



## National Council of Women of New Zealand

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Wahine O Aotearoa

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### Submission on Supporting Children

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 51 nationally organised societies and national members. It has 23 branches throughout the country attended by representatives of those societies and some 10 other societies as well as individual members. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action.

This submission is compiled by the NCW Economics Standing Committee, drawing on research, previous submissions and established NCWNZ policy resolutions. NCWNZ has a long history of resolution surrounding the care and support of children, more recently when parents separate. This discussion document points out quite rightly that the current child support scheme is substantially out of date and needs review. Family groupings and work demographics have changed, leaving the child support scheme in the last century.

#### Objectives

The discussion document claims in the first instance to promote the ongoing wellbeing of children after their parents separate. It is the contention of NCWNZ that child welfare should be the primary driver of any change in the legislation, not only in terms of living standards but also in psychological and mental wellbeing.

However, the Child Support Act 1991 was more specifically designed to ensure that noncustodial parents fulfilled their support obligations. This is a design flaw in the legislation that is not rectified in this discussion document's range of suggestions for a new Child Support Scheme, in spite of introductory claims. Although encouraging parental responsibility is a laudable aim, it should not be achieved in a way that is psychologically damaging to the child(ren) involved.

Under Objective 2.1, there are potentially conflicting intentions listed. Ensuring through legislation that both parents be actively engaged in caring for children is often diametrically opposed to protecting children from marital conflict when parents separate. Warring parents forced into shared care arrangements will very likely have a negative impact on children, as continued contact between parents puts their children in the centre of the conflict<sup>1</sup>.

Almost all of the subsequent objectives are concerned with parents' rights and obligations, the payment or non-payment and collection of child support, and the costs of caring for children, with little reference to the children involved except as regards financial support. NCWNZ sees this as a serious gap in the discussion.

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<sup>1</sup> Julia Tolmie, Vivienne Elizabeth and Nicola Gavey; *50:50 shared care a desirable norm following family separation?* *New Zealand Universities Law Review*, Vol 24, pg.136 June 2010.



### Expenditure for raising children

NCWNZ policy on the support of children includes “those born out of wedlock”, children of solo parent families and unsupported children. Resolution 16.3.5.7, passed in 1945, calls for the Government child allowance proposal to be universal and at the same rate for all children. Resolution 16.3.5.8, passed in 1978, urges the Government to adjust the Family Benefit to reflect the real cost of living. Only a few years later, the Family Benefit was not only not raised, but abolished altogether.

The exhaustive cost calculations outlined in this discussion document indicate the complexity of the issue, and the administrative complexity of dealing with it. Therefore according to Resolution 16.3.5.11 passed in 2001, we suggest in the interests of all New Zealand children, most especially the one quarter living in poverty, that the universal Family Benefit or its equivalent be reinstated.

There are a number of advantages to this idea. One is the simplicity and cost-effective administration compared to other forms of welfare, and particularly compared with the Working for Families scheme, which is costly to administrate, invasive of privacy and does not include the families on welfare whose children live in the deepest poverty.

Another advantage, relevant to this submission, is a substantial reduction of the problem of financial support of children after separation, allowing parents, government and the courts to focus on child centred arrangements and outcomes. Research on Australian and United Kingdom schemes indicate that where legislation is guided by the overall wellbeing of the child, not only are children happier, healthier and better off, but liable parents are more likely to meet responsibilities.<sup>2</sup>

We note that of the examples given in Appendix 5, in three of the five that were not beneficiaries, the liable parent paid less under the new formulae. There is concern that adoption of these formulae will impact on and further impoverish custodial parents, most of whom are women.

### Shared care

Although in the case of many separated parents shared care is accomplished by private agreement and is presumed to work well, there is evidence to suggest it is not the best arrangement for parents who are, and continue to be, at odds. Conflict between parents has been shown to **be** extremely damaging for children’s emotional development, and shared care should not be imposed in these situations. Where there is acrimony and the need for mediation between parents, in the best interests of children shared care should not be the first option or even necessarily included in a parenting order.

A child needs a close and secure relationship with at least one person for good psychological wellbeing, especially after a separation. For a very young child (under 3 years), shared parenting is likely to be problematic, with distress at spending nights away from the primary caregiver. Damage done at this age can be long lasting and create significant problems for the child, and cost for the health and justice systems in later years.

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<sup>2</sup> Felberg and MacLean *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, Vol 23, 2009.



Even in amicable arrangements, older children report stress at living in two homes, with all the attendant disruptions of packing and moving on a regular basis, leaving favourite or vital possessions behind through oversight. Shared care may satisfy the rights and needs of parents, but the benefit for children is highly debateable.

It is important to make a distinction between parental responsibilities and parental rights, between financial support, which is ongoing, and shared care, which may be optional. These distinctions should be governed entirely by the best interests of the child(ren). Placing emphasis on shared care over other considerations (e.g. a contact parent's history of violence or abuse, problems with alcohol or drugs, or even lack of parenting experience) may directly or indirectly harm the child(ren) involved.

There is evidence to suggest that in responding to calls for fathers' rights, in adhering to a rigid ideology of shared care or in making assumptions about the presumed benefits of shared care, some Family Law professionals (judges, lawyers, mediators and counsellors) have gone too far for the wellbeing of the children involved.<sup>3</sup>

The current high threshold of shared care that must be reached before a liable parent's child support payment is reduced does seem to skew the level of both contact time and the integrity of payment. This suggests that a lower level or tiered system might be an improvement, but only as long as the children's best interests are paramount and the custodial parent is not too severely affected. There is a danger that linking shared care levels with liability for support encourages some contact parents to demand greater access and care responsibilities, not for the sake of the child(ren) but in order to minimise the child support liability. In some custodial parents' experience, shared care ordered by the Family Court does not result in actual care by the contact parent, leaving the custodial parent with less child support and more costs.<sup>4</sup> In such a case where the shared care is established by a parenting order and is not being met by the contact parents, the custodial parent may be so financially disadvantaged as to be unable to challenge the order.

The discussion document suggests that custodial parents take advantage of the current system for financial gain, and that contact parents incur significant costs under shared care arrangements. In the majority of cases however, custodial parents are women, contact parents are men, and the gender income gap suggests that over-consideration of contact parents' costs and rights may cause custodial parents and their children significant hardship.

### **Income shares**

It is in this area that reinstating the Family Benefit for use by the primary caregiver would be most useful. A universal benefit for each child would help low income families, provide a basic income for solo parents, and maintain a stable child support base for custodial parents. No account need be taken of fluctuating income (more likely to be the mother's income as more women are in unstable, part-time and casual employment) when determining child support liability.

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<sup>3</sup> Julia Tolmie, Vivienne Elizabeth and Nicola Gavey; *Raising Questions About the Importance of Father Contact within Current Family Law Practices*, *New Zealand Law Review* 2009.

<sup>4</sup> *Ibid.*



Custodial parents would not be 'discouraged from participating in the workforce', as suggested in the discussion document, as the Family Benefit would not abate. Alternatively and certainly more importantly for young children, a custodial parent would not be discouraged from full time parenting if (s)he felt it necessary for the wellbeing of the child(ren) and the family.

To minimise administrative costs, a custodial parent's income might only be taken into account where that income is significantly higher than the contact parent's. In such a case, the opportunity for a contact parent to submit a challenge or apply for a review should be in place. In the majority of cases however, the custodian is a mother and, in spite of examples to the contrary, is unlikely to have a higher income than the father.

NCWNZ agrees that, as passed into policy by our recent conference, the definition of income should be reviewed forthwith so that liable parents are no longer able to duck child support by claiming investment losses or sequestering money in trusts.

### **Conclusion**

NCWNZ has two basic concerns:

- That any change to the child support scheme is informed first and foremost by concern for the physical, mental and emotional health of the children involved. Legislation that has genuinely taken child welfare as its core focus has been found to operate better on all fronts.
- That any change to the child support scheme ensures that low and middle income custodial parents, the majority of whom are women, are not severely disadvantaged financially. Care should be taken that shared care doesn't become a vehicle for avoidance of child support by liable parents.

And, two suggestions :

- That the Family Benefit or its equivalent be reinstated for the good of all New Zealand children, as a cheaper, simpler option for reducing child poverty.
- That the notion of income is redefined so that liable parents are no longer able to **avoid** child support by claiming investment losses or sequestering money in trusts.
- NCWNZ welcomes the opportunity to comment on this discussion document.

Elizabeth Bang  
**National President**

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**Economics Standing Committee**