

## **GOSNELLS COMMUNITY LEGAL CENTRE'S SUBMISSION.**

Gosnells Community Legal Centre is making this submission in relation to the Child Support Inquiry on:

1. Methods used by the Department of Human Services ,Child Support **(the Department)** to collect payments in arrears and manage overpayments
2. Whether the child support system is flexible enough to accommodate the changing circumstances of families
3. The alignment of the child support and family assistance frameworks
4. Linkages between Family Court decisions and Child Support's policies and processes and
5. How the scheme could provide better outcomes for high conflict families.

Our child support service is funded by the Commonwealth government to provide a range of child support services basically to the receiving parents. We also provide assistance to paying parents on Centrelink or limited income.

This is an opportunity for us to provide feedback on what we have recognized as gaps in the child support legislations that affect payers and payees of child support in areas identified above.

### **Collection of Arrears and Overpayments**

Under the current regime, the Department cannot collect arrears that have accrued after the Registrar amends a child support assessment retrospectively during a private collect period. For example where the department reconciles an income estimated by the paying parent. The Payee in this situation has to apply for a private enforcement action through the court as this is not a registerable maintenance liability even though it is not due to the fault of the payee.

Our clients believe they are being "punished" by the Department for making the decision to make private financial arrangements for their children which negates part of the object of the child support legislation that gives parents the opportunity to make private financial arrangements with limited involvement with the Department

We also have provided assistance to many clients who have successfully taken private enforcement action through the court. These were situations where the Department was unable to collect arrears from paying parents who though have the capacity to pay but refused to pay. Currently the Department cannot take enforcement action against payees with huge amount of child support debt because they are unable to put a charge on the payees' interest in any property that is jointly owned.

### **Recommendation**

We recommend that the legislation be amended to allow the Registrar to collect arrears that accrued during private collect period as a result of a replaced income if the ongoing child support is collected through the Department. The receiving parents find the court process very daunting and confusing. They often query why the Department can collect ongoing child support and not collect arrears arising from a default income or reconciling an income estimate provided by payers. These payees also need legal assistance for the recovery of such arrears

Further, we recommend that the Department be given wider power under the legislation to lodge a caveat on a payer's interest in any joint property.

We also recommend that the Department take steps to recover arrears during early stages instead of waiting until the arrears have accumulated to an amount that the payers find difficult to pay off. For example they can begin to start sending default notices within the first few months.

### **Preventing/Reducing Overpayments.**

Overpayments of child support can occur due to different reasons. But for purposes of our submission we will mention 2 instances that mostly affect our clients

1. *Where the Department backdates a decision about the residency of a payer.*

When the Department makes a decision that a parent is no longer a resident of Australia or a reciprocating jurisdiction for child support purpose, the payer is not liable to pay child support from the date the decision takes effect.

The payee is then left with the option of making child maintenance application to the court. It takes a while to get a child maintenance order under the Family Law legislation and families are always in financial hardship before an order is eventually made. Some of the families we represent are quite depressed about the decision which makes it difficult for them to take the necessary steps.

We have seen situations where the Department sent letters to payees requesting repayment of an amount as a result of a decision backdating the residency of some payers to a particular period

### **Recommendation**

That the Registrar considers not backdating the decision on residency where the payer has capacity to pay the assessed amount as of the date the decision is made and where backdating will put a payee in financial hardship.

2. *Where a court makes a parentage order in terms of S 107 of the Child Support Assessment Act that a person is not a parent of a child.*

When a decision is made pursuant to S107 of the Act, the child support assessment is deemed not to have been accepted. This can create overpayments because when a court makes a S107 order that a parent is not a parent of a child, it must also consider making an order for a recovery of the child support amount paid. However the court must consider the factors listed in S143 (3B) (inclusive of the financial capacity of both the payer and the payee) before making the recovery order. The matters listed in this section are extensive and are big hurdles for most the payers for most payers to cross. Therefore, majority of the payers would not get back the child support paid.

We note that if monies received from a payer are not remitted to the payee after the Department has received a proof that a parent is not a parent of a child, it will reduce overpayments to the payees who often do not have capacity to pay back. We have seen situations where payers have provided some proof of paternity to the Department and the Department has continued to remit payments deducted from payers' wages because of the current provision of the child support legislation.

In order to prevent this, a payer will need to make an application to court in terms of *S107 of the Child Support (Assessment) Act* and for a stay order. Alternatively the payee can contact Centrelink to stop the child support case against the payee. We have seen that most payees in this situation refused to cancel the child support case because of the financial benefit.

### **Recommendation**

We recommend an amendment allowing the Department to consider not remitting any payments subsequently received to a payee when they receive proof that a payer was not the biological father of a child. This will reduce the overpayments as a payer is not likely to recoup back the child support paid. In order to reduce financial hardship on the payee, the Department can give the payer an ultimatum to make an application to court for relevant orders.

### **Impact of Mediation and Counselling Arrangements**

Our Centre provides mediation service for neighborhood dispute and Family Dispute Resolution (FDR). From our experience, FDR has been an effective tool for separating parents since it was introduced in 2008.

Parents who have attended our FDR service were able to discuss financial support for their children. This is because mediation offers an opportunity for a dialogue between parents to discuss what they want for their children and how to achieve them without making an application to the Department for a change of assessment.

As each family is unique, parents were able to include in their parenting plans extra financial support for their children or a reduced amount of child support to allow for a resettlement period for a paying parent during the separation period.

However, where parties wish to translate their parenting plan to a consent order in the Family Court, they are unable to include their financial agreement in their consent order because of the provision of *S66E(1) of the Family Court Act* which prevents the court from making child maintenance order if an application for administrative assessment of child support can be made.

Parents and children have also benefitted from different counselling and family therapy which have assisted them to have a better insight to their parental roles and helping them with their parenting issues.

We have referred clients to Courses like "Mums and Dads Forever" and other age appropriate counselling services for the children. Families who have attended some of these programs have returned back more informed and willing to negotiate.

Over the past few years the Department has trained its staff to screen for domestic violence and offered exemption for parents experiencing family violence where an application for child support may compromise their safety and that of the children. The Family Assistance Office has worked together with the Child Support Department to achieve this

**Recommendation.**

An amendment to the Family Law legislation allowing parents to translate their mediated child maintenance agreement to consent order in limited circumstances and for a certain duration is recommended. Orders allowing parties to apply for a relisting to cancel the child maintenance order and go back to the administrative assessment can be considered. Another alternative is by way of a Binding Child Support Agreement but a Certificate of Independent Legal Advice is required.

Part of the object of the Act is to permit parent to make private arrangements for the financial support of the children with limited interferences with their privacy and this should be encouraged particularly where parents have made an informed decision through mediation.

Whilst the current screening system is working for most families, however it is important for the staff to update their skills in the area of family safety. This will assist in identifying clients' needs and making appropriate referrals for FDR or counselling where applicable. This will also assist in dealing with most of the angry and dissatisfied parents who find dealing with the Department very quite frustrating.