

House of Representatives Standing Committee  
on Family and Community Affairs

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Secretary: .....

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Committee Secretary  
Standing Committee on Family and Community Affairs  
Child Custody Arrangements Inquiry  
Department of the House of Representatives  
Parliament House  
Canberra ACT 2600

Submission to the enquiry into child custody arrangements in the event of family separation.

**Page 4 of this submission is headed 'Confidential section'**

My comments mainly relate to  
(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

The following outlines areas where I believe the existing child support formula is unfair.

Having child support based on contact leads to non-resident parents aiming to get contact set to just within the level for shared or substantial care. When this contact does not actually occur it is very difficult to get the level of care changed by a court. I have been advised by a solicitor that all my ex-partner would have to do is say that they are now able to stick to the original agreement and say that they want to do so, and the magistrate would usually let the agreement stand. The cost of going to court to try to make these changes is prohibitive. Even if the cost is around \$5,000, this is not affordable for most single parents. Legal aid is not available other than to those people without a job.

I believe the only circumstances that work for 'shared' care are when there is co-operation between the parents, that includes both parents willingly accepting responsibility for a fair share of the children's expenses. This is very unlikely to happen in a case where it is necessary to go to court and for this reason, I do not think it is a decision that a court should be able to make.

In cases where care is shared, one parent usually pays most of the expenses and provides for the children. There does need to be some allowance for expenses relating to two households when care is shared, but allowance also needs to be made for one parent paying the majority of expenses.

Some parts of the child support formula that I consider to be unfair are as follows:

Summary of points:

1. The party with substantial (or less) care should not be able to claim against the party with major care. This can currently occur when the party with major care has a high income and the other party has a low income.
2. Payers are allowed to get up to 30% of their income disallowed if it can be shown that this is earned to support a subsequent family. This seems to be unfairly biased towards the payer and should be available to the payee in certain circumstances.

3. Change of care arrangements can result in one party having to make payment to the 2<sup>nd</sup> party while the 2<sup>nd</sup> party has a child support debt to the first party. Child support should be offset against the arrears.
4. Non-payment of child support. Arrears of child support should be paid from the tax system, stamp duty, or from the payer's superannuation account. There is very little encouragement for the payee to aim to earn an income, particularly more than a basic income. Arrears should be able to be claimed against the tax system, at least to reduce the tax rate of the payee to 0% while child support is owed. This would offer some encouragement to work – if the payee was not working and claiming government assistance it would cost the government a lot more than allowing this tax relief.
5. Current CSA procedures are for the payer to receive a monthly statement of account. The payee does not get a statement. Both parties should receive a monthly statement

Details relating to the above points:

1. The party with substantial (or less) care should not be able to claim against the party with major care. This can currently occur when the party with major care has a high income and the other party has a low income.
  - In almost all cases the party with major care will be paying the majority of expenses for the children. The formula, or rules, should be changed so that it cannot occur for the lesser carer to have a claim against the major carer, except after a 'change of assessment' review showing special circumstances.
    - I believe if this situation is allowed to occur the major carer is paying **more than 100%** towards the children's upkeep and the other parent contributing **less than zero**.
2. Payers are allowed to get up to 30% of their income disallowed if it can be shown that this is earned to support a subsequent family. This seems to be unfairly biased towards the payer and should be available to the payee in certain circumstances.
  - I believe this should also apply to a payee who is earning extra income to support the children of the separated parents. When the non-resident parent refuses to pay child support, the resident parent can either rely on social security, or work to earn extra income. The payee's extra income cannot currently be disallowed by the formula, and results in a reduced liability for the payer in that year and subsequent years. This encourages the payer not to pay their child support.
3. Change of care arrangements can result in one party having to make payment to the 2<sup>nd</sup> party while the 2<sup>nd</sup> party has a child support debt to the first party. Child support should be offset against the arrears.
  - Non-payment of child support could result in the resident parent relinquishing the residence of the children to the non-resident parent. The child support is then re-assessed for the new resident parent. Currently the new payer has to pay their liability, despite being owed a debt by the other party. In these cases, the new child support liability should be credited against the outstanding debts, until reduced to zero. This should be the usual arrangement, with the 'change of assessment' process used for unusual circumstances.
4. Non-payment of child support. Arrears of child support should be paid from the tax system, stamp duty, or from the payer's superannuation account. There is very little encouragement for the payee to aim to earn an income, particularly more than a basic income. Arrears should be able to be claimed against the tax system, at least to reduce the tax rate of the payee to 0% while child support is owed. This would offer some encouragement to work – if the payee was not working and claiming government assistance it would cost the government a lot more than allowing this tax relief.
  - Child support assistance is needed while the children are growing up. The current situation, where child support arrears are left to accrue means that the money is not available for the care of the children when it is most needed.
  - While the payer is allowed to accumulate arrears the payee has various options:
    - dependence on government assistance, but this usually is based on what the payer is supposed to pay, not what is actually collected

- the payee can do extra work to get extra income, which in turn reduces the payer's liability. Doing extra work also means that the payee is not available to care for the children as well as they could if they worked less hours
- once the payee's higher income is established, it is hard to justify a reduction in that income in subsequent assessments, as this can be used as a basis for 'earning capacity'
- If child support arrears were paid by the government it would remove the personal element of not paying, because the payer knows the payee will get the money anyway
- When doing extra work to cover expenses, rather than relying on government assistance, particularly for a payee with a higher income (\$70,000+) the following may occur:
  - pay additional PAYE tax
  - lose entitlement to some or all family tax benefit
  - teenagers are not entitled to youth allowance
  - reduces future child support entitlement

This does not encourage payees to take responsibility and work. For every dollar earned in this income bracket, the payee loses

48.5 cents tax / medicare levy

30 cents family allowance / youth allowance

17 cents child support entitlement (for 3 children)

That is, a total of 95.5 cents for every \$1 earned.

5. Current CSA procedures are for the payer to receive a monthly statement of account. The payee does not get a statement. Both parties should receive a monthly statement.
  - The payee can ring up and get a verbal statement. When changes are made I have no way of knowing whether the correct calculations have been applied as I do not have access to periodical statements. I have requested backdated statements and have been told that I cannot get them. This practise should be changed so that both parties receive a monthly statement.

Sue Hennessy