

Changes in the New Formula to Accommodate Multi-case Family

The Explanatory Memorandum accompanying this Bill states that it makes “minor consolidating refinements to the child support scheme and minor consequential amendments to the family assistance law”.

Changes have been made to ensure that in multi-case situations

- the new formula “sufficiently recognises the fundamental principle that older children cost more to raise than younger children, and child support should be divided accordingly” in situations where “the children are living in a number of households
- “a parent’s responsibility to children in another child support case are recognised” (Page 13 Explanatory Memorandum)

Far from being merely technical, the need for the new multi-case formula, and its application illustrate difficulties the new formula creates for certain groups of both payers and payees. Thorough consideration of the reasons that these modifications are necessary will illustrate many of the problems in the formula as proposed and the need for further review prior to implementation.

Effectiveness of Changes

The first problem will be addressed by calculating the cost of children using the “multi-case” method. Variations to cost of children calculations and multi-case dependents allowance proposed in the consolidation amendments generate child support liabilities based on the actual age rate of each multi-case child rather than “the more general ‘averaged costs’ children approach.”

The new multi-case method will be effective when it is only the “mixed age” rate that is averaging out increases due to age of children. The averaging of rates that apply in families of “mixed age” is only one way that averaging in the new Formula and its application can skew the operation of the formula. More frequently it is inequitable dependent allowances that favour second families, unreasonable cost of children caps for large families – for both single payee and multi-case scenarios, over generous contact allowances for the wealthy, that interfere with the ‘proper’ formula operation.

Factors other than rate that prevent recognition of increasing cost

Many factors can prevent the new Formula from reflecting the increasing cost of children with age. The changes are effective in ensuring that actual costs are fairly recognised only in the following circumstances:

- Neither party has additional dependents.
Additional dependents are treated equally by process only. The deductible allowance for a dependent is the amount you would pay if you alone were assessed for child support liability of the child. The dependent deduction for low-income earners – particularly low-income earners who provide care – is small, or minimum payment. Women generally earn less, and provide more care. The additional dependent allowance of women under the new formula will usually be the minimum payment, and much less than any deduction given to the father in the case.

- Both parties have very low incomes
Changes due to rate changes will be insignificant and insufficient to fix the problems encountered in this income bracket. It is essential that the government complete an MIT review as recommended by the Parkinson Report to attempt to address difficulties low-income single parent families face. Low-income payers who will lose child support liability may actually be disadvantaged by the new formula if currently splitting FTB payments.
- Any decrease in liability for contact is fair.
When contact costs are recognised, contact costs decrease child support in all circumstances and skew its proper operation. Losses due to 15%+ contact can be very large. When the payer's income far exceeds 2.5 times average male earnings, deductions in liability for contact can be \$8500 - \$8900 p.a.

Contact costs could be added to children, and apportioned on an income share basis. Alternatively they could be capped. The multi-case cap in the new Formula recognises time. Multi-case payers never pay more than they would if the children all lived under one roof. A similar principle could be applied to payees so that payees do not pay more than they should for contact.

- Where the child support and any additional increase in family payments is an accurate reflection of the expenses for the child while with the parent. Large families will be disadvantaged by the new formula. They will generally experience an increase in MIT per child as a percentage of child support paid.
- Where expenses are actually split according to time in a share-care situation.
- There is not a great disparity between incomes and/or time each child spends in each house. Especially relevant when dependents are concerned, since dependents of wealthy children cost more than dependents of low income earners.

Once any of the above situations change –

e.g. where either party has dependents, if the combined CS Income is above average to high, if there is contact, but not shared care (because of the 10% discount)

- the operation of the formula under the new multi-case formula is skewed.

When several of the above factors occur, the operation of the formula can become 'improper', producing responsibilities that are not just in consideration of the fundamental principles that the New Formula purports to support.

The operation of the new multi-case formula provides benefit to some, and will disadvantage others. It fails to address many other factors that prevent the new Formula from recognising increasing costs with age.

Problems with the Part-Child and Part-Family apply to all families

The new multi-case formula ensures that in a shared care situation, each child receives the actual rate that applies to their age, rather than the mixed rate. This effectively

produces a slightly higher cap for each child in the multi-case family in certain circumstances, than would be given to the children if the “mixed rate” was used.

Single-payee families experience the same difficulties with the mixed rate when the care of children is shared between two households. The new multi-case formula means some single-payee families will be disadvantaged in comparison to multi-case families. Single payer/payee families remain subject to the mixed rate, even if the average rate is higher than the mixed rate.

In large families where some of the children live primarily with one parent, and other children of the assessment live primarily with the other parent, the way the family is split and the number of children each parent cares for are more likely to effect the child support of any of the individual children than the rate.

In these “shared family” situations, per child costs of the children cared for by the wealthier parent are significantly greater than per child costs of the child/children living with the less wealthy parent. This imbalance is clearly unfair and is exacerbated when the wealthier parent has additional dependents, or when the contact discount applies

Multi-case Payees Under One Roof

Where all the multi-case children do live primarily under one roof, and where neither of the paying parents have dependents, the operation of the law is that each payer will pay the actual costs of the children, as if the related multi-case children were the payees only children.

Assuming none of the multi-case families have more than 3 children, each child will receive some marginal child support. If both or one of the payers is very wealthy, the operation of the new multi-case method effectively extends the cost of children cap. A single payee can receive child support for 4+ children in some circumstances when the multi-case method is used.

This is fair:

- On a continuation principle - though arguably unfair if the second payer thought that he would only supply the marginal cost of their children.
- Ability to pay
- Contact discounts leave the payee with too little child support (May arguably be too high when no contact occurs in either family when combined CS income is high in both multi-case families.)

It may not be fair in some circumstances.

e.g. Sarah is a single parent who receives Parenting Payment Single. She has a child aged 15 with Bruce, who earns \$300,000. She also has a child aged 4 with Fred who earns \$150,000 p.a. Both men would pay 100% of the capped costs of children. Sarah would receive \$34, 734 p.a. in child support.

It is unlikely both multi-case payers would be very wealthy. In actuality the total CS received by two payers is unlikely to exceed the cost of children, even if one is wealthy.

In single payee families no child support is payable for fourth or subsequent children; regardless of the income of the payer and even if the payee will not receive FTB A for the child for single payee families. It is possible to receive some kind of marginal increase for a 4+ child where there are multiple payers.

Conversely, a payer with an income many times the AMTWE, could have 2 families of four children, contribute no time, but - because of the multi-case cap and the limiting of cost of children to 3+ children - be liable for total child support appropriate for 3 children at this income level. Multi-case payers cannot be made to pay more than they would if all the children lived under one roof. The second family would effectively halve the child support of the first, which was inadequate to start with.

Scenario

The following example illustrates that the split-household family is as problematic for the single payee family as it is for multi-case families.

Sarah and John have 4 children - a girl Melanie aged 15, and 3 boys below 12. Sarah earns \$36,883 p.a. John earns \$136,883 p.a. Melanie resides with Sarah and has 15% contact with John. The boys have 20% contact with Sarah.

If all the children lived with Sarah, and John provided 15% care to each of the children, John's liability to Sarah would be \$20,474. In these circumstances the average cost of each child is \$5118.50. The effect of splitting the family is to reduce John's liability for Melanie, to below the average cost of a child. That the formula operates in this manner has been confirmed by Larry Wood of Mal Brough's office via phone.

Calculations

Child support in these circumstances will be calculated using method 1.

Costs of children will be capped at the mixed rate \$33,174

Cost of each child = \$8293.50

Sarah's CS Income = \$20,000 (14%) John's CS Income = \$120,000 (86%)

Assessment

John is liable to Sarah for Melanie's care. His child support percentage for Melanie is 61%. John must pay Sarah \$5059.03. Sarah has a negative child support percentage for the boys, and does contact so is not required to contribute to their costs.

Problems

The actual child support paid for Melanie is \$5059.03, which is less than the average cost per child if they all lived under the one roof. This is clearly unfair given Melanie is an older child, and the three boys are younger children. Increases are divided by four, with three-quarters of the increase then passed to the costs of the boys because the mixed-rate applies.

If the multi-case method were applied to all families, it would help ensure that each child is paid at the correct rate, but still would not substantially compensate because of the number of children involved.

The multi-case method would see Melanie's costs set at \$8990, and the boys costs would be \$22 792 (\$7597.25 per child). John's liability for Melanie's costs would become \$5483.90. This is a substantial increase on \$5059.03, however Melanie's costs, even at the correct rate are insufficient because of the number of children in the assessment and because of excessive deductions in liability for contact.

Neither John nor Sarah has an additional dependent. Sarah would be able to deduct only \$3400 for a dependent. John would deduct \$15,448. This is clearly inequitable treatment.

Summary and Suggestions

Part-families in single payee child support cases are treated differently from part-families in multi-case scenarios. Difficulties encountered when applying the formula to multi-case children spending time under two roofs apply to single-families living under two roofs. This is made worse when there are large discrepancies between time and/or income contributions between the parents of the children concerned.

Part-family and part-child difficulties need to be examined further, not merely addressed by applying bandaid measures to certain groups. Recognising a problem in the application of the formula and modifying for one group is unfair to those groups who experience the same problem, but are exempt from the fix. Changes that help multi-case families help all families.

In order to ensure that treatment is fair, at a minimum the multi-case method of calculating the cost of each of the children should apply, so that all children's costs are calculated using the rate that applies to their age bracket.

Where liability is decreased because of 15%+ contact, the cost of contact must be capped. The same method that is applied to calculate multi-case cap costs per child could be applied, since it considers time.

The effect of averaging cost of children on FTB and Child support for large families – particularly those with a very high combined child support income –also needs to be addressed, possibly with an MIT review as recommended in the Parkinson Report (and only partially considered in the new Formula). The needs of low-income families should be a priority of this review, but limitations on MIT should also be considered.

Any measures taken to prevent injustice caused by averaging for large single-payee families would also allow benefit those multi-case scenarios where it is averaging due to the number of children that prevents sufficient recognition of the principle that children get more expensive as they get older.

Further consideration of the new formula and its operation should take place before the new formula laws are finalised, preferably with the input of both men's and women's groups who understand the circumstances that both men and women face in attaining a fair assessment.

Michelle Wingett

Personal Background

I am a single mother of four children aged 15, 13, 9 and 8. I became well versed in the new Child Support legislation due to its impact upon my children and myself. The children's father earns significantly more than the current income cap and the new cost of children cap. Interim measures have already reduced the \$36,000 p.a. child support paid under the old formula by almost \$12 000 p.a.

I am concerned that the new formula will not only affect my ability to properly provide for my children, but will leave many families with 4+ children unable to adequately provide for their children.

New Formula Fails to deliver 'proper' Child Support in high income situations

When the new formula is implemented, the children's father will be liable for \$32,000 p.a. in child support if he does not meet his contact obligations. If he begins meeting these responsibilities, recognition of his contact contribution will reduce child support liabilities by \$9000 p.a.

The new formula in operation for my specific scenario means that a parent who earns \$300,000 p.a. and provides 15% actual care, pays \$24,100 p.a. towards the expenses of my four children whilst in my care.

Failure to recognise 'proper' infrastructure costs

In some circumstances \$24,000 may be a fair contribution - it would depend on the property settlement. Most people readily see the moral wrong and obvious imbalance in my circumstances – I was left a mortgage. I have spent 12 months unsuccessfully trying to get CSA or the legal system to recognise this situation as legally wrong.

In 2001 my circumstances were recognised as justifying review and departure from formula. In 2006 expenses associated with the children's activities and intended lifestyle were not recognised as grounds for review. A CSA officer told me recently

“ All single parents have accommodation expenses. All single parents have public school fees. All single parents have activity expenses. All single parents have to take their children to the dentist.” I am “no different to any other single parent”.

I point out that I am different, that only a very small percentage of payers have incomes well beyond the cap, that even smaller percentages have four children. I realise I am “lucky”. I receive child support that is, as I was told in court, “good by community standards”. Unfortunately I am no different from many single parents – my income, benefits and capped child support see me with a net income that is below the poverty line.

Many single parent families will continue to live below the poverty line

The 2006 Henderson Poverty Line for a single parent with four children was \$725.68 per week. This includes accommodation of \$158.27. The maximum amount of child support for four children under the new formula when contact occurs is around \$462 per week, \$263 per week below the poverty line. In circumstances where the only income of the resident parent is welfare payments, the single parent pension will take them to poverty line. The only disposable income this family would have, would be their family payments. MIT means that large families that receive “good” – by

comparison only – child support receive base rate family payments. The new formula increases MIT as a percentage of child support liability significantly when contact occurs. The “best” child support leaves a welfare dependent parent of four about \$90 per week above poverty line.

For most families with four children accommodation expenses exceed the \$158.27 allowed in the Henderson calculation. At even \$300 per week for accommodation– less than the repayment on an average Sydney mortgage - the family will live about \$50 a week below the poverty line. It is difficult to accept that it is reasonable that in circumstances where one parent earns more than \$300,000 a year, and meets their child support obligations, that it is right that their children live in poverty. This is the effect of the cap – to keep the children of wealthy parents living in poverty.

Resident parents can – and often do – work to meet the gap between child support and poverty. If we assume \$300 for accommodation, the parent must earn around \$470 per week net to provide poverty line care. Many single parents who care for big families simply cannot do this. They are stuck below the poverty line, even if they work fulltime. Those that can must work fulltime to provide a standard of living that at best provides better accommodation than poverty line living, and at worst meets the poverty line standard.

These parents are the “wealthiest” in terms of child support received. Any child support system that leaves it “wealthiest” families living below the poverty line is clearly not doing a great job.

Costs & economies of scale do not reflect the real costs of large families

The Parkinson Report did acknowledge that this “relatively small” particular group of families – high income families with a large number of children - are disadvantaged under the new formula, since high income families do not receive FTB A. Because the number is “relatively small” the problems the new formula creates for families like myself was ignored. Fourth children are not free of expenses. Middle-income families may receive FTB A, but it would be significantly reduced by the MIT clawback. These families will similarly struggle to meet the expenses of their 4⁺ children.

The economies of scale presumed in the Parkinson report simply do not exist for middle to high incomes. Low-income families referenced in the report live below the poverty line. In these situations family payments actually contribute to the infrastructure of the home, in addition to the costs of the child. This is to the government’s shame. These families need help. The situation in these families is not ideal, and should not be used to make judgements about what should happen in higher income situations/or as a guide to the costs of 4+ children. All large families suffer under the proposed new Formula. Fourth and fifth children do cost in middle and high-income homes.

I acknowledge that it is impossible to devise a formula that delivers a fair outcome in all cases. Knowing that you are a minority does not help when you are trying to meet expenses. My kind of CSA client may be a small group, but I also belong to a larger group of people. I am someone:

- who feels his or her Child Support Assessment is unfair.

- whose individual circumstances are not recognised as sufficient for CSA review
- has more than 3 children, and will not receive child support for the fourth, even though care of these children significantly increases weekly expenses.
- has been unable to find a solution using the courts
- whose legal fees are likely to outweigh any financial benefit they receive
- whose financial situation is only marginally improved when I do work, due to loss of benefits and under the new formula, loss of child support – since the more the payee earns, the higher income share they have
- who is expecting an argument about how much time is spent in the non-resident parent's household.

The old formula was sometimes harsh on low-income payers, and to middle income payers with large families. I do understand – and empathise with – the non-resident parent who cannot afford contact with his children. I cannot afford to care for my children either. I do sympathise with the payer who, even when he works more, does not really move ahead. I feel trapped too. The new formula does not necessarily help the groups that were most disadvantaged under the current method of assessment. Many of the groups that were disadvantaged, will remain disadvantaged.

New Formula Inadequately Recognises Time Contributions

The new formula and an income share approach should be “fairer”; in that it purports to consider the income and time each parent contributes. Income contributions are however limited by the cap.

Time contributions reduce income contributions for payers, but generally go unacknowledged for payees with primary care. Time doesn't always count, as it only has a value/impacts on the operation of the formula if you have earned a dollar to subtract it from, since time is subtracted from income. Negative balances – typical of women payees – are discarded.

Time also has a different dollar value in different circumstances. In my circumstances, time with Dad is worth about \$170 per day – this is the amount he is presumed to contribute towards the cost of children for each day care. My time is worth \$79 a day, even though this time is the time when most of the children's expenses actually occur.

In circumstances where the government is hoping to promote shared care, it is difficult to see why time only sometimes counts, and has a different value under different parental rooftops.

Infrastructure Costs

The new formula is sometimes unfair because it averages when things become “too complex” e.g. the Parkinson report acknowledges that accommodation expenses vary widely, that FTB A payments per child vary widely, but then goes on to assume that these things don't matter.

Contrary to the Parkinson report, it is difficult to have your Child Support Assessment reviewed because of higher infrastructure expenses. This is problematic for both payers as well as payees, since payers have infrastructure to maintain to facilitate contact. Costs of Children that clearly identify infrastructure amounts and daily care

amounts may allow the CSA to consider cases where accommodation costs make the formula unfair.

Family Payments and the Contact discount

The costs of children used in the new Formula are based on costs and FTB received if the family were intact. The operation of MIT means that some low income payees receive less FTB than they would if they had remained partnered.

Even if the costs of children and economies of scale in the Parkinson Report are correct, the “contact bonus” for 100% of FTB trade-off frequently produces an unfair distribution of monies for children. The government is trying to encourage shared care. Why would they implement a policy that discourages FTB splitting?

Most parents do not split FTB. Increases due to retaining FTB will generally not greatly change monies available to resident parents to support their children.

Often the gain in FTB will not cover child support reductions, reducing the monies available to children in their primary residence. This problem becomes worse as combined child support income and/or the number of children increases E.g. The increased FTB – in my case about \$1000 annually (\$20 per week) as I am on base rate – will not cover the \$9000 p.a. I will lose due to contact.

Selective recognition of additional infrastructure due to separation

The “contact discount” does not always benefit the non-resident parent. For low income payers, savings due to reduction in child support are significantly less than the FTB entitlement the non-resident parent will lose. Although touted as men’s reform, these low-income men, particularly those with 3+ children, may find themselves unable to afford contact. The justification for the “contact discount” is to cover the infrastructure costs of the non-resident parent. Ironically those most in need of the discount may find themselves worse off as a result of the new laws.

It is generally accepted that the cost of raising children where families have divorced or separated is 1.2 – 1.4 times that of raising children in an “intact” household. Both payees and payers have additional expenses. The new formula recognises only the additional expenses of the payer, and only if contact is not sufficient to be deemed shared care. The additional costs of those that share care and those that provide a primary residence are not recognised or accounted for. It seems unfair to recognise the additional expenses of one type of parent only.

Contact does not necessarily generate higher infrastructure costs. E.g. where a payer has repartnered and gone on to have more children, they may not need any additional infrastructure to facilitate care. It may be proper to leave the costs of contact with the non-resident carer if they are better able to afford them. The financial burden is passed to the primary residence family in **all** circumstances, rather than added to the cost of children and apportioned in an income-share manner.

As acknowledged in the report, the cost of children for the resident parents is generally unaffected by contact – the resident carer still pays 99 – 100% of the cost of children. When contact occurs the resident carers must bear the burden of both their

infrastructure costs, and the infrastructure costs of the non-resident parent. This does not seem fair in circumstances where even the wealthiest families are close to the poverty line.

New Formula will create Conflict

The contact discount will see far more couples arguing about time, than they do currently. It has the potential to encourage men who do not really want contact to seek contact. It is arguable that this is a good thing. Men's groups claim that women withhold contact to maintain child support. This aspect of the new legislation has the potential to see thousands of couples embroiled in bitter arguments surrounding time. Such conflict is not in the best interest of children.

Need for Further Discussion and Consideration

Much of this legislation has been rushed, without sufficient time for review by the organisations that help divorced families. Although "men's groups" have generally considered the reform as a positive thing, both payers and payees have significant gripes with the new formula.

At this time there has been little discussion between the groups that represent men and women regarding the new law. Most are struggling to inform the groups they represent what the new laws will mean. I believe that both men and women - and most importantly the children whose "best interests" these laws protect - would benefit from real consideration and discussion of these laws by those that will be affected by them. Most times when payees are disadvantaged, there is a corresponding disadvantaged payer group.

"Extreme" scenarios – such as mine – illustrate problems when applying the formula. The new formula will not help those where the combined income does not actually support the expenses of 2 households – it merely shuffles not enough from one roof to another. When contact occurs, it will significantly disadvantage the children of middle-income families who live primarily with the lower earning parent. It will leave even the wealthiest recipients of child support below the poverty line in many circumstances.

Michelle Wingett