



**Supporting Children Project
C/- Deputy Commissioner
Policy Advice Division
Inland Revenue Department
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SUPPORTING CHILDREN PROJECT SUBMISSION

October 2010

1.1 This submission is being made by **Family First NZ**, a charitable organisation that researches and advocates on family issues in the public domain.

1.2 Family First NZ welcomes the review of Child Support.

GENERAL PRINCIPLES

1.3 There are some general principles that must be addressed before Child Support can achieve what it was originally designed to do. **Child Support is awarded without reference to fault – or lack of it.** This must be considered.

1.4 At the moment Child Support is automatically assessed on all non-custodial parents, even those divorced over their objections and who lose their children through no legal fault or agreement of their own **A parent can lose their child/ren and their property and earnings without fault.**

1.5 While it takes two to marry and to create a child, it takes only one to divorce or walk away. The spouse that divorces or violates the marriage contract through adultery or desertion incurs no liability for the costs or consequences – this creates a legal anomaly – the only of its kind. In all other areas of contract law, those who break a contract are expected to compensate the other party. Under ‘no fault’ divorce, this doesn’t happen.

1.6 Child Support effectively designates an active present parent as “absent”. **It can indirectly create an economic incentive to separate.** Child support is about the continued welfare and upkeep of the child – not funding the lifestyle of the adult.

1.7 **Forced expropriations under the name of ‘Child Support’ must be debated.** The precise purpose of Child Support has never been made clear or publicly debated. Most people assume it is for parents who have abandoned their children. It was certainly never intended to subsidise the removal of children from living, innocent parents who want the family to stay intact.

KEY RECOMMENDATION/S

Flexible, Just, and Ability to Contract Out

1.8 **Child Support should be strongly targeted at parents who abandon their responsibility or who are proved to be unsuitable to care for the children** e.g. domestic violence, sexual, physical and psychological abuse – **not at those who wish to maintain their responsibilities related to raising their own children.**

1.9 **The current regime is too inflexible and can lead to unjust results.** The Child Support statutory regime should be sufficiently flexible when determining the rights and responsibilities of parents to recognize and accommodate that there may be a variety of different circumstances. Greater discretion is needed.

1.10 Factors to be considered would be:

1. Divorce/separation by **mutual consent** (which was the original application of Child Support) is valid, but unilateral and involuntary divorces/separation should result in a level of accountability for the offending party
2. Parents should have the option to **contract out of the Child Support regime**
3. It is critical that the **nature of the relationship each parent has with the child/ren** is clearly assessed and understood
4. the **circumstances and degree of common commitment** surrounding the conception of the child/ren (*see para 1.30 onwards*)

1.11 Flexibility ensures that no parent can guarantee the right to custody in the event of a break-up. A flexible approach to the statutory regime for child support is consistent with the welfare and best interests approach of Care of Children Act (COCA) which determines what the care arrangements for a child are to be post-separation. One size does not fit all, and cognisance should be given to this within the child support regime, in the same way as COCA requires an assessment of “this particular child with this particular mother and this particular father”. We appreciate that the social science is

conflicted in this area, but we note studies have shown that the parent who anticipates gaining custody is the one most likely to file for divorce. In the US, divorce rates appear to decline in states where custody is guaranteed to both parents. John Guidubaldi and Richard Kuhn found that states with higher levels of shared parenting awards have shown significantly greater declines in divorces in the following years. Overall, divorce rates declined nearly four times faster in high shared parenting states compared with states where shared parenting is relatively rare. Shared parenting “removes the capacity for one spouse to hurt the other by denying [participation in raising the children.]”

Kuhn, Richard; John Guidubaldi (1997-10-23). "Child Custody Policies and Divorce Rates in the US". 11th Annual Conference of the Children's Rights Council

1.12 Judith Seltzer concluded that joint physical custody, even when imposed over the objection of one parent, reduces post-divorce conflict.

(Demography 1998) Seltzer, Judith A. 1998. "Father by Law: Effects of Joint Legal Custody on Father's Involvement with Children." Demography 35(2):135-146.

1.13. Wolchik et al found “Joint legal custody has considerable benefits for children, increasing their paternal visitation and enhancing their wellbeing. Joint custody appears to enhance paternal involvement, child-support compliance, and child adjustment

Journal of Clinical Child Psychiatry 1985 Maternal Versus Joint Custody: Children's Postseparation Experiences and Adjustment Sharlene A. Wolchik; Sanford L. Braver; Irwin N. Sandler Journal of Clinical Child & Adolescent Psychology, 1537-4424, Volume 14, Issue 1, 1985, Pages 5 – 10

RECOMMENDATIONS OF GOVERNMENT DISCUSSION DOCUMENT

1.14 Family First **supports** a tiered approach, paying parents would have the care they provide acknowledged at a given rate, with higher levels of care reflected in a corresponding increase in the Child Support liability adjustment, in recognition of the additional costs incurred. We agree with the view that subsequent small increases in levels of care should not give rise to major changes in Child Support for either parent. This keeps the system as simple as possible

1.15 We **agree** that there should be no direct adjustment for additional costs. This keeps the process as simple as possible and acknowledges that the parent has living costs – irrespective of whether the child/ren are living with them.

1.16 We **support** the nights test for Child Support purposes - with a qualifier. The administrative review process would still need to be available to provide departures from the test on a case-by-case basis e.g. where one parent is responsible for the care of the child during the day but the child stays overnight at the other parent’s place

1.17 We **support** the proposal that the Commissioner of Inland Revenue should have a comparable

discretion to adjust Child Support contributions if a parent can show that the costs he or she incurs through daytime contact are sufficiently substantial – and are *directly* related to the care of the child

1.18 We **agree** that Child Support should take into account the income of both parents in determining levels of Child Support payments. We agree that the financial arrangements that existed in providing for children before their parents began living apart should be a prime consideration. An important principle is that the non custodial parent is always responsible to make some contribution to his/her child as biological parent.

1.19 The suggested disadvantage of the receiving parent's income varying already exists under Child Support arrangements – in that the paying parent's income can vary also

1.20 The argument that it could discourage receiving partners from participating in the workforce because a portion of every dollar they earned over the self-support amount would be “lost” through a decrease in the Child Support they received already exists under WFF (marginal tax rate)

1.21 We **support** the proposal that the expenditure for raising children should continue to be expressed as a percentage of income. We agree that higher income households generally have higher living standards and, all other things being equal, children tend to share in those living standards. The ultimate goal is that Child Support attempt to mirror the *pre* break-up level so as to maintain some level of normality for the child. However there should be a cap based on the assessed expense of a child (as per para 1.23) otherwise it becomes, by default, alimony payments rather than Child Support.

1.22 We **agree** that that child's age be taken into consideration when calculating the payments – similar to the formula used in Australia - 0-12 years and over 12 years.

1.23 For this reason, we **agree** that there should be up-to-date information on the expenditure for raising children.

1.24 Family First submits that a paying parent should in no way incur liability or expense for the dependent children of new partners of the receiving parent. Child Support should follow the child of the two liable parents and their respective incomes.

1.25 We **support** the compulsory deduction of Child Support payments from salary and wages for all employees with Child Support obligations

1.26 Family First **supports** the use of departure prohibition orders whereby paying parents could be restricted from travelling overseas until their Child Support liabilities are settled. 2008 figures show that nearly 13,000 liable parents live overseas yet this group owes one third of the total debt

1.27 We **support** increasing non-financial enforcement measures – anything that increases compliance

1.28 We **support** a Child Support penalty debt amnesty whereby penalties are automatically written off if a paying parent pays all their existing assessed Child Support debt during a set time period. We **do not support** a cap on penalties. The collection process should simply be made more efficient.

1.29 However, we do **support** assessed debt relating to beneficiaries being able to be written off by Inland Revenue on serious hardship grounds – provided that it is the exception rather than the norm for the defaulting parent.

ADDITIONAL ISSUE

Paternity Testing

1.30 **As part of a review of Child Support, the issue of paternity testing should be considered.**

1.31 Approximately 7% of children in NZ have no named father on their birth certificate.

1.32 Establishing paternity testing has previously been rejected on the basis that taking a bodily sample against a person raises issues in relation to the NZ Bill of Rights Act 1990. Children have a more important right of knowing who their biological parents are – and this should be supported by our laws. This is also a key component to the implementation of Child Support

1.33 We support the statements of Judy Turner ex-MP who when introducing the *Family Proceedings (Paternity Orders and Parentage Tests) Amendment Bill* 1st reading, said “Currently, if a dispute exists and a man believes he is the father of a child and wants his name on the birth certificate so that he can contribute to the well-being of the child and have access to him or her—or it may be the reverse, that he is named as the father and he has some doubts about that and would like to have it clarified—under the current Family Proceedings Act the judge can recommend that a DNA test is done, but the mother can block it... the father then has to undergo a lengthy and expensive court process—taking 4 or 5 years.”

1.34 The Law Commission’s paper on Legal Parentage recommended that section 54 of the Family Proceedings Act be amended to give courts the power to order DNA tests, rather than just recommend them.

1.35 The Law Commission recommends that the Court should order DNA testing unless there are “compelling reasons why it would not be in the interests of justice, including the best interests of the child”.

1.36 The Law Commission said “The argument [that it would not be in the child’s best interest’s to determine parentage by testing because it might distress the child by disrupting his or her current parenting arrangements] has been rejected by the courts on the basis that the long-term consequences to the child of uncertainty surrounding his or her parentage outweigh the short-term disruption to the child’s current family life that resolving parentage might cause.”

1.37 There must be a consistent approach to the treatment of mothers and fathers which recognises that fathers are as important as mothers in a child’s life. Currently the law makes it easier for a mother to insist that a father takes a paternity test to establish whether he is the father of a child but more difficult for a father to insist that a mother consent to testing of a child.

1.38 Family First believes that a child has a right to know who their biological father is, and that a father has a right to have the ability to have input into his child’s life, from the earliest possible age. A delay in establishing paternity will make it more difficult and robs both father and child of a relationship in those early and important years. It is therefore critical that any new process to establish paternity reduces delays as much as possible.

1.39 Family First submits that paternity testing is a key component of Child Support, and changes should be made to the legislation to ensure that parents held liable for Child Support are actually the parents.

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