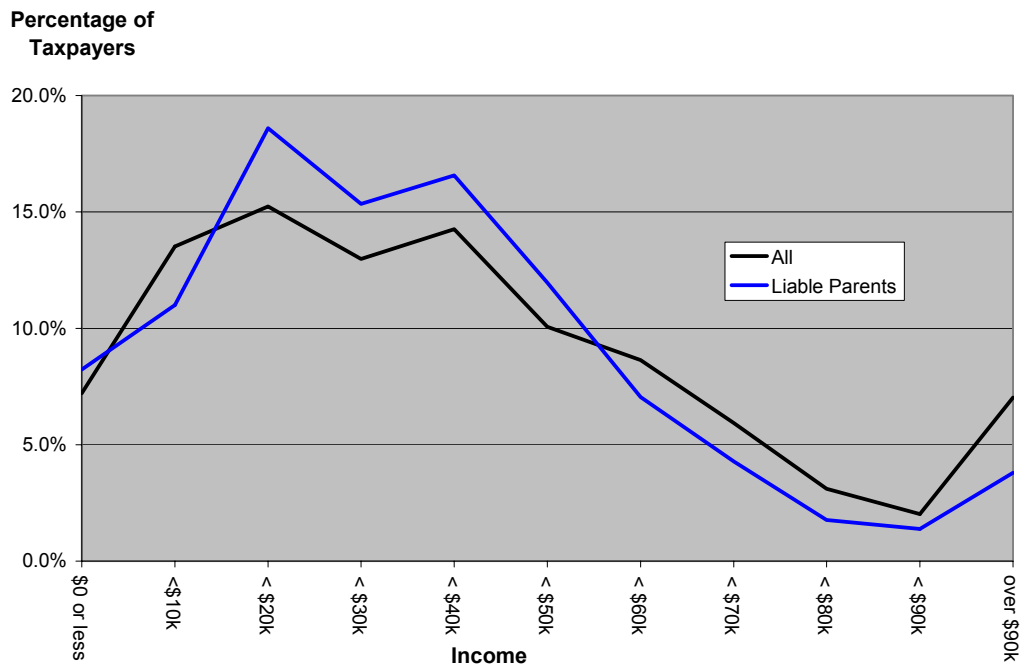
The purpose of the change is to ensure that liable parents' capacity to financially support their children is based on the income, earning capacity and/or assets they have available to them.

As the child support formula is based on taxable income it provides an incentive for liable parents wishing to minimise their child support liability to reduce their taxable income. Most liable parents receive a salary, wages or a benefit and thus, apart from exchanging salary or wages for a fringe benefit, such as a car, or employer superannuation contributions, or deliberately giving up or reducing their employment, have limited opportunity to manipulate their income in order to minimise their child support liability.

However, the way in which other liable parents, for example, business people and those with investment income, can structure their financial affairs means that the amount of child support they pay may not reflect their capacity to pay. If the structures are legal for income tax purposes, they cannot be challenged by the Commissioner. The structures may have been adopted for legitimate reasons, such as separating business and private assets. Equally, they may have been adopted to minimise child support liabilities.

While there may be good reasons for liable parents to have a reduction in their income following separation (for example, additional debt may have been incurred to retain business assets or investments may have been transferred to the custodian as part of the matrimonial property settlement), the following graph shows that liable parents are over-represented in lower income levels and under-represented in higher income levels.

COMPARISON OF NON-SALARY AND WAGE EARNER TAXPAYERS AGED 18 – 65 FOR THE 2004 TAX YEAR



Whatever the reason for the way in which liable parents structure their financial affairs, if they have the effect of reducing the person's own taxable income, and thus their child support liability, the intent of the Child Support Act that parents contribute to their children's support according to their capacity to pay is defeated.

The Child Support Act allows either parent to seek a departure from the formula assessment on the basis that it results in an unjust or unfair level of financial support because of the income, earning capacity, property or other financial resources of either parent or the child. (There are nine other grounds upon which a departure may be sought.) However, many custodians are unable to seek a departure owing to lack of information of the liable parent's financial affairs. This lack of information has also been raised in submissions.

Liable parents can choose not to participate in the review, and this includes choosing not to supply any information regarding their income and/or assets. As the onus of proof is on the party applying for a departure, if the other party is uncooperative, the applicant may be unable to establish his or her case. In this situation the Review Officer may seek the assistance of the Commissioner of Inland Revenue to obtain information from tax records and/or third parties. However, if the liable parent's tax records are not up to date, there may be little information to pass on to the Review Officer. Even when the liable parent's tax records are up to date, it may not be obvious from the liable parent's own tax return that assets have been diverted to another tax structure, such as a trust. If the liable parent does participate in the review, the information supplied may not be complete. Review Officers need to be able to justify the level at which they set a liable parent's income and they are therefore limited to the information available to them.

Proposal for Commissioner-initiated reviews

The intention behind the proposed Part 6B is to allow the Commissioner to identify cases where he considers that liable parents have a greater capacity to contribute to their children's financial support than that arising from basing their liability on their taxable income. The Commissioner will thus be considering just one of the ten grounds on which a departure may be granted. However, both the liable parent and the custodian could make an application under the existing provisions in Part 6A on any of the other grounds, and the liable parent could also raise the financial position of the other parent and/or child.

Case selection will be by applying set criteria (which will not be made publicly available) against information held by Inland Revenue. No distinction in case selection will be made on the basis that the custodian is, or is not, a beneficiary. While information from custodians will be accepted, and fed into the case selection process, it will not be the single determinant of whether a liable parent is selected for review. Likewise, information referred by staff or Review Officers will also feed into the selection process. It is expected that self-employed liable parents will form the bulk of those investigated. However, salary and wage earner liable parents will be included if any evidence is received of a significant employer superannuation contribution for salary substitution being made, or of a large fringe benefit being enjoyed which the liable parent has a choice in receiving.

The Commissioner will use the existing powers he has under the Tax Administration Act 1994 to establish what he considers to be a liable parent's full financial position. These powers include:

- requiring liable parents to provide any information that the Commissioner requires, such as details of any financial interest in any entity which is not reflected in their own income tax return, recent dispositions of assets, etc.;
- if there are doubts about the veracity of the information supplied, requiring the liable parent to make a statutory declaration; and
- if the information is not supplied, seeking a court order to require the liable parent to supply the information.

From the information gathered, plus anything else that the Commissioner has access to, a summary (the "statement of reasons" referred to in the proposed section 96T) of the liable parent's income, assets, liabilities, any indirect interests in other tax entities and any other relevant information (such as whether a new partner is financially independent of the liable parent) will be prepared. This summary will be supplied to the liable parent and a period allowed for the liable parent to raise any concerns he or she has with the Commissioner. An amended summary will be issued if the Commissioner agrees with the liable parent. Should liable parents not accept that the summary truly represents their financial position, their reasons for this may be set out in writing and this will be attached to the summary.

Once the information is agreed (or a statement of disagreement is received from the liable parent), a notice will be sent to both the custodian and the liable parent advising that the Commissioner intends to initiate the review process. The liable parent (but not the custodian) will also receive a summary of the information on which the Commissioner has based his decision. At this stage, the custodian will have three choices: to ask the Commissioner not to proceed (non-beneficiary custodians only); to

become a party to the proceedings; or to accept the outcome of the review without becoming a party to the proceedings.

The usual review process will then follow. Review Officers will consider the summary provided by the Commissioner, together with any submissions made by the liable parent and/or the custodian, and reach a conclusion based on existing case law as to whether the child support assessment ought to be amended. As with any administrative review, the liable parent and the custodian will each have the opportunity to appear before the Review Officer in person (or by telephone if this is more convenient). The liable parent will still have the choice of not participating but, should this happen, the Review Officer will be able to recommend a departure on the basis of the information contained in the summary. The Commissioner will not make any further representations to the Review Officer, but Review Officers will be able to seek clarification of any item included in the summary and/or further information from the Commissioner.

As with any other administrative review, the first step will be to establish that "special circumstances" exist. Once that test has been met, any adjustment to the child support liability will still need to be "just and equitable" and "otherwise proper".

As with the existing review process, if it is relevant to the decision, information (other than that relating to a third party, such as the income of the liable parent's new partner) on which the decision is based will be included in the information supplied to both the liable parent and the custodian.

As departures from the formula assessment are not limited to just the current year, it is envisaged that any departure made under the proposed Part 6B will usually be made for a number of years to avoid the Commissioner having to review the same cases year after year until child support ceases to be payable for the child(ren).

If a liable parent or custodian is unhappy with the outcome of the review, he or she will be able to lodge an appeal in the Family Court against the Commissioner's decision (with the usual appeal rights to a higher court). However, the Commissioner will not be able to lodge an appeal but will automatically be a party to the proceedings.

Examples

The following examples are some of the situations which are likely to be reviewed.

Example 1

A salary and wage earner has income of $90,000 and enters into an arrangement with his/her employer to reduce that to $60,000 with $30,000 being paid into a superannuation fund. The $30,000 is subject to tax (specified superannuation contribution withholding tax), but not at the employee level. In this case child support would have been reduced by between $5,400 and $9,000. This person's choice to substitute income for savings should not be to the detriment of his or her child(ren).

Example 2

A salary and wage earner has income of $60,000 and enters into an arrangement with his/her employer to reduce that to $40,000 in return for an interest-free loan of $250,000. The value of the loan is subject to fringe benefit tax, again not at the employee level. In this case child support would have been reduced by between $3,600 and $6,000.

Example 3

An independent contractor changes from being a sole trader to a company and owns all but one share. The company, after legitimate business expenditure, has a net profit of $60,000. The contractor decides to draw a salary of $38,000. The balance is taxed at the company rate of 33 cents in the dollar. If the contractor had drawn the full $60,000, his or her child support would have been between $3,960 and $6,600 higher.

Note: In each of the examples the lower amount is where child support is payable for one child and the higher, for four or more children. Also, each example assumes that the liable parent does not have shared custody.

Submissions

Eleven submissions were made on the proposal to allow the Commissioner to initiate a departure from a formula-based child support assessment. Support and opposition were roughly equal.

EFFECTIVENESS/PURPOSE OF PROPOSAL

Submission 1
(13W – Judge P F Boshier)

The proposal is likely to be ineffective as it does not address the issue of the Commissioner or a Family Court being able to set aside any scheme or device which has the effect of reducing a liable parent's child support obligation.

Comment

The proposal intends that there be another avenue into the review process. The courts have shown that they will "look through" structures which have the effect of reducing child support. Officials are not aware of any problem where a Review Officer or a court has had difficulty in setting an income amount for a liable parent which takes into account income or assets available to the liable parent in another tax entity.

Recommendation

That the submission be declined.

Submission 2
(29 – New Zealand Institute of Chartered Accountants)

The proposal should provide a rule or series of rules that better target the mischief that Inland Revenue is seeking to address.

Comment

The proposal has the very simple objective of ensuring that liable parents contribute to the financial support of their children according to their capacity to provide such support. The *Tax Information Bulletin* which will be published following enactment of the legislation will explain both this and the process the Commissioner will follow.

Recommendation

That the submission be declined.

PROPOSAL IS NOT NEEDED OR SHOULD BE LIMITED TO BENEFICIARY CUSTODIANS

Submission 1
(21 – Parents for Children)

The proposal is unnecessary as custodians may already make an application for a departure. The proposal will create conflict.

Submission 2
(29 – New Zealand Institute of Chartered Accountants)

The proposal should be limited to circumstances when the qualifying custodian is in receipt of a social security benefit.

Comment

One of the problems that the proposal is intended to address is that many custodians cannot or will not make an application for a departure, often because they lack the information on which to do so. Non-beneficiary custodians can always ask the Commissioner to discontinue proceedings.

Recommendation

That the submissions be declined.

Submission 3
(29 – New Zealand Institute of Chartered Accountants)

Information which is subject to the secrecy provisions in the Tax Administration Act 1994 may be released to the custodian.

Comment

This is already the situation. For example, if a liable parent chooses not to participate in the administrative review process, information that is supplied from Inland Revenue's tax records may be included to justify the decision recommended by the Review Officer. Sections 96P and 124 and proposed section 96ZF place restrictions on the publication of information in a decision.

Recommendation

That the submission be declined.

LEGITIMATE TAX STRUCTURES

Submission 1
(16 – Andy Lewis and Shelley Windley-Lewis)

Individuals should be allowed to organise their financial affairs to their best advantage. Levels of child support are the reason liable parents may be utilizing structures such as loss attributing qualifying companies.

Comment

Provided the custodian is not in receipt of a benefit, liable parents and custodians are able to ignore the amount of child support which would be payable under a formula assessment and come to their own arrangement regarding the level of child support to be paid. Legitimate tax structures should not be able to be used to the detriment of children.

Recommendation

That the submission be declined.

Submission 2
(26 – Child Advocacy Services)

All administrative reviews (not just the ones to which this proposal relates) must follow standard accounting practices.

Comment

Legitimate tax structures should be following standard accounting practices. However, the proposal does not attempt to change legitimate tax structures or standard accounting practices, but rather to address the issue of structures which are legitimate for income tax purposes but have the effect of unfairly reducing a liable parent's taxable income, and thus his or her child support liability.

Recommendation

That the submission be declined.

MATTERS TO BE CONSIDERED BY COMMISSIONER

Submission 1
(26 – Child Advocacy Services)

The ability for the Commissioner to act on the basis of any information in his possession should be removed.

Comment

This provision is essential to the proposal and mirrors that which currently applies to administrative reviews.

Recommendation

That the submission be declined.

Submission 2
(29 – New Zealand Institute of Chartered Accountants)

The Commissioner should have regard to the financial position of the custodial parent.

Comment

The formula assessment does not take into account the custodian's income. The proposal is attempting to address the issue of the liable parent's taxable income being an inadequate measure of the liable parent's ability to financially support his or her children. Proposed section 96R(1)(a) requires consideration of "…the income, earning capacity, property and financial resources of either parent or the child…". This mirrors existing section 105(2)(c)(i). At present, if a liable parent does not participate in the administrative review process, the Review Officer is limited to the information that can be obtained from Inland Revenue's tax records or from third parties, such as banks, using the powers the Commissioner has to seek information under section 17 of the Tax Administration Act 1994. Officials envisage that the reverse will apply in Commissioner-initiated reviews if the custodian does not participate and the liable parent raises the issue of the custodian's own financial position.

Recommendation

That the submission be declined.

SPECIAL CIRCUMSTANCES

Submission
(26 – Child Advocacy Services)

The Commissioner's determination of special circumstances should be subject to appeal and special circumstances must be established prior to any preliminary enquiries.

Comment

A significant disparity between a liable parent's taxable and economic income/assets is likely to be the special circumstance. It will take the preliminary enquiries to establish this. Special circumstances will have to be established before a departure from the formula assessment can be made. Any appeal will be to the Commissioner's determination regarding the finding that special circumstances do exist, and will be through the Family Court in the first instance.

Recommendation

That the submission be declined.

COMMISSIONER'S POWERS

Submission 1
(20W – Solo Women as Parents Christchurch Inc)

The Commissioner should not be able to refuse to make a determination because the issues are too complex. The Commissioner should have the power to investigate beyond complexities created by liable parents who are able to make themselves appear cash poor with the assistance of skilled accountants. In complex cases the onus should not be on the custodian to make an application to the court for an order.

Submission 2
(26 – Child Advocacy Services)

The provision which allows the Commissioner to refuse to make a determination because the issues are too complex should be removed.

Comment

The Commissioner will have the powers in the Tax Administration Act to investigate and determine a position on the income and assets available to a liable parent. This power extends to seeking a court order to require the liable parent to supply the information. However, issues may arise which are so complex that the Review Officer considers they should be best considered by the courts. This mirrors the current provisions relating to administrative reviews. Situations where the Commissioner might currently refuse to make a determination on these grounds include complex property matters that are before a Court.

Allowing the Commissioner to take complex cases to the courts in the place of the custodian is likely to create a significant imbalance between the resources available to the Commissioner and those available to the liable parent.

Recommendation

That the submissions be declined.

Submission 3
(26 – Child Advocacy Services)

The provision which permits the Commissioner to conduct a hearing, enquiry or investigation in such manner as he thinks fit, and not be bound by any rules of evidence should be removed.

Comment

This provision mirrors the existing provision which currently applies to administrative reviews. Its removal would impact on the informal manner in which administrative reviews are held.

Recommendation

That the submission be declined.

Submission 4
(28W – Angela Gail Church)

The submitter questions Inland Revenue not appearing before a Review Officer and not being able to lodge an appeal.

Comment

As with the current administrative review process, Review Officers will be contracted to hear cases and recommend to the Commissioner whether to make a determination. However, it is the Commissioner who will determine whether there should be a departure from the formula assessment. This submission would therefore require the Commissioner to lodge an appeal against his own decision. With regard to Inland Revenue appearing before a Review Officer, this would create the imbalance between the resources available to the Commissioner and those available to the liable parent referred to above, and could impact adversely on the informal nature of the proceedings.

Recommendation

That the submission be declined.

CUSTODIAN'S RIGHTS

Submission 1
(9 – The Family Law Section of the New Zealand Law Society)

Custodians should not be able to ask the Commissioner to discontinue proceedings if the review is likely to produce a reduction in the amount of child support payable by the liable parent.

Comment

Cases selected for review will be where the Commissioner considers that liable parents have a greater capacity to contribute to their children's financial support than that arising from basing their liability on their taxable income. Therefore, it is extremely unlikely that the Commissioner would initiate a review if there is likely to be a downward movement. If this were to be the case, and the non-beneficiary custodian did ask for the proceedings to be discontinued, there would be nothing to stop the liable parent seeking his or her own departure from the formula assessment.

Recommendation

That the submission be declined.

Submission 2
(9 – The Family Law Section of the New Zealand Law Society

Custodians should be a parties to the proceedings unless they elect not to be a party.

Comment

The submission is the reverse of that proposed. Officials consider that custodians having the choice to opt in is preferable to making them a party unless they choose to opt out. Also, this mirrors the existing administrative review process which allows the party other than the one seeking a departure the choice as to whether to participate.

Recommendation

That the submission be declined.

INFORMATION PROVIDED TO CUSTODIAN

Submission
(9 – The Family Law Section of the New Zealand Law Society, 13W – Judge P F Boshier)

Custodians should be informed of the reasons for proceedings and all the information upon which the Commissioner intends to rely. Without this, there could be a breach of the principles of natural justice. The lack of information hinders both the custodian and the courts. If custodians had access to this information they would be able to take proceedings themselves.

Comment

It is accepted that custodians are sometimes unable to initiate the review process themselves owing to lack of information regarding the liable parent's financial affairs. Indeed, this is one of the main reasons for the proposal. However, there needs to be a balance between a liable parent's right to privacy and the custodian's right to a fair level of child support. Some information, such as that relating to a liable parent's new partner, while it may be relevant to the decision reached by a Review Officer, should not be available to the custodian.

It is expected that the proposal will result in greater information feeding into the review process, thus providing a better basis for a Review Officer to recommend a departure from the formula. The information relevant to the decision reached by Review Officers will be contained in it.

Recommendation

That the submission be declined.

INVESTIGATION PROCESS

Submission 2
(25 – Nik Renwick)

The proposed changes do not specify what an investigation would entail. To allow a public authority the right to carry out an investigation without any definition of the limitations is dangerous.

Comment

The investigation will be akin to ones that Inland Revenue already carries out for the purposes of revenues such as income tax and GST, albeit with a different focus.

Recommendation

That the submission be declined.

AUTOMATIC INVESTIGATION

Submission
(11 – Birthright New Zealand Incorporated National Executive)

There should be an automatic investigation of any liable parent who seems to be evading child support.

Comment

The Commissioner does not have the resources for this proposal to be adopted.

Recommendation

That the submission be declined.

REVIEW CURRENT ADMINISTRATIVE REVIEW PROCESS

Submission 1
(29 – New Zealand Institute of Chartered Accountants)

There needs to be a substantial correction to the current administrative review process as the current framework is insufficient to adequately deal with the financial and commercial aspects of child support decisions, and this will be worse once extended to deal with Commissioner-initiated determinations. As child support determinations involve the consideration of the income, earning capacity, property and financial resources of the parent or child, and not other factors, Review Officers should have commercial experience and some knowledge of family law (rather than the current emphasis on family law experience).

Submission 2
(29 – New Zealand Institute of Chartered Accountants)

Administrative reviews for child support should be carried out by the Adjudication Unit of Inland Revenue, and not review officers contracted to the Child Support Agency.

Comment

The submitter's position that child support determinations involve consideration of the income, earning capacity, property and financial resources of a parent or the child, and not other factors ignores the fact that determinations often need consideration of factors governed by one of the other nine grounds. Although each ground does have a fiscal element, an opinion may need to be formed on such matters as how both parents wish their child to be educated or what constitutes special needs. A large body of expertise has built up in the nearly 12 years that Review Officers have been recommending departures from formula assessments. Under the proposal, Review Officers will have not only the Commissioner's findings, but also any representations that the liable parent chooses to make. While parties to an administrative review are not able to have professional representation at the review hearing, it could be sought in the preparation of any reasons why a liable parent considers that the Commissioner's findings of income and/or assets are incorrect.

Determination of income by Inland Revenue's Adjudication Unit would be better placed in a regime that allows the Commissioner to simply modify the taxable income parameter in the standard formula, with the liable parent having objection rights to the quantum of income thus determined.

Recommendation

That the submissions be declined.

TIMEFRAMES AND OTHER ADMINISTRATIVE ISSUES

Submission 1
(26 – Child Advocacy Services)

The response times for a liable parent or custodian to make written representations should be increased from 14 days to at least 28 days.

Comment

The proposed response times are the same as those which currently relate to administrative reviews.

Recommendation

That the submission be declined.

Submission 2
(26 – Child Advocacy Services)

A requirement should be inserted that all actions and decisions must be clearly explained to the liable parent.

Comment

The bill specifically provides for liable parents to be notified of the reasons the Commissioner considers that a departure from the formula assessment might be appropriate and, if the Commissioner does decide to initiate proceedings, a summary of the information on which the Commissioner has based his decision. In addition, Review Officers are required to explain the position they have reached in making their recommendation. Any deficiency in Review Officers' recommendations would not be addressed through this suggestion.

Recommendation

That the submission be declined.

Submission 3
(26 – Child Advocacy Services)

The ability for the Commissioner to refuse to hear a custodian (who has elected to become a party to the proceedings) if written representations are not made within the prescribed time should be removed.

Comment

This provision mirrors the existing provision which currently applies to administrative reviews.

Recommendation

That the submission be declined.

Submission 4
(26 – Child Advocacy Services)

That the provision relating to making a determination retrospective should be removed.

Submission 5
(13W – Judge P F Boshier)

The submitter questioned whether the provisions relating to making a departure from the formula assessment retrospective are in harmony with the other departure provisions in the Child Support Act.

Comment

Case law indicates that departure orders made under existing provisions cannot be made retrospective. The Commissioner therefore does not make a retrospective determination in relation to current departures from the formula assessment. This will also be the position under the proposal to allow the Commissioner to initiate the administrative review process.

Officials consider that the proposed new section 96ZE mirrors the existing provision which currently applies to retrospectivity of administrative reviews, and that there is therefore harmony with the other departure provisions.

Recommendation

That the submissions be declined.

Submission 5
(29 – New Zealand Institute of Chartered Accountants)

Inland Revenue should issue a standard practice statement with guidelines on the use of the power to initiate determinations on child support, and the commencement date for Commissioner-initiated administrative reviews should be deferred until Inland Revenue has consulted on this.

Comment

Inland Revenue will issue a standard practice statement on the process it intends adopting in advising liable parents if, after preliminary enquiries have established that the liable parent's financial affairs should be subject to an investigation, of its intention to commence an investigation. However, the standard practice statement will not prescribe when, and in what circumstances, the Commissioner will commence an investigation. Nor will it prescribe the information which the Commissioner may provide to Review Officers. To attempt to draw up a prescriptive list of what can be investigated and/or used to initiate a review runs the risk that the list would be incomplete.

Recommendation

Note that Inland Revenue's normal practice before issuing a standard practice statement is to release a draft publicly for comment. The New Zealand Institute of Chartered Accountants will be able to comment on the proposed standard practice statement at that stage.

Part 2: Other matters in bill (arranged by submission)

Submission
(1W – Eugenie Hellewell)

Submission 1

The issue is covered in Part 1 of this report.

Submission 2

Measures should be introduced which would prevent a parent on a Domestic Purposes Benefit for no legitimate reason other than a desire not to work, receiving Child Support when both parents share equal custody of their child.

Comment

Child support is not generally paid to a custodian in receipt of a Domestic Purposes Benefit, unless the amount paid exceeds the amount of the net benefit.

The bill does not deal with the criteria for receiving a Domestic Purposes Benefit.

Recommendation

That the submission be declined.

Submission
(2W – Paul A Doyle)

Submission 1

The increase in the living allowance of $60 per month to include a dependent spouse or partner is insufficient to support another person.

Comment

The living allowance increases from $13,149[2] a year for a single liable parent with no dependent children to $17,772 a year for a person who is married or has a civil union or de facto partner. The increase is $4,623 a year ($385 a month). The living allowance rate for a couple with no children is based on the gross married rate of the unemployment benefit, which has been designed to provide a modest standard of living. The benefit rates and living allowances are adjusted annually based on movements in the Consumer Price Index.

Submission 2

Inland Revenue is ruthless in collecting child support. Inland Revenue should collect court fines.

Comment

This bill does not deal with the collection of court fines, and consideration of the appropriate collection agency for court fines is not within the scope of the bill.

Recommendation

That the submission be declined.

[2] Rates for 2006-07 child support year.

Submission
(3 – Robert Kilkolly)

Submission 1

"Contribution" should entail a fair and equal share of child-related expenses from both parents, by taking into account the income of both parents.

Comment

Recently proposed changes to the child support scheme in Australia recognise the income of both parents and an estimate of the costs of children. However, it should be noted that those proposed changes have been developed within a broader context of change in family law generally.

The need has been identified for New Zealand-based evidence of the real costs of children. Both the Families Commission and the Ministry of Social Development (MSD) have explored developing a budget standards approach (one of the methodologies that contributed to the estimate of the costs of children in intact Australian families)[3] to estimate the costs of children and have recommended against progressing this approach.

Instead, MSD will be using living standards data to estimate equivalence scales.[4] MSD will also be exploring the topic further as part of qualitative research to be carried out as part of the evaluation of the Working for Families package.

When the results of that research are available, the information may contribute to any future consideration of a different basis on which to assess child support liability.

The Minister of Revenue has instructed officials to consider whether recognition should be given to lower levels of shared care than the current 40% of nights threshold. That work will also consider the proposed changes in the Australian child support scheme.

Submission 2

All income and allowances should be calculated upon net earnings, not gross earnings.

Comment

The child support percentages were set at a level that produces a certain level of child support payable, based on taxable income. If the formula were to move to an after-tax income base, those percentages would need to be increased and there would have to be a different formula for each tax rate, adding considerably to the complexity of the system.

[3] Report of the Australian Ministerial Taskforce on Child Support
[4] Equivalence scales permit the comparison of living standards among households of different size and composition. They usually take a two-adult household as the base and apply an appropriate ratio to the income of a household of a different size or composition – producing a measure called "equivalised income".

Submission 3

The contribution should be calculated upon the actual and reasonable costs for raising the child or children concerned, rather than based upon a liable parent's earnings and financial status.

Comment

The relevant data is not immediately available as contended by the submitter. It should also be noted that a "cost of children" approach to establishing child support liability would not necessarily produce a simpler system as there is no fixed "cost of children". The costs of children vary in relation to a range of factors, such as the level of income of their parents, the age of the children, location of the family and the gender mix of the children. The sample calculation provided by the submitter takes into account the incomes of both parents but assumes that the cost of the child is fixed.

Submission 4

All actual and reasonable costs, including any changes to those circumstances, for contribution should be agreed to by both the custodian and liable parent.

Comment

Any changes in costs incurred by a custodian do not currently affect the level of support to be provided by the liable parent, unless those changes arise through special circumstances that provide a basis for an application for an administrative determination of the level of child support to be paid. If the submitter is suggesting that child support should be adjusted administratively in relation to cost changes incurred by both parents, this would impose high compliance costs on both parents and high administrative costs for Inland Revenue. In particular, it would be difficult to estimate the child-related portion of fixed household costs such as power, rates, mortgage payments or rent, and insurance.

Submission 5

The custodial parent must account for all contribution payments received for the support of the child or children and present this information at a yearly reassessment.

Comment

The submission is somewhat inconsistent with the previous submissions as it suggests that only one parent should be accountable for costs incurred in relation to the children. The submission implies that there should be an end-of-year adjustment if actual costs are higher or lower than allowed in the assessment. This would create end-of-year debts for custodians, if proven costs are lower; or for liable parents if proven costs were higher. This would impose high compliance and administrative costs.

Submission 6

Contribution for child support by both parents should be calculated upon the ratio difference between both the liable and custodial parent's actual net income and household earnings.

Comment

The proposal would, if accepted, involve a major re-structuring of the child support scheme. If the government were to agree to consider the proposal it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision.

Submission 7

The income and household earnings of both the liable and custodial parent should be based upon actual figures for a full PAYE financial year, rather than temporary assessments being actioned in February of each year.

Comment

The changes to the year of assessment for child support were introduced with effect from 1 April 2001. They were intended to facilitate a better alignment between the year in which taxable income is earned and the year in which it is used as the basis of a child support formula assessment, for most liable parents. Because child support assessments must be issued in time for liable parents and, where appropriate, employers to adjust payment arrangements before the start of the child support year, awaiting full-year income details as suggested by the submitter would require a change to the child support year so that it would start from 1 July, instead of 1 April as at present. This possibility was considered at the time of the policy change, but was rejected by the government because the scope of the information technology work involved in implementing the change would have posed a significant risk to the child support system and other major information technology projects that Inland Revenue had planned or underway at that time.

Approximately one-third of assessments that have been based on a partial estimation are adjusted in July each year when finalised actual income for the year ending the previous 31 March comes available. No adjustment is made if the income variation is less than $500 more or less than the estimation. For the year ended March 2004, 63% had an increase in their assessment, while 37% had a reduction. Of the increased assessments, 74% were for amounts less than $500 for the whole year.

Submission 8

In assessing contribution payments, the cost of raising children in another relationship must also be fairly included to ensure that no family receives less support for their child or children than the custodial or liable parent receives under assessment.

Comment

It is a principle underpinning the Act that obligations to birth and adopted children are not extinguished by obligations to stepchildren. However, a person's responsibility for children in a subsequent family is recognised through the living allowance. The difference in the current child support year between the living allowance for a couple with no children and that for a couple with one child is $7,147. It is not until a liable parent's income reaches $65,000 that the amount of child support payable for one child exceeds the marginal increase in the living allowance for one child. Recognition that some economies of scale can be achieved for second and subsequent children is built into the formula, both in the living allowances and the child support percentages.

Submission 9

The administrative review process should be amended to provide a fairer forum for all matters to be considered and to seek fair assessments based upon the input and needs of both parents and their families.

Comment

The submitter suggests a number of changes to the administrative review process that would, in his view, be of benefit to the process.

The administrative review process was introduced in 1994 to address perceived barriers of access to the Family Court. A significant barrier for both liable parents and custodians was the cost of legal representation. A further inequity arose when one party could afford to be legally represented and the other could not. Among other concerns was the relative formality of the courts – even though the Family Court is less formal than other courts, an appearance can be intimidating for those unused to the court process.

However, an applicant for an administrative review who is not satisfied with the outcome has a right to take the case to the Family Court for more formal consideration. Under a proposed amendment contained in clause 25, respondents who are dissatisfied with the outcome of an administrative review will also be able to take an appeal to the Family Court.

In a speech delivered to a child support conference in November 2005, principal family court judge Boshier commented that the process is generally considered to be working well. That perception is supported by the low numbers of cases being taken to the Family Court since the process was introduced. The highest number of cases heard by the Family Court was 44 in the 1998-99 year. In that year there were 3,465 applications for administrative review.

Submission 10

The management and administration of credit and arrears issues should be overhauled to provide a more effective, supportive and responsive method in which to manage arrears payments and gain the acceptance and co-operation of all parties.

Comment

The proposed changes in clause 32 are intended to provide relief to liable parents (and those liable for domestic maintenance) who have incurred incremental penalty debt. Under the new provisions, it will be mandatory for Inland Revenue to write off accrued incremental penalties (imposed for earlier non-payment of financial support liability), when payments in accordance with an agreement to pay ongoing liability together with amounts in repayment of arrears have been maintained for 26 weeks. The write-offs will be based on a pro-rata percentage of the arrears, including initial late payment penalties, which have been paid.

Inland Revenue has in place a debt management strategy for dealing with child support cases in arrears. This involves close case management of individual cases and timely contact with employers, when appropriate, to commence automatic deductions from wages and salary.

Recommendation

Note in relation to submissions 1, 3, 4, 6 and 8 that work is being undertaken on shared care, however, no changes are recommended in this bill.

That submissions 2, 5, 7, 9 and 10 be declined.

Submission
(4W – J K V Von Hooker)

Submission 1

Changes should be made to deal with hardship faced by liable parents.

Comment

The submitter cites the stress associated with a missed payment as a result of the timing of deductions from a benefit made by Work & Income.

The problem has been identified and has occurred in years in which a benefit payment due in early January is brought forward and paid out in December. The extra child support deduction created a credit in the December period, which, under the payment allocation rules, was credited to past arrears. However, the subsequent shortfall in January would have generated an arrears notice for that month and the imposition of a late-payment penalty.

It has in past years been necessary to manually identify the affected customers, re-allocate their payment to the correct month and reverse the penalty. However, agreement has now been reached with Work & Income to include such "early" deductions in the schedule for the month to which they relate.

In general, liable parents who consider their child support liability is contributing to hardship can negotiate with Inland Revenue, if the amount they are required to pay includes arrears, to seek a reduction in the level of arrears recovery. Alternatively, if they consider there are special circumstances in their situation such that the level of liability is inappropriate, they can seek a departure from the standard formula assessment through an administrative review.

In addition, the provisions in clause 32 for the write-off of incremental penalties will provide some relief to liable parents through the progressive write-off of those incremental penalties as the arrears of liability are reduced.

Submission 2

There should be a cut-off point above a certain income level for tax rises.

Comment

The bill does not deal with tax rates. Therefore, the submission is not within the scope of the bill.

Recommendation

That the submission be declined.

Submission
(5 – Douglas MacCredie)

Submission 1

An exemption to undertake education should apply to anyone regardless of age.

Comment

The policy reason for introducing a new exemption for under 16-year-old liable parents was not to provide a choice between undertaking further education or parenting. It reflects their compulsory participation in the education system until they reach age 16, and places young people in a similar position to other liable parents who are prevented from earning an income from which they could meet their obligation to support their children. Adult choices as to lifestyle and provision for future needs should not come before current liability to support their children.

Submission 2

The assessment formula itself is in need of redevelopment. The formula needs to be relative to the actual reasonable costs of supporting a child, and not just automatically increased as the liable parent earns more.

Comment

The need has been identified for New Zealand-based evidence of the real costs of children. Both the Families Commission and the Ministry of Social Development (MSD) have explored developing a budget standards approach (one of the methodologies that contributed to the estimate of the costs of children in intact Australian families)[5] to estimate the costs of children and have recommended against progressing this approach.

Instead, MSD will be using living standards data to estimate equivalence scales.[6] MSD will also be exploring the topic further as part of qualitative research to be carried out as part of the evaluation of the Working for Families package.

When the results of that research are available, they could contribute to any future consideration of a different basis for calculating child support liability.

However, it should also be noted that a "cost of children" approach to establishing child support liability would still require some regard to the income of the parents as there is no fixed "cost of children". The costs of children vary in relation to the level of income of their parents.

[5] Report of the Australian Ministerial Taskforce on Child Support.
[6] Equivalence scales permit the comparison of living standards among households of different size and composition. They usually take a two-adult household as the base and apply an appropriate ratio to the income of a household of a different size or composition – producing a measure called "equivalised income".

Submission 3

The Child Support Bill must be developed in a way that properly acknowledges its inseparability from the role of the Family Court and often the domestic purposes benefit arm of Work & Income.

Comment

The agencies responsible for the administration of the Family Court and the domestic purposes benefit were both consulted in the development of policy proposals given effect through this bill in acknowledgment of the wider policy context in which changes to the child support scheme should be considered. However, the bill does not deal with the role of the Family Court or the administration of the domestic purposes benefit.

Submission 4

The bill should make provision for the best use of money for the needs of the child, in the present and future, and allow parents to perform whatever role they are best at regardless of whether they are the custodial or non-custodial parent.

Comment

Decisions relating to expenditure in relation to the day-to-day care of children and the roles of their parents are private matters beyond the scope of the bill or the Child Support Act.

Recommendation

That the submissions be declined.

Submission
(6 – Murray Coppen)

Submission 1

The timeframe for appeals in proposed section 103B(3)(a) should be amended to impose no time limit, to be consistent with the timeframe applications to the Family Court for a departure, following an unsuccessful application for an administrative review.

Comment

The inclusion of a time limit for appeals is consistent with the Legislation Advisory Committee's *Guidelines on Process & Content of Legislation.* Time limits provide certainty to those affected and speed up the process without denying review. It is considered advisable to confer a power to extend the time limit on the appellate body, as has been done in this case. This mitigates the harsh inflexibility a strict time limit can cause, and allows the court to extend the time limit to one that would be available if the application was for a departure under section 104 of the principal Act, if it considers that to be appropriate in the circumstances of the case.

Submission 2

The bill should address the difficulties facing liable parents with substantial access.

Comment

The "cliff effect" as described in the submission inevitably occurs when limitations are imposed on access to a right. In the situation where the care of a child is shared between parents the policy intent was that there would be some relief from liability if the liable parent was substantially equally sharing the care of the child. The threshold of 40% of the nights in a child support year provides a degree of tolerance around equal or 50:50 sharing.

The bill does provide for other aspects of care arrangements to be taken into account when the level of care falls short of 40% of nights, such as: how the responsibility for decisions about the daily activities of the child is shared; who takes the child to and from school and supervises leisure activities; or how decisions about the education or health care of the child are made.

Officials acknowledge that where there is regular overnight contact the total costs of children tend to increase significantly because of the duplicated infrastructure costs of running two households. The "shading approach" suggested in the submission has been adopted to some extent in Australia, where there is currently a two-tier reduction starting when care is provided for 30% of the nights in a child support year. The Australian Government has also announced that from July 2008 this threshold will be lowered so that recognition will be given in the formula to a liable parent who has care of the child for 14% or more nights. This may soften the "cliff effect" for the liable parent, but may reduce income into the custodian's household by a greater amount than costs are reduced. To produce equitable outcomes for the parties involved, recognition of shared care arrangements in child support formula

assessments requires a balancing of the needs of liable parents with those of custodians.

The Minister of Revenue has instructed officials to consider the issue of whether and to what extent recognition should be given to lower levels of shared care than the current 40% of nights threshold. That work will consider the proposed changes in the Australian child support scheme, noting the broader context of change in family law generally in which those changes have been developed.

Submissions 3 and 4

A provision should be introduced relating to retrospectivity of administrative determinations that clarifies the position and ensures consistency with the provisions relating to departure orders; in particular, to "tidy up" the perceived tension between sections 96O and 106(2) of the Act.

Comment

Inland Revenue acknowledges that on the basis of case law precedents there is uncertainty about the ability for the Commissioner or the Family Court to make administrative determinations or departure orders with retrospective effect. The advice of the Solicitor-General has been sought on the appropriate means of obtaining clarification through the courts. A response has not yet been received.

Submission 5

Inland Revenue should be directed to update its information/publications before the bill comes into force.

Comment

The publications provided by Inland Revenue to support the administration of the child support scheme are not provided for in the Act. The updating of those publications is outside the scope of this bill. However, as advised to the Committee in our memorandum of 27 March 2006, the relevant publications have been scheduled for updating to reflect legislative changes as a result of the passage of this bill.

Recommendation

That submissions 1 and 5 be declined.

Note in relation to submission 2 that work is being undertaken on shared care, however, no changes are recommended in this bill.

That submission 3 and 4 be noted pending advice from the Solicitor-General.

Submission
(7 – Dr Vivian Paul Roberts)

Submission 1

The submitter supports exemption for victims of sexual offences.

Submission 2

There should also be exemptions for other aspects, such as breach of contract, fraud, psychological or verbal abuse.

Comment

The need for an exemption from child support liability for victims of sexual offences arose in the context of the gender neutralisation of the sexual offence rules under the Crimes Act 1961. Government considered that making victims of sex offences liable for child support was unjust because a victim should not be held responsible for legal obligations resulting from a sexual offence that was committed against him or her. In addition, the obligation to pay child support as a consequence of sexual activity that he or she had been forced to participate in may compound his or her victimisation. This was considered to be a justified departure from the general principle that underpins the Child Support Act that all children have a right to be maintained by their parents.

Apart from the proposed exemption for victims of sexual offences, the only other circumstances in which an exemption from liability for child support has been allowed are those in which the liable person is prevented from earning an income from which they could meet their obligation to pay child support. Those circumstances are long-term imprisonment or hospitalisation, or compulsory attendance at school.

Submission 3

There should be a refocusing of the child support system so that money does go to children. This was clarified in the oral submission – that the money should go into a trust fund and the custodian should keep receipts for expenditure.

Comment

All payments of child support are initially paid into the Crown Bank Account. Payments that are not retained to offset the cost to the State of providing a social security benefit to custodians and children are transferred to the Child Support Trust Bank Account, which is held and administered in accordance with the relevant provisions of the Public Finance Act 1989. Payments to custodians are made out of the trust account.

The submitter's proposal would necessitate the establishment of individual trust funds, raising the issue of who would bear the cost of establishing and administering such funds. Further, the proposal that custodians should be required to produce receipts for all expenditure on behalf of the children would impose high compliance costs on custodians and very high administrative costs on Inland Revenue.

Submission 4

There should be an upper limit of liability for each child.

Comment

Under the current scheme the amount of child support for each child is "capped" relative to the capacity of the liable parent to provide support. When the results of proposed research on the costs of children in New Zealand become available that information could contribute to any future consideration of a different basis for calculating child support liability.

Submission 5

Neither parent should be required to pay child support when shared care is close to 50:50.

Comment

When parents share substantially equally the care of their children and neither parent is in receipt of a social security benefit, they already have the option to enter into a voluntary agreement to each bear their own costs of care, or to determine what quantum of support should be exchanged. It is only when one parent applies for a social security benefit that an application for formula assessment of child support becomes mandatory.

There is an adjustment to the standard formula in cases of substantially equal sharing of care. For instance, the child support percentage for one shared child is 12% compared with 18% for a fully supported child.

Submission 6

There should be an exemption from liability for child support for a person who can produce medical evidence of psychological ill health.

Comment

A person who is hospitalised as a result of psychological ill health would be entitled to an exemption from liability for child support if the period of hospitalisation is 13 weeks or more, subject to meeting the relevant income criteria.

Recommendation

Note in relation to submission 5 that work is being undertaken on shared care, however, no changes are recommended in this bill.

That submissions 2, 3, 4 and 6 be declined.

Submission
(8 – Chuck Bird)

Submission 1

The submitter supports the proposal for an exemption for victims of sexual offences.

Submission 2

The whole Act has to be rewritten recognising that a formula cannot deal adequately with the many variables that are involved in determining a fair amount of child support, particularly without taking into account the financial position of the custodial parent.

Comment

The introduction to this report summarises the intent of the government of the time in introducing the child support scheme. This submission, if accepted, would completely reverse the basis on which the Act was developed. The introduction of further variables, including consideration of the financial position of custodians would impose high compliance costs on all parties and high administrative costs for Inland Revenue.

If the government were to agree to consider the proposal it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Submission 3

There should be amendments so there are either no penalties or there are penalties for the custodial parent as well as the non-custodial parent. This should particularly apply where the custodial parent has obtained child support by dishonest means.

Comment

Penalties are not applied to amounts recoverable from custodians because these are not obligations to pay by a specific date.

Submission 4

Men should not be obliged to pay child support for a child who is not theirs unless they have accepted responsibility by adopting the child.

Comment

The Act makes a presumption of dependency only when a child was conceived or born during a legal marriage. In that case, the birth mother and the other party to the marriage are presumed to be the parents of the child.

In all other cases formal documentary evidence of the birth and parentage is required. By way of exception, there are special rules in relation to children conceived as a result of any Assisted Human Reproduction procedure to which Part 2 of the Status of Children Act 1969 applies.

When a person named as a liable parent considers that he is not the other parent of the child he has a right of objection to the acceptance of the application for child support under the Act.

Submission 5

If a man suspects he is not the father of a child for whom he is paying child support, he should be allowed to get a DNA test without being obliged to notify the mother or the child.

Comment

The submitter clarified during his oral submission that in his view the mother should not even have knowledge of a DNA test in a case of disputed paternity.

The provisions relating to parentage testing are contained in the Family Proceedings Act 1980 and are not within the scope of this bill.

Recommendation

That the submissions be declined.

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

Submission 1

Section 89E should be amended to exclude persons under 17 years of age.

Comment

Clause 17 inserts a new part 5A that introduces new exemptions for liable parents under the age of 16 years and victims of sexual offences, and restructures the existing provisions for exemptions from liability for financial support.

Young parents under 16 years have limited ability to earn income for the period that they are compulsorily required to attend school. In addition, they are generally not eligible for social security benefits. The exemption is to be subject to the same income criteria as the existing exemptions. It is also consistent with wider policy objectives of encouraging young people to focus on educational achievements during the years of compulsory attendance at school and is likely to be in the long-term interests of both the young parent and their child.

Once young people reach 16 years of age, they can choose whether to continue their education. They will become liable for at least the minimum amount of child support.

Beyond the age at which compulsory attendance at school ceases, it could be considered discriminatory to determine an exemption from liability for child support on the basis of age.

Submissions 2 to 5

The issue is covered in Part 1 of this report.

Submission 6

Clause 26(1) should be deleted.

Comment

Under the current law a respondent to a successful application for an administrative determination is unable to take an application to the Family Court for a departure order without proving his or her own "special circumstances". The fact of the administrative determination itself is not considered by the court to be a special circumstance. The respondent, therefore, is at a disadvantage before the court compared with an unsuccessful applicant for a determination who can rely on the same grounds that were rejected by the Commissioner.

Clause 25 inserts a new appeal right in section 103B to rectify that situation. The amendment to section 104(20(b)(i) in clause 26(1) is necessary to clarify that the existing right to apply to the Family Court for a departure order is restricted to persons who have applied for a determination.

Submission 7

The bill should be amended to provide for the full involvement of the qualifying custodian, and the independent custodian in particular, in the process of writing off penalties.

Comment

The status of the relevant custodian is not a factor for Inland Revenue in deciding whether to apply resources to the collection of outstanding financial support liabilities. However, under the current law, arrears when collected, are applied to the oldest period of outstanding liability. Those arrears are retained by the Crown if the custodian was in receipt of a sole parent benefit during that oldest period for which the arrears are owed.

The effect of the provisions in clauses 33 and 34 will be to change the order in which arrears of liability, when collected, are allocated. Priority will be given to making payments for any periods in which a custodian was not a beneficiary over payments owed to the Crown.

Penalties are owed to the Crown. They are not passed on to custodians when collected. In addition, the new provisions in clause 32, particularly new sections 135J and 135K, are intended to encourage non-compliant liable parents to meet their payment obligations.

Submission 8

That any payments by the liable parent who is in arrears should be credited first against the current child support instalment due, and secondly to offset instalments in arrears. That could be the oldest arrears or the most recent arrears. Either way the independent custodian should receive all payments made by the liable parent, including penalty payments, until their payments are up to date.

Comment

As already commented, the effect of the provisions in clauses 33 and 34 will be to give priority to payments owed to custodians over payments owed to the Crown, as recommended in the submission.

The feasibility of compensating custodians for late payments of child support has been raised recently. Issues which would require further consideration include the high transaction and administration costs of such a measure; the appropriate targeting of passing on the initial 10% penalty, for example, to all custodians or just non-beneficiary custodians; whether such a proposal might be better met through a use-of-money interest provision; the impact on the child support penalty system; and the impact on the wider social security benefit system. It is also likely that administrative costs would be significant as a result of the systems changes that would be required. The government decided not to pursue the matter.

Submission 9

The State should be entitled to seek costs awards from the court for costs that are incurred through the recovery of penalty payments.

Comment

The Act already provides for the court to make such order as to costs as it thinks fit.

The retention of penalty payments by the Crown does go some small way towards meeting the costs of the Crown in its agency role of collecting and passing on financial support.

If Inland Revenue were to seek costs for the recovery of penalties, that would impose an additional cost on liable persons without any corresponding benefit to payees or to children.

Submission 10

The independent custodian should be entitled to engage a private debt collector should they wish to do so. They should still be permitted to return to Inland Revenue for assistance in collection and enforcement at any time. The costs of such collection should be added to the sums due by the liable parent.

Comment

The Act already provides for a payee (other than for periods in which the payee was receiving a social security benefit) to be able to uplift the whole or any part of arrears of financial support owed to him or her, and to pursue the collection of such amounts on their own behalf. Such an election is irrevocable in respect of the periods uplifted but the payee may continue to have Inland Revenue pursue collection of any periods not uplifted.

Submission 11

Inland Revenue should be required to account to the qualifying custodian for any of the payments made by the liable parent that are kept by the Crown for collection and enforcement costs.

Comment

Inland Revenue publishes in its Annual Report the costs of administering the child support scheme. However, costs of collection vary from case to case depending on the nature of the enforcement activities undertaken and the ease with which a source for compulsory deductions is found. If Inland Revenue were to be required to apportion total costs to individual cases, this would add further to those costs.

Custodians are entitled to receive, on request, information about payments, not including penalties, made by the relevant liable parent. The purpose of providing this information is to provide certainty for non-beneficiary custodians about payments that can be expected, and to assist beneficiary custodians to make decisions about whether to go off a benefit. Information about penalties is not provided because penalties are not passed on to custodians.

Submission 12

Section 39(1) of the Act should be amended to:

a. remove, from the definition of "child support income amount" the following sentence:

   "*or, if less, an amount equal to 2.5 times the yearly equivalent of the relevant average weekly earnings amount for the most recent tax year",* and

b. change the definition of "child support percentage" to include an increase for every further child for whom child support is sought.

Comment

The maximum income amount was increased from two times the relevant average earnings to 2.5 times the average with effect from 1 April 2002. It was considered that liable parents with incomes above that level should be able to choose how they provide any additional support to their children.

The amount is adjusted each year in response to increases in the relevant average weekly earnings amount. For the 2006-07 child support year the maximum income amount is $100,157.

Increasing the range of the child support formula to include increased percentages for 5th and subsequent children would be likely to have a significant impact on low- and middle-income liable parents.

Submission 13

Section 157 of the Tax Administration Act 1994 should be amended or a new section added that permits the Commissioner to deduct or extract a sum from a liable parent's account to offset the child support and penalties overdue for payment by that parent.

Comment

A person who defaults on a payment due under the Act is required to make future payments by automatic deduction in accordance with section 130. That is given effect through section 154, which authorises the Commissioner to require a person to make automatic deductions from monies payable to a liable person, including salary, wages and bank accounts.

Submission 14

Liable parents should be required to provide the Commissioner with sufficient information about their account(s) to enable the Commissioner to deduct or extract the overdue funds.

Comment

A person named as a liable parent on an application for child support is required to complete a registration form (IR103) that includes details of a current bank account.

Recommendation

That the submissions be declined.

Submission
(10W – Michael Roy Freeman)

Submission 1

The maximum income amount should also reflect the cost of bringing up children.

Comment

The maximum income amount represents a threshold above which liable parents with higher incomes can choose how they provide additional financial support to their children. The amount is adjusted each year in response to increases in the relevant average weekly earnings amount.

Basing the formula on taxable income ensures that children can benefit from increases in the income of their parents in the same way that they would if they were in an intact family.

The rates of living allowance equal relevant social security benefit rates applicable on 1 January immediately preceding the start of the child support year: for a single liable parent – the gross single rate of an invalid's benefit; for a liable parent with a partner, but no dependent children – the gross married rate of an unemployment benefit; and for a liable parent with dependent children – the gross married rate of an invalid's benefit plus, from 1 April 2005, $2,522 for each child. Those benefit rates have been designed by the government to provide a modest standard of living and are adjusted annually based on movements in the Consumer Price Index.

It is generally accepted that expenditure on children rises as household income rises.

Submission 2

All calculations should be based on a percentage of disposable income, something everyone has some control and choice over.

Comment

The introduction to this report summarises the intent of the government of the time in introducing the child support scheme. The formula assessment provides a consistent, easily understood calculation of liability that provides an appropriate level of support and certainty for both liable parents and custodians in the majority of cases. The proposal, if accepted, would require each case to be assessed individually, a process that would involve unacceptably high compliance and administrative costs.

Submission 3

The bill needs to review the initial clause 29 formula. A better formula would have:

- a maximum amount required to be paid by the liable parent that reflects the cost of bringing up children;
- a living allowance as at present; and
- be based on a percentage of disposable income.

Comment

See comments above in relation to the suggested components of a better formula.

If the government were to agree to consider the development of a new formula for calculating child support liability, it would need to follow the Generic Tax Policy Process for considering major policy proposals. This would include extensive research, analysis and formal consultation before a decision could be made. Such a review would have a significant impact on the government's tax policy work programme which is already substantial.

Recommendation

That the submissions be declined.

Submission
(11 – Birthright New Zealand Incorporated National Executive)

The submission supports changes that improve the financial situation for children, and changes that would support the authorisation of Inland Revenue undertaking reviews.

Submission 1

Child support should be automatically deducted from salary and wages (at the source) or included in business tax payments.

Submission 2

The issue is covered in Part 1 of this report.

Comment

Involving third parties would be an unnecessary intrusion into the private affairs of liable persons who do choose to voluntarily comply with their obligations to pay financial support. Compliant liable persons should not be penalised for the actions of those who choose not to comply. If a liable parent does not comply, a deduction order is placed on salary or wages as a matter of course.

Recommendation

That the submission be declined.

Submission
(12 – Murray Bacon and Mark Shipman)

Submission 1

Family Court should have to evaluate parenting skills and resources and not just decide on the basis of deciding care to maximise child support/benefit recovery payments, to maximise the benefit cost to the government, as at present.

Comment

This bill does not deal with the role of, and procedures in, the Family Court. Therefore, the submission is not within the scope of the bill.

Submission 2

The Domestic Purposes Benefit should be funded by government on the basis of the needs of the parent. In particular, not providing full support when only partial support is warranted – for example, for a single child.

Comment

This bill does not deal with the basis of funding for social security benefits, including the Domestic Purposes Benefit. Therefore, the submission is not within the scope of the bill.

Submission 3

The non-custodial parent should be given all information relating to benefit applications and have the right to be heard.

Comment

This bill does not deal with the administration of social security benefits. Therefore, the submission is not within the scope of the bill.

Submission 4

When children are abducted, then child support should not be collected and forwarded to the abductor. Any assets of the abductor remaining in New Zealand should be made available to the remaining parent to assist in finding the children and returning them to New Zealand.

Comment

The Act defines a qualifying custodian as one who is the sole or principal provider of ongoing daily care for the child or who shares ongoing daily care substantially equally with another person. The Act does not require Inland Revenue to consider whether children are in the care of a custodian in contravention of a Court Order or parenting order, when determining whether to enforce the obligations of a liable parent under

the Act. The relevant offences and consequent penalties for removal of a child from New Zealand are provided for in the Care of Children Act 2004. The obligation to pay child support for such a child would terminate if the child ceased to be a New Zealand citizen or was no longer ordinarily resident in New Zealand.

Submission 5

Child support payment should be based on the degree of care in each household and the fixed cost of the essential needs of the children to be shared equally by both parents. The formula should take into account the child-care and household income of both parents, on equal terms.

Comment

The Act does recognise substantially equal sharing of care through an adjustment to the standard formula. The threshold in the Act of 40% of the nights in a child support year provides a tolerance around equal sharing. When the level of care falls short of 40% of the nights, the Act also provides for other aspects of care arrangements to be taken into account, such as: how the responsibility for decisions about the daily activities of the child is shared; who takes the child to and from school and supervises leisure activities; and how decisions about the education or healthcare of the child are made.

The Minister of Revenue has instructed officials to consider whether and to what extent, recognition should be given to lower levels of shared care. That work will take into account the proposed changes in the Australian child support scheme, noting the broader context of change in family law generally in which those changes have been developed.

In relation to the issue of New Zealand-based evidence of the real costs of children, both the Families Commission and the Ministry of Social Development (MSD) have explored developing a budget standards approach (one of the methodologies that contributed to the estimate of the costs of children in intact Australian families)[7] to estimate the costs of children and have recommended against progressing this approach.

Instead, MSD will be using living standards data to estimate equivalence scales. MSD will also be exploring the topic further as part of qualitative research to be carried out in respect of the evaluation of the Working for Families package.

When the results of that research become available, the information could contribute to any future consideration of a different basis on which to assess child support liability.

[7] ibid

Even in two-parent households it cannot be assumed that the parents contribute equal financial resources or provide equal levels of care. The development of an administrative formula that attempts to reflect the relative contributions of the parents to the household would need to follow the Generic Tax Policy Process for considering major policy proposals. This would include extensive research, analysis and formal consultation before a decision could be made. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

It should be noted that involvement in the child support scheme is voluntary unless the custodian is in receipt of a social security benefit, when an application for child support becomes compulsory. In the absence of benefit receipt by one of the parties the way is open for them to come to a private arrangement that avoids the need for State intervention.

Submission 6

Inland Revenue should provide statements, which clearly communicate the spousal support and child support components, the raw data from which the payments have been calculated, and provide confirmation that the monies have been paid to the recipient.

Comment

The Act provides for the assessment and collection by Inland Revenue of child support, but the collection only of domestic maintenance.[8] The jurisdiction for assessing the quantum of domestic maintenance lies with the Family Court.

When a person is liable for both child support and domestic maintenance the amounts are identified separately on notices of assessment and statements, as they are on notices of entitlement.

Confirmation to the liable person that monies have been paid to the payee is not possible as to do so would, by implication, reveal whether or not the payee is in receipt of a social security benefit.

Recommendation

Note that work is being undertaken on shared care, however, no changes are recommended in this bill.

[8] The term "spousal maintenance" was replaced with "domestic maintenance" in the Child Support Act 2005 to reflect that under the Family Proceedings Act 1980 or in accordance with a maintenance agreement, maintenance may be payable to a former spouse, civil union partner or de facto partner.

Submission
(13W – Judge P F Boshier)

Submission 1

It is unclear why objections can be made to appealable decisions under subpart 2 – section 89I and subpart 3 – section 89Z but not under subparts 4 and 5. My impression is that there should be a uniform procedure for dealing with all objections relating to decisions made by the Commissioner in respect of those matters contained in section 89A to 89ZE. As the Act now operates under section 93(c) where an objection has been disallowed in whole or in part, an objector can appeal to the Family Court against that decision.

Comment

Objections can be made to appealable decisions under subpart 2 – section 89I (prisoners, hospital patients, persons under 16) and subpart 4 – section 89Z (victims of sex offences).

There are no rights of objection to administrative determinations under the Act. An appeal process is provided for the new determinations under section 103A that is consistent for the appeal process against a determination under Part 6A or Part 6B.

Because determinations are made by the Commissioner on the recommendation of an independent review officer, it would be inappropriate for the Commissioner to also decide on an objection to that determination. In addition, the particular appeal provisions provided for in relation to subpart 3 are more tailored to the grounds for determining that the exemption does not apply.

Subpart 5 provides for the actions that the Commissioner must take in order to give effect to decisions or determinations made under subparts 2, 3 or 4. It does not contain any power for the Commissioner to make decisions that need to give rise to a right of objection or appeal.

Submission 2

I am unclear what section 96L(4) means – the extent of the Commissioner's knowledge is not defined. It appears the Commissioner has complete discretion as to what knowledge is imputed. It is unclear how such knowledge is acquired in the first place – there is no obligation on the Commissioner to disclose all matters which could be argued to be within the "knowledge" of the Commissioner.

Comment

The Commissioner is bound by the secrecy provisions in Part IV of the Tax Administration Act 1994, unless specifically provided otherwise, in relation to information that is held.

Submission 3

The issue is covered in Part 1 of this report.

Submission 4

Section 103D(3) is vague when it refers to different child support years. Does this mean the court can make retrospective orders which cover a number of years? To avoid uncertainty section 103D(3) should be made more specific.

Comment

The drafting of section 103D(3) is consistent with that in existing sections 96O (in relation to determinations under Part 6A) and section 118 (in relation to orders that may be made by the court).

Inland Revenue acknowledges that on the basis of case law precedents there is uncertainty about the ability for the Commissioner or the Family Court to make administrative determinations or departure orders with retrospective effect. The advice of the Solicitor-General has been sought on the appropriate means of obtaining clarification through the courts. A response has not yet been received.

It would create further uncertainty if the new provision were to be drafted differently.

Recommendation

That submissions 1 to 3 be declined.

That submission 4 be noted pending advice from the Solicitor-General.

Submission
(14W – Stuart Birks)

The submission supports the proposed changes for young liable parents, liability by a victim of a sex offence, and in relation to penalties.

There should be a comprehensive review of the child support legislation so that assessed child support liabilities can be clearly demonstrated to be fair and equitable and that the objectives of the Act are made consistent with other aspects of family law.

Comment

Officials do not consider that there is strong evidence that the current scheme, with its simple formula, does not produce an appropriate level of support and certainty for both liable parents and custodians in the majority of cases.

As a safeguard for liable parents who consider that the amount they are expected to pay, or for custodians who consider the amount they are entitled to receive, is unfair, either party could seek consideration by the Family Court of the special circumstances of their case. The administrative review process was subsequently introduced as a more informal, low-cost means of obtaining individual consideration.

If the government were to agree to consider the proposal it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Recommendation

That the submission be declined.

Submission
(15W – Paul McManaway)

Submission 1

Thought should be given to making more basic changes; changes that would support the equal and shared parenting of children and strong parent-child relationships in separated families.

Submission 2

This bill should not proceed and a complete public review should be undertaken of the child support law and administration.

Comment

The Act already makes provision for a variation to the standard formula in cases of substantially equal sharing. However, the proposals go beyond the scope of the Act, involving broader considerations in relation to family law generally.

If the government were to agree to consider the proposals it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Recommendation

Note that work is being undertaken on shared care, however, no changes are recommended in this bill.

Submission
(16 – Andy Lewis and Shelley Windley-Lewis)

Submission 1

The issue is covered in Part 1 of this report.

Submission 2

The capped income level should be reduced to bring contributions in line with the realistic costs of raising a child.

Submission 3

The living allowance provided in the formula should be altered to reflect the actual cost of raising children.

Submission 4

A mechanism for review of the custodial parent's allocation of contributions should be urgently implemented.

Comment

It is not clear whether the submissions 2 to 4 are limited to determinations that might be made by the Commissioner under new Part 6B. If they are intended to apply more generally to the Act they would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision.

Recommendation

That the submissions be declined.

Submission
(17 – Don Rowlands)

The bill should include provision for an additional exemption based on day-to-day care responsibilities between 20% and 40%.

Comment

The Minister of Revenue has instructed officials to consider the issue of whether and to what extent recognition should be given to lower levels of shared care. That work will take into account the proposed changes in the Australian child support scheme, noting the broader context of change in family law generally in which those changes have been developed. An issues paper on the subject is likely to be circulated for consultation later this year.

Recommendation

Note that work is being undertaken on shared care, however, no changes are recommended in this bill.

Submission
(18W – Raymond S Newman)

Submission 1

Child support payments should be capped for workers remunerated hourly at 50 hours per week.

Comment

A principle underpinning the Act is that the level of financial support is determined according to the capacity of the parents to provide. For a liable parent the basis of determining that capacity is taxable income. The Act already provides a "cap" through the maximum income amount. It would be inequitable to set different maximum income amounts according to the means by which liable parents receive their remuneration.

Submission 2

Costs of travel should be recoverable.

Comment

The Act already provides a ground for departure from the standard formula when the costs of maintaining a child are significantly affected because of high costs incurred by a liable parent or a custodian in enabling that liable parent access to the child. Costs of access are not considered to be high if they are not more than 5% of the child support income amount for the year.

Submission 3

A proportion of the liable parent payment should be accrued to assist in tertiary education.

Comment

Imposing conditions on the way in which child support is expended for the support of a child goes beyond the scope of the current scheme. It is intended to provide for the current needs of a child.

Recommendation

That the submissions be declined.

Submission
(19 – Martin Ryman)

The submitter proposes a system that starts from a basis of presumptive shared parenting.

Comment

The proposal goes beyond the scope of the Act. Although the Care of Children Act 2004 includes shared responsibilities for parenting within the principles relevant to a child's welfare and best interests, it does not go as far as making a presumption of shared parenting.

If the government were to agree to consider the proposal as a basis for a change in the child support scheme it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Recommendation

That the submissions be declined.

Submission
(20W – Solo Women as Parents)

The issue is covered in Part 1 of this report.

Submission
(21 –Parents for Children)

Submission 1

The only way to remove the root cause of the problems found in the Act is for a complete review of the current child support regime. Such a review should encourage widespread public debate as to what child support model will best provide for New Zealand's children.

Comment

Officials do not consider there is strong evidence that the current scheme, with its simple formula, does not produce an appropriate level of support and certainty for both liable parents and custodians in the majority of cases. However, they do acknowledge the need for a means of independent consideration for liable parents or custodians who feel that the amount they are expected to pay, or entitled to receive, is unfair. This is provided for through the administrative review process.

Out of approximately 175,000 liable parents in the year ended 30 June 2005, 2,417 took an application for administrative review. Similarly, 1,558 out of approximately 185,000 custodians applied for an administrative review. In 33 cases the further right to have the case considered by the Family Court was exercised, with the decision of the Commissioner being upheld in 75% of cases.

If the government were to agree to consider a complete review of the current child support regime, it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Submission 2

The "Donkin Method" for calculating child support provides a real solution for kiwi kids and parents that tinkering, yet again, with the Child Support Act 1991 cannot deliver.

Comment

The suggested "Donkin Method" assumes that each parent has independent means of support, so it does not address the situation where a family is without independent means of financial support, and the government accepts a shared responsibility for the care of the family by payment of a social security benefit. This was acknowledged by the submitters during their oral submission, and that it is not suitable for low-income families. Since almost three-quarters of custodians are in receipt of a sole parent social security benefit and there are many other low-income families represented in the scheme, it would be necessary to develop two systems.

If there is significant disparity between the financial positions of the parents it would not be possible for one to make their 50% contribution without some assistance from the State.

Providing a flat rate of child support based on the living allowances for children in the current child support formula would mean that many children would suffer a significant drop in living standards if high-income parents separate because they would no longer benefit from the full capacity to provide support of one of their parents.

Submission 3

The bill should not proceed and a public review of the current child support regime should take place.

Comment

The bill contains several important improvements to the child support scheme. Officials recommend that the bill proceed.

Recommendation

That the submissions be declined.

Submission
(22W – New Zealand Father and Child Society)

Submission 1

Waive liability for child support for liable parents under 21 years old if they are studying full time.

Comment

The exemption for liable parents is being made available not because they are merely participating in full-time education, but because their participation is compulsory until they reach age 16 years. They are unable to earn an income from which to meet their obligations to provide financial support.

Once young people reach age 16 years they can choose whether or not to continue in education.

Beyond the age at which compulsory attendance at school ceases, it could be considered discriminatory to determine an exemption from liability for child support on the basis of age.

Submission 2

DNA paternity testing should be made available for men who are incurring a child support liability.

Comment

The provisions relating to parentage testing are contained in the Family Proceedings Act 1980 and are not within the scope of this bill.

Submission 3

There should be across the board halving in the rate for penalties imposed in cases of unpaid child support.

Comment

The initial late payment penalty for financial support is significantly higher than that for tax because there is no use-of-money interest charge. Considerations for and against a use-of-money interest charge have been explored previously. Use-of-money interest would be complex and difficult to calculate and explain because of the frequent reassessments in some liable parents' accounts. For that reason it would also be highly resource-intensive with consequent high administration costs.

Officials consider that a penalty for late payment of child support obligations is necessary to provide an incentive for liable persons to pay in full, on time, so that no penalties are incurred.

Submission 4

There should be reconsideration of the child support formula to consider circumstances of both the caregiver and the liable parent and to recognise direct costs incurred by both parties in relation to the children.

Comment

The proposal would, if accepted, involve a major re-structuring of the child support scheme. If the government were to agree to consider the proposal it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Recommendation

That the submissions be declined.

Submission
(23W – Daryl Strachan)

The submission seeks clarification of the situation relating to departures from the formula assessment with retrospective effect.

Comment

Inland Revenue acknowledges that on the basis of case law precedents there is uncertainty about the ability of the Commissioner or the Family Court to make administrative determinations or departure orders with retrospective effect. The advice of the Solicitor-General has been sought on the appropriate means of obtaining clarification through the Courts. A response has not yet been received.

Recommendation

That the submission be noted pending advice from the Solicitor-General.

Submission
(24 – Peter Burns)

The submission does not specify in which aspects of the bill change is sought, and the submitter did not appear before the Committee to clarify his position.

Recommendation

That the submission be declined.

Submission
(25 – Nik Renwick)

Submission 1

The bill should be clear that it is for the financial operation of the Child Support Act and avoid any claim of "support of children".

Comment

Despite the submitter's perception, $136.2 million was paid out to non-beneficiary custodians in the year ended 30 June 2005.

Requiring Inland Revenue to monitor the expenditure of those monies would impose high administrative costs on the department and high compliance costs on custodians.

Submission 2

Address the financial inequities of shared or split care that arise under the Child Support Act to align with the original CS Act itself: "h) To ensure that equity exists between custodial and non-custodial parents, in respect of the costs of supporting children".

Comment

The Minister of Revenue has instructed officials to consider the issue of whether and to what extent recognition should be given to lower levels of shared care than the current 40% of nights threshold. An issues paper on the subject is likely to be circulated for consultation later this year.

Submission 3

The issue is covered in Part 1 of this report.

Submission 4

Remove the two-month limitation to appeals.

Comment

The inclusion of a time limit for appeals is consistent with the Legislation Advisory Committee's *Guidelines on Process & Content of Legislation.* Time limits provide certainty to persons affected and speed up the process without denying review. It is considered advisable to confer a power to extend the time limit on the appellate body, as has been done in this case. This mitigates the harsh inflexibility a strict time limit can cause, and allows the Court to extend the time limit to one that would be available if the application was for a departure under section 104 of the principal Act, if it considers that to be appropriate in the circumstances of the case.

Submission 5

The issue is covered in Part 1 of this report.

Submission 6

Allow applicants both options to have their case heard as a question on the original case or as a new case.

Comment

It is the view of the Principal Family Court Judge that the new appeal rights in clause 25 will allow the Family Court on hearing an appeal to make such order correcting the assessment to which the appeal relates as the circumstances require.

Submission 7

The issue is covered in Part 1 of this report.

Submission 8

Custodial parents who are meeting the primary purpose of providing for their children should not be levied Child Support, let alone penalties.

Comment

Custodial parents become liable for child support only in situations of split or shared care. Their obligation to contribute is consistent with the principles that underpin the Act. When parents have a liability to each other the amount payable by one is offset against the amount payable by the other so that only the parent with the higher liability has an amount to pay.

Submission 9

Recommend the bill be abandoned and a full review of the Child Support Act 1991 carried out.

Comment

If the government were to agree to a full review of the Act it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Recommendation

Note in relation to submissions 2 and 8 that work is being undertaken on shared care, however, no changes are recommended in this bill.

That submissions 1, 4, 6 and 9 be declined.

Submission
(26 – Child Advocacy Services)

Submission 1

Rewrite section 10 and 11 to reflect that where shared care of children is involved there should be no involvement in Child Support by either parent.

Submissions 2 to 6

The issue is covered in Part 1 of this report.

Comment

The provisions in clauses 10 and 11 amend the existing provisions relating to split and shared care of children. They allow the offsetting of the liability of one parent against the liability of the other parent to continue when one parent goes onto a social security benefit. It is only when a custodian is in receipt of a social security benefit that an application for child support is mandatory. Otherwise, parents do have a choice as to whether they are involved in the child support scheme.

The Minister of Revenue has instructed officials to consider the issue of whether and to what extent, recognition should be given to lower levels of shared care. That work will have regard to the proposed changes in the Australian child support scheme, noting the broader context of change in family law generally in which those changes have been developed. An issues paper on the subject is likely to be circulated for consultation later this year.

Recommendation

Note that work is being undertaken on shared care, however, no changes are recommended in this bill.

Submission
(27 – Families Apart Require Equality)

Submission 1

If the government wished to solve the child support debt problem it would introduce true equality between biological parents, i.e. Equal Shared Parenting providing for preferential equal physical custody.

Comment

The submission goes beyond the scope of the Child Support Act. Although the Care of Children Act 2004 includes shared responsibilities for parenting within the principles relevant to a child's welfare and best interests, it does not go as far as making a presumption of shared parenting.

If the government were to agree to consider the proposal as a basis for a change in the child support scheme it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Submission 2

The government must introduce free paternity testing immediately for all fathers who have been, or will be, liable to pay Child Support.

Comment

The provisions relating to parentage testing are contained in the Family Proceedings Act 1980 and are not within the scope of this bill. A person named as the other parent in an application for child support has the right, under the Act, to object to the decision if he disputes that he is the other parent.

Recommendation

Note that work is being undertaken on shared care, however, no changes are recommended in this bill.

Submission
(28W – Angela Gail Church)

Submission 1

The issue is covered in Part 1 of this report.

Submission 2

Why is the figure for shared care 40% and not 50%?

Comment

The submission takes a contrary position in relation to shared care from most other submissions, which advocate a lowered threshold from 40%. The Act requires "substantially equal sharing of care", but the 40% threshold provides a tolerance of around 50:50 sharing to allow some flexibility for situations where it is not possible for the care arrangements to be made that are absolutely equal.

Recommendation

Note that work is being undertaken on shared care, however, no changes are recommended in this bill.

Submission
(29 – New Zealand Institute of Chartered Accountants)

Submissions relating to clause 32

Submission 1

The rate of initial penalty in section 134(1)(a)(i) of the Child Support Act 1991 should be reduced from 10% to 5%.

Comment

The initial late payment penalty for financial support is significantly higher than that for tax because there is no use-of-money interest charge. Considerations for and against a use-of-money interest charge have been explored previously. Officials believe that use-of-money interest would be complex and difficult to calculate and explain because of the frequent reassessments in some liable parents' accounts. For that reason it would also be highly resource-intensive with consequent high administration costs.

Submission 2

Section 134(10)(a) of the Child Support Act 1991 should be amended to structure the penalty for late payment of financial support in the same way as for income tax, with the initial penalty applied in two stages: 1% applied immediately once overdue then the balance applied incrementally after the payment is seven days overdue.

Comment

Partially deferring the imposition of the late payment penalty was one of the policy options considered when officials were considering ways to deal with the growth of penalty debt. It was not possible to obtain accurate data on the number of liable persons who pay late but within seven days of the date on which payment is due. However, the information that was available suggested that the number is very low. A limited survey of liable persons who paid late but by the end of the month, that is, not necessarily within seven days, suggested that less than 0.6% pay late but within seven days. Officials also considered it likely that more liable persons, rather than being deterred by the 1% penalty, would change their payment behaviour to partial compliance by paying on or before the sixth day after the due date.

The potential reduction in potential Crown revenue was estimated at that time to be $1 million, while costs of implementing the necessary systems changes were estimated at between $250,000 and $350,000.

Submission 3

The rate of incremental penalty in sections 134(1)(b) and (c) of the Child Support Act 1991 should be reduced from 2% to 1%.

Comment

A reduction in the incremental penalty would reduce the burden on liable persons who are non-compliant in the future but would do nothing to encourage liable persons who have already incurred those penalties to get back into the payment system. The proposed write-off provisions will relieve liable parents who enter and comply with a payment arrangement of some of their existing penalty debt and encourage future compliance, so that no further incremental penalties are incurred.

Submission 4

Inland Revenue should issue a standard practice statement with guidelines on the application of the write-off provisions.

Comment

The proposed write-off of incremental penalty debt will be mandatory for liable persons who meet the requirements. Since Inland Revenue will not be exercising discretion, a standard practice statement would not appear to be necessary.

Recommendation

That the submission be declined.

Submissions relating to clause 24 are dealt with in Part 1

Submissions relating to clause 25

Submission 1

The right of appeal in relation to child support determinations should be to the Taxation Review Authority and not the Family Court.

Comment

The issue is covered in Part 1 of this report.

Submission 2

A child support dispute should be heard in the first instance by the Court (Family Court or Taxation Review Authority).

Comment

The administrative review process was introduced into the child support scheme in 1994 to address the perceived barriers of access to the Family Court. A significant barrier for both liable parents and custodians was the cost of legal representation. A further inequity arose when one party could afford to be legally represented and the other could not. Among other concerns was the relative formality of the courts – even though the Family Court is less formal than other courts, an appearance can be intimidating for those unused to the court process. The process was also successful in significantly reducing the delays that had been experienced by the parties in having their cases heard.

Recommendation

That the submissions be declined.

Submission
(30 – Mark Shipman)

The Select Committee should recommend that this bill does not proceed and that instead a complete public review be undertaken of the child support law and its administration.

Comment

Officials do not consider that there is strong evidence that the current scheme, with its simple formula, does not produce an appropriate level of support and certainty for both liable parents and custodians in the majority of cases. However, they do acknowledge the need for a means of independent consideration for liable parents or custodians who feel that the amount they are expected to pay, or entitled to receive, is unfair. This is provided for through the administrative review process.

Out of approximately 175,000 liable parents in the year ended 30 June 2005, 2,417 (1.4%) took an application for administrative review. Similarly, 1,558 (0.84%) out of approximately 185,000 custodians applied for an administrative review. In 33 cases the further right to have the case considered by the Family Court was exercised, with the decision of the Commissioner being upheld in 25 cases.

If the government were to agree to consider a complete review of the child support law and its administration, it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Recommendation

That the submission be declined.

Submission
(31 – Paul Rodney Sapsford)

The entire child support scheme should be overhauled in the interests of the child with both parents being recognised for their input into that child's development.

Comment

It is not clear from the submission which specific amendment in the bill is opposed.

If the government were to agree to the submission, it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Recommendation

That the submission be declined.

Submission
(32W – Jim Bailey)

The committee should return the bill to Parliament with the recommendation that it does not proceed and a complete public review be undertaken of the current child support regime and its administration.

Comment

If the government were to agree to the recommendation, it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Recommendation

That the submission be declined.

Submission
(33W – John Potter)

The committee should recommend that this bill does not proceed and that a complete public review be undertaken of the child support law and administration.

Comment

If the government were to agree to the recommendation, it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Recommendation

That the submission be declined.

Submission
(34W – Jan Thomas)

The committee should recommend that this bill does not proceed and that instead a complete public review be undertaken of the child support law an administration.

Comment

If the government were to agree to the recommendation, it would need to follow the Generic Tax Policy Process for considering major policy proposals, including extensive research, analysis and formal consultation before it would be in a position to make a decision. Such a review would have a significant impact on the government's tax policy work programme, which is already substantial.

Recommendation

That the submission be declined.

Part 3: Issues raised by officials

ISSUES RAISED BY INLAND REVENUE

Clauses 33 and 34

Issue: Changed implementation dates for some of the provisions that have become necessary as a result of the delays in the introduction and first reading of the bill

Submission
(Matter raised by officials)

Comment

The majority of the provisions in the bill, as introduced, are to come into force on the day after the date on which it receives Royal assent and this application date remains appropriate.

However, two provisions cannot be implemented concurrently with other provisions in the bill due to the complexity of developing the IT system that supports child support delivery. The bill provides that these two provisions (relating to allocation of payments to custodians as a priority over payments due to the Crown), were to come into effect on 1 April 2006, but that application date is no longer possible. Officials recommend that these provisions be implemented two months from the first of the month following the date of assent.

Recommendation

That the provisions for allocation of payments to custodians as a priority over payments due to the Crown in clauses 33 and 34, commence from the date that is two months from the first of the month following the date of assent.

Clause 32

Issue: Formula for calculating mandatory write-off of incremental penalties

Submission
(Matter raised by officials)

Comment

The detailed design of the implementation of the provisions in the bill has revealed that the formula for the mandatory write-off of incremental penalties contained in the bill will, in some cases, produce a small credit balance at the end of the repayment arrangement that will have to be allocated to another period in a liable person's account. These transfers will cause confusion when they appear on statements and will increase system transaction costs.

A revised formula has been designed that will ensure there are no residual credits at the end of repayment arrangements. The revised formula is:

$$r = \frac{(a \times c)}{b} - d$$

r is the amount of incremental penalty that is to be written off

a is the amount of the initial debt that has been paid since the payment agreement was entered into

b is the initial debt

c is the total amount of incremental penalties related to the initial debt of the liable person that were unpaid at the time that the payment agreement was entered into; or the total amount of incremental penalties related to the initial debt of the liable person that were unpaid at the commencement of the section

d is the total amount of incremental penalties related to the initial debt of the liable person that has already been written off under the arrangement.

Recommendation

That the formula in proposed subsections 135J(4) and 135K(6) for calculating the write-off of incremental penalties be replaced with the above formula as appropriate to avoid a residual credit at the end of some repayment arrangements that would have to be transferred to another period in the liable person's account.

Clauses 10 and 11

Issue: Enhancement to offsetting provisions

Submission
(Matter raised by officials)

Comment

The detailed design of the implementation of the provisions in the bill has revealed an opportunity for an enhancement to the offsetting provisions in clauses 10 and 11.

It was intended that the new offsetting arrangements would be implemented manually as it was still not possible to automate the process. However, in the course of the analysis and design work necessary for implementation of the proposal, an automated system solution has been identified that will allow offsetting to occur without any manual intervention.

There are currently approximately 3,900 cases where parents are liable to pay child support to each other and one is a beneficiary, but there has been no application for offsetting. It is proposed to convert all these cases so that the non-beneficiary parent can gain the advantage of offsetting rather than pay the full amount and receive a small payment from the beneficiary parent. The conversions would have to be effective from the beginning of a calendar month.

Recommendation

That clauses 10 and 11 be amended to allow full automation of offsetting when both parents are liable for child support and one parent is in receipt of a social security benefit, with existing cases to be converted from the beginning of the month following Royal assent.

Clause 9

Issue: Meaning of term "living allowance"

Submission
(Matter raised by officials)

Comment

The changes in clause 9 to the living allowance provisions in the principal Act were introduced to correct amendments to the living allowance provisions in the principal Act made by the Taxation (Working for Families) Act 2004. Those changes were included in the Statutes Amendment Bill (No 5) and enacted as the Child Support Amendment Act (No 2) 2005, as they were necessary to validate child support assessments for the current child support year and assessments soon to be issued for the 2006-07 child support year. However, the amendments in the Child Support Amendment Act (No 2) 2005 fall short of achieving the full intent of ensuring that the living allowances are correctly inflation-adjusted in future child support years, as provided for in clause 9 of the bill.

A further amendment to the living allowance provisions in the principal Act is necessary to ensure that living allowances will be correctly inflation-adjusted in the 2007-08 child support year and subsequent child support years.

Recommendation

That the bill be amended by substituting clause 9 with a new provision, which will build on amendments in the Child Support Amendment Act (No 2) 2005 to ensure that the living allowances are correctly inflation-adjusted in future child support years.