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Secretary:



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Standing Committee on Family and Community Affairs
Child Custody Arrangements Inquiry
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Submission to the Inquiry into child custody arrangements in the event of family separation

Response to Term of reference (a).

(i) A child needs a stable harmonious environment with loving carers to give him/her the best chance to grow into a responsible adult. Ideally this should include mother, father and relatives from both sides of the family.

As stated the best interests of the child must be the paramount consideration.

In practical terms, I believe that the division of a child's life on a regular basis between two households would be a very difficult task, even with the full cooperation of both parents. If the motivation is to provide a child, particularly a child in the first five years of life, with a stable environment, this solution is likely to demand a sacrifice from the child in order to keep the parents' happiness intact.

The Family Law system has built up expertise in making judgement over a number of years. In such difficult and emotive circumstances there are bound to be cases where people feel that their case has been ignored or minimised. I would favour a renewed emphasis on the responsibilities of both parents and a system which encourages both parents to share and cooperate in the support of their children. I believe any presumption of the rights of a parent or any other person in relation to the child may weaken the ability of objective arbitrators or judges to prioritise the interest of the child in some cases.

(ii) As a grandparent, I recognise the stability and support that a wider family relationship can give a child of separated parents. I agree that in principle that the custodial parent should be encouraged to maintain contact with relatives on both sides of the family. But ordering contact is an extreme measure and care should be taken by the court that it only be used when it is perceived to be in the interests of the child's safety and happiness. A presumption of the rights of other persons in the family may cause unrealistic expectations and actually increase conflict around the child.

Response to term of reference (b)

The Child Support System should work to ensure that both parents provide financial support for their child in relation to their income and family circumstances.

Under the existing formula the payer income is capped (any income over the cap is ignored). If the parents were living together, the child would have the benefit of both parents' total income. The cap would seem to disadvantage a child of separated parents.

Currently, any income earned by the Payee over the designated amount reduces the assessable income of the **Payer parent** by 50% of the excess amount. The relevant child support percentage is then applied to ascertain the payee's liability. In effect this element of the child support formula increases the payee's effective marginal tax rate by reducing the income the payee receives, providing a disincentive for the payee to increase their income.

The current tax and family assistance regime encourage a partner of a two parent family to be a full time carer. The regime treats a sole parent whose main income is from paid employment identically to a two parent family where one parent is employed and the other a full time carer. For the many sole parent families who are sufficiently well paid to pay tax, the regime appears to ignore that one parent is carrying out the roles of carer of the child, managing a household and is main breadwinner. The above penalty via the child support system is an added burden. A reduction in the payer's liability reduces the financial support available to a child. A payee's income has no effect on the payer's capacity to financially support their child and should not be taken into consideration in the assessment of payer liability.

The Child Support Review Process

At present any review of the child support assessment requires an examination of the current and future financial circumstances of both parents, regardless of who requested the review and for what purpose. If either parent seeks a reassessment of their liability, an assessment should be made independently. This would uphold the principle that a payee's financial capacity is independent of the payer's capacity to pay. The Child Support Formula would provide a fairer and more reasonable assessment of a payer's liability if the assessments were made independently.

Collection and Arrears

Assessment is only effective when payment is actually made. Currently the Child Support Agency's collection system seems unable to ensure Child support payments are made regularly. When payments are not paid at the proper time, it affects the payee's ability to budget for household needs and deprives the child of regular support but more importantly it makes accurate assessment of the Family Tax Benefit almost impossible. Lump sum payments from the defaulting payee's tax return can plunge the payee into serious difficulties with Centrelink. All payment are taken to be applicable to the year in

which the payment was made, regardless of the period of time in which the arrears were accrued.

If the emphasis is on the best interests of the child, it would seem that the health and wellbeing of the supporting parent is of vital importance. If the government were to pay regular payments to the payee and recoup that money from the payer, it would take away the stresses of the present system for the custodial parent. It would also make the principle of parental responsibility for a child a social reality endorsed by the state.

Child Support and Shared Care

The existing Child Support formula has the advantage of flexibility, addresses different levels of care by parents and can modify child support payments in response to particular circumstances. In this regard it seems a better tool to tackle the proposed variation in the amount of shared care provided by both parents, than the Family Tax Benefit which is more inflexible.

Family separation often causes major financial stress for both parents, with sole parent households consistently over represented in household living below the poverty line. Many non-custodial parents report financial difficulties, particularly in regard to providing adequate accommodation for regular visits by their children. The government's stated aim of encouraging stronger relationships between children and the non-custodial parent will be undermined if the struggling custodial parent's income support is likely to be cut because of the increased contact with the non-custodial parent. There must be some examination of the possibility of providing low income non-custodial parents with support towards maintaining contact with their children. This might seem an expensive option. However, I believe the best interests of the children will not be supported by creating financial stresses and competition between their parents. The best arrangement for the child would come from a reasonably harmonious relationship between the parents. It might save money in the long run by producing healthier, happier children.