

4 July 2014.

Addenda to Submission to the Parliamentary Enquiry into the Child Support System.

Identifying the Problem – **Capacity to pay provisions of the act and the basis for payments.**

There are real problems with the capacity to pay provisions of the act. The system is based on gross incomes as reported to the tax department, but these incomes are only established for paid employees and those honest enough to report their incomes. They are also out of date as they apply to a previous income period rather than a current one. There are many other deficiencies of this system as well including disparities between gross and net income.

The government simply can't fairly determine many parent's capacity to pay as they hide it. The assessment formulas simply charge parents too much child support making parents resentful and bitter about the unfairness of the system, so they resist or refuse to pay where they can as a consequence ie it encourages noncompliance.

**The truth is that children cost money regardless of the parent's financial circumstances** and the current system WILL NEVER BE FAIR because of the government's inability to determine fairly what a parent's capacity to pay is.

The capacity to pay assessment process is also removing any rights of the paying parent to determine in any manner how their child should be supported, they may simply get no say.

The Current system treats all paying parents as bad parents, in many cases removing from them any right to participate directly in the process of parenting their kids. This not only causes these parents to feel resentful and angry about what they are forced to contribute but rather to take pride in their ability to support their children.

In this case what is good for the parent is also good for the children as in many normal cases this will help support parent-child bonding and happiness even in the face of the breakdown of relationships which it relates to. Of course there are going to be cases where this is inappropriate ie due to a violent or abusive parent, but there has to be a mechanism to recognise this and not inflict an unfair assumption on the majority of parents who love their children and who will contribute willingly by providing for them in a direct way and just want a fair deal in all of this.

## **Proposed solution.**

Equal Shared Care Situations:

Where both parents have the child equally time-wise there should be no child support required and costs should be negotiated between the parents with mandatory parenting agreements negotiated if required. Where there is majority and minority care the costs should be as follows:

### **Setting a fair amount for paying parents:**

Where a majority minority care situation exists, The Government should be setting a **basic support amount** that **reflects what the Australian Government is prepared to pay for the support of an Australian child if they were on full welfare benefits**— this should not be that hard to work out as the Government already has established these amounts. In most cases it is my contention that, normally, this is the only amount that should be policed by the Australian Government. The attitude of the government should be to support, but not interfere. The government should be consistent across its social services program with the same amount being given in benefit recipient situations.

A current welfare recipient supporting a child will get family tax A and B the amounts for which are available online. The rough range is say \$510 a month. The government says this is a maximum Family tax benefit A = 176.82 per fortnight for 13-19 \$230.02 Tax B is \$150.36 and 5-18 is \$105 so we are looking at an amount around \$300 per fortnight. This amounts to around \$600 per month (rough figures)

In a fair system **both parents should be responsible for the financial maintenance of their children**, a paying parent **should be required to pay half this basic support amount** ie around \$300 per month (roughly current figure) per child regardless of how much care of their child they have to the majority care parent. This would be a profoundly simple system based on a fair premise that both parents contribute half the costs for the basic support amount of their child where they can. Majority custody parents would be assumed contributors.

Care reductions should be calculated as a percentage of time spent and assessed on a yearly basis. ie if a parent spent 20% of the care time for the child per month they should be able to deduct %20 of half the basic support amount to spend on their child and pay the other 80% of the half basic support amount to the other parent. This should be measured as an overall time spent, not nights alone.

### **Dealing with Non Payment:**

Where a minority custody parent couldn't pay this amount, the Government and tax payer could make all or some of the payment on their behalf to the majority custody parent to the debt of the minority custody parent.

The system should be that these parents have to come forward and present to the government why they can't pay the full amount for their children ie financial circumstances statements etc.

For parents unwilling to negotiate arrangements with the Government and not prepared to make payment on the receipt of a bill, a normal course of billing should be followed with the continued non-payment being referred to a private debt collector and normal collection actions on debts.

A rate of interest or penalty could be applied as well commensurate with not being able to afford to support their own children given that the basic support rate was a fairly low amount and a fair representation of support costs for a child these collection measures would also be fair.

In effect the Government would loan what wasn't paid and receive interest on these loans to parents. Importantly the loans would be assumed placing the onus on parents to support their

children, not the government or the taxpayer. I would anticipate there being relief in welfare payments to the government in response to the program I am proposing with parents choosing to pay rather than be charged interest.

Where the government was paying for the costs of the child on behalf of the paying parent, I would say some system like the educational HECS debt could be introduced, but with more scope for the government to negotiate with parents and ask for a partial payment negotiated with the parent, not stipulated in a formula based on a "what can you manage" or a mediated approach. The rest could be paid off to the government as possible.

This system would be fair because it would acknowledge both parents financial responsibilities towards their children and communicate with parents and negotiate with them about their capacity to pay, unlike the current system.

This would lead to happier parents that would feel they were making appropriate contributions that matched their circumstances and not being over charged for child support. Importantly it would apply to all parents due to pay regardless of how they earned their income, there would be no "outs" or dodging of responsibilities.

Capacity to pay would therefore be placed back where it should be, fairly and equally distributed between the parents. Parents would be billed on the same support amount regardless of their income or how they earned it or their capacity to pay. This is fair because children actually cost money to support.

#### **Distinction between Child Support and Maintenance.**

In a normal breakup one parent could be left without an income, and this is the realm of maintenance, NOT child support, and should be charged to the minority or non-custodial parent where one parent couldn't work because of rearing young children but should only be gained where the custodial parent could not support themselves or be supported by a current partner, or until the children started school and the opportunity to work became available to the custodial parent. This would also be policed with the onus on the recipient parent to report their circumstances or changes in their circumstances. Capacity of the paying parent would be managed in a similar way with negotiated outcomes ie the government going to the parent to negotiate the payment and debt amounts based on the parent's circumstances. I am not sure that maintenance is within the province of this enquiry but this is provided as how I would conceive that this should be fairly managed.

#### **Secondary support for Children.**

It is not fair to argue that children are a burden and not a benefit in terms of care ie that having the children means one parent shouldn't have to pay for their care as is the case in the current system. If one parent didn't want to have the kids, in most cases the other parent would like to and in any case this system would encourage parents to negotiate with each other under usual circumstances both in terms of care arrangements and in terms of financial arrangements for their children.

Since parents would not be forced to pay excessive amounts the stage would be set for parents to negotiate fairly secondary amounts or contributions to benefit their children like joint contributions

to send the child to a particular private school for example and make their own arrangements without the government unfairly taking the side of one parent against another or supporting animosity and resentment between parents as the current system does.

The government could support this process by more access to counselling situations for parents where a normal context existed. This has got to be good for children as the system would not be setting their parents into dispute with each other it would in general be a less acrimonious system. The government could encourage the process of parents negotiating about financial arrangements to benefit their children above the basic amount of support.

In order to force a parent to pay more than half the basic support amount a case should have to be made by the majority care parent to a tribunal of parents from the community, based on evidence of **unwillingness of a parent to contribute** and evidence of **ample means to do so** with negotiation at the heart of the process and not duress. Ie an established refusal to contribute with an unwillingness to negotiate.

Example being a multi-millionaire parent not contributing beyond the basic amount for their child by some kind of direct means and the other parent disputing it on the basis that they should be required to. There should be this avenue of appeal for majority care parents and in specific circumstances the ability to enforce it.

In general the amount of secondary support should be a negotiated process that is undertaken by both parents for the benefit of the children. The preference for this process would be something that the paying parent chooses to do for their child ie pay for school fees or lessons or other benefits, though financial aid to the receiving parent on behalf of the child should not be ruled out.

#### **Other statements about a fairer child support system.**

It is completely unfair for the receiving parent to receive total financial control when it comes to the child with the paying parent being forced to pay %100 of the child's costs.

The scope of child support payments should be that Child support payments should only be compulsory while the child is at school and should cease when the child leaves school.

Parents should not be punished in most cases because they don't see their child which happens for a range of reasons, many of which are not even the paying parent's fault and should only have to pay the required amount ie half the basic support amount as a compulsory exercise.

If parents are financially well enough endowed to provide further for their children then it should be left to parents to negotiate how this is to happen not made compulsory by government regulation or policing.

Half the base amount or basic support amount the government set should be the limit for a parent who has no contact with their children. The parent should be at most liable for half the support amount for the child.

**There should also be no backdating of child support as is the case in the current system. This is a major problem with the current child support act.**

**Statement of benefits under this proposed system.**

Many parents who deserve to receive payments of child support would get payments under this proposed system where they don't under the current system. Capacity to pay would mostly be rendered a non-issue. Assessments would be fair. Parents who currently avoid paying child support would also not escape making payments under this much fairer system benefiting parents and children who deserve to be receiving child support but cannot under the current system. Many parents who receive too much child support would receive the proper amount under this system. It would just be fairer all around.

A base only process by the government would allow parents to be parents by in most cases allowing them to sensibly talk about and negotiate any provision for their children above the basic support level with the other parent.

In some evidently unfair cases the government should be able to make a parent pay a secondary amount of child support – ie more than half the basic support amount for their child but this should only be where it can be proved that the child would otherwise not be adequately provided for or in unusual circumstances.

It would also allow the government to assume a less interfering and more supportive approach to parenting and the whole issue of child support.