Child Support Amendment Bill

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

September 2012

Prepared by the Policy Advice Division of Inland Revenue

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Policy issues

OVERVIEW

Introduced in 1992, the New Zealand child support scheme helps to provide financial support for over 210,000 children. Although many parents reach private agreement on their financial contributions and care arrangements, many cannot. The scheme, therefore, provides a back-up for those parents who cannot mutually agree on their financial contributions to support their children. It also applies when the parent who is the primary caregiver receives a state-provided benefit.

While the current child support scheme provides a relatively straightforward way of calculating child support liability for the majority of parents, there are concerns that the scheme is now out of date.

The amendments in the bill aim to reduce these and other concerns. The changes provide for a revised assessment calculation for child support payments that takes a wider range of individual circumstances and capacities to pay into account. The bill also includes changes to the rules relating to the payment of child support, the imposition of penalties, and the writing-off of penalties.

Broadly, the changes in the bill fall into three categories:

- a new child support calculation formula;
- secondary changes to update the child support scheme; and
- amendments to the payment, penalty and debt rules for child support.

Revised child support formula

The new formula introduced in the bill will provide a more equitable system of financial support in a variety of circumstances. In particular, it will better reflect many of the social and legal changes that have occurred since the introduction of the current scheme, such as the greater emphasis placed on separated parents sharing the care of and financial responsibility for their children. This in turn will increase the incentives for parents to meet their child support obligations.

The new formula bases child support payments on:

- a wider recognition of care of children, based, in the first instance, on there being care of at least 28 percent of nights in a year;
- the income of both parents; and
- estimated average expenditures for raising children.

Secondary changes to update the child support scheme

The bill also includes amendments which affect the operation of the child support formula and scheme more generally. The amendments:

- allow Inland Revenue to rely on parenting agreements and orders when establishing care levels;
- introduce a Commissioner's discretion to make it easier for significant daytime care to be recognised for shared-care purposes in addition to nights;
- more closely align the definition of "income" for child support purposes with the broader definition of "family scheme income" for Working for Families tax credit purposes;
- introduce a Commissioner's discretion to allow, in certain circumstances, certain payments to be recognised for child support payment purposes;
- recognise re-establishment costs, following a separation, as an administrative review ground in certain circumstances; and
- reduce the qualifying age of children subject to the child support scheme from under 19 years to under 18, unless they are 18 years and enrolled in full-time secondary education.

Changes to payment, penalties and write-off rules

The rules relating to payment, penalties and the write-off of child support debt play an important role in encouraging parents to meet their child support obligations on time. A system that is overly penal and inflexible can lead to very high debt levels that discourage parents from contacting Inland Revenue and arranging payment. The changes in the bill are aimed at encouraging parents to make timely payments of child support. To that end, the bill:

- allows for compulsory deductions of child support from the employment income of paying parents;
- introduces a new two-stage initial penalty, with the current full 10 percent only being charged if the debt remains unpaid after 7 days;
- reduces the incremental monthly penalty from 2 percent to 1 percent after a year of non-compliance;
- changes the circumstances in which penalties can be written off, including when a paying parent enters into an instalment arrangement or is in serious hardship, when debt recovery is a demonstrably inefficient use of Inland Revenue's resources, or when only a low level of penalty debt is outstanding; and
- allows Inland Revenue to write off assessed debt owed to the Crown, in relation to a receiving carer who is on a benefit, on serious hardship grounds.

Application dates

The amendments proposed in the bill will apply in two phases. The bill currently states that the new child support formula will apply for assessment periods from 1 April 2013, with all other changes to the child support scheme applying from 1 April 2014.

It should be noted that these implementation dates are currently under discussion with Ministers, and are due to be considered by Cabinet in late September. Further details will be submitted to the Committee once this consideration has taken place.

General theme of the submissions received

Sixty written submissions were received on a variety of issues relating to the bill. These ranged from holistic views on all of the changes taken together, to comments on specific proposed amendments.

There was no overarching theme that could be gleaned from the submissions received, with views instead ranging from the very supportive, to vociferous opposition. This is not surprising given the inherent potential for divergent views on the subject of child support reform.

Nearly half of the submissions either supported the proposed amendments in their entirety or alternatively, elements within the package. Within this group submissions said that either the reforms did not go far enough or that other specific changes should be made.

Those who generally did not support the changes in the bill provided a variety of reasons to support their views.

This report identifies and provides comment and recommendations on the following matters:

- main policy issues raised in submissions (generally raised by a number of parties);
- other policy issues raised in submissions;
- further policy issues raised by the Social Services Committee during the hearing of oral evidence; and
- further policy issues raised by officials.

In addition, other technical and remedial legislative issues raised in submissions and by officials are included for the Committee's consideration.

MAIN POLICY ISSUES RAISED IN SUBMISSIONS RECEIVED

Issue: Further research should be conducted before any changes to the child support scheme are made

Submissions

(Matter raised primarily by Auckland Coalition for Safety of Women and Children, Auckland Women's Centre, Dunedin Community Law Centre, Nicola Gavey, Vivienne Elizabeth, Julia Tolmie, Prue Hyman, the Equal Justice Project, Women's Studies Association)

There is currently a lack of comprehensive data and research on child support issues, in particular in a New Zealand context. No significant changes should be made to the child support scheme until further research is conducted on the effects of any change.

Comment

In developing the Government's September 2010 discussion document on child support, *Supporting children,* officials considered a variety of domestic and international research on child support matters. This included a significant amount of Australian research undertaken as part of similar changes made to the Australian child support formula in 2008.

Recent New Zealand research specifically undertaken to inform the discussion document included:

- *Costs of raising children* by Iris Claus, Paul Kilford, Geoff Leggett and Xin Wang; and
- *What separating parents need when making care arrangements for their children* by the Families Commission.

The discussion document provided detailed analysis of both the current scheme and options for updating the scheme. As well as consideration of research undertaken and specific submissions received on the discussion document, a dedicated website was established to ask readers to respond to a series of questions based on the options included in the document. There were 2,272 participants in this online consultation, comprising:

- 834 receiving parents (37 percent);
- 753 paying parents (33 percent); and
- 685 "other" parties (30 percent), including those who both pay and receive child support, other family members, members of representative organisations and advocates involved in child support policy such as lawyers and academics.

Results based on the proposed formula changes were also modelled and summarised in the regulatory impact statement prepared by Inland Revenue on the child support scheme reforms.

Recommendation

That the submissions be declined.

Issue: The proposed changes will have a negative effect on caregivers

Submissions
(Matter raised primarily by Auckland Coalition for Safety of Women and Children, Auckland Women's Centre, Child Poverty Action Group, Families Commission, Human Rights Commission, Lesley Patterson, Nicola Gavey, Vivienne Elizabeth, Julia Tolmie, Prue Hyman, Women's Studies Association)

The changes in the bill will disproportionately affect those who will be least able to withstand any reduction in income. There is a concern that caregivers, in particular mothers, will be adversely affected to the detriment of their children.

Comment

The overall objective of the revised child support formula is to achieve an equitable outcome based on up-to-date costs of raising children, both parents' income and a greater range of care levels. This will encourage more parents to pay their outstanding child support liabilities voluntarily, benefitting the children involved.

There are wide-ranging views about what a fairer and more effective scheme might look like and how to achieve this. It will never be possible to design rules to satisfy all concerned as there are too many conflicting interests and points of view.

However, if a child support formula were being established for the first time, the principles behind the proposed formula would provide a sound basis for calculating child support payments and entitlements. Officials consider that the proposed formula provides the best opportunity for introducing a revised formula that represents a fair reflection of the expenditure for raising children, the parents' contribution to care and the parents' capacity to pay. For these reasons the proposed child support formula is considered a significant improvement over the current one and will benefit, in particular, all parents who become part of the child support scheme after the changes are made.

It is recognised that moving from one method of calculating child support to another will, in the short term, have both a positive and negative financial effect for parents already in the scheme, and will have a material financial impact for a minority of parents. It should be noted, however, that as a percentage of parents, those affected adversely are as likely to be paying parents as receiving parents.

Overall, it is estimated that approximately 70,500 parents will be better off under the changes (that is, they will receive more or pay less child support) and approximately 62,500 worse off (that is, they will receive less or pay more).

For the majority of parents whose child support will be affected, the change in child support received and paid is likely to be between plus or minus $66 per month (plus or minus $800 per year).

In addition, for a large percentage of receiving and paying parents (60 percent and 40 percent respectively), the changes to the formula would not result in any change in the amounts received or paid. For approximately 140,000 parents, therefore, there would be no change. This group would consist of some of the most financially vulnerable parents – those who would continue to either receive a sole-parent benefit (and therefore not receive child support payments directly) or continue to pay the minimum contribution because their income level is below the minimum level for child support purposes.

The approach taken during the review was to categorise the parents into paying parents and receiving parents. Being a receiving parent is generally indicative of being the primary caregiver, and this can be the mother, the father, or another person. That said, as the majority (but certainly not all) of receiving parents are female, women are more likely to be adversely affected by this change.

Taking both female paying and female receiving parents into account, it is projected that approximately 26,000 of these parents would receive more or pay less child support and approximately 31,500 of these parents would receive less or pay more child support. The majority (approximately 83,000) would be unaffected – for example, receiving parents who remain on a sole parent benefit would continue to receive full benefit levels.

Taking both male paying and male receiving parents into account, it is projected that approximately 44,250 of these parents would receive more or pay less child support and approximately 30,750 of these parents would receive less or pay more child support. Approximately 56,250 would be unaffected by the proposed formula.

Recommendation

That the submissions be noted.

Issue: Child support payments should be passed on to beneficiaries instead of being retained by the Crown

Submissions
(Matter raised primarily by Auckland Coalition for Safety of Women and Children, Auckland Women's Centre, Child Poverty Action Group, Families Commission, Office of the Children's Commissioner, Prue Hyman, Women's Studies Association, Anne Busse)

The child support system could contribute to decreasing child poverty if the Crown passed on child support payments to sole parents on state-provided benefits. This would be an effective and efficient method of reducing poverty and increasing income support for affected families.

Comment

Currently, New Zealand does have a partial system of passing on child support payments in that a receiving parent receives any child support amount paid over and above the benefit they receive. They are, however, guaranteed as a minimum, the benefit amount.

Most countries that have introduced a full pass-on system have used it to emphasise the welfare of the children when child poverty and/or poor child support payment rates have been of central concern.

Although alleviating child poverty is not a specific policy objective of the proposed measures in the bill, and the Child Support Act more generally, indirectly the measures will assist by encouraging parents to take responsibility for the financial support of their children, by paying their outstanding child support liabilities voluntarily and on time. Child poverty is a wider issue than child support as poverty can also arise when parents live together.

While there is some international evidence to show that a child support pass-on system can improve collection rates and help alleviate child poverty in certain circumstances, its introduction would involve a very significant fiscal cost to the Government. This cost would be reduced only if benefits were wholly or partly offset against child support payments received, similar to that which already occurs.

The Crown entitlement recapture that has occurred in each of the past six years below shows the potential amounts that could be involved for a full child support pass-on system.

Child support year	Crown recapture ($m)	Proportion collected	100% estimated ($m)
2007	161.0	83.48%	192.9
2008	152.1	80.56%	188.8
2009	152.2	77.57%	196.2
2010	161.2	74.97%	215.0
2011	159.9	72.08%	221.8
2012	155.5	67.01%	232.1

As noted, these amounts would be reduced if the pass-on was in some way restricted, or if associated cost savings arose for the Government from a reduction in other benefits being made at the same time (for example, special needs grants). The amount reduced would depend on the ultimate make-up of any package designed, but the net overall cost would still represent a significant cost to the Government.

Offsetting benefit payments against child support received would create uncertainty, and in some cases hardship, for beneficiaries and their children, as the overall amount they received would be dependent on whether and how promptly the other parent paid his or her child support contribution.

Pass-on is often cited as a way of encouraging parents to pay their child support payments as the payment goes to the other parent or caregiver, rather than to the Crown. A point to note is that pass-on does not necessarily ensure that child support payments are applied for the benefit of the child and this may, as one submission noted, cause additional tensions between some parents.

To the extent that pass-on is used to assist collection, officials note that collection of child support is traditionally high in New Zealand by international standards – with around 89 percent of all core assessment collected over time.

Officials note that if further measures were to be considered to help alleviate child poverty, this should ideally be considered in a wider context than just when parents live apart. This work would likely need to be co-ordinated by the Ministry of Social Development, and consider a number of measures. In that context, it should be noted that the Government is soon to release its White Paper for Vulnerable Children.

Recommendation

That the submissions be declined.

Issue: Guaranteed child support payments (also referred to as the "advanced payment scheme")

Submissions
(Matter raised primarily by Office of the Children's Commission, Lesley Patterson, Prue Hyman, Equal Justice Project, Women's Studies Association)

The Crown should automatically advance child support payments to receiving parents to avoid the instability and delay of payments to parents. The Crown would then recoup any child support payments received.

Comment

The domestic purposes benefit already effectively guarantees payments for basic necessities to a child's caregiver. Child support received from a paying parent is only passed on to the custodial parent if it is in excess of a domestic purposes benefit received.

When caregivers are not receiving a benefit, child support is only paid to the custodial parent once it is received by Inland Revenue. The child support scheme, both currently and proposed, does not provide any guaranteed payments as its aim is to set out and administer rights and obligations between the parents of a child.

Extending the scheme to provide guaranteed payments would require a judgement call to be made in determining basic needs. This is not the role of the child support scheme. More targeted solutions (for example, special needs grants) assessed by the Ministry of Social Development are likely to be more appropriate in such circumstances.

A guaranteed payment in all cases where child support was not paid would be a significant risk for the Government and, in many cases, involve undue fiscal cost to the Crown – and, ultimately, for taxpayers. It could also have a negative effect on incentives for paying parents to pay on time.

Various measures in the bill, including automatically deducting child support from all salary and wages, should facilitate timely payments to custodial parents.

Recommendation

That the submissions be declined.

Issue: Incorporating the promotion of child well-being as a core objective of the Child Support Act

Submissions
(Matter raised primarily by Auckland Coalition for Safety of Women and Children, Child Poverty Action Group, Dunedin Community Law Centre, Families Commission, Human Rights Commission, Law Society of New Zealand, Office of the Children's Commissioner, Equal Justice Project, Women's Studies Association)

Consistent with Article 3 of UNCROC, the bill should require that the Child Support Act's objects provision be amended to incorporate a child's best interests.

Comment

There was concern in some submissions that the bill proposed removing section 4(c) of the Child Support Act that affirmed the rights of caregivers of children to receive financial support for those children from their non-custodial parents. Although it is proposed that this objective be removed, it is to be replaced by new section 4(fa) in the bill that proposes the insertion of the following objective that is essentially the same, only using updated terms:

> "To affirm the rights of carers who provide significant care of children to receive financial support in respect of those children from a parent or parents of the children."

It has also been submitted that this should be extended further. For example:

- The Human Rights Commission and Law Commission contend that the objects provision should be amended to require that financial arrangements made to support a child reflect and promote a child's needs and best interests.
- The Office of the Children's Commissioner proposes that the objective should be "to affirm the right of children to be maintained by their parents and the promotion of their on-going wellbeing and healthy development following parental separation" and "to require that, in all decisions and actions made under the Act, the welfare and best interests of the child shall be a primary consideration."

Including overarching objectives in the Child Support Act that are specifically centred on the welfare and best interests of the child would not fit well within the Child Support Act and the child support scheme more generally. This is because the Child Support Act is fundamentally about the payment and receipt of child support. While an effective child support scheme that collects and distributes financial support efficiently is undoubtedly in a child's best interest, making this an explicit objective would place the administrator of the Act, Inland Revenue, in the position of having to establish in each child support case, whether the individual measures in the Act, on their own, achieved that objective.

The British example given by the Office of the Children's Commissioner highlights this point, as the object in that case is limited to "…. **the exercise of any discretionary power conferred by this Act** …. shall have regard to the welfare of the child likely to be affected by his decision." While in principle this type of more restricted objective may be desirable, it should be noted that even extending the objectives that far would, implicitly, require Inland Revenue to consider what is in the best interest of the child – an area of judgement that the department may not be best placed to make.

To that end, one option that could be considered would be for Inland Revenue to consult with a body better placed to determine the welfare and needs of children (for example, the Children's Commissioner) before setting any administrative guidelines relating to the exercise of a discretionary power conferred to it under the Child Support Act.

Recommendation

That the submissions be noted.

It is recommended that when Inland Revenue sets administrative guidelines relating to the exercise of any discretionary power conferred to it under the Child Support Act, it should first consult with the Children's Commissioner.

Issue: The 28 percent care threshold at which recognition is given in the proposed child support formula is too low

Submissions
(Matter primarily raised by Auckland Coalition for Safety of Women and Children, Auckland Women's Centre, Child Poverty Action Group, Dunedin Community Law Centre, Francis and Julia Quirke, Prue Hyman, Suzanne Edwards)

The proposed care threshold at which recognition is first given in the proposed child support formula is too low, and does not take into account that the primary financial burden for many costs remains with the principal caregiver.

Comment

In proposing the 28 percent level at which care should be recognised for child support purposes, the following criteria were taken into account:

- the level of regular and shared care that starts to give rise to dual costs;
- how the extra costs are borne by each parent;
- the degree of complexity that the child support scheme should reasonably bear;
- the financial impact of any change, as it affects paying parents, receiving parents, children, and when the child support offsets benefit payments, the Government;
- the degree to which the approach encourages paying parents to comply; and
- the costs involved in implementing the approach.

Various levels of care were considered to provide recognition to those paying parents who provide high levels of care, but who are unable to satisfy the current 40 percent of nights shared-care threshold or "substantially equal" care test.

In addition to the option proposed (to recognise, on a tiered basis, care in excess of 28 percent – on average two nights a week), the following options were also considered:

- care in excess of 14 percent of care (on average one night a week);
- care in excess of one-third of care (to align with Working for Families tax credits); and
- retaining the current 40 percent of care threshold.

Recognition at 14 percent is the threshold adopted in some other jurisdictions (for example, in Australia and Britain). Although this option would provide recognition to more paying parents who care for their children, it may be seen as too generous, particularly if the majority of everyday and other significant one-off costs are still borne by receiving parents. It would also involve a greater fiscal cost as more child support liabilities would be reduced, thereby further reducing the amount received by the Government to offset benefit payments to receiving parents.

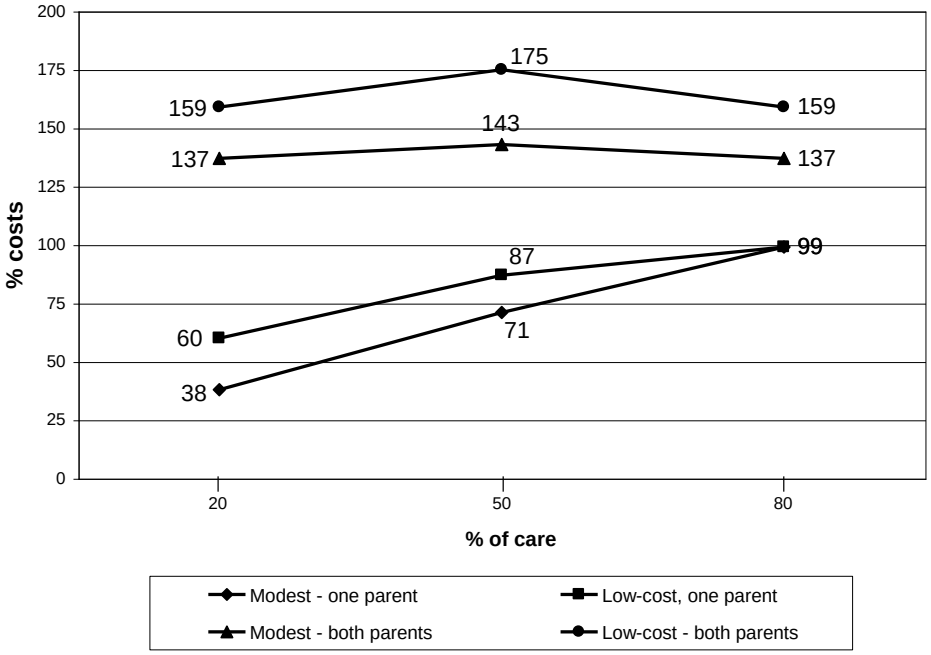
Conversely, providing recognition at a higher threshold may mean that parents who incur a significant level of care and its associated costs are not provided with any recognition for the care they provide. There is no one correct level of care, it is instead ultimately a question of judgement based on the criteria noted above.

There is general agreement that the costs associated with shared care of a child are higher than when one parent has sole care. The major cause is the need to duplicate housing and related costs, such as utilities, household furnishings, play and study space, toys and play equipment, and additional transport costs. However there is no specific New Zealand data on the differences in costs, and who bears the costs, between shared care levels at 40 percent and 28 percent.

Research by Paul Henman for the Australian Ministerial Taskforce on Child Support has helped to provide some insight into the question of how additional costs are likely to be borne.

The findings (illustrated below) show that sizable additional costs are likely to arise even when a parent has only a 20 percent share of a child's care, implying that the shared-care threshold should be substantially lower than the 40 percent of nights currently used.

Estimated average shared care costs as proportion of 100 percent care situation in Australia



Percentage of estimated average total costs incurred by each parent

% of shared care	Low Cost		Modest	
	Receiving parent	Paying parent	Receiving parent	Paying parent
80:20	62	38	72	28
50:50	50	50	50	50

It is worth noting that the recognition provided to a parent in the proposed formula in the bill does depend on the level of care provided (the recognition being tiered), with 28 percent merely being the lowest qualifying care recognised.

Recommendation

That the submissions be declined.

Issue: The child support formula should not apply to equal shared-care situations

Submissions

(Matter primarily raised by Adam Simpson, Mark Richardson, Pam Hulls, Robert Montgomery, Sally Marr, Tim Monck-Mason, Troy Shoebridge)

In cases where the care of a child is shared equally (50% each), the child support formula should not apply.

Comment

The submissions received on this point are based on the premise that as the parents are sharing the care of the child and all the associated costs equally, there should be no need for any financial adjustment to be made between parents.

This approach ignores the possibility of parents having materially different incomes and, therefore, materially different expenditures to support their children. The essential features of the proposed formula are that:

- the deemed expenditure for raising children directly reflects both parents' income; and
- this expenditure is distributed between parents according to their respective share of that combined income and their level of care of the child.

The aim of the new formula is to replicate, as far as possible, the financial arrangements that would exist if the parents were living together (notwithstanding that separation often causes a decline in parents' living standards). Failure to do this may ultimately result in an unfair outcome for the parents and a significant drop in living standards for the children.

Recommendation

That the submissions be declined.

Issue: Transitional issues for departures

Submission
(Matter raised by the New Zealand Law Society)

It is unclear whether the bill will apply retrospectively if there is a successful application for a departure from an assessment that extends beyond the implementation date for the new formula. The existing departures should remain in place until the order expires or there is a further application for variation or discharge.

Comment

It is agreed that transitional provisions will be required to deal with existing applications for a departure from an assessment arising from an administrative review that extends beyond the implementation date for the new formula. Although Inland Revenue is currently discouraging departures that go beyond the likely implementation date, some may remain.

As noted in the Law Society's submission, for some parents the departure may no longer be appropriate when the new formula is in place, while for others the rationale for a departure may still be valid.

It is therefore recommended that the new formula apply from the implementation date, in the first instance, for departures arising from administrative reviews that extend beyond the implementation date. However, it is also recommended that the Commissioner of Inland Revenue should be given the discretion to continue, where appropriate, with existing departures that go beyond the implementation date when the departure is based on issues or elements that are not taken into account in the new formula calculation.

For court-ordered departures that go beyond the implementation date, it is recommended that these orders should continue until the order expires or one of the parties applies for another departure order or applies to vary the order in some other way.

Recommendation

That the submission be partially accepted, with the Commissioner of Inland Revenue given the discretion to continue with existing departures arising from administrative reviews that go beyond the implementation date when the departure is based on issues that are not taken into account under the new formula.

For court-ordered departures that go beyond the implementation date, it is recommended that these orders should continue until the order expires or one of the parties applies for another departure order.

Issue: Privacy and cultural concerns with the automatic deduction of child support from paying parents' salary and wages

Submissions
(Matter primarily raised by the Legislation Advisory Committee, Mark Richardson, Sally Marr, Troy Shoebridge)

Concerns have been raised about the automatic deduction of child support from paying parents' salary and wages, which could result in privacy and cultural issues with employers having knowledge of employees' child support details.

Comment

Although the Office of the Privacy Commissioner had concerns with the automatic deduction of child support from paying parents' salary and wages, on balance they concluded that the public benefit (including the desire to prevent people from falling into arrears and debt) appeared to justify the privacy impacts on compliant individuals.

Recognising that some employees may rightly have legitimate concerns about employers being informed of their child support affairs, however, it is recommended that the Commissioner of Inland Revenue be given the discretion where there are legitimate privacy, cultural or other concerns, and alternative payment options have been provided, not to automatically deduct child support payments from salary and wages.

Recommendation

That the submissions be partially accepted, with the Commissioner of Inland Revenue given the discretion, where there are legitimate privacy, cultural or other concerns, and alternative payment options have been provided, not to automatically deduct child support payments from salary and wages.

Issue: The proposed child support formula is too complex

Submission
(Matter raised primarily by the New Zealand Law Society)

The proposed child support formula is too complex and should be simplified so that it reflects the intentions of a child support scheme – one that is simple, efficient, equitable and transparent. For example, consideration should be given to reducing the split for the percentages of average weekly earnings used in proposed new schedule 2 in the bill to three groupings.

Comment

Although individual elements of the proposed child support formula could, in theory, be considered in isolation, taking all the elements into account results in a more cohesive and comprehensive change to the formula that incorporates:

- estimated average expenditures for raising children;
- varying levels of care; and
- the income of both parents.

Incorporating just one or two of these options would limit the overall impact and effectiveness of any changes and would, in officials' view, represent a significantly less comprehensive, equitable and transparent solution. Sacrificing this for greater simplicity is not recommended.

It should also be noted that 69 percent of respondents to the online consultation undertaken thought that all the factors should be used to determine child support payments.

That said, the proposed child support formula is more complex, particularly when a parent has multiple relationships, than the one currently used. However, parents or other affected parties will not be expected to undertake the calculations themselves. Inland Revenue's systems will undertake all calculations required to determine liabilities and entitlements. For parents and other carers wishing to undertake their own estimations, comprehensive, yet easy-to-use online calculators, will be provided, together with explanations of the principles sitting behind the calculations and worked examples. This will assist transparency, subject to privacy constraints, such as not revealing the income of the other parent.

In these circumstances, reducing the split for the percentages of average weekly earnings used in schedule 2, for example, would not make the changes any simpler.

Further, the approach proposed is, in officials' view, preferable to starting from the basis of a more simple formula, and moving on to cater for different circumstances at a later date. Adopting this approach would lead to more confusion for parents, as the law (setting out the basis for child support calculations) would change on a regular basis. It would also lead to significant system and administrative concerns for Inland Revenue in implementing an ever-changing child support scheme.

Recommendation

That the submission be declined, but it be noted that parents or other affected parties will not be expected to undertake the child support formula calculations themselves. Inland Revenue's systems will undertake these calculations to determine all liabilities and entitlements.

Issue: Ability for parents to enter into binding voluntary agreements

Submission
(New Zealand Law Society)

Currently, voluntary agreements made between parents can be displaced by a successful formula assessment application for child support under the Child Support Act. It is submitted that, if the receiving party is not in receipt of a social security benefit for a child, voluntary and independent agreements made between parents should be binding until the parties or the Family Court agree to vary the agreement. If the recipient becomes a beneficiary, then the formula assessment could be made at that time.

Alternatively, consideration should be given to adopting a two-tiered approach which would provide for:

- a binding child support agreement only where each party has received independent legal advice; and
- a child support agreement that is more flexible and which is designed for parties not ready to bind to a long-term commitment.

Comment

Officials support the tenet and substance of this submission and agree that wherever possible, it is better for parents to reach a mutually agreeable outcome without redress to the child support scheme.

There are, however, some potential questions that would need to be carefully considered before this measure could be implemented – for example, what would constitute a binding agreement for child support purposes, where the boundaries between binding and non-binding agreements would lie, and how such a provision would interact with the Care of Children Act 2004 and the Property (Relationships) Act 1976.

Concerns around the ability of one parent to potentially exert undue pressure on another would also need to be dealt with, along with the potential consequences of one party's situation (for example, their financial position) changing considerably after an agreement has been entered into.

Officials support this submission in principle and consider that it is an issue worth considering further, but that further detailed policy work should be undertaken first. To that end, it is recommended that Inland Revenue discuss this matter with the Ministry of Justice with a view to reporting back to Ministers on next steps.

Recommendation

That the submission be noted and that Inland Revenue discuss this matter with the Ministry of Justice to identify whether further policy work is needed and, if so, report to joint Ministers on next steps.

Issue: "Cost of children" calculations for children under five

Submissions
(Matter primarily raised by Child Poverty Action Group, Maxine Ford, F&J Quirke)

The "cost of children" calculations contained in schedule 2 of the bill do not sufficiently cater for children under the age of five, either in terms of the opportunity cost of foregone earnings associated with looking after young children or, alternatively, the high cost of childcare.

Comment

The table that forms the basis of schedule 2 in the bill endeavours to provide for childcare, and some degree of lost earnings, by applying the higher cost of raising 5 to 12 year olds also to 0 to 4 year olds (given that childcare costs are likely to be highest for very young children).

Given data constraints, estimates of the cost of raising children in New Zealand did not separately calculate the costs of raising children in the 0 to 4 year age group.

However, we note that the Australian studies undertaken for the purposes of designing their child support formula did include a more detailed age breakdown. Research undertaken in 2005 indicated that, for middle income (A$50,000–$60,000) families, the costs associated with raising a child aged 0 to 4 years was, as a percentage of income, between 4 to 8% lower than the cost of raising a child in the 5 to 12 year old group, as follows:

Gross costs of children as a percentage of gross family income

Number of children	0-4 age range	5-12 age range
1	10%	14%
2	16%	22%
3	20%	28%
4+	24%	33%

These costs do not include childcare costs or opportunity costs, such as forgone earnings while looking after children. Conversely, they do not take into account childcare subsidies.

Given that New Zealand's study produced broadly consistent results to those of Australia, there is no reason to assume that this lower cost for 0 to 4 year olds would not also exist in New Zealand.

The Australian approach taken was to combine the two age bands and apply the percentages of the older group, which are higher, effectively providing some recognition of the costs of childcare that can be faced by the parent who has major care of a child under five and wishes to undertake paid work, and the opportunity costs that custodial parents face when children are very young.

This approach has also been followed in the proposed New Zealand changes, in the child expenditure table contained in schedule 2 in the bill. Providing recognition beyond this level for indirect costs such as opportunity costs is a debatable issue given the purpose of the child support scheme is to focus on the direct cost of the child.

Recommendation

That the submissions be declined.

OTHER POLICY MATTERS RAISED IN SUBMISSIONS

Issue: Providing for a uniform commencement date of the proposed changes

Submission
(New Zealand Law Society)

Currently, it is proposed that the amendments in the bill apply in two phases. All the changes should instead be introduced on the same date, rather than applied across two years (including bringing forward the reduction in the qualifying age for children from age 19 to 18).

Comment

The bill currently states that the new child support formula will apply for assessment periods from 1 April 2013, with all other changes to the child support scheme applying from 1 April 2014.

It should be noted that these implementation dates are currently under discussion with Ministers, and are due to be considered by Cabinet in late September. Further details will therefore be submitted to the Committee once this consideration has taken place.

Consideration was given to whether a single implementation would be preferable. Although introduction on a single date could potentially be less confusing, such an approach would be difficult for Inland Revenue to implement, given the significant number of projects it currently has underway. Consequently, split implementation dates continue to be the preferred approach.

Recommendation

That the submission be declined.

Issue: A parent's adjusted taxable income should be calculated on the basis of a 37.5-hour working week

Submission
(New Zealand Law Society)

A cap should be placed on the amount of adjusted taxable income so that the level of income available for use in an assessment reflects no more than the primary full-time income for a liable parent calculated on the basis of a 37.5-hour working week.

Comment

Taking the income of both parents into account reflects the parents' relative abilities to financially contribute towards the expenditure for raising their children. It also parallels the likely expenditure on the children were the parents living together. Limiting income on the basis of a set working week not only dilutes this principle but would also be less transparent and add a further layer of complexity to the formula.

There is already provision in the bill for a parent to seek an administrative review of a child support assessment to take account of re-establishment costs incurred out of income that was earned in accordance with a pattern that was established after parents have separated (for example, from income earned from overtime). This relief, open for a period of three years post-separation, is for up to 30 percent of a parent's income.

Recommendation

That the submission be declined.

Issue: A Māori perspective should be taken into account

Submission
(New Zealand Law Society)

A Māori perspective should be taken into account and included in the objectives of the bill – for example, in relation to questions over who may claim child support.

Comment

The issue of who may claim child support is worth considering further, but officials believe some further detailed policy work should be undertaken first. Currently, a person can claim child support if they are the sole or principal provider of care for a child (or share that role equally with someone else), but there are conflicting views about who should be able to claim child support.

Many of the concerns that arise in this context extend beyond child support and encompass not only Māori issues, but also wider questions regarding child welfare. To that end, it is recommended that Inland Revenue, the Ministry of Social Development, the Ministry of Justice and, where appropriate, Te Puni Kōkiri, work together to determine who should be able to claim child support, with a view of reporting back to Ministers on next steps.

Recommendation

That the submission be noted, and that Inland Revenue discuss this matter with the Ministry of Social Development, the Ministry of Justice and, where appropriate, Te Puni Kōkiri, to identify whether further policy work is needed on this matter and, if so, to report to Ministers on next steps.

Issue: Allowing children to apply for child support in certain circumstances

Submission
(New Zealand Law Society)

Consideration should be given to extending the class of person who may apply for a formula assessment to include children, in certain circumstances.

Comment

As previously noted, officials agree that some further detailed policy work should be undertaken on who should be able to claim child support. It was recommended that Inland Revenue, the Ministry of Social Development and the Ministry of Justice work together on this issue with a view to reporting back to Ministers on next steps.

Recommendation

That the submission be noted, and that Inland Revenue discuss this matter with the Ministry of Social Development and the Ministry of Justice to identify whether further policy work is needed on this matter and, if so, to report to Ministers on next steps.

Issue: Factors used when establishing care levels

Submissions
(New Zealand Law Society, Patricia Morrison)

New section 15(5), that sets out the factors that the Commissioner of Inland Revenue should use for determining proportions of care, should not include matters that fall within guardianship obligations. This is because such obligations tend to represent major decisions affecting a child's life rather than day-to-day care responsibilities and decisions.

The guardianship factors are contained in subsections (c), (d) and (f) and have regard to the education and health of the child, and which parent or carer pays for which expenses of the child.

Comment

Officials agree that the factors noted in this submission, together with factor (e), do tend to represent major decisions affecting a child's life, rather than day-to-day care responsibilities and decisions, and should be omitted from section 15(5). It is additionally noted that the financial factors can often be taken into account during the administrative review process.

Recommendation

That the submission be accepted, and also extended to include the factor in section 15(5)(e).

Issue: Right of review when determining care cost percentages

Submission
(New Zealand Law Society)

New section 16 should be amended to provide that a person affected by the decision of the Commissioner of Inland Revenue to determine their care cost percentage should have a right of objection or review.

Comment

New section 16 merely requires the Commissioner of Inland Revenue to determine, on the basis of the proportions of care already established under new section 14, a carer's care cost percentage. This is done without discretion by applying the table in new schedule 1.

It should also be noted that clause 16 of the bill proposes that section 90(1) of the Child Support Act be amended so that "a decision under section 14 establishing the proportion of ongoing daily care that a carer provides to a qualifying child" becomes an appealable decision. This should effectively address the submitter's point.

Recommendation

That the submission be declined.

Issue: Dependent child allowance

Submission
(New Zealand Law Society)

Step-children, foster children and children in whāngai situations should be included in the definition of "dependent child".

Comment

New section 35 sets out the dependent child allowance a parent is entitled to for each dependent child that he or she is financially supporting. This submission notes that excluding step-children, for example, from the dependent child allowance goes against the objectives of the child support scheme.

The approach taken towards foster and step-children is consistent with not including the income of a parent's new partner when calculating child support. Also, a parent may not, in fact, support a step-child financially.

Officials consider that it is preferable to exclude step-children, foster children and children in whāngai situations from the definition of "dependent child". The option of an administrative review remains open to those who feel that a departure from the child support formula assessment is warranted, on the basis that they have a duty to maintain another child or person.

Recommendation

That the submission be declined.

Issue: Re-establishment costs

Submission
(New Zealand Law Society)

The drafting in clause 26 should be simplified if possible (for example, the phrase "a re-establishment costs situation" should be replaced with "re-establishment").

It is further submitted that:

- Consideration be given to allowing a person to claim re-establishment costs even when they have not undertaken extra work, having instead relied on existing income to pay for the re-establishment.
- The Commissioner of Inland Revenue be given the power to extend the three-year period in new section 105(2)(d) when it would be just and equitable to do so, and the costs remain actual and reasonable.
- Consideration be given to providing a list in the Act detailing basic examples of re-establishment costs.

Comment

As previously noted, taking the income of both parents into account reflects the parents' relative abilities to financially contribute towards the expenditure for raising their children, and also parallels likely expenditure on the children. This principle would be diluted if parents were allowed to claim re-establishment costs out of existing income, and would reduce the amount available to provide for children. There is an acceptance that standards of living for both parents will reduce when parents separate, with a period of re-establishment being the norm for both parents.

Although noting that the three-year period proposed is necessarily arbitrary, it is preferable to limit the availability for relief to a specific period, otherwise there is a risk that costs for re-establishment will, over time, become everyday costs.

On the question of providing a list of basic examples of re-establishment costs in the legislation, officials agree that examples would be helpful but consider that it is preferable that the Commissioner of Inland Revenue instead publish guidelines periodically on the types of expenditure that have generally been accepted as qualifying costs, rather than including less flexible legislative examples in the Act itself.

Recommendation

That the submission on the drafting in clause 26 be noted, but that the other submissions be declined.

Issue: Qualifying payments

Submission
(New Zealand Law Society)

Section 131, which gives the Commissioner of Inland Revenue discretion to reduce the amount of child support that a parent pays in some circumstances so it takes into account certain direct payments made to other parties, should be amended as follows:

- A person affected by the Commissioner's decision will have a right of objection, and that an agreement reached with the receipt of independent legal advice will create a rebuttable presumption that the agreement will be upheld. Alternatively, legal advice should be a factor that the Commissioner of Inland Revenue takes into account when exercising the discretion.
- The Commissioner of Inland Revenue be given discretion to "recognise" payments for more than one child-support year, subject to the ability to reverse the decision when circumstances change.
- Section 130(2) and (3) be included in section 131 rather than section 130.

Comment

Given that the parties involved must reach agreement on the terms of the arrangement in the first place, there appears to be no need for the further ability to object. Officials do, however, agree with the other recommendations.

Recommendation

That the submission to give a right of objection be declined, but the other submissions accepted.

Issue: Non-compliance without reasonable cause with previous payment agreements

Submission
(New Zealand Law Society)

New section 135AA, which allows the Commissioner of Inland Revenue to decline to enter into a payment agreement with a liable person when the person has breached a previous agreement, should be amended to give a right of objection to the liable person if the Commissioner of Inland Revenue declines to enter into a payment arrangement.

Comment

The right of the receiving carer to timely financial support needs to be balanced against a liable parent's obligations when they have failed to pay their liability in full and on time. Conferring a right of objection to the Commissioner's refusal to accept periodic payment agreements in the face of a previous failure to adhere to arrangements would restrict the Commissioner's right to enforce payment by way of lump-sum and/or legal action.

Recommendation

That the submission be declined.

Issue: Other "cost of children" issues

Submission
(Matter primarily raised by Deidre Butler)

The "cost of children" calculations do not graduate sufficiently against high income earners.

Comment

Recent New Zealand research on the costs of raising children – *Costs of raising children*[1] – measured the expenditure for raising children in New Zealand for the purposes of the proposed formula. It used methodology from equivalent Australian studies, but with New Zealand data.

The results show that the average expenditure for raising children in New Zealand varies according to the age of the child, the household's level of income and the number of children in the household. In particular, higher income households are found to spend more on their children than lower income households, although the proportion of household income spent is lower.

These findings are reflected in the cost of children calculations contained in schedule 2 of the bill.

Recommendation

That the submission be declined.

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[1] *Costs of raising children*, by Iris Claus, Paul Kilford, Geoff Leggett and Xin Wang.

Issue: Living allowances

Submissions
(Matter primarily raised by Robert Montgomery, Patricia Morrison)

The living allowances used to calculate the cost of children are not sufficient and should be increased, in particular if there is equal 50/50 care. Alternatively, it is suggested that both amounts of living allowance be used in all cases (for example, if one parent cannot use their allowance, any remainder should be transferred to the other parent).

A (private) submission also recommended that the current system, whereby there are various living allowances depending on circumstances, be retained.

Comment

A living allowance provides a deduction against child support income for parents, and recognises the living costs for that parent. This is necessarily a proxy, as parents' true living costs will depend on their circumstances.

Under the proposals, the allowance for most people will be equivalent to the amount payable under the domestic purposes benefit to a person with one or more dependent children.

Parents receiving a higher domestic purposes benefit for looking after someone sick or infirm will be entitled to a higher allowance. These amounts are higher than the minimum amount provided in the existing child support scheme.

There are no specific justifications for increasing the allowance when there is 50/50 care. The new formula separately takes into account the costs of care when care is shared. Also, transferring allowances between parents when one parent does not have sufficient income in order to use their full allowance would run contrary to the principle of apportioning the costs of children between parents according to the relative difference between their respective shares of child support income. It would also be extremely administratively complex, and require square-ups and reassessments.

On the question of providing different living allowances depending on a parent's circumstances, there is no need for this. Under the existing formula, the living allowance varies to reflect the number of dependent children. The dependent child allowance, under the proposed formula, is now separately provided. This allows a further deduction for expenditure associated with other children the parent is financially supporting.

Recommendation

That the submissions be declined.

Issue: Determination of income for child-support purposes

Submissions

(Matter primarily raised by Adam Simpson, Doreen Cleave, Pam Hulls, Paul Raynor, Sally Marr)

Several submissions provided comment and suggestions on how income should be determined for child support purposes.

There was general approval of the new definition of "adjusted taxable income" that ensures parents are assessed on their true financial capacity to pay when this is not reflected in their taxable income. One submission felt that this went too far and that parents should be able to operate a company on a more commercial basis, retaining profits to help grow their business. Other submissions, however, felt that the definition did not go far enough and that more should be done to ensure that the self-employed cannot shelter income in a company.

Other submissions suggested that, rather than using taxable earnings, the basis should instead be on a parent's ability to earn – thereby preventing parents from choosing not to work to reduce their child-support liability.

Other methods proposed for determining child support payable included:

- taking the assets of a parent into account; and
- using a uniform cost of a child, rather than costs that vary with income.

Comment

The effect of the proposed "adjusted taxable income" definition will be that the following will be included as income for the purposes of the child support formula:

- business and other losses that have been offset against taxable income;
- income from a trust and companies owned by trusts when the parent is the settlor;
- income kept in a closely held company;
- fringe benefits received by shareholder-employees who control the company;
- overseas pensions that are exempt from New Zealand tax;
- distributions from superannuation schemes that relate to contributions made by a person's employer within the last two years, when the person has retired early;
- PIE income that is not "locked in";
- tax-exempt salaries and wages;
- 50 percent of the value of private pensions/superannuation payments/annuities;
- main income equalisation scheme deposits; and
- other payments if the total exceeds $5,000 a year (this captures, for example, income received from a trust where the parent is not the settlor).

The first four adjustments, in particular, will ensure that it is more difficult for parents to shelter income. An administrative review is also available, including one initiated by the Commissioner of Inland Revenue, when a child support assessment does not take into account the income, earning capacity, property or financial resources of either parent.

This administrative review ground also allows an assessment to be set that is based on a parent's ability to earn. This is, in officials' view, a preferable approach to handling situations when a person's taxable income does not reflect their ability to earn, rather than legislating for a deemed income based on someone's ability to earn. Likewise, this administrative review ground can also be used when a parent has significant property or financial resources.

On the question of using a fixed uniform cost of a child, rather than one that varies with income, although this would be simpler to calculate, it would not reflect the findings of research that the dollar cost of raising children increases with family income (but declines as a proportion of income). It would also likely lead to further issues of equity or a parent's ability to pay.

Recommendation

That the submissions be declined.

Issue: Treatment of the income of new partners

Submissions
(Matter primarily raised by Adam [no surname provided], Hayden Hughes, Raymond Porter)

The income (or assets) of a new partner should be taken into account in the child support calculations.

Comment

The income of a new partner is not taken into account in the proposed child support formula. In some cases a new partner in effect becomes a parent, while in others, the parenting of the child in question will remain primarily with the separated parents. It is not possible to reflect this variance in a formula, particularly if the new partner also has personal child support liabilities.

The administrative review process is, and will continue to be, available to parents who consider that a parent's new partner's circumstances should be taken into account.

Recommendation

That the submissions be declined.

Issue: Qualifying age of children

Submissions
(Matter primarily raised by Andrew Parsons, Human Rights Commission, Dunedin Community Law Centre, Law Society of New Zealand)

The provisions of the current Child Support Act whereby child support obligations continue until a child reaches age 19 are inconsistent with the United Nations Declaration of Human Rights.

One submission suggested that child support should remain payable until children make the transition into the paid workforce (or tertiary education).

Comment

The proposal to reduce the qualifying age of a child from age 19 to age 18 unless the child is still in full-time secondary education is consistent with the United Nations Declaration of Human Rights.

On the proposal that child support should remain payable until children make the transition into the paid workforce or tertiary education, it should be noted that children will still be qualifying children if they remain in full-time secondary education. The student loan and student allowances schemes are available for students in tertiary education.

Recommendation

That the submissions be noted.

Issue: Liable parents who live outside New Zealand

Submissions
(Matter raised by The Auckland Coalition for the Safety of Women and Children, the Auckland Women's Centre)

Further bilateral agreements on the recovery of child support, in addition to the existing agreement with Australia, should be entered into with other overseas jurisdictions (for example, with the United Kingdom).

Comment

A number of factors need to be considered when investigating whether two countries should enter into a reciprocal agreement. For some countries, the relatively small numbers of people involved may be an important factor. New Zealand has had discussions with several countries over the years, but Australia remains the only country with which we have a reciprocal agreement for child support purposes.

However, as a member state of The Hague Convention, New Zealand is actively involved in progressing the unification of the rules of private international law. As part of that, New Zealand was a signatory to the Hague Convention for the International Recovery of Child Support and Other Forms of Family Maintenance (the Convention). The Convention, which includes rules on judicial and administrative co-operation, has the potential to improve New Zealand's ability to assess and collect child support when liable parents are residing in countries that are (or will become in the future) signatories to the Convention.

The Hague Convention Permanent Bureau is currently exploring how to implement country profiles electronically and develop a business plan for implementing its proposed system. Once these practical issues have been developed further, a national interest analysis will be produced to identify the pros and cons of the convention for New Zealand, detailing any legislative and system changes that would be required before the convention could be considered for ratification in New Zealand.

From an operational standpoint, developing and enhancing partnerships to better address international child support debt and promote proactive compliance management is also a focus of Inland Revenue activity. This has included information-sharing with the New Zealand Customs Service and the establishment of a direct debt team that directly collects international debt from overseas.

Recommendations

That the submission be noted.

Issue: Pass-on of penalties

Submission
(New Zealand Institute of Chartered Accountants)

Initial and incremental late payment penalties should be passed on to the custodial parent provided that parent is not a beneficiary. This is on the basis that it is the receiving parent and their children that suffer from non-payment of child support, not the Crown.

Further, the proposed penalty changes in this bill should be made retrospective to 26 September 2006 (the date the Child Support Amendment Act 2006 came into force).

Comment

While noting the merits for passing on child support penalties, it should be reiterated that the application of penalties for child support debt has three main purposes – a monetary sanction for not complying, compensation for the lack of use of funds and compensation for the additional administration costs incurred in recovering overdue debts. Currently, penalties help to defray the costs of administrative collection in the first instance.

Passing on penalties may create inconsistencies in the treatment between receiving parents, as the approach adopted by Inland Revenue in writing off penalties could affect the amounts actually received. As a result, receiving parents who were in otherwise identical situations could receive different amounts of support, depending on circumstances, resulting in potential equity issues.

Further, passing on only a component to the receiving parent would make the child support scheme more complex to administer, and would require an appropriate rate to be passed on to be set (this would also need to be reviewed periodically).

On balance, officials therefore recommend not passing on penalties to custodial parents.

Officials consider that the penalty changes should not be made retrospective. There is no cohesive policy rationale for doing so, and there would be significant administrative and fiscal implications in backdating any changes.

Recommendation

That the submission be declined.

Issue: Application of the multi-group cap

Submissions
(Equal Justice Project, the Women's Studies Association)

The application of the multi-group cap should be improved to better reflect the fact that in multi-group situations there may be no economies of scale. It is therefore proposed that the cap have safeguards that prevent affected children from receiving less financial support than is necessary (for example, by the cap not applying when a paying parent is liable for more than three children living in separate households).

Comment

It is recognised that in some multi-group situations the income-sharing principle, and the method of calculating the costs of children based on intact families, does not fit comfortably, but it is a matter of balancing this concern with simplicity.

Arguably, in such circumstances it could be preferable to treat each receiving parent separately, calculating the liability to such parents using the standard formula, which is in effect what happens with the multi-group allowance. However, doing so would ignore the fact that the paying parent does not live in multiple households supporting each family separately. Hence the multi-group cap applies to limit the overall liability as if all the children lived in one household. Arguably, this is also a contrived result as the children do not live together with the attendant economies of scale.

These generous economies of scale that the cap provides to the liable parent are tempered by the fact that the proposed multi-group cap only takes into account the income of the paying parent and therefore the paying parent does not benefit from a reduction in their liability if the income of any of the receiving parents increases.

While recognising its limitations, non-application of the cap where a paying parent is liable for more than three children would result in a different set of discrepancies for paying parents.

Recommendation

That the submissions be declined.

Issue: Application of the minimum payment

Submission
(Stacey Porteus)

The minimum payment should apply to each child, rather than to the liable parent.

Comment

The current scheme provides that there is a minimum amount of child support payable each year per parent. It is recommended that this provision be retained to limit the impact of the changes on low-income recipients.

While applying a minimum payment for each child may be a positive outcome in theory, in practice it would either require a reduction to be made to the applicable minimum amount payable per child or alternatively, result in child support liabilities that significantly exceed a parent's ability to pay when a parent has to support several children (possibly leading to non-payment). Either option is likely to be to the detriment of the children involved.

Recommendation

That the submission be declined.

Issue: Child support payments should be linked to contact with children

Submission
(Peter Douglas Zohrab)

Child support payments should be proportionately linked to the amount of contact a liable parent has with their children.

Comment

While recognising the difficulties associated with care of children problems, and the disincentive that a lack of contact can have on making child support payments, the child support scheme is fundamentally about establishing the amount of financial support that parents living apart have to pay towards raising their children. The two issues are therefore separate. It should be noted, however, that the proposals in the bill will provide a level of recognition to parents who have significant levels of care.

Recommendation

That the submission be declined.

Issue: Introduction of a simplified appeal process

Submission
(Wayne Hulls)

A simplified "small claims court"-type function should be introduced for child support issues.

Comment

It should be noted that the administrative review process that is currently in place under the Child Support Act, effectively already serves such a function.

Recommendation

That the submission be declined.

Issue: Repayments under the student loan scheme

Submission
(Matter raised primarily by the New Zealand Union of Students' Association)

Repayments under the student loan scheme should be considered as a reduction in income for child support purposes.

Comment

One of the arguments submitted for taking student loan repayments into account is the fact that student loan repayments are frequently deducted from salary and wages at source. The submission argues that it effectively adds to an individual's effective marginal tax rate. It is also submitted that deducting loan repayments would be treated in the same way as a loan taken out for a business venture.

Income for child support purposes is based on gross income. No deduction is given for taxes. Further, the fact that student loan repayments are deducted directly from salary and wages is not unique. Many people have other deductions at source, such as KiwiSaver contributions.

The main factor for determining whether such costs should be deductible is the fact that student loan repayments are made in relation to personal expenses – in that way, they are more akin to mortgage repayments.

Using the same analogy, student loan repayments are often just in relation to the loan itself as there is often no interest applied. These repayments are more capital in nature, and would therefore not attract a business deduction. It is worth noting that, in any case, the bill actually proposes adding back business and other losses that have been offset against taxable income.

Recommendation

That the submission be declined.

Issue: Post-implementation review

Submission
(Matter raised primarily by the Human Rights Commission)

Inland Revenue should conduct a post-implementation review of any changes implemented.

Comment

Inland Revenue's monitoring, evaluation and review of any child support changes would take place under the Government's generic tax policy process (GTPP).

The GTPP is a multi-stage policy process that has been used to design tax policy (and social policy administered by Inland Revenue) in New Zealand since 1995. The final step in the process is the implementation and review stage. This involves a post-implementation review of legislation and the subsequent identification of any problems that transpire.

In practice, any changes identified from a post-implementation review would be added to the Government's tax policy work programme, and proposals would go through the GTPP again. Opportunities for external consultation are built into this stage. Officials envisage this process being followed for the child support changes included in the bill.

Recommendation

That the submission be noted, recognising that post-implementation reviews are part of the GTPP.

Issue: Better alignment with Working for Families tax credits

Submission

(Matter predominantly raised by the Child Poverty Action Group)

There should be greater alignment (of the child support reforms) with Working for Families tax credits, in particular with regard to shared-care thresholds and the definition of "income".

Comment

One of the policy rationales for the proposed lowering of the shared-care threshold is to move it generally closer to the tests used in other areas of social policy. However, child support is separate from Working for Families tax credits and other family-based tax credits and, while it is sometimes simpler to have thresholds that match, it is not always possible, necessary or desirable.

Working for Families tax credits has a one-third of time threshold. Consideration was given to a similar threshold for child support but there was concern over the "cliff effect" that would result. To reduce this effect, a series of thresholds is proposed. In the case of the proposed child support shared-care thresholds, these are tiered, commencing from 28 percent of care.

The proposed definition of "income" for child support purposes provides a very close alignment with the definition used for Working for Families tax credit purposes.

Recommendation

That the submission be declined.

ADDITIONAL MATTERS RAISED BY THE SOCIAL SERVICES COMMITTEE

The following matters were raised specifically by the Social Services Committee (the Committee) during the hearing of evidence on submissions, and are not otherwise discussed in relation to the written submissions summarised above.

Issue: United Nations Convention on the Rights of the Child obligations

Submission

It was noted that New Zealand has obligations under the United Nations Convention on the Rights of the Child. The Committee asked, in terms of the proposals in the bill:

- What would this mean in terms of New Zealand's obligations under the convention?
- What would New Zealand need to do to ensure it complies with its obligations under the convention?

Comment

The Human Rights Commission, in its submission on the bill, specifically noted three Articles of the United Nations Convention on the Rights of the Child that applied. They are:

- Article 1, which provides that: "child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier".
- Article 3, which provides that: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".
- Article 18, which provides that: "Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern".

While recognising that the proposals in the bill are consistent with or enhance New Zealand's compliance with Articles 1 and 18 of the Convention, the Commission felt that the bill should amend the objects provision of the Child Support Act to require that financial arrangements made to support a child reflect and promote a child's best interests, consistent with Article 3 of the Convention. (See officials' earlier comments and recommendation on this submission on "Incorporating the promotion of child well-being as a core objective of the Child Support Act".)

Issue: Questions asked by the Auckland Coalition for the Safety of Women and Children and the Auckland Women's Centre

Submission

The Auckland Coalition for the Safety of Women and Children and the Auckland Women's Centre, in addition to their submissions, posed a number of additional questions.

Comment

Officials' comments on the questions are as follows:

Q1: There is a perception amongst single mothers that the Child Support Agency makes vigorous attempts to enforce payments from liable parents when the other parent is on the DPB, but not when the other parent is not on a benefit. Does the Child Support Agency have any data in this area?

A: Inland Revenue does not differentiate according to whether a parent is on a benefit when attempting to enforce child support payments from liable parents.

Q2: International research has found that women experience a 30 percent decline in income in the first year after separation, while men experience a 10-15 percent increase (St John, 1995). There is an urgent need for New Zealand research on this topic before the proposed changes are undertaken which will make separated mothers worse off financially.

A: Inland Revenue is not aware of other more recent research on this specific issue. In respect of the proposed changes to the child support formula, taking both paying and receiving parents into account, it is projected that approximately 26,000 female parents would receive more or pay less child support and approximately 31,500 female parents would receive less or pay more child support. Approximately 83,000 parents would be unaffected – for example, receiving parents who remain on a sole parent benefit would continue to receive full benefit levels.

Q3: We know that when parents make arrangements outside of the Inland Revenue Department (IRD), these arrangements provide for considerably higher payments for children than when arranged by IRD. Payments organised outside the IRD are a median of $433 per month, while payments organised with IRD assistance are $241 per month. What are the factors that account for this difference?

A: There will inherently be a greater degree of trust and ability to work together when parents are able to make their own financial arrangements.

It is not known what the factors are that account for any difference in payments. However, a potential factor could be that the income levels are lower for paying parents in the child support scheme, and these are reflected in lower child support payments. As at 31 March 2011, approximately 42 percent of paying parents in the child support scheme were receiving a Government benefit.

Q4: *What percentage of parents pay the allowable minimum because they have declared a very low income. (In 1997, it was a considerable 65 percent of the liable parents whose income was assessed by IRD.)*

A: In 2011, approximately 56 percent of paying parents were required to pay the minimum payment.

Q5: *The bill claims that in 2006 IRD was given the ability to review a child support assessment if an investigation into a paying parent's financial affairs shows the assessment does not reflect the parent's true ability to provide financial support. IRD claims that this is a very useful tool that enables it to counter the use of vehicles such as trusts to shelter income for child support purposes. What data is there to support this claim?"*

A: Every year approximately 300 cases are reviewed to establish whether a Commissioner-initiated administrative review (CIAR) should be instigated. Every year, this leads to approximately 20 administrative review cases. These typically represent cases when income is sheltered for child support and social policy purposes and does not include cases where the custodian has, for whatever reason, instructed the Commissioner of Inland Revenue to stop the CIAR process themselves.

Q6: *What are the implications for discrimination through implementation of the bill under the New Zealand Bill of Rights Act 1990 and what is the best way to ensure that children and primary caregivers do not suffer from discrimination through existing child support legislation and through any changes to the legislation? We would like to see a report from the Human Rights Commission on this topic.*

A: The bill has been vetted for New Zealand Bill of Rights Act implications. For further details, please see:
http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/child-support-amendment-bill
The Human Rights Commission made a submission on the bill, commented on elsewhere in this report.

Q7: *The bill is based on the belief that fathers provide more caregiving to their children than was the case in 1991. What evidence is there of this? If there is evidence that they do provide more caregiving, what do we know about this caregiving? How much more caregiving do they provide now than in the past? What does it involve? For instance, does it involve taking children to doctor's appointments? Does it involve paying for extra school activities?*

A: In 2008 the Families Commission commissioned Colmar Brunton to undertake high-level research into a number of issues relating to separated parents. The Families Commission then released an issues paper entitled *What separating parents need when making care arrangements for their children*.

The research yielded the following information on care and contact arrangements:

- 51.9 percent of parents who pay child support (through voluntary arrangements as well as through the child support scheme) say they see their child at least a few days per fortnight, compared with 41.2 percent of receiving parents who say their child sees the paying parent at least a few days a fortnight (an average of 44.1 percent across both parent groups).
- 48.3 percent of parents who pay child support (again, through voluntary arrangements as well as through the child support scheme) say their child stays overnight at their house at least a few days per fortnight, compared with 32.0 percent of receiving parents who say their child stays overnight at the paying parent's home at least a few days a fortnight (an average of 36.4 percent).

Care and contact arrangements vary depending on personal circumstances – in particular, based on whether parents can achieve agreement on these arrangements. The type of arrangements made by paying parents include:

- taking their child to school and also picking them up from after-school activities (47 percent for parents with voluntary arrangements, compared with 35 percent for those in the child support scheme);
- picking their child up from school (45 percent for parents with voluntary arrangements, compared with 36 percent for those in the child support scheme); and
- taking care of their child while the other parent meets work commitments (43 percent for parents with voluntary arrangements, compared with 31 percent for those in the child support scheme).

The research did not comment on which parents tended to take children to doctor's appointments or extra-curricular activities, but a significant portion did note that paying parents paid for such things, indicating their involvement.

Q8: The bill proposes that the per-child payment decreases when more than one child is involved. Do we know that economies of scale apply to the cost of raising children?

A: Research undertaken internationally, including in New Zealand and Australia, (noted elsewhere in this report), shows that economies of scale do apply to the cost of raising children.

Q9: The Trapski report (1994) found that the Child Support Act allows wealthy and self-employed liable parents to conceal their income through trusts and other devices, thereby escaping liability for child support payments (McLoughlin, 1995). The report recommended that when the Child Support Agency was looking at the liable parent's ability to pay it should look not only at taxable income, but also at earning capacity, property and financial resources. In 2006, IRD was given the ability to review a child support assessment if an investigation into a paying parent's financial affairs showed that the assessment did not reflect the parent's true ability to provide financial support. Is there an evaluation of whether this has been a useful tool that enables IRD to counter the use of vehicles such as trusts to shelter parental income for child support purposes?

A: See the response to question 5 above. It should also be noted that the effect of the proposed "adjusted taxable income" definition proposed in the bill will be that the following will all be included as income for the purposes of the child support formula:

- business and other losses that have been offset against taxable income;
- income from a trust and companies owned by trusts when the parent is the settlor;
- income kept in a closely held company;
- fringe benefits received by shareholder-employees who control the company;
- overseas pensions that are exempt from New Zealand tax;
- distributions from superannuation schemes that relate to contributions made by a person's employer within the last two years, when the person has retired early;
- PIE income that is not "locked in";
- tax-exempt salaries and wages;
- 50 percent of the value of private pensions/superannuation payments/annuities;
- main income equalisation scheme deposits; and
- other payments if the total exceeds $5,000 a year (this captures, for example, income received from a trust where the parent is not the settlor).

Issue: Application of the shared-care formula in shared-care situations

Submission

If you have a shared-care arrangement, is there a formula that could be used to combine both parents' incomes to determine where a child would sit relative to the income stream, the total cost of child support, and then how that total cost of child support could be apportioned on a pro-rata basis? If so, how would that child support liability compare with the liability under the current child support calculation?

Comment

The proposed child support formula in the bill aims to achieve all these objectives, including in shared-care situations.

Currently, in shared-care situations (when the 40 percent care threshold is achieved), parents are able to cross-apply against each other. This has the effect of recognising both parents' income. The proposed formula in the bill, in addition to recognising both sets of income, not only takes into account the level of care provided by each parent, but also reflects up-to-date estimates of the costs of raising children at different income levels.

Issue: Household incomes

Submission

What work has been done on including the income of new partners, and are there jurisdictions which operate on the basis of household bands? What are the advantages and disadvantages of such an approach?

Comment

Officials are not aware of any jurisdictions that operate an administrative scheme that automatically takes into account the whole income of a household. Instead, it is typical for child support schemes to only take the income of the child's parents into account, and not that of any new partners the parents may have.

As noted in the officials' comment on submissions on this issue, sometimes a new partner in effect becomes a parent, while for others the parenting of the child in question will remain primarily with the separated parents. The presumption in child support schemes is that the biological parents will generally have the responsibility to support their children.

Since it is not possible to reflect such different approaches in a formula, the proposed formula in the bill (and the existing formula) only takes into account the income of parents. It should be noted that the administrative review process is, and will continue to be, available to parents who consider that a parent's new partner's circumstances should be taken into account. Again, this approach is consistent with other child support schemes, both of an administrative and court-based nature.

Issue: Expenditure for raising children in different family circumstances

Submission

Does the new system proposed under the bill accurately reflect the expenditure for raising children in different family circumstances in New Zealand?

Comment

Any child support formula is necessarily a proxy that tries to derive an appropriate cost (expressed as a percentage of income) that represents the assumed expenditure for raising a child. The proposed formula far better reflects that expenditure for raising children in different family circumstances in New Zealand than the current formula.

As noted in previous comments on submissions, there is a significant amount of available research into the expenditure of raising children, including recent New Zealand and Australian work undertaken for child support purposes. The proposed system, designed against the backdrop of this research, specifically takes into account:

- the combined income of both parents;
- the number of children, up to three children;
- the age of the children concerned; and
- other dependent children.

Although there are some inherent limitations – for example, some difficulties exist in larger multi-group situations, these are problems that would be difficult to overcome with any formula assessment. In circumstances where the formula assessment may not be considered to support an appropriate outcome, the option of an administrative review is often available for parents so individual circumstances can be taken into account.

Issue: Incentives to pay child support

Submission

Do the provisions in the bill provide a great enough incentive for payments to be made in order to promote the welfare of the child (in the context of an alternative proposal to provide for guaranteed payments, also described as an "advanced payment scheme")?

Comment

Some parents have concerns that the current child support scheme does not take into account their particular circumstances, or that the principles on which the scheme is based are now out of date. These concerns, or even perceptions of such concerns, often undermine parents' incentives to meet their obligations under the child support scheme, to the detriment of the children involved. Other parents are concerned about either the non-payment of child support or the instability of such payments.

The proposals in the bill are designed to increase incentives to meet child support obligations. Those incentives include creating a scheme that is seen as a fair reflection of the expenses of raising children, which is well administered and that applies appropriate sanctions for non-payment. Parents are more likely to comply if a scheme is perceived as fair.

Various measures in the bill, including automatically deducting child support from all salary and wages, will also help timely payments to custodial parents.

In terms of an alternative option to also provide for what is referred in submissions as an "advanced payment scheme", whereby child support payments are guaranteed by the Crown, this could actually have the effect of reducing the incentive to pay. If a parent knows that their child will receive child support regardless of whether they pay or not, this may well reduce their inclination to pay. It would also involve a significant fiscal cost to the Crown.

Issue: Administrative effect of the changes on Inland Revenue

Submission

What are the administrative effects on Inland Revenue of the following:

- administering a scheme based on the formula in the bill, including costs associated with informing the public and its clients of the changes and their impact;
- costs for training existing call centre staff or hiring new call centre staff;
- costs associated with changes to the IT system to ensure that it is able to cope with the changes and capacity demand; and
- any other additional implementation costs.

Comment

A business case incorporating all these issues is due to be considered by Cabinet late September. The information will, therefore, be submitted to the Committee once this consideration has taken place.

Issue: Capacity to pay

Submission

Under what circumstances can a parent's capacity to pay be taken into account when an administrative review has been applied for, particularly in terms of potential earnings?

Comment

The Child Support Act provides that an administrative review is available when, "by virtue of special circumstances … formula assessment of child support assessment would result in an unjust and inequitable determination of the level of financial support to be provided by the liable parent for the child because of the income, earning capacity, property, and financial resources of either parent or the child".

In practice, once a hearing has been held, the administrative review officer considers all the information given by both parents as well as any information already held by Inland Revenue (including, for example, tax information held). The review officer looks at each case on its own merits and how any decision to depart from a formula assessment might affect the child(ren) and both parents (after establishing that special circumstances to depart from the formula do in fact exist).

The ability of a parent to earn more income than they currently do would not necessarily, in itself, justify a departure. Review officers would look at the individual circumstances of each case, and listen to the evidence of both parties, before making a decision. This would involve looking at the evidence of parents' previous incomes.

Issue: How the child support formula works in more complex situations

Submission

How, in detail, does the proposed child support formula work when more complex and unique situations are involved?

Comment

The chart below highlights the key steps in determining child support payable for a particular child (referenced to the proposed new sections of the Act).

Step 1: Work out each parent's child support income amount (section 32). This is the parent's taxable income plus adjustments to take into account a number of other forms of "income" (section 33), less:
- a living allowance (section 34);
- any allowance for other dependent children (section 35); and
- any allowance for other children from other relationships (referred to as child support groups) for whom the parent is financially responsible (section 36)

↓

Step 2: Work out the parents' combined child support income

↓

Step 3: Work out each parent's income percentage (section 31)

↓

Step 4: Work out each parent's and non-parent carer's percentage of care for the child

↓

Step 5: Work out each parent's and non-parent carer's care cost percentage for the child (section 16 and schedule 1) that relates to their care percentage

↓

Step 6: For each parent, subtract their care cost percentage from their income percentage (section 18). If the answer is positive (i.e. the income percentage exceeds the care cost percentage), the parent is a liable parent. If the answer is negative, (i.e. the income percentage is less than the care cost percentage), the parent is a receiving carer

↓

Step 7: Work out the expenditure for the child using the child expenditure table (section 36D), taking into account the combined child support income amounts of the parents, the number of children in the child's child support group; and the age of those children. This expenditure amount is divided by the number of children in the child support group to get a per child amount

↓

Step 8: The annual rate of child support payable by the parent for the child is worked out using the formula (section 29):
(parent's income percentage – parent's care cost percentage) x expenditure on the child

↓

Step 9: The amount that a carer receives is determined in sections 36A-C. A receiving parent receives an amount calculated applying the formula in step 8, based on their income and care cost percentages. If this is less than the amount that the liable parent pays, the balance is split between any other receiving carers

↓

Step 10: When a parent is paying child support for more than one child support group, the amount may be capped. If the amount calculated at step 8 is more than the amount calculated under the multi-group cap (section 29), the multi-group cap amount applies. This cap ensures the liability is no more than it would be if all the children from the various child support groups were living together

↓

Step 11: The amount payable may also be subject to a minimum annual rate (section 30)

More complex or unique situations (and therefore calculations) are likely to arise where there are other dependent children or other child support groups, or alternatively multiple receiving carers or more than two parents.

Step 1 notes that a dependent child allowance, where appropriate, can be deducted. A parent is entitled to this in respect of each other dependent child they are a parent of. This allowance is designed to recognise the costs of raising children in new relationships. The dependent child allowance is calculated in the same manner as any other formula calculation, apart from the fact that it is based on the adjusted taxable income, less the living allowance, of that parent alone.

Likewise, step 10 sets out the multi-group allowance. This allowance applies to a parent who has more than one child support group. In other words the paying parent is paying child support in respect of at least two relationships. A child support group is all those children of the parent who share the same other parent.

A parent's multi-group allowance in relation to one child is the sum of the multi-group costs of all other children who are not in the same child support group as that child. The multi-group cost of a child is worked out according to a formula involving the appropriate amount from the child expenditure table for that child, using the adjusted taxable income of the parent (after deducting the living allowance and any dependent child allowances), and assuming that all the children from the various child support groups are living together. The result from the child expenditure table is then divided by the total number of children of the parent in all his or her child support groups.

The purpose and effect of the multi-group allowance is to adjust child support payments to ensure equity between the different child support groups that a liable parent may be paying child support for. It has a similar effect as the dependent child allowance, in that it reduces a parent's child support income amount in recognition of the cost of their children in other child support groups. In such cases, however, the liable parent's payment is subject to a cap (the multi-group cap). This ensures the liability is no more than if all the other children were living together.

FURTHER POLICY ISSUES RAISED BY OFFICIALS

Issue: Orders that can be made

Submission

Proposed section 106(1) of the Act should be amended to allow a court to either vary specific components of the formula, the liability produced by the formula by a certain amount, or alternatively, set another child support liability.

Comment

Proposed section 106(1) sets out the orders that a court may make following an application under section 104 seeking a departure from a formula assessment.

The proposed section allows the court to make an order varying any component, or the application of any component, of an assessment of child support under a formula assessment.

Officials recommend that this section be expanded, given the complexity of the proposed formula and the fact that it may be difficult for the courts to work out specifically what components of the formula should best be varied to achieve an intended result. The proposed change will allow a court to:

- vary any of the following components of the formula:
  - adjusted taxable income;
  - living allowance;
  - dependent child allowance;
  - child support income;
  - child expenditure amount.
- vary the liability produced by the formula by a certain amount; or
- set a new, alternative, child support liability.

Recommendation

That the submission be accepted.

Issue: Entitlement of parents to be a receiving carer

Submission

Although care should still be recognised for formula calculations when care by a parent is between 28 and 34 percent, a carer should not be able to be a receiving carer until their care levels reach 35 percent or more.

Comment

A receiving carer is defined in proposed section 2 of the bill as a carer of a child in respect of whom child support payments are payable under the Child Support Act by a liable parent.

Proposed new section 17(b) states that a parent carer whose income percentage is less than their care cost percentage is a receiving carer. Proposed section 17(c) states that a non-parent carer who provides at least 28 percent of care is a receiving carer.

The effect is that it is possible to have up to three receiving carers entitled to child support. However, it also means that it is possible, in certain specific circumstances (for example, when there is a wide disparity in income between parents) for a parent who has only 28 percent of care to be entitled to receive child support from another parent who has the remaining 72 percent of care. This appears to overly compensate the parent who is not the main caregiver in such circumstances.

Officials therefore recommend that, although care should still be recognised for formula calculations when care by a parent is between 28 and 34 percent, a carer should not be able to be a receiving carer until their care levels reach 35 percent or more. This is consistent with the approach taken in Australia, which has a formula similar to the proposed new formula in the bill.

Recommendation

That the submission be accepted.

Issue: Social security beneficiaries must apply for a formula assessment

Submission

New section 9 and other relevant sections in the Child Support Act should be amended to clarify when a social security beneficiary must apply for a formula assessment.

Comment

New section 9 proposed in the bill states that a social security beneficiary who provides at least 28 percent of care and does not have an existing child support arrangement with or involving all the liable parents of the child must apply for a formula assessment in relation to every parent of the child. A "child support arrangement" is not, however, defined in the bill or the Child Support Act.

The intention of this part of the provision is to remove the need for a person going onto a benefit from having to reapply for a formula assessment when a formula assessment, voluntary agreement or court order was already being administered by the Commissioner of Inland Revenue.

The following potential problems arise with the current wording:

- It is not clear whether private agreements not administered by the Commissioner of Inland Revenue are included within a "child support arrangement".
- Voluntary agreement administered by the Commissioner of Inland Revenue for amounts in excess of the formula outcome may be replaced.
- If an application for a formula assessment is made when an existing overseas court order is being administered by the Commissioner of Inland Revenue, a dual liability would be generated.

Officials recommend the bill should be amended to clarify that private arrangements should be excluded from the meaning of "child support arrangement" in this context. Further, it should be made clear in the Child Support Act that any such agreement should be administered by the Commissioner of Inland Revenue in relation to the liable parents of the child.

Officials also recommend that the Child Support Act be amended to clarify that voluntary agreements administered by the Commissioner of Inland Revenue for amounts in excess of the formula outcome can be used instead of a formula assessment. In such cases, however, the Crown recapture of the benefit element should remain in place.

The current section 71 of the Child Support Act should be amended to provide that an overseas order is suspended, from the date a formula assessment commences in respect of the same parties and children until the date the receiving parent ceases to be a social security beneficiary. This will ensure consistency between domestic and overseas parents, when the receiving parent is a New Zealand beneficiary.

Recommendation

That the submission be accepted.

Issue: Form of application – third-party carers

Submission

Proposed new section 10 should be amended to require applications from third-party carers to be made against all the parents of the child, unless there are specific circumstances not to.

Comment

Officials recommend that proposed new section 10 should be amended to require applications from third-party carers to be made against all the parents of the child, unless there are specific circumstances not to. This ensures that all of the parents' income is taken into account when calculating their liabilities. For existing third-party carers who are part of the child support scheme currently, this application should be deemed to have been made (on the basis of information available to the Commissioner of Inland Revenue).

If carers do not wish to receive entitlements from a parent, however, this should not be enforced. Accordingly, existing section 180 of the Child Support Act should be amended to allow for a revocable uplift of future entitlements.

Where exceptional circumstances exist whereby third-party carers will not want to apply against all the parents – for example, if there is risk of domestic violence or if Child Youth and Family considers it inappropriate to apply against the other parent, the carer should not be required to apply against both parents. Inland Revenue will publish guidelines and examples on when such circumstances may arise.

Recommendation

That the submission be accepted.

Issue: Identity information required

Submission

Consideration should be given to amending the type of identity information that can be disclosed to Inland Revenue under schedule 1A of the Births, Deaths, Marriages and Relationships Regulations Act 1995.

Comment

Schedule 1A of the Births, Deaths, Marriages and Relationships Regulations Act 1995 lists what information can be disclosed by the Department of Internal Affairs to specified agencies. The following table shows the information (and its purpose) that is currently disclosed to Inland Revenue:

	The type of information that can be disclosed to:	Purpose
IRD	Birth information, marriage information, civil union information, and name change	To verify the identity of a person to establish— (a) the tax file number of the person: (b) the details of an applicant for child support
	Death information	To identify deceased taxpayers and verify their details

Officials recommend that the type of information that can be disclosed by the Department of Internal Affairs be widened for child support purposes, to also include:

- the parentage and dates of birth of qualifying children and dependent children; and
- death information for qualifying children and dependent children.

This will allow the Commissioner of Inland Revenue to confirm the identity of children for which child support or a dependent children deduction are being claimed (and their relationship to the parties claiming the deduction). From an administrative and compliance point of view this is much simpler, for both Inland Revenue and parents, than contacting parents individually and requiring that they provide such information directly.

The Department of Internal Affairs has been consulted and agrees with this submission.

Recommendation

That the submission be accepted.

Issue: Dependent child allowance

Submission

Proposed new section 35(2) should be amended to ensure that the formula is calculated on the basis of the number of dependent children the parent maintains as a member of their family.

Comment

Proposed new section 35 sets out the dependent child allowance that a parent is entitled to. It provides for the dependent child allowance to be calculated for each child in the dependent child's child support group. The policy intent was for it to be calculated on the basis of the number of dependent children the parent is responsible for, which can be wider than just children with the same biological parents. For example, the definition of "dependent child" includes an adopted child.

Officials therefore recommend that proposed new section 35(2) be amended to ensure that all other dependent children that a parent maintains as a member of their family are taken into account in the dependent child allowance calculation.

Recommendation

That the submission be accepted.

Issue: Child support income amount

Submission

Proposed new section 32(2), which sets out child support income when the adjusted taxable income of the parent cannot reasonably be ascertained, be removed to allow for the use of existing default provisions.

Comment

Proposed new section 32 sets out how a person's child support income amount for a child is determined. Subsection 2 states that if the adjusted taxable income of a parent cannot reasonably be ascertained, then:

- if one parent's adjusted taxable income is known, that is also used for the other parent; and
- if there is more than one parent whose adjusted taxable income is known, an average is used.

The effect is that existing default assessments could only be used when both parents' income cannot reasonably be ascertained. Officials recommend that the existing default assessment process used to find an appropriate income to assess a parent is preferable to the proposed provision in new section 32(2).

It is also recommended, however, that the provisions in new section 32(2) are retained as a fall-back if the Commissioner of Inland Revenue is satisfied that there are exceptional circumstances that dictate that the existing default assessment process should not be used.

Recommendation

That the submission be accepted.

Issue: Estimation provisions

Submission

As existing estimation provisions in the bill or Child Support Act do not adequately deal with the fact that the new formula takes into account both parents' income (and therefore both parents can now estimate their income), new updated estimation provisions should be included in the bill.

Comment

Proposed new section 41, together with other existing provisions in the Child Support Act relating to elections that can be made for child support income to be based on estimated taxable income for the current year (as compared with the lagged income used in the formula), do not adequately deal with the new formula. In particular, the new formula now takes into account both parents' income, so therefore both parents can now estimate their income. It is also now potentially possible for liable parents to become receiving carers, and vice versa, depending on their respective incomes.

Estimation provisions should ideally apply for those periods after re-estimates of income have been made, to encourage timely re-estimates and remove the possibility of debt arising on the receiving carer. The current provisions require a re-assessment of the whole year which can mean a receiving parent has a debt when the paying parent's income has reduced significantly and the paying parent makes the reconciliation late in the year.

To address these issues, and other matters of consistency, officials recommend that the bill be amended to ensure that, for parents wishing to estimate their income based on current year information:

- Parents need to advise Inland Revenue of their income earned in the year-to-date at the time of their estimate. This information needs to be accurate as it will be used to determine if the estimate will be accepted, and for reconciliation purposes.
- The estimated figure for the balance of the year must be for the period from the 1st of the month of the estimation, through to the end of the child support year.
- The sum of the estimated figure and the year to date figure must be 85 percent or less of the lagged income to qualify for estimation purposes.

It is considered fairer to use the whole year's income, rather than just income from the date the estimate takes effect to the end of the child support year, as for many people income streams can be uneven throughout the year.

Officials also recommend that income estimated for the balance of the year should be annualised in order to calculate remaining liabilities for the child support year being estimated.

For parents wanting to subsequently revoke an estimate, this should be permitted but doing so would revoke all previous estimates made during that year, with the result that a parent is assessed on the income that was used prior to the original estimate being accepted.

Parents who have estimated their income should continue to be able to have their child support liabilities reconciled to ensure that revised income levels are taken into account. However, this reconciliation should only occur for the future periods that the customer has estimated their income for, not for the whole year as is currently the case. This will help to ensure surety and consistency of payments for all parties.

It is recommended that underestimation penalties should apply to both liable parents and receiving parents who estimate their income, with the manner in which the penalty is charged being based on the parents' own estimates. However, it should be clarified that additional late payment penalties will not be applied to underestimation penalties.

Recommendation

That the submissions be accepted.

Issue: Living allowance

Submission

Proposed new section 34, that sets out the living allowance that applies to every person's child support income amount should be amended to allow for an increased allowance to be available to parents who are in receipt of an invalid's benefit under section 40 of the Social Security Act 1964.

Comment

Proposed new section 34 sets out the living allowance that applies to every person's child support income amount. Under this section, an increased allowance is made available for someone who is in receipt of a domestic purposes benefit payable to a person under section 27G of the Social Security Act 1964 because that person is caring at home for someone who is sick or infirm.

This increased allowance should also be available to parents who are in receipt of an invalid's benefit under section 40 of the Social Security Act 1964, which is currently paid at the same rate.

Recommendation

That the submission be accepted.

Issue: Offsetting liabilities

Submission

A provision to allow offset of a liable parent's current liability against entitlements already owing to them by a receiving carer should be included in the bill.

Comment

Currently, it is not possible to offset a liable parent's current liability against entitlements already owing to them by the other parent. This can happen in both a domestic and international context.

For example, one parent may be owed a significant arrears of entitlement in respect of a child, but then incur a liability if the other parent now instead cares for that child. There is no ability, currently, to offset such liabilities.

Officials recommend that the bill include provision to allow offsetting in such circumstances, both for New Zealand domestic cases and also when the liabilities arise in countries that are subject to a reciprocal child support agreement with New Zealand.

Recommendation

That the submission be accepted.

Issue: Write-off when one party dies

Submission

Proposed new section 180A should be expanded to give the Commissioner of Inland Revenue the discretion to write off financial support owing when a receiving carer or liable parent dies.

Comment

Currently, the Commissioner of Inland Revenue cannot write off child support debt in circumstances when a liable parent or receiving carer is deceased. As a result, child support debts may remain payable in circumstances where repayment is extremely unlikely – for example:

- a liable parent has died with an insolvent estate; or
- a deceased payee is owed financial support from a liable parent who is considered unlikely ever to pay (for example, if they have permanently left New Zealand).

Under the current rules, such debts will remain payable indefinitely.

Officials therefore recommend that new section 180A be expanded to give the Commissioner of Inland Revenue the discretion to write off financial support owed when a receiving carer dies, or to write off the debts of a liable parent if the Commissioner of Inland Revenue is satisfied there are insufficient funds in the estate to satisfy the liability.

Recommendation

That the submission be accepted.

Issue: Payment arrangements and relief from incremental penalties

Submission

Section 135J of the bill should continue to apply to payment arrangements entered into on or after 1 April 2014.

Comment

The bill amends section 135J of the Child Support Act. This section gives the Commissioner of Inland Revenue the ability to provide relief from incremental penalties by writing them off when a payment agreement has been complied with during a review period. The bill proposes that this ability will no longer apply to payment arrangements entered into on or after 1 April 2014.

Officials recommend that this relief should continue to be available on or after 1 April 2014, in addition to the other penalty write-off provisions in the bill. Doing so will provide additional incentive for parents to continue to enter into and commit to payment agreements where they may not meet the criteria for write-off under serious hardship.

Recommendation

That the submission be accepted.

Issue: Overpayments to payees

Submission

Section 151(2) of the Child Support Act should be amended to make the charging of penalties arising from overpayments to payees discretionary.

Comment

Proposed new section 134C in the bill has the effect that if a payee has been overpaid child support, the Commissioner of Inland Revenue must assess the amount that is repayable and penalties will apply as if that amount was financial support and the payee was a liable person.

In many circumstances, receiving carer overpayments are outside a payee's control. It is therefore, in many circumstances inappropriate for a payee to be charged penalties. Officials therefore recommend that section 151(2) of the Child Support Act should be amended to make the charging of such penalties discretionary, rather than compulsory as it is currently.

Recommendation

That the submission be accepted.

Issue: Qualifying payments

Submission

In order for the qualifying payments process to be made more effective and efficient, proposed sections 131 and 131A should be amended to extend the criteria for its use. This includes, for example, extending who can qualify and reducing certain limitations on when qualifying payments can be recognised.

Comment

Proposed new sections 131 and 131A provide for a new payment method for some of the child support for a child. It allows the Commissioner of Inland Revenue to provide recognition for qualifying payments made for a child's benefit.

In the interests of making the process more effective and efficient, officials recommend sections 131 and 131A be amended to extend the criteria of its use – for example, extending who can qualify and reducing certain limitations on when qualifying payments can be recognised.

A number of mostly administrative changes to the way qualifying payments are to operate, in order to make this method of payments available to more parents who agree to its use, are recommended. These include the following main proposed changes (together with other associated consequential changes):

- Agreement should be in writing between a liable parent and a receiving carer (and not just between parents).
- Qualifying payment needs to be for 10 percent or more of their liability for the relevant child for the child support year at the time of the application.
- Agreement can be made at any time during a child support year, rather than only before.
- A qualifying payment will come into force in the month following the acceptance of application.
- Recognition will not be granted until the qualifying payments have been made.
- Payments need to have been made within the last 12 months.
- No parent or third-party carer of the child can have any child support debt, as a receiving carer or liable parent, at the time of application (however a debt caused by a reassessment, subsequent to acceptance of the application to recognise the qualifying payment, will not disqualify the payments from continuing to qualify).
- If a reassessment, subsequent to acceptance of the application to recognise the qualifying payment, causes the total qualifying payment to be less than 10 percent of the liability for the relevant child for the child support year, the total qualifying payment still qualifies (that is, the acceptance should not be revoked).

Officials also recommend that current section 206 of the Child Support Act, that concerns direct payments to payees, be amended to reflect the existence of qualifying payments.

Recommendation

That the submission be accepted.

Issue: Discretion to write off certain child support debt

Submission

Proposed new section 180A should be expanded to allow the Commissioner of Inland Revenue to write off some or all of the benefit component of an amount of child support that is payable if collecting it would represent an inefficient use of Inland Revenue's resources.

Comment

Proposed new section 180A enables the Commissioner of Inland Revenue to write off some or all of the benefit component of an amount of child support that is payable by the liable person to the Crown if recovery would place the liable parent in serious hardship.

Officials recommend that this should be expanded to allow the Commissioner of Inland Revenue to also write off some or all of the benefit component if collecting it would represent an inefficient use of Inland Revenue's resources.

Recommendation

That the submission be accepted.

Other matters

REMEDIAL MATTERS RAISED IN SUBMISSIONS RECEIVED

Issue: Definition of "care order or agreement" in clause 5(2)

Submission
(New Zealand Law Society)

The definition of "care order or agreement" in clause 5(2) of the bill, which contains definitions of relevant terminology, should be amended by replacing the word "proportion" with "division".

Comment

Officials agree that using the word division better reflects common usage, and that it should be used in the bill when considering care.

Recommendation

That the submission be accepted.

Issue: Proposed section 33(5)(b) should be amended to indicate in more detail the "particulars" to be taken into account by the Commissioner

Submission
(New Zealand Law Society)

Proposed section 33(5)(b) should indicate in more detail the "particulars" to be taken into account by the Commissioner of Inland Revenue when determining a person's taxable income when that income has not yet been assessed.

Comment

Officials do not consider that it is appropriate to limit the use of any particulars that the Commissioner of Inland Revenue may (or may not) hold about a person in such circumstances, when trying to assess a person's likely taxable income.

There are many and varied reasons why a person's adjusted taxable income may not be known at the time an assessment is required to be made. Although most are likely to be cases where a return of income is overdue, there will be others where a person is not required to file an income tax return or request an income statement and so will not be required to have their income "assessed" as such.

It is considered appropriate that the Commissioner of Inland Revenue be able to gather whatever information may be available (for example, returns from associated entities that will contribute towards the parent's income adjustments, historical income assessment information adjusted to account for the time elapsed, or a declaration that no income was earned).

The potential range of reasons for adjusted taxable income figures not being available at the required time and the variety of appropriate sources of information detailing the "particulars" may unduly limit the factors the Commissioner of Inland Revenue may take into account in determining the appropriate level of income to use in an assessment. This may lead to an inferior assessment, to the detriment of the parent.

Further, if a parent or receiving carer disagrees with the amount used, remedies are available to them under the Child Support Act – ranging from filing the required income returns or providing evidence to support a proposed alternative, formal objection and/or administrative review.

Recommendation

That the submission be declined.

Issue: Ability of a liable parent to apply for a formula assessment

Submission
(New Zealand Law Society)

New section 8 in clause 9 of the bill should be amended to make it clear that a liable parent can apply for a formula assessment.

Comment

Officials agree with this submission. Any parent and/or other carer should be able to apply for an assessment.

Recommendation

That the submission be accepted.

Issue: Number of parents of child

Submission
(New Zealand Law Society)

It is not clear from clause 9 of the bill, which inserts new section 7B, what the rationale is for assuming that a qualifying child has two parents. The section should be amended to provide that one or both parents are carers or, alternatively, the section should be removed from the bill.

Clarification should also be given as to what modifications the Commissioner of Inland Revenue can make when this assumption is shown to be incorrect.

Comment

The bill is broadly written based on the assumption of two parents, otherwise the legislation would be necessarily convoluted. However, cases arise when there are more than two parents. Proposed new section 7B allows flexibility in the bill to accommodate situations when a child has more than two parents (for example, when a person is declared a step-parent). There is the potential for this to become more common over time as the variety of parenting relationships change (for example, through surrogacy or same-sex couples). Section 7B gives the Commissioner of Inland Revenue the discretion to modify the way the formula is applied to take more parents into account.

The modifications required would be to adjust relevant formulas to ensure that any change in parenting circumstances would not negate an assessment in relation to other parents and receiving carers. Any adjustments would be expected to maintain a fair assessment of liability and entitlement, and would be open to the usual remedies (objection or administrative review).

Recommendation

That the submission be declined.

Issue: Deemed application by beneficiary

Submission
(New Zealand Law Society)

New section 12 should be amended to make it clear whether a social security beneficiary must apply for a formula assessment or whether they are simply deemed to have applied (new section 9).

Comment

Consistent with the current law, a social security beneficiary must apply for a formula assessment (under new section 9). New section 12 states that "the Commissioner is deemed to have received from the beneficiary a properly completed application for a formula assessment for child support, **as required by section 9** ….". Section 12 is concerned with timing, ensuring that any liability under a formula assessment arises immediately after the liability under a voluntary agreement ceases.

Recommendation

That the submission be declined.

Issue: Backdating of assessment commencement dates

Submission
(New Zealand Law Society)

New sections 13 or 19 should be amended to enable the Commissioner of Inland Revenue to backdate the liability to pay child support to the date of the filing of an application, whether that application is properly completed or not. Concerns have been raised that parents may face a delay in their entitlement if, for example, they cannot obtain information relating to third parties.

Comment

The effect of new section 13 is merely to ensure that the Commissioner of Inland Revenue must notify all parents of the receipt of an application for child support that affects them.

New section 19, on the other hand, establishes when the liability to pay child support begins. It states that the liability starts from the day on which the properly completed application is received by the Commissioner of Inland Revenue. The application will only require information that is available to the applicant, therefore no unnecessary delays will arise.

An existing rule, whereby the start date can be backdated when a paternity order is made after the properly completed application is received, will remain.

Recommendation

That the submission be declined.

Issue: How the Commissioner establishes proportions of care

Submission
(New Zealand Law Society)

New section 15(1) should be amended to state that the Commissioner of Inland Revenue "must", rather than "may" rely on the contents of the care order or agreement when establishing the proportion of on-going daily care that a carer provides to the child. Further, new section 15(3) should also be amended to ensure that a parent, as well as a carer, can rebut this presumption in new section 15(1).

Comment

Officials agree that the changes should be made, to address inconsistencies in the new section and provide further clarification.

Recommendation

That the submission be accepted.

Issue: Identification of liable parents and receiving carers

Submission
(New Zealand Law Society)

New section 17 should be amended to provide that both parents may be identifiable as liable parents and receiving carers, depending on their cost/care percentage.

Comment

Parents' incomes and care levels are taken into account in the proposed formula assessment, and in identifying who liable parents and receiving carers are in proposed new section 17.

The current ability to cross-apply in a shared-care situation (whereby liabilities are netted off) effectively applies automatically under the new formula.

Recommendation

That the submission be declined.

Issue: Effect of being a liable parent or receiving carer

Submission
(New Zealand Law Society)

New section 18, which describes the effect of being a liable parent and a receiving carer, should be amended to address a situation when a liable person may only be a carer rather than a parent.

Comment

Although it is possible for a non-parent carer to be a receiving carer, it is not possible for them to be a "liable parent" under new section 17. This reflects the fact that non-parents do not have a responsibility for the financial upkeep of a child they care for.

Recommendation

That the submission be declined.

Issue: Child expenditure tables

Submission
(New Zealand Law Society)

New section 36D should be amended to provide that the child expenditure table for the current and previous child support year (if applicable) is available not only on an internet site maintained by or on behalf of Inland Revenue, but also in a hard copy form if requested.

Comment

Officials agree that hard copies should also be available on request.

Recommendation

That the submission be accepted.

Issue: Definition of "access"

Submission
(New Zealand Law Society)

The word "access" should be changed to "contact" in amended section 105(2)(b)(i) and (3) to reflect the more up-to-date terminology used in the Care of Children Act. Further, the phrase "access [contact] (of any kind and for any purpose)" should be amended to clarify that it includes all contact, including where care levels are less than 28 percent.

Comment

Officials agree that the recommended changes would better reflect terminology used in the Care of Children Act.

Recommendation

That the submission be accepted.

Issue: Automatic deduction

Submission
(New Zealand Law Society)

New section 129(1) should be amended to give guidance on when it would be considered "inappropriate" for financial support not to be paid by automatic deduction.

Further, the phrase "automatic deduction person" in new section 129(2) should be amended so it is a less cumbersome phrase, and subsections (2) and (3) of section 130 should be moved to section 131.

Comment

As noted in the comments on the main submissions on automatic deductions, it is recommended that the Commissioner of Inland Revenue be given a specific discretion, when there is legitimate privacy, cultural or other concerns, and alternative payment options have been provided, not to automatically deduct child support payments from salary and wages.

In the context of new section 129(1), on the other hand, it is anticipated that "inappropriate" refers to situations when it is administratively inappropriate to deduct child support at source.

Recommendation

That the submission be declined.

REMEDIAL MATTERS RAISED BY OFFICIALS

Issue: Commissioner-initiated administrative review

Submission

Section 96Q of the Child Support Act should be amended, together with any other associated sections, to reflect the fact that a liable parent may want to elect to become a party to a Commissioner-initiated administrative review (CIAR), where appropriate.

Comment

During a Commissioner-initiated administrative review, the Commissioner of Inland Revenue may wish to review the financial resources of any parent involved in a formula assessment. Section 96Q of the bill states that the parties are to be:

- the parent who is the subject of the CIAR review; and
- any receiving carer, whether a parent or non-parent of the child, who elects to become a party.

Officials recommend that section 96Q should be amended, together with any other associated sections, to reflect the fact that a liable parent may also want to elect to become a party to a Commissioner-initiated administrative review, where appropriate.

Recommendation

That the submission be accepted.

Issue: Establishing proportions of care identified in an application

Submission

The words "identified on the application" should be removed from new section 14 of the Child Support Act in case not all carers, in fact, are identified on an application.

Comment

New Section 14 states that the Commissioner of Inland Revenue must establish the proportion of care that each parent and non-parent carer identified on the application provides.

To correctly establish the proportion of care that a person provides, consideration must also be had to anyone else who may also have care, whether or not they are identified on the application.

Recommendation

That the submission be accepted.

Issue: Notification by Commissioner of application

Submission

New section 13 should be amended to clarify that notification by the Commissioner of Inland Revenue of an application can occur if the relevant facts have already been ascertained.

Comment

New section 13 of the Child Support Act states that on receiving a properly completed application for a formula assessment in respect of one or more qualifying children, the Commissioner of Inland Revenue must notify the applicant, and every parent and carer identified in the application, that the Commissioner of Inland Revenue has received an application for a formula assessment and will therefore ascertain certain facts.

To allow the Commissioner of Inland Revenue flexibility on when parties are notified, given that the Commissioner of Inland Revenue may have already ascertained who the liable parents or receiving parents are, officials recommend that new section 13 be amended to clarify that notification can occur if the relevant facts have already been ascertained.

Recommendation

That the submission be accepted.

Issue: Suspension of other agreements

Submission

New section 19(2), which states that if a parent becomes liable under a formula assessment, existing liabilities under any other agreement in relation to that child are suspended, should be amended to clarify that the suspension only applies to a liability under a voluntary agreement.

Comment

New section 19(2) states that if a parent is liable under a formula assessment, existing liabilities under any other agreement in relation to that child are suspended.

However, in this context "any other agreement" is only intended to cover voluntary agreements, not court orders (consistent with section 20 of the current Child Support Act, which the new provision is designed to replicate).
Officials therefore recommend that new section 19(2) be amended to clarify that it only applies to the suspension of liabilities under voluntary agreements.

Recommendation

That the submission be accepted.

Issue: Form of application

Submission

The reference to an "application form" in new section 10(3) should be clarified so that it applies to different forms of application (such as online applications).

Comment

New section 10(3) states the application for formula assessment, and every document accompanying it, must be verified as specified in the application form.

Officials recommend that "as specified in the application form" be clarified so that it applies to different forms of application (such as online applications).

Recommendation

That the submission be accepted.

Issue: Details in notices of assessments

Submission

New section 88A(3)(f) should be amended so that "child expenditure notice" should instead read "child expenditure table".

Comment

New section 88A(3) lists the things that need to be on the notice of entitlement for a non-parent carer. Subsection (f) states "the expenditure on each child from whom the carer provides care, as determined by the relevant child expenditure notice".

Officials recommend that "child expenditure notice" in this regard should instead read "child expenditure table".

Recommendation

That the submission be accepted.

Issue: Notification by Commissioner to other payers and payees

Submission

New section 89(2)(c) should be amended to reflect the fact that the requirement to supply the name of each child does not apply to domestic maintenance cases.

Comment

New section 89(2) states that the notice must set out a number of things, including the name of each child for whom payment is to be made.

Officials recommend that as the name of each child does not apply to domestic maintenance cases, subsection (c) should be amended to reflect this.

Recommendation

That the submission be accepted.

Issue: Notice of assessment of formula assessment of child support

Submission

New section 88(2) should be clarified to make it clear that notices of assessment can contain both details of the amount of child support a liable parent is liable to pay to each receiving carer and the amount of child support receiving carers will receive from each liable parent.

Comment

New section 88(2) states that the notice of assessment must set out, as a minimum, the relevant matters in section 88A, but in no case may a notice of assessment reveal any more detail about another person who is a parent or carer than:

- the person's name (unless it is unsafe to do so);
- the person's proportion of care; and
- the person's cost care percentage.

Officials recommend that new section 88(2) be clarified to make it clear that notices of assessment are able to contain the following information:

- details of the amount of child support a liable parent is liable to pay to each receiving carer; and
- details of the amount of child support that child support receiving carers will receive from each liable parent.

Recommendation

That the submission be accepted.

Issue: Dependent child allowance

Submissions

Parents claiming the dependent child allowance should be required to provide an IRD number for a child, or alternatively the information to enable an IRD number to be allocated, when claiming a dependent child allowance for that child for the first time.

The definition of "dependent children" in new section 35(3)(c) should be amended to exclude children that a person is liable to pay child support for under an Act equivalent to the Child Support Act in an overseas jurisdiction.

Comment

The bill does not currently specify any information requirements that must be provided to Inland Revenue for a parent to be eligible for the dependent child allowance. To ensure that dependent child allowances are only granted where appropriate, parents should be required to provide an IRD number for a child, or alternatively the information to enable an IRD number to be allocated, when claiming a dependent child allowance for that child for the first time. This is similar to the requirement for "qualifying children" under proposed new section 10(2)(d)).

Officials also recommend that the definition of "dependent children" in new section 35(3)(c) should also be amended to exclude children that a person is liable to pay child support for under an Act equivalent to the Child Support Act in an overseas jurisdiction.

Recommendation

That the submissions be accepted.

Issue: Overseas children

Submission

New sections 5(a)(ii) and 35 (3)(b)(ii), that define "qualifying children" and "dependent children", should be amended to cover 18 year old children still enrolled in overseas secondary schools.

Comment

New sections 5(a)(ii) and 35 (3)(b)(ii) state that both a "qualifying child" and a "dependent child" need to be under 18, or aged 18 but still enrolled at a registered school (as defined in section 2(1) of the Education Act 1989).

The reference solely to the Education Act 1989 prevents children who are aged 18 and enrolled in a secondary school overseas from meeting the criteria. To ensure that children overseas are not excluded, officials recommend that the definition of "qualifying children" and "dependent children" be amended to include equivalent Acts in overseas jurisdictions.

Recommendation

That the submission be accepted.

Issue: Children aged 18 who are still enrolled at secondary school

Submission

When children aged 18 stay at secondary school for all of the academic year, then the child should be treated as having stayed at school until the 31 December of the year they left school.

Comment

New section 5(a)(ii) states that a "qualifying child" needs to be under 18, or aged 18 but still enrolled at a registered school (as defined in s 2(1) of the Education Act 1989).

Officials recommend that when children aged 18 stay at secondary school **for all of the academic year**, then the child should be treated as having stayed on at school until the 31 December of the year they left school.

This would be more efficient from an administrative standpoint, as the end of the academic year varies slightly between schools. In the absence of such a provision, Inland Revenue would have to establish what school each child was at and contact that school to find out when the academic year finishes. A similar provision already operates for Working for Families tax credit purposes, and also for certain benefits.

Recommendation

That the submission be accepted.

Issue: Identification of liable parents and receiving carers

Submission

Proposed new section 17 should be amended to reflect the policy intent that a parent whose income percentage is greater than or equal to their care cost percentage should be a liable parent.

Comment

Proposed new section 17 currently identifies liable parents and receiving carers as follows:

- a parent whose income percentage exceeds their care cost percentage is a liable parent of the child;
- a parent carer whose income percentage is less than their care cost percentage is a receiving carer of the child, and
- a non-parent carer who provides at least 28% of ongoing care is a receiving carer.

Following this definition, if a person's combined living allowance, dependent child allowance and multi-group allowance exceeded their adjusted taxable income, they would not be a liable parent (as their income would be nil, and therefore does not exceed their care cost percentage, even when this is also nil).

It was not the policy intention that parents should not be a liable parent merely on the basis that they have a low income. The policy intent was that if a parent's income percentage less care cost percentage was nil, and the proportion of ongoing daily care was less than 28 percent, they should be a liable parent and therefore be subject to the minimum payment. Parents whose care is 28 percent or more are considered to be incurring sufficient costs to warrant the waiving of the minimum payment.

Officials therefore recommend that proposed section 17 of the Child Support Act be amended to reflect this.

Recommendation

That the submission be accepted.

Issue: Formula for assessing annual amount of child support

Submission

New section 29 should be clarified to make it clear that if section 36A applies, then the liable parent's liability is the amount calculated as per section 36A.

Comment

Proposed new section 29 sets out the formula for assessing a liable parent's child support liability. New section 29(2) states that if a liable parent is entitled to a multi-group allowance, the annual amount of child support for a child is the lesser of:

- the amount determined by the formula in section 29(1); or
- the amount determined under the multi-group cap in section 29(3).

New section 29 does not, however, state that if new section 36A applies, and the amount determined in section 29(1) or (3) is higher than section 36A, then the liability is the amount calculated under section 36A.

New section 29 should therefore be clarified to make it clear that if section 36A applies, the liable parent's liability is the amount calculated according to section 36A. If section 36A applies, but the liable parent is liable for the minimum amount for this case, then the minimum amount applies.

Recommendation

That the submission be accepted.

Issue: Rounding

Submission

All rounding relating to daily, monthly and annual liabilities should be done to the nearest 10 cents, with rounding to a whole dollar only applying in relation to values applied to and included in the child expenditure table and in the charging of late payment penalties.

Comment

Sections 136 and 237 of the Child Support Act currently provide for daily and monthly amounts to be rounded to the nearest 5 cents and annual liabilities to the nearest dollar. As New Zealand's lowest denominated coin is now 10 cents, all rounding relating to the formula should be done to the nearest 10 cents, including for annual liabilities.

Section 237 of the Act currently includes a list of when rounding does not apply to the nearest dollar. This section should also be amended to state instead when rounding should apply to a whole dollar, namely:

- all values applied to and included in the child expenditure table; and
- in the charging of late payment penalties.

Recommendation

That the submission be accepted.

Issue: Child support income amount

Submissions

Proposed new section 32 should be clarified to state that if a parent's child support income amount is a negative, then it should be deemed to be nil.

Comment

Proposed new section 32 provides that a parent's child support income amount is their adjusted taxable income minus their living allowance, dependent child allowance, and multi-group allowance.

Officials recommend that this section should be amended, in order to provide greater clarity, that if a parent's child support income amount is a negative, then it should be deemed to be nil.

Recommendation

That the submission be accepted.

Issue: Requirements for estimating income

Submissions

The requirement to make and revoke estimations of income in writing under sections 40 and 42 of the Child Support Act should be relaxed so that they can also be made in other approved formats. Further, the requirement to provide information and evidence of the revised income to the Commissioner of Inland Revenue should be relaxed so that this evidence, although still required, would only need to be submitted upon request by the Commissioner of Inland Revenue.

Comment

It is currently a requirement under section 40(1) of the Child Support Act that estimates of income must be provided in writing. To make it easier for parents to estimate their income, officials recommend that this requirement for the estimate to be made in writing be removed. This would allow estimations to be made via other approved channels.

Section 40(2)(c) of the Child Support Act currently also states that the estimate must be accompanied by information and evidence to support the estimate. Officials recommend this requirement be relaxed so that the information and evidence, although still required, would only need to be submitted upon request by the Commissioner of Inland Revenue.

Finally, officials recommend that any revocation of an estimate of income (under section 42(1) and (2) of the Child Support Act) should not need to be in writing. This would allow revocation to be made via other approved channels.

Recommendation

That the submissions be accepted.

Issue: Overseas income

Submission

Proposed new section 33 should be clarified to make it clear that, for a person residing outside New Zealand, adjusted taxable income includes all income, whether taxable in their country of residence or not.

Comment

Section 39A of the Child Support Act currently allows the Commissioner of Inland Revenue, in making a formula assessment, to take into account any income the parent has derived in a country outside New Zealand that is taxable in that country (if that income can be ascertained). It also states that the Commissioner of Inland Revenue may apply the provisions of the Act with such modifications as may be necessary.

The bill proposes to amend section 39A(1) so that the income no longer has to actually be taxable in that country. However, the bill is not clear in proposed new section 33 (in relation to adjusted taxable income) that, for a person residing outside New Zealand, that adjusted taxable income includes all income, whether taxable in their country of residence or not. Officials therefore recommend that proposed new section 33 be clarified to make this clear.

Recommendation

That the submission be accepted.

Issue: Definition of "child support group"

Submission

The definition of "child support group" should be amended to exclude children who are not covered by the Child Support Act.

Comment

The new definition of "child support group" included in the bill is currently worded widely enough so that it could include children who are not covered by the Child Support Act. However, the policy intent was that it should only include children within the New Zealand child support scheme, and not private arrangements.

Officials therefore recommend that the definition of "child support group" be amended to exclude children who are not covered by the Child Support Act.

Recommendation

That the submission be accepted.

Issue: Discretionary relief for residual incremental penalty debt

Submission

Proposed new section 135GA should be amended to clarify that when section 180A applies, any residual penalties in relation to the debt in question may also be written off at the same time.

Comment

Proposed new section 180A allows the Commissioner of Inland Revenue to write off the benefit component of a child support debt if the receiving carer is or was a social security beneficiary and recovery would place the liable person in serious hardship.

Officials recommend that proposed new section 135GA be amended to clarify that when section 180A applies, any residual penalties in relation to this debt may also be written off at the same time.

Recommendation

That the submission be accepted.

Issue: Initial late payment penalty

Submission

Proposed new section 134(3) should be clarified to reflect that the second initial late payment penalty of 8 percent charged seven days after the due date under this section is calculated by reference to the financial support outstanding before the first initial late payment penalty of 2 percent charged under section 134(2) was applied.

Comment

Proposed new section 134 provides for the application of penalties for late payment of financial support debts.

Officials recommend that proposed new section 134(3) be clarified to reflect the intention that the second initial late payment penalty of 8 percent under this section, payable seven days after the due date, be calculated by reference to the financial support outstanding before the first initial late payment penalty of 2 percent under section 134(2) was applied.

Recommendation

That the submission be accepted.

Issue: Relief from ongoing incremental penalties if payment agreement in force

Submission

Proposed new section 135N(1)(c) should be clarified to reflect that when a deduction is made from a liable parent but an employer fails to pay the deduction to Inland Revenue, the liable parent can still be eligible for relief from on-going incremental penalties.

Comment

Proposed new section 135N(1) provides relief from on-going incremental penalties if a deduction notice is in force. The intention of section 135N(1)(c) is that the deduction should be made from a liable parent's wages.

Officials recommend that proposed new section 135N(1)(c) should be clarified to reflect that when a deduction is made from a liable parent but an employer fails to pay the deduction to Inland Revenue, the liable parent is still entitled to relief from the on-going incremental penalties.

Recommendation

That the submission be accepted.

Issue: How the Commissioner establishes proportions of care – rounding

Submission

Proposed new section 15(6) should, for clarity, provide the method of rounding to be used.

Comment

Proposed new section 15(6) states that when establishing proportions of care the Commissioner of Inland Revenue must use only whole percentage figures.

Officials recommend that, for further certainty, the bill also states the method of rounding used. The method adopted would be one whereby:

- if the proportion of care is greater than 50 percent, then the rounding should go up (57.1 percent is rounded to 58 percent); and
- if the proportion of care is less than 50 percent, then the rounding should go down (13.9 percent is rounded to 13 percent).

Recommendation

That the submission be accepted.

Issue: Parents and receiving carers to advise Commissioner of changes

Submission

Proposed new section 82 should be amended to provide greater clarity when both parents provide notification.

Comment

Proposed new section 82, which provides for the effective dates of changes advised to the Commissioner of Inland Revenue, does not operate consistently for all shared-care cases.

Section 82 provides that when a liable parent informs Inland Revenue about a reduction in their care levels outside of the 28-day period, Inland Revenue makes the change from the date of the event. However, if the receiving carer informs Inland Revenue about a liable parent's reduction in care, Inland Revenue makes the change from the date of notification. A potential conflict therefore exists if both provide notification on the same day.

Officials recommend that proposed new section 82 should be amended to clarify the outcome if both parents provide notification.

Recommendation

That the submission be accepted.

Issue: Care cost percentage table

Submission

Proposed new schedule 1 in the bill should be amended to reflect that when using care cost percentages, only whole percentages should be used, to make it easier to understand.

Comment

Proposed new schedule 1 in the bill contains the new care cost percentage table.

Officials recommend that consideration be given to amending this table to reflect that when using care cost percentages, only whole percentages are to be used. This may make it easier to understand.

Recommendation

That the submission be accepted.

Issue: How the Commissioner establishes proportions of care

Submission

Proposed new section 15 in the bill should clarify that the Commissioner of Inland Revenue, when establishing proportions of care, can reflect care arrangements made for periods in excess of a year.

Comment

Some care arrangements run for periods in excess of a year. Officials therefore recommend that section 15 should be amended to clarify that different time-periods can be used.

Recommendation

That the submission be accepted.

Issue: Offsetting of child support liabilities

Submission

Proposed new section 152B in the bill should be amended so that offsetting of liabilities can apply in split-care cases (this is allowed under section 34 of the current Child Support Act, but this section is proposed to be repealed by the bill).

Further, the ability to offset should not only be available to offset domestic New Zealand liabilities, but also be extended to situations when split-custody arrangements are in place in a trans-Tasman context – that is, when liabilities between two parents exist that are potentially subject to the reciprocal child support agreement between New Zealand and Australia.

Comment

Proposed new section 152B in the bill provides for the offsetting of child support payments between parents. It states that if two parents of a child are each liable to pay the other an amount payable under a formula assessment for child support, then the Commissioner of Inland Revenue may offset one liability against the other. As the proposed new formula inherently caters for offsetting in a shared-care situation, this section is no longer needed in a domestic context.

However, the bill also repeals current section 34 of the Child Support Act which deals with offsetting liabilities when there are split-custody situations (where the custody of two or more children is split between two parents.) As it would be beneficial for both parents and Inland Revenue, it is still preferable to offset liabilities in such cases. Officials therefore recommend that section 152B be amended so that it applies in split-care cases.

Officials further recommend that the ability to offset should not only be available to offset domestic New Zealand liabilities, but also be extended to split custody arrangements in place in a trans-Tasman context, where liabilities between two parents exist that are subject to the reciprocal child support agreement between New Zealand and Australia. For offsetting to be effective, enabling legislation in Australia will also be required in due course.

Recommendation

That the submission be accepted.

Issue: Use of the phrase "shared care"

Submission

Consideration should be given in the bill to changing the use of the phrase "shared care" to "recognised care", when appropriate, for greater clarity.

Comment

Several submissions appeared to be under the misconception that 28 percent "shared care" represented equal care, rather than the level of care at which point some recognition is provided to parents for the costs they have incurred in providing a significant degree of care for their children.

In that context officials recommend that consideration be given in the bill to changing "shared care" to "recognised care".

Recommendation

That the submission be accepted.

Issue: Care orders and agreements

Submission

Consideration should be given to changing the phrase "care orders or agreement" to "care agreement or orders" in the Child Support Act so there is an increased focus on the making of voluntary care agreements between parents.

Comment

The bill currently refers to "care order and agreement" (for example, in proposed new sections 2 and 15).

Officials recommend that consideration be given to reversing the wording to "care agreement or order" in the Child Support Act so that there is an increased focus on the making of voluntary care agreements.

Recommendation

That the submission be accepted.

Issue: How the Commissioner establishes proportions of care

Submission

Proposed new section 15(3), that provides that a carer of a qualifying child may challenge the application of section 15(1) and (2), should also apply to a parent (who may not be a carer).

Comment

Proposed new section 15(3) states that a carer of a qualifying child may challenge the application of section 15(1) and (2) in establishing proportions of care.

A parent (who is not a carer) should also be able to make such a challenge.

Recommendation

That the submission be accepted.

Issue: Income criteria for long-term prisoner exemption

Submission

Current section 89D and 89F of the Child Support Act should be amended to provide that an exemption from child support should still be provided when certain income is earned prior to a prisoner being imprisoned, but received afterwards.

Comment

Current section 89D of the Child Support Act provides that a long-term prisoner can be eligible for an exemption from the payment of financial support while they are imprisoned. Section 89F prevents such an exemption from applying if, at any time during a child support year, certain income criteria are not met. These include a requirement that the prisoner must not receive certain income after they are imprisoned.

Due to payments often being made in arrears, many beneficiaries and employed liable parents who are imprisoned in actual fact receive their final benefit payments or wages on or after the date they are imprisoned. As soon as such payments are received, the exemption noted above is not available for that child support year.

Officials therefore recommend that the Child Support Act be amended to provide that an exemption from child support should still be provided when certain income is earned prior to a prisoner being imprisoned, but received afterwards.

This will help increase prisoner compliance levels, as they will not be burdened with outstanding debts upon their release.

Recommendation

That the submission be accepted.

Issue: Requirements where there are no liable parents or receiving carers

Submission

It is recommended that the notification and other requirements be clarified in circumstances where there may not be any liable parents or receiving parents identified as a result of the application of the Child Support Act.

Recommendation

That the submission be accepted.

Issue: Minor drafting errors

Submission

The following minor drafting errors should be amended:

- Proposed new section 180A(1) should read "unpaid and in arrear**s**" rather than "unpaid and in arrear".
- The consequential amendment to the existing section 105(2)(b)(i) which changes the term "qualifying custodian" to "receiving carer" is not required as clause 26 in the bill repeals and substitutes this section.

Recommendation

That the submission be accepted.