



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: FamilyJFFEel:1069619

17 December 2015

The Hon Christian Porter MP
Minister for Social Services
Parliament House
CANBERRA ACT 2600

Dear Minister,

Parliamentary Inquiry into the Child Support Program

The Family Issues Committee of the Law Society of NSW (“Committee”) assists the Law Society in the area of family law, particularly in respect of advocacy about the needs and family law rights and duties of people in NSW. The Committee includes a cross-section of experts in the areas of family law and children’s law drawn from the Law Society’s membership.

The Committee made a written submission to the Parliamentary Inquiry into the Child Support Program, and provided evidence at a public hearing and written responses to questions taken on notice at the public hearing. The Committee has reviewed the recommendations contained in the Inquiry Report, *From Conflict to Cooperation: Inquiry into the Child Support Program* (“Report”). The Committee’s response to the recommendations is set out below.

Recommendations 1 and 2

The Committee supports these recommendations.

Recommendation 3

The Committee is generally in favour of trialling the greater use of mediation in appropriate child support matters and is of the view that there is merit in parents discussing financial arrangements and the needs of their children at an early stage. The Committee supports the Report’s recommendation that mediation is not appropriate in cases where family violence is identified.

However, there are a number of legal issues which may impact on the effectiveness of mediation and warrant further consideration and/or consultation with legal representatives. Specifically:

- The interaction between the Family Tax Benefit system and the child support system places limitations on the extent to which a parent (who relies on those payments) can agree to arrangements outside of the child support assessment made by the Department of Human Services (“Child Support”).

- If parents do reach an agreement at mediation there are potential difficulties with the implementation or enforceability of such agreements. The *Child Support (Assessment) Act 1989* provides for two different types of agreements: "limited" and "binding". For each type, specific requirements must be met before they can be accepted by Child Support. This means that parents may find that the arrangements that have made at mediation cannot be implemented by Child Support or that they require legal advice and certification before agreements can be finalised.
- As identified in the Report it is generally not permissible for family law consent orders to contain provisions that relate to maintenance or child support. Making provision for child support in Parenting Plans can also lead to unintended consequences or frustration (if such agreements cannot be implemented or enforced).
- In the experience of Committee members the effectiveness of mediation can depend on the adequacy of financial disclosure, which can in turn affect the integrity and sustainability of agreements reached.
- Although the Report correctly identified that additional training would be required for Family Relationships Centres undertaking this work, even with this training, it may be beyond the scope of the role of the Family Dispute Resolution Practitioners to advise parents about the issues outlined above. It would therefore be necessary for advisory input from the Department during the mediation process.

Recommendations 4 to 7

The Committee supports these recommendations.

Recommendation 8

The Committee accepts that fourteen weeks is not an adequate period of time to enable a contested change in care application to be considered by the court, and would support an amendment to the legislation which allows for this time period to be extended in appropriate cases. The Committee agrees that the best interest of the child must be paramount in any amendment made.

Recommendation 9

The Committee's view is that the court is best placed to consider the enforcement of contact and parenting orders. The Committee would have serious concerns about any proposal to enforce these orders through the child support program.

Recommendation 10

The Committee supports the proposition that more structure should be applied to changes of assessment under Reason 8.

Recommendation 11

The Committee agrees that a clearer system for resolving disputes about the payment of school fees as non-agency payments is needed.

Recommendation 12

The Committee supports this recommendation. The Committee notes generally that retrospective laws are commonly considered inconsistent with the rule of law. In general, the Committee would not support amendments to laws that will retrospectively change legal rights and obligations. This is especially the case where those retrospective changes derogate from rights, or as in this case, change contractual entitlements.

Recommendations 13, 14, 16, 17 and 19 to 24

The Committee supports these recommendations.

Recommendation 25

The Committee does not support this recommendation.

Australia was the first common law western country to develop and implement a federally administered child support system.¹ The option of the government providing a quasi-guarantee of child support payments to the payee pending collection from the liable parent was not considered when the child support scheme was first mooted. The rationale for the child support scheme was said to be that parents are responsible for the financial support of children after family breakdown (or when parents have never lived together) rather than the taxpayer.² There is therefore a proper basis to query the utility and the public policy basis of the New Zealand approach.

The Committee raises the concern that adopting the New Zealand approach of the government paying the child support liability in advance of collection from the payer could create an economic disincentive and lead to more liable parents failing to comply with their child support obligations. Arguably, Australia can draw from the New Zealand experience in this area. New Zealand has instituted a harsh penalty regime in relation to late payments and arrears. The self-perpetuating cycle of the New Zealand Department of Inland Revenue chasing arrears (a large proportion of which are just penalties) highlights a potential downside to government administering these debts in this manner.

If you have any questions please contact Chelly Milliken, Policy Lawyer for the Committee, on 02 9926 0218 or chelly.milliken@lawsociety.com.au.

Yours sincerely,


John F Eades
President

¹ *A Comparison of Child Support Schemes in Selected Countries*, Secretariat to the Ministerial Taskforce on Child Support, May 2005, Department of Families, Housing, Community Services and Indigenous Affairs, <http://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/a-comparison-of-child-support-schemes-in-selected-countries?HTML>, accessed on 12 September 2014.

² *History of the Child Support Scheme*, Department of Social Services, <http://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/history-of-the-child-support-scheme>, accessed on 12 September 2014.