



Submission to the Child Support Amendment Bill 2012

Submitted by:

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We would like to speak to our submission.

The Auckland Coalition for the Safety of Women and Children was developed in 2006 in reaction to concerns regarding responses to domestic violence in Auckland. Community agencies met together to discuss domestic and sexual violence legislative developments and decided to form a coalition group that met regularly to strategise and work toward achieving the ultimate goal of safety for women and children in Auckland.

Our Work

We have undertaken a number of innovative activities including:

- a competition for young people to make a video for you-tube on violence against young women
- a community development programme involving small businesses making a commitment to speaking out against domestic violence
- A flash mob drawing attention to the prevalence of domestic violence on International Women's Day 2010

Members:

- Auckland Women's Centre
- Auckland Sexual Abuse HELP
- Blow the Whistle on Violence
- Homeworks Trust
- Inner City Women's Group
- Mental Health Foundation
- Mt Albert Psychological Services Ltd
- Rape Prevention Education – Whakatu Mauri
- SHINE Safer Homes in NZ Everyday
- Supportline Women's Refuge
- Women's Health Action Trust

Preamble

Child Support policy is important to New Zealand mothers and their children

In New Zealand today, the lion's share of child raising, domestic work and caring for the sick and elderly is still undertaken by women. This unpaid work women undertake is partly responsible for their lower life-time earnings compared to men, and for women's lower average hourly pay rate. We need to recognise that Child Support policy operates in a gendered context. Currently most liable parents are men and most receiving parents are women. To reflect this reality sometimes this submission will use the term "mother" in lieu of "receiving parent" and "father" in lieu of "paying parent" or "liable parent".

Child Support policy is an important issue for women in New Zealand. Spending at least some time in a sole-parent family is a relatively common experience (MSD, 2010). The most recent estimates are that about one in two mothers have spent some time as a sole parent by the time they reach 50 and that a third of children have lived with a sole mother for some time by age 17 (MSD, 2010).

The requirement to pay Child Support payments by the liable parent, usually men, to the custodial parent, usually the mother, is designed to reflect the fact that children are a large personal cost in New Zealand and that even after the parents have separated these costs should still be borne by both parents.

If Child Support payments reflected the high cost of childrearing and were paid regularly and frequently, they could help to lift single mothers out of poverty. In 2009, 90 percent of sole-parent families had incomes below the median household income for all households, with or without children (MSD, 2010). The high rate of poverty amongst single mothers would be alleviated if they received regular Child Support payments at a reasonable level. Unfortunately this Bill does nothing to ensure that single mothers receive Child Support payments at a reasonable level. In fact, it will mean that some single mothers and their children will receive less than what they currently receive.

Introduction - further research is needed before the scheme is changed

Before we address the provisions in the Bill, we wish to register our concern that the Bill is not evidence-based. There is a considerable lack of comprehensive data and research on Child Support. Furthermore, where research exists, this Bill has drawn on the research selectively. For example, the Families Commission research found that payers are more supportive of Child Support when it involves "the pass-on" to carers on a benefit and recommends that this legislation include provision for the pass-on. This recommendation has not been included in this Bill. There is an urgent need for a thorough inquiry into Child Support in New Zealand that updates the findings of the 1994 Trapski report. This research needs to answer the following questions, amongst others.

We need answers on the following matters before the current Child Support scheme is changed.

1. 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?
2. 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.
3. 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, payments organised with IRD assistance, \$241 per month. What are the factors that account for this difference?
4. What percentage of parents pay the allowable minimum to the Child Support Agency 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.)

5. 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 parental income for Child Support purposes. What data is there to support this claim?

6. 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.

7. 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?

8. 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?

9. 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?

Before examining the Bill it is important to look at problems with the existing legislation that are not addressed by the Bill

1. A culture of Child Support avoidance

New Zealand fathers have a long history of not paying Child Support, or paying too little, and paying erratically (Trapski, Halsted, McCabe and Walsh, 1994). Unfortunately it appears that New Zealand's dominant culture commodifies children, resulting in many liable parents taking the attitude of "I only have financial responsibility for my child if s/he lives with me". Liable parents' reluctance to pay Child Support has not been adequately explored by the Government. The Child Support Agency should fund research into this phenomenon to understand the patterns of this avoidance and the thinking behind it.

The Bill seems to take the view that Child Support should be less onerous because liable parents resent paying it. Yet IRD does not advocate for taxes to be lowered using the same rationale. This rationale appears to have neglected the fact that Child Support is for the support of children and reducing the amount some mothers receive will increase child poverty.

The culture of avoiding paying Child Support needs to be challenged directly with Government public awareness campaigns (similar to the stop smoking and don't drink and drive campaigns) that give the message that real men continue to support their child/ren when they are no longer living with them. The message needs to be "Man up and support your children by paying Child Support". This public awareness campaign needs to promote the idea that child support is for the wellbeing of the child and it is not ok to use it as a weapon against the primary caregiver.

2. Passing on Child Support payment to custodial parents on a social security benefit

Currently, where the custodial parent is receiving an Income Support Benefit, the Child Support that can be automatically deducted from earnings by IRD is kept by the Government to defray the cost of the benefit. Essentially women on the DPB do not receive any Child Support payments. This is very harsh on DPB recipients, 55 percent of whom were found to be living in hardship by the 2008 Living Standards Survey. There is

no other area in which the Government claims back a payment to a child in order to recoup a social service or health service payment to an adult who is in hardship.

In contrast to New Zealand's policy, in Australia, the custodial parent is always given a percentage of the money that is collected from the non-custodial parent, even when the mother is receiving Income Support (known as the "pass-on"). This measure was taken because the legislators believed it would create an incentive for the liable parent to pay, as they could see their children benefiting from the payment. Indeed, this is what has happened. As a result of these changes in 1988, the proportion of sole parent beneficiaries receiving Child Support in Australia increased from 26 percent in 1988 to just over 41 percent in 1994 (McHugh and Millar, 1996:22).

The Families Commission supports this change (Families Commission, 2009), arguing that it would make a positive difference to the level of hardship faced by sole parent families. We agree, and believe that the Government failing to pass on Child Support to DPB recipients means that these parents are subsidising all non-paying contact parents and that this current practice may well be a violation of their right to live free from discrimination under the New Zealand Bill of Rights Act 1990.

It is very disappointing that provision for the "pass-on" is not in this Bill. One of the main reasons stated in "Supporting Children" (A Government discussion document on updating the child support scheme 2010) for not supporting the pass-on is that "under the current scheme, the receipt of Child Support payment partly cushions the loss of the benefit when the receiving parent takes up employment" (p70). Where is the data supporting this assertion? The only research regarding this area, the Trapski report (1994), found that New Zealand fathers have a long history of not paying Child Support, or paying too little, and paying erratically.

3. Some fathers are pressuring their ex-partners to accept little or no Child Support

There is no reflection in the Bill of the practice of fathers threatening emotional and/or physical violence if their ex-partners make a claim for Child Support. Many women have reported to members of the Coalition that they have been told: "If you go for Child Support I will make your life hell" or "You will be sorry" by their ex-partners. The Women's Safety Survey conducted in 1996 found that 73 percent of separated women

had experienced some form of domestic violence from their male ex-partners (Morris, 1997). Some women are afraid to claim Child Support because of the potential violent reaction from their ex-partners.

Some single mothers report that they have been threatened by liable parents that if they apply for Child Support the liable parent will claim guardianship of the child in the Family Court. These men know that they can drag out a guardianship case for many years and in the process bully the single mother into dropping a claim for Child Support.

The Child Support Amendment Bill 2012

1. Removal of the right of caregivers of children to receive financial support in respect of those children from the non-custodial parents of the children

We feel that the Bill as a whole seems to have more of a focus on Government debt-recovery and the needs and wishes of liable parents, rather than a focus on receiving parents and children. This is reflected by the removal of s 4(c) from s 4 of the principal Act, a provision which affirms the right of caregivers of children to receive financial support in respect of those children from the non-custodial parents of the children.

We can see no rational reason for the removal of this provision from the principal Act. This provision should absolutely be retained in recognition of the state's duty to protect the rights of caregivers of children to receive financial support from the non-custodial parent of those children.

2. Reducing the threshold for shared care

The threshold for reductions in Child Support payments for "paying parents" (usually fathers), due to them having shared care of their child will drop to just 28 percent. This means a father with two children who currently contributes \$7,400 a year to their mother's expenses, and has his children for an average of two nights a week, would only have to pay \$2,600 a year – a reduction of 64 percent!

This reduction in the definition of shared care assumes that when the child resides with the liable parents for at least 28 percent of the time, that the liable parents will be paying 28 percent of the child's costs. This assumption does not take into account that the primary financial burden for health care costs, education, uniform costs, sports

activities, extra curriculum activities and social activities will remain with the primary caregiver.

This change to how Child Support is calculated provides a financial incentive for fathers to increase the amount of nights they spend with their children to at least two per week. At first glance, this might seem like a great result. Yet when the incentive to do so is the avoidance of paying Child Support, is this a quality outcome for children?

In two recent published articles, Julia Tolmie, Vivienne Elizabeth and Nicola Gavey report on in-depth interviews with 21 women in New Zealand who had disputes over care arrangements with the fathers of their children and were involved in family law processes to resolve those disputes (Tolmie et al, 2009 and Tolmie et al, 2010). They also contrast their findings with the research literature.

This research highlights that:

- The two most important things for children's psychological wellbeing after parents separate are, first, to maintain and strengthen their relationship with their primary caregiver and, second, to minimise exposure to inter-parental conflict.
- The studies do not consistently demonstrate that a high level of contact with the non-custodial parent is always in the best interests of children.
- The benefit of contact with fathers after separation depends on the style and quality of the father's parenting, as opposed to the amount of contact.
- With very young children, particular care is needed to preserve their relationship with the residential parent because of their need to have at least one secure attachment.
- **The one thing that has been shown to be associated unquestionably with good outcomes for children is the contact parent paying Child Support.**

It is critical that the best interests of the child are the central focus of Child Support and that these interests are not taken over by fathers' rights groups who have men's interests as their primary concern.

3. This Bill will increase the number of children living in poverty

"Supporting Children" found that New Zealand families on an average income spend on average \$268 per week (\$13,936 p.a.) on a child aged 0-12 years and \$316 per week (\$16,432) on a child aged 13-18 years old. The Regulatory Impact Statement on the Bill reminds us that one of the Government's key social policy objectives is to ensure that New Zealanders have an equal opportunity to participate in and contribute to society (IRD, p2:2012).

We know that for many receiving parents (almost three quarters of those who receive Child Support do so via IRD) that the amount they receive is considered to be too little to meet the needs of their child (Colmar-Brunton, 2009). The Bill ignores this finding from the Colmar-Brunton research, even though it was undertaken for the Government's Families Commission. Furthermore, this Bill will decrease the amount received by mothers for their children, resulting in even more New Zealanders who cannot participate and contribute to society.

3. Liable parents who live outside New Zealand

A significant number of women who are eligible for Child Support do not receive anything because the liable parent is living overseas. The Australian and New Zealand Governments have an agreement that allows New Zealand Inland Revenue Child Support and the Australian Child Support Agency to ensure that Child Support is deducted from wages, regardless of which country the liable parent resides. If the liable parent lives outside New Zealand, but not in Australia, and they do not pay Child Support, the mother who is eligible for Child Support has no means of enforcing this payment. The agreement with Australia was made some time ago. Why has the Government not secured agreements with other countries, for example, the United Kingdom?

4. Both parents' income will be taken into account

Both parents' income (less a living allowance for each parent) will be included in the formula, with the costs of raising children being apportioned according to each parent's share of total net income. This is a huge shift in philosophy regarding a father's financial

responsibility to his children. This reduces the father's financial responsibility to children from a first relationship if his ex-partner has a higher income than him, once both their incomes have been reduced to account for the costs of their dependent children. Ever since Child Support was introduced in New Zealand, Governments have argued that a father's financial responsibility to his child should not be reduced by his ex-partners income. This provision encourages men to be serial parents – create families and abandon them. Men's rights groups, who have worked alongside Peter Dunn to design this legislation, claim that they want more fairness and inclusion in the system that allocates custody and responsibility for children. However, this Bill contradicts that by enabling men to abandon responsibility not only for one family, but many.

Conclusion

This Government rails against single mothers who it believes are getting pregnant without taking personal financial responsibility for their children and yet with this Bill diminishing father's financial responsibility. This Bill contradicts the Government's stated aim of making people more responsible for the care of their children and reducing the numbers of vulnerable children. It will also increase the number of vulnerable children and the number of children living in poverty.

An Equitable Child Support Scheme - an alternative proposal

The only way to make Child Support payments fair to both parties, and a secure source of income to single parents is to adopt the system used in Belgium, Denmark, Germany, France, Luxembourg, Austria, Finland, Sweden and Norway where the custodial parent is paid a standard amount by the state unrelated to the ability to pay of the non-custodial parent (Bradshaw et al, 1996). This amount is paid by the State which then seeks to recoup as much as is possible from the absent parent based on their ability to pay (Bradshaw et al, 1996). This means that single mothers receive a reasonable and constant sum each week regardless of the circumstances of the liable parent, and that the child is not therefore harmed by the unwillingness of the liable parent to pay.

One of the Programme of Research into Low Income Families (PRILIF) studies (1996) in the United Kingdom found that receiving Child Support payments greatly increased a single parent's likelihood of entering the workforce. "Suddenly they have choices. They can go to work, if they want to; perhaps not now, but soon. The survey showed that the independent relationship between receiving maintenance payments and entry to work is a robust finding and it appears to be growing stronger. It helps lone parents overcome other serious barriers to work and does so most effectively; it seems, for those whose barriers are greatest, particularly the inexperienced workers and the poorly educated. ... Paid in amounts that properly meet the cost of caring for children, maintenance payments all but abolish the poverty trap." (Marsh, 1997:131).

The British study above is backed up by a study from the United States. The Splater-Roth et al study found that receiving Child Support increased the probability of a single mother being in employment from 20 percent to 32 percent (1995).

The reality in New Zealand is that the current DPB payments leave the primary caregiver facing ever-increasing payments of rent and power bills, with insufficient money for basic food and transport costs, and this promotion of poverty impacts on the health, education and well-being of the child.

Recommendations

The Government is currently woefully under-resourced to make any changes to the Child Support Scheme

Any changes need to be based on:

1. A clear picture of the impact of the current scheme on children and their primary caregivers, usually mothers.
2. Clarity regarding the aim of our Child Support legislation. The Coalition for the Safety of Women and Children believes the principal aim should be the welfare of children.
3. Research on the benefits of State-provided Child Support payments, with the State retaining the funds it recoups from liable parents. This policy avoids the inequities of the current policy and would raise the living standards of our most marginalised section of society, children in single parent families and their caregivers.

Bibliography

Bradshaw, J., Kennedy, S., Kilkey, M., Hutton, S., Corden, A., Eardley, T., Holmes, H., and Neale, J. (1996), *Policy and the Employment of Lone Parents in 20 Countries*, Social Policy Research Unit, University of York.

Colmar Brunton (2009), *New Zealand Child Support Arrangements; A research report prepared for the Families Commission: Kōmihana ā whānau*.

Fehlberg, Belinda and Mav I S Maclean (2009), *Child Support Policy in Australia and the United Kingdom: Changing Priorities but a Similar Tough Deal for Children?* *International Journal of Law, Policy and the Family* 23, (2009), 1–24 Advance Access Publication 29 January 2009.

Families Commission's Issues Paper of August 2009, "What separating parents need when making care arrangements for their children."

Inland Revenue Department (2011), *Revenue Impact Statement*.

Fanslow, Janet and Elizabeth Robinson (2004), *Violence Against Women in New Zealand; Prevalence and Health Consequences*. *New Zealand Medical Journal* 117(1206).

Krishnan, Carol (1997), *Business Analyst, Inland Revenue Department, Private Correspondence*, 21 October.

Marsh, Alan (1997), "Lowering the barriers to work in Britain" in *Social Policy Journal of New Zealand*, Issue 8, March, 111-135.

McHugh, M and Millar, J (1996), *Sole Mothers in Australia: Supporting Mothers to Seek Paid Work*, Social Policy Research Centre, Sydney.

Ministry of Social Development, Centre for Social Research and Evaluation (July 2010), *Sole parenting in New Zealand: An update on key trends and what helps reduce disadvantage*.

Morris, Allison (1997), *Women's Safety Survey, 1996* commissioned by the Victimisation Survey Committee from Victoria Link Ltd and AC Nielsen McNair.

Price, Catherine (1994), *The Child Support Act 1991*, Unpublished Dissertation (LLB (Hons)), University of Auckland.

St John, Susan (1995), *Income expectations of men/women after separation - prospects for equality: an economic analysis*, paper prepared for Family Law Conference, NZ Law Society, Wellington.

Thomas, Liam (1997), Lawyer for the Child Support Agency, conversation with the writer, 26 February.

Tolmie, J., Elizabeth, V., and Gavey, N. (2009), *Raising questions about the importance of father contact within current family law practices*, NZ Law Review, 659-694.

Tolmie, J., Elizabeth, V., and Gavey, N. (2010), *Is 50:50 shared care a desirable norm following family separation? Raising questions about current family law practices in New Zealand*. New Zealand Universities Law Review, 24(1), 136-166.

Trapski, P., Halsted, D., McCabe, J. and Walsh, T. (1994), *Child Support Review*, Government discussion paper.