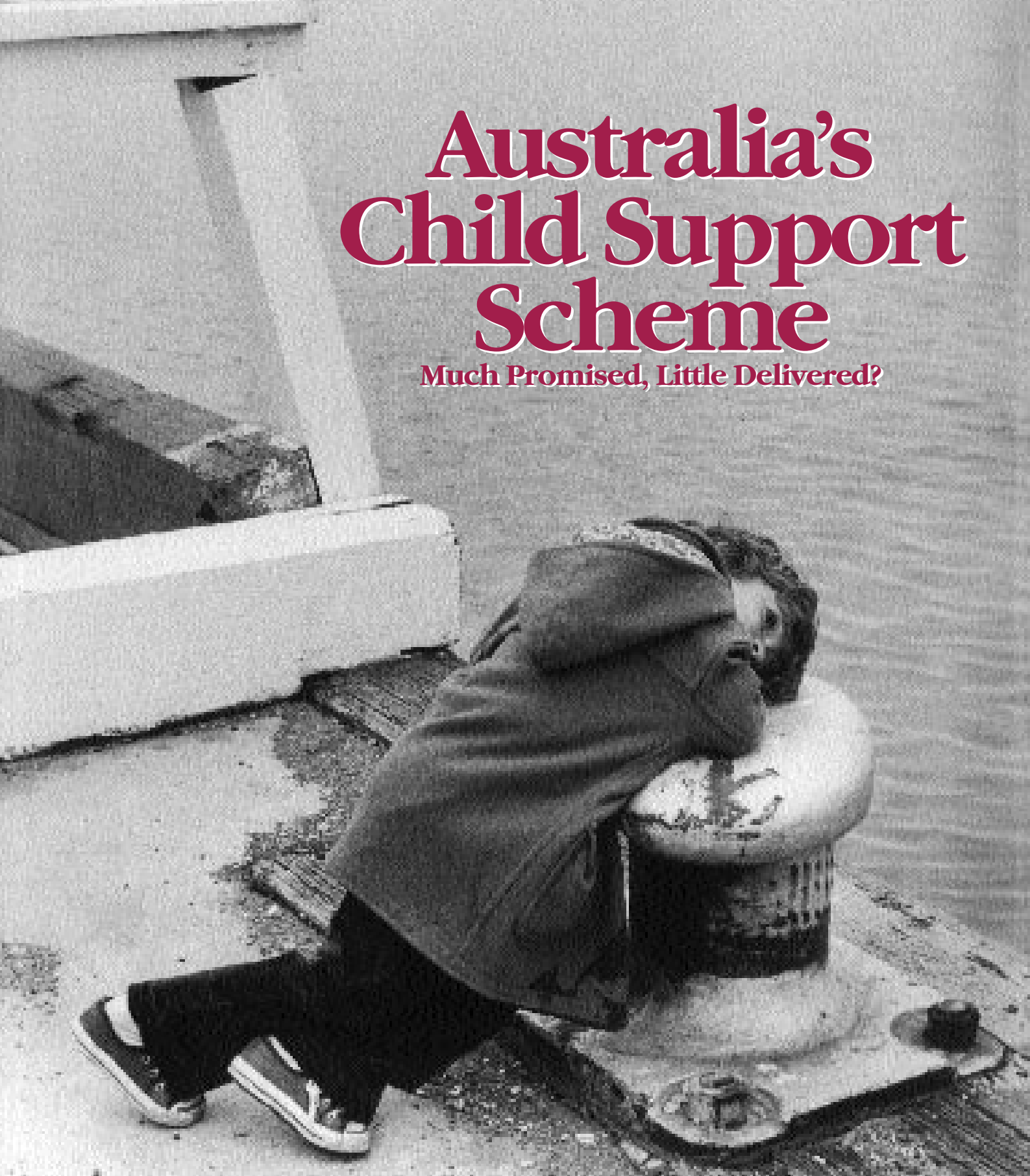


Australia's Child Support Scheme

Much Promised, Little Delivered?



Australia's Child Support Scheme was established in 1988–89 primarily to overcome the extremely low rate of payment of child maintenance by non-custodial parents.

LIZ ALEXANDER argues that after six years of operation it is evident that the way in which the Scheme has been implemented has created serious problems for both custodial and non-custodial parents. Here, she outlines these problems, as identified particularly by the 1994 report by the Joint Select Committee on Certain Family Law Issues.

Australia's Child Support Scheme provides an interesting example of the large discrepancy that often occurs between legislative intention and practical effect.

The Scheme was established in 1988–89 with the central purpose of overcoming the extremely low rate of payment of child support by non-custodial parents. Six years later, it is questionable whether the collection rate has improved to the extent claimed by the Government. It is also evident that the way in which the legislation has been implemented has created serious problems for both custodial and non-custodial parents.

This paper outlines these deficiencies but argues that the problems in effecting the legislation should not be allowed to obscure the fact that the basic legislative conception of the Scheme was sound, and that the Scheme, through a number of reforms, could be made to operate far more effectively than it has to date.

BACKGROUND

The Child Support Scheme was intended to redress the apparent failure of existing child maintenance arrangements. Under the pre-1988 legal scheme, the Family Law Act 1975 (Part 7 Division 6) provided for the relevant courts – Family and magistrates – to make orders in relation to the maintenance of children following the breakdown of their parents' relationship. In theory these orders were enforceable by the courts. In practice most were never acted upon, and the rate of payment of child maintenance under court orders (or voluntarily) was abysmally low; indeed, it was estimated that as many as two-thirds of non-custodial parents failed to meet their obligations to their children (Bowen 1994:4).

This low rate of compliance was essentially due to the private nature of collection and Government failure to back the law with effective enforcement – an indication of how the area of child maintenance was regarded as one that should be minimally regulated, possibly because of its 'private' nature, and also because those suffering were overwhelmingly women, many of them social security beneficiaries, a group that has traditionally been a low priority for law makers. In order to enforce a court order with which a liable parent had failed to comply, a custodial parent had to go back to the court, because the court would not automatically enforce it: 'The custodial parent was required to take enforcement action himself or herself. This again involved further applications, service of documents and litigation . . . The expense, time and difficulties associated with the process of obtaining child support under the Family Law Act were severe disincentives to custodial parents' (Leibler 1991:140).

Another major defect of the pre-1988 legal scheme was the absence of any objectively determined benchmark for assessing the amount to be paid, with the result that assessments varied wildly between comparable cases, were often unrealistically low and, as costs of living rose, difficult to adjust (Bowen 1994:2).

The most pressing consequence of these deficiencies for the Government was the ultimate cost to the welfare system, as many custodial parents unable to collect child maintenance were forced to seek social security benefits to obtain an adequate income. This was the major economic pressure behind the setting up of the Child Support Scheme. Of course there were also other imperatives, including the notion that *both* parents should accept responsibility for their child's support, regardless of relationship breakdown and custody arrangements. With the growth in social and political pressures for laws to redress inequities against women and children, this was increasingly seen as a social value, not a merely 'private' matter.

Two major reports were influential in the establishment of the Scheme. In 1979 the Family Law Council recommended 'a separate national maintenance enforcement bureau' (cited in Commonwealth Parliament 1994); and the Child Support Consultative Group (CSCG 1988) proposed a model for the administrative assessment of child maintenance.

The Legislation

The Child Support Scheme was created by two major pieces of Commonwealth legislation – the Child Support (Registration and Collection) Act 1988, and the Child Support (Assessment) Act 1989. Complementary amendments were also made to the Commonwealth Family Law and Social Security Acts, and a number of significant amendments to both primary Child Support Acts were made in 1992 by the Child Support Legislation Amendment Act, in the areas of enforcement and review respectively.

Child Support (Registration and Collection) Act 1988

This Act established a number of important bases for the new Scheme, in particular by:

- creating the Child Support Registrar, a role assigned to the Commissioner of Taxation, who is responsible for the administration of the Act, and can delegate his/her powers to designated officers of the Taxation Office;
- creating the Child Support Register on which would be registered all appropriate child maintenance liabilities, primarily those established by court orders or court registered agreements;
- giving the Registrar the power to collect these debts by automatic withholding – that is, by direct deduction via the liable parent's employer from their salary or wages;
- giving the Registrar the power to distribute the collected payments to the custodial parent;
- providing for review of decisions.

The Act specified little about the administrative structure needed to put the legislative scheme into practice. Primarily this involved creating a specialised agency within the Taxation Office – the Child Support Agency

– to register and collect the debts from non-custodial parents. It also involved establishing mechanisms in the Department of Social Security to distribute the payments to custodial parents.

The rationale behind this splitting of collection and distribution functions seems to have been the assumption that the Taxation Office has particular expertise in collection of monies, while the Department of Social Security has particular expertise in distributing monies. Importantly, in practice a large proportion of custodial parents were social security beneficiaries, whose level of benefits would be affected by the amount of their child support income, so giving this function to the Department of Social Security had the effect of combining efficient distribution with automatic receipt of information about this part of beneficiaries' incomes.

This split between collection and distribution has had serious implications for the efficiency of the Scheme, which will be discussed later.

Child Support (Assessment) Act 1989

This second Act created a means by which the assessment of child support liability could be made administratively, rather than by the courts. Its principal provisions in brief are as follows:

- children who are eligible for such assessment are those born on or after the Act's commencement date (1 October 1989), or whose parents separated on or after that date, or who have a younger sibling born on or after that date;
- to receive an administrative assessment, custodial parents must apply to the Child Support Registrar for such assessment;
- if the application is accepted, the assessment is to be made in accordance with a prescribed formula, which determines the percentage of a liable parent's income which is payable as child support; there are a number of different formulas applicable to different income situations, and provision is made for annual adjustment according to changes in the CPI;
- regardless of whether there has been an administrative assessment or not, private (or 'consent') child support agreements may be made between consenting parents, and may be registered with the Registrar for the purposes either of routine collection, or collection only in case of default.
- departure from (variation of) an administrative assessment may be requested by applying to the Registrar (the Registrar may refer such an application to a court if s/he regards the issues as 'too complex');
- appeals against certain decisions of the Registrar may be made to the Family Court; these may be by a custodial parent against a decision not to accept their application for assessment, or by a potentially liable parent against a decision to accept an application for assessment, or against

an incorrect assessment, or against acceptance or non-acceptance of a consent agreement.

Stages One and Two

The Act created two groups of child support recipients: those born before 1 October 1989 (known as Stage One children) and those born on or after 1 October 1989, or whose parents separated on or after that date, or who had a younger sibling born on or after that date (known as Stage Two children).

Stage One children are not eligible for assessment under the Child Support (Assessment) Act formula; they continue to receive assessment only by court order (if their parents do not make a private 'consent' agreement). However, this order may be registered with the Child Support Registrar via the Child Support Agency, which is the effective delegate of the Registrar. This empowers the Agency to collect and distribute the money owed under that order. Similarly, any consent agreement made between the parents of a Stage One child may be registered with the Agency for the purpose of enforcement if the liable parent defaults. If either parent wishes to vary the order, they must apply to the court.

Stage Two children receive both assessment and collection by the Child Support Agency, unless their parents make a consent agreement (which can still, if the custodial parent wishes, be registered with the Agency in case of default). If either parent wishes to vary the order, they may apply to the Registrar.

ADVANTAGES OF THE SCHEME

There is no doubt that the Scheme represented a substantial advantage over pre-1988 arrangements, at least in relation to Stage Two parents.

Assessment Advantages

Instead of ad hoc fixed assessments based on a particular judge's subjective impressions of what it might cost to support a child and what it might be 'reasonable' to collect from a non-custodial parent, the Child Support Assessment Act 1989 offered assessment according to a formula based on an objective (taxable income based) statement of the liable parent's income, with a number of variables (self-support needs, responsibility for other children, custodial parent's income over and above average weekly earnings, sharing of custody, costs of substantial access) factored in. A percentage, progressively decreasing as the number of children increases, was then applied to the resulting 'adjusted income amount', to determine the amount of child support payable by the liable parent.

It is clear that the amounts granted to custodial parents under administrative assessment have usually been significantly higher than those available through court orders. However, this discrepancy may be declining, as the courts now routinely use the Child Support Agency formula to make their own assessments.

While the formulas are designed to produce the fairest outcome to both parents (and, above all, to the child), either parent can

apply to have the assessment varied by application to the Registrar. Both the assessment and variation procedures are carried out administratively, so the costs to applicants are far lower than those attached to court procedures. And in theory at least, the procedures should be much less open to delay than the court system. By the same token, the replacement of court orders with administrative assessment also relieves the over-burdened court system of one substantial group of cases.

Collection Advantages

These advantages are available to both Stage One and Stage Two parents, as both may have their child support collected by the Agency under the Child Support (Registration and Collection) Act.

Of course, the major expected advantage of the Scheme was to improve the rate of collection. It was assumed that deduction of the child support amount from a liable parent's salary/wages by his or her employer, and direct payment to the Agency in the manner of PAYE tax would guarantee collection in most cases, apart from cases where the liable parent was not employed or self-employed.

As noted in the report of the Joint Select Committee, the Agency claims substantial success in this regard: 'The Child Support Agency constantly claims that it has achieved the best collection rate of any similar agency in the world. The frequently quoted collection rate of "73 per cent of amounts registered" is used as the key indicator of the Agency's success' (Commonwealth Parliament 1994). It is claimed that not only is this a vast improvement on the previous

NEED FOR INDEPENDENT REVIEW OF CHILD SUPPORT ASSESSMENTS

Given the profound implications of the Child Support Agency assessments for both non-custodial and custodial parents, this is an area in which one might expect careful provision for the review of decisions.

The procedure for reviewing Stage Two assessments (called 'departure from assessment'), is provided for in Part 6A of the Child Support Assessment Act. These provisions, and their application, are highly problematic in two fundamental respects: first, in the procedures, which deny natural justice (or due process) and, second, in the review body, which is arguably neither independent nor accountable.

The Child Support Review Office, an agency set up within the Child Support Agency, must give a hearing to the applicant if he or she so requests, but there are no procedural rules governing the hearing (s.98H(4)) which is conducted 'as the Registrar sees fit'. That is, there are no legal rules, and correspondingly no legal rights, regarding evidence, the calling of witnesses, examination and cross-examination, and so on. So the way in which the hearing is conducted, and evidence admitted or refused, is entirely

at the reviewer's discretion. As with other types of tribunal hearings, it is argued that this reduces delay and expense. But, it must be asked, at what cost in terms of natural justice?

These problems are compounded by the absence of a right to representation, legal or otherwise (s.98H(5)), despite the complexity of the subject matter. Indeed it is not clear whether even applicants with inadequate English language skills have a right to a translator!

The reviewer is not required to provide written reasons for decision, so the applicant and respondent may remain completely in the dark about the reasons for their respective success or failure.

The proceedings are not required to be published, which may be partly justified on the grounds of privacy, but which denies the right to information about how such important (quasi-judicial) decisions are made, and reinforces the impression that the reviewers are not publicly accountable.

Furthermore, the reviewers themselves are hardly independent: review powers have been delegated to the Child Support Review Office – as already noted, an agency set up

within the Child Support Agency. There is no avenue for independent review decisions of the Child Support Review Office. Rather (under s.115), applicants who are dissatisfied with the outcome can only seek a new review by the court of the original Agency assessment, without reference to the decision of the Child Support Review Office.

These procedures have been roundly criticised by the 1994 Joint Select Committee, which recommended that provision be made for an independent external body to review decisions of the Child Support Review Office, and that there be a further avenue of final appeal to the Administrative Appeals Tribunal (Commonwealth Parliament 1994: 58–59).

It is to be hoped that these recommendations are adopted, as they would require the Child Support Review Office to improve its procedures, and would bring the Child Support Scheme into line with the dominant model of Commonwealth administrative review in comparable areas such as social security, veterans affairs and small taxation claims.

– Liz Alexander

scheme, which collected around 30 per cent of debts, but also it is a better rate than any other comparable scheme in the world: 'It seems that more Australian children are being supported by their parents . . . than children in any other country' (Bowen 1994:93-112). The accuracy of these claims will be addressed in the 'Criticisms' section below.

Another less tangible advantage is the removal of responsibility for collection from the custodial parent. Before 1988, the actual payment of child support was made privately between parents (although subject to a court order). It appears from evidence cited in a number of studies (see, for example, Harrison 1991) that in practice the liable parent often failed to volunteer the payment, forcing the custodial parent to ask for the money, which caused substantial bitterness and distress on both sides. To compound the tension, this often occurred at the time of access visits, and the argument over money would take place in the children's presence. In this way, payment of child support seems often to have become confused with access issues, with many liable parents apparently regarding child support as in some way a payment in exchange for access rights, or used as a weapon in the continuing conflict between ex-partners. Furthermore, in those cases where the dissolved relationship involved domestic violence, it may reasonably be assumed that it would be particularly difficult for a fearful custodial parent to ask for payment, and all too easy for a violent non-custodial parent to regard such a request as provocation.

The introduction of collection by an independent external agency was intended, therefore, to ameliorate these situations. Child support liability was to be made clearly a responsibility attached to parenthood, and one enforced by the State. The intention was that this would not only be of immediate advantage to custodial parents, but would also produce the long-term benefit of changing the attitudes of liable parents, encouraging them to accept the nature of their responsibility, so that ultimately many would voluntarily pay child support without the need for external intervention (Bowen 1994:vii; Commonwealth Parliament 1994:39).

CRITICISMS OF THE SCHEME

Given the highly emotional and controversial nature of child support issues, it is hardly surprising that the Scheme has received criticism from many quarters. However, attacks have been levelled not only by disgruntled liable parents, but also by custodial parents, welfare services, and economic analysts; aimed not only at the philosophical basis of the Scheme, but most damningly at its implementation methods and actual effectiveness.

A full range of these criticisms is clearly and systematically set out in the Report of the Joint Select Committee on Certain Family

Law Issues (Commonwealth Parliament 1994). The following draws primarily, although not exclusively, on this Report.

Collection Rate

One of the most surprising accusations levelled at the Scheme is that it may not in fact have improved the child support collection rate as substantially as is claimed. As noted above, the Agency claims a collection rate of 73 per cent, a vast improvement over pre-1988 rates, and puts Australia ahead of all comparable countries in this regard.

However, the Joint Select Committee challenges this claim, pointing out that the calculation method used is questionable. Put simply, the Agency does not calculate its collection rate by comparing the total amount of child support collected with the total amount owed (as could reasonably be expected). Rather, the Agency compares the total amount collected with what it calls the 'estimated collectable amount', a number

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based on highly questionable premises. By pitching this number low, the resulting rate looks extremely high; but, the Committee points out, it bears little relation to reality. Furthermore, even the total amount collected is not satisfactorily defined. For example, the Agency includes money collected privately – not by the Agency, but by custodial parents whose private agreements are merely registered with the Agency – in the total of money collected. This raises the amount above the rate actually collected by the Agency, and so further enhances the apparent collection rate. The Committee describes the use of these practices to inflate the collection rate as 'abysmal' and recommends their reform (Commonwealth Parliament 1994:9-10).

These 'rubbery figures' make an accurate assessment of the Child Support Agency's collection rate extremely difficult; while it is likely to be significantly better than the pre-1988 rate, it is by no means certain that it is of the world-beating order claimed by the Agency.

Collection Enforcement

While the collection rate is debatable, there is no doubt that the gross amount of child support debt has seriously blown out over the six years of the Scheme's operation (Commonwealth Parliament 1994:62).

Given that the minimisation of debt was one of the expected advantages of the introduction of the Scheme, and its automatic withholding process, it appears that there are significant problems in enforcing collection. While it was inevitable that a PAYE-type collection would not cover all cases – and in particular would miss self-employed liable parents – the amount of the debt is far beyond that which would be expected if this was the only, or main, group defaulting.

However, exactly which other categories the defaulters fall into is not at all clear – again because of problems relating to the information (or lack of it) recorded and provided by the Child Support Agency. The Joint Select Committee notes that in this context the Agency was unable to provide any of the categories of data necessary for an analysis of the different types of default making up the total debt, and for devising strategies to target these. The Agency's failure to collect this information is described by the Committee as 'deplorable', characterised by 'five years of neglect', and a major target for reform (Commonwealth Parliament 1994:63-77).

Enforcement is currently available only through local courts and the Family Court, neither of which has been notably successful (Kingshott 1992). The Committee makes a small number of specific recommendations relating to possible improved enforcement methods, such as using private collection agencies, reporting defaulters' names to credit reference bureaus, and publishing defaulters' names. But primarily the Committee is concerned that the Agency obtain accurate and useful information about the nature of defaulters, so it can devise its own strategies for effective enforcement. To this end, a number of the Committee's recommendations

include increasing resources to the Agency to improve its capacity to carry out these tasks (Commonwealth Parliament 1994: 66-69).

Delivery of Payments

The Child Support Agency has also been severely criticised for its failure to deliver efficiently the payments it actually collects. Custodial parents report extraordinary delays (of up to five months) between registering with the Agency and receiving their first payment. The Joint Select Committee exhaustively examined this area, and identified a number of logjams in the registration and first payment collection process.

Briefly, the steps in the process can be identified as follows: the Child Support Agency receives an application for registration from a custodial parent; the Agency sends a pre-acceptance letter to the non-custodial parent; in the absence of a valid appeal, the Agency accepts the application; the Agency sends notification to both parents; the Agency initiates collection action (automatic withholding, or letter of demand if self-employed) to the liable parent; the Agency transfers the collected money to the Department of Social Security for payment to the custodial parent; the Department of Social Security pays the custodial parent.

It is immediately apparent that this is a cumbersome process, with the potential for significant delays at each stage. The Joint Select Committee concluded that the average total delay between registration and first payment was 142 days. Not surprisingly, the Committee considered this to be 'unacceptable', not only from the viewpoint of custodial parents, but also from that of non-custodial parents who, because of the delay between registration and acceptance of application, could find themselves liable for two months

of arrears before being made aware of the liability. The Committee makes a number of specific recommendations to reduce the timelag between application and receipt, and also to ameliorate the arrears problem (Commonwealth Parliament 1994:30–41).

Split Between Bureaucracies

It would seem reasonable to argue that a fundamental problem underlying the whole process of collection and distribution is that the process is split between two large bureaucracies. It was earlier noted that the rationale for this was that the Tax Office is expert at collection, the Department of Social Security is expert at distribution – and many custodial parents are social security beneficiaries.

However, in practice, the Tax Office has failed to commit sufficient expertise and resources to the Child Support Agency's operations to enable it to collect efficiently; the liaison between the Agency and the Department of Social Security has been characterised by communication breakdowns and delays; and the need for a client to liaise with two different departments to find out what is happening with their one application has created considerable frustration, both for them and for the departmental officers they deal with.

Harrison (1991) notes also that the sheer logistical problems in transferring specific payments from one department into a fund, to be removed and distributed by another, creates delays and frustration; these are only worsened when the first department frequently fails to collect at all, but the failure to pay is naturally blamed by the client upon the second department. She notes that in the interests of administrative efficiency and greater speed in transferring money, the Australian Institute of Family Studies also recommended that the Scheme be administered by one organisation and that, in these circumstances, the Child Support Agency was the most appropriate.

The Joint Select Committee is not quite so bold, and recommended only that there be a review in 1997 of the Child Support Agency's location. Whichever Department the Agency is located in, it would seem desirable to combine the functions of collection and distribution in one.

Client Relations

The problems in delivery of payments form only part of a whole spectrum of criticisms regarding the way the Child Support Agency relates to its clients, both custodial and non-custodial.

The most common criticism, which recurs throughout critiques of the Scheme, is that the Agency's communications with its clients are inadequate and often completely inappropriate. This applies equally to written and telephone communications. In the case of the former, the standard Tax Office practice of sending out computer-generated pro forma letters was adopted from the outset without consideration of whether or not this was appropriate to the area of child support.

The Joint Select Committee states: 'The

Agency's computer generated correspondence is seen by many clients as threatening and complex. The correspondence does not explain issues in a "user friendly" manner and often fails to address the matter or issue raised by the client in the first place. Computer generated correspondence appears to have developed, in tone and content, from Australian Taxation Office practice' (Commonwealth Parliament 1994:22–23). That is, it is a means of minimising contact with individual clients in order to most 'efficiently' collect debts – whether from tax avoiders or child support defaulters, and little thought appears to have been given to the fundamental differences between the two.

Kingshott (1992) notes that liable parents in particular often find such letters deeply offensive, because their form (usually a bald demand for arrears, without careful explanation of the reasons for the parent's liability, and their rights) is totally inappropriate, given the sensitive nature of the type of debt collected and its entanglement with emotional issues of relationship breakdown and access to children. According to Kingshott it is not surprising that recipients of these letters often become 'completely confused, frustrated or enraged about their dealings with the Agency'.

On the other hand, custodial parents often complain of the Agency's practice of not answering correspondence at all, so that many letters of vital importance to clients – such as inquiries about the progress of a first payment collection, or about the non-payment of a due amount, or about an unexplained reduction in a monthly payment – go unanswered

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(Kingshott 1992). The Joint Select Committee has accordingly recommended major reforms to this area of communication (Commonwealth Parliament 1994:24).

These problems in the Agency's written correspondence are compounded by the notorious deficiencies in its telephone inquiry service. In many cases where a letter is problematic – that is, incomprehensible or irrelevant or containing wrong information, or not arriving at all – it could be expected that a quick telephone call would resolve the problem. However clients overwhelmingly complain that there is no such thing as a 'quick call' to the Agency, because it is extremely difficult to get through at all on their inquiry numbers. The Joint Select Committee notes: 'The Agency's telephone service has been condemned by both custodial parents and non-custodial parents. The inability of clients to get through to the Agency, their inability to talk to a specific officer or case officer, the long waiting times hanging on the end of a telephone queue, and the rudeness of some Agency officers are all regular occurrences (Commonwealth Parliament 1994:21).

While the Committee makes a number of specific recommendations to overcome this

chronic problem, including improving staff training and telephone technology, it also addresses the crucial underlying problem of the lack of a culture of positive client service in the Agency. Kingshott (1992) and other commentators have noted this problem of a Tax Office 'them-and-us' culture which, while questionable in relation to any Tax Office client, is entirely inappropriate to child support clients. Accordingly, the Committee proposes the adoption of case management – that is, the assignment of individual cases to individual officers who maintain a consistent contact with 'their' clients, encouraging a more responsive and understanding service, and, by the same token, improving client understanding and therefore ultimately compliance (Commonwealth Parliament 1994:21).

Given that case management is far more established in the Department of Social Security than the Tax Office, this proposal – especially in the light of criticisms of the failure to apply the Tax Office's collection resources effectively – raises the question of whether the Agency might be better situated in the Department of Social Security. This is not a possibility canvassed by the Committee, which merely suggests that the Agency's location be reviewed at a later date, but it would seem a logical option.

Discrimination Against Stage One Children

A widespread criticism of the Scheme is that it effectively discriminates against Stage One children. It was earlier noted that a major benefit of the Child Support (Amendment) Act was its creation of administrative assessment. This not only provided more realistic (higher) assessments of child support, but also allowed for annual increases in line with the CPI index (so income rose as the cost of living rose).

However, these benefits are not available to all children requiring child support, but only to Stage Two children – those who meet the criteria set out in the Act; that is, they must have been born on or after 1 October 1989, or their parents must have separated on or after that date, or they must have a younger sibling born on or after that date. Children born before 1 October 1989 who do not meet the second and third criteria (Stage One children) do not have access to administrative assessment, but continue to receive child support by court order.

While the courts increasingly use the Agency formula to assess these orders, there remain significant discrepancies between the average amount awarded under court orders and under Agency assessment. In 1992 the Child Support Evaluation and Advisory Group reported: 'The financial disadvantages experienced by children and custodial parents covered by Stage One are a continuing and major problem. Custodial parents with maintenance under Stage Two of the Scheme are receiving about 60 per cent more than those covered by Stage One. Sole-parent pensioners with maintenance were receiving about 30 per cent higher payments under Stage Two' (CSEAG 1992:14). And these discrepancies widen over time, as Stage Two amounts

automatically increase with indexation and Stage One amounts do not.

Also Stage One children do not have access to administrative variation under Part VII of the Child Support (Assessment) Act; their assessments can only be varied by the court itself, involving all the expense, delay and access difficulties attached to court proceedings.

Accordingly, there have been calls (CSEAG 1992) for the abolition of the distinction between the stages, so that all children are covered by the Child Support (Assessment) Act. This would require that the Act be made retrospective to cover children born prior to October 1989, a requirement that to date has been rejected by the Government on the ground that 'legislative retrospectivity in this regard would be unacceptable' (Bowen 1994). The Joint Select Committee also rejects this option, both because it would 're-open divorce settlements agreed in good faith within the parameters of the law in force [pre-1989]' and, perhaps more influentially, because it would have 'serious resource implications for the Child Support Agency' (Commonwealth Parliament 1994:100). It is worth noting here, however, that a dissenting report advocating the extension of Stage Two to Stage One children was tabled by Senator Belinda Neal.

Given the Government's willingness to apply retrospectivity wholesale in other areas (particularly immigration in recent years, but also in some other areas of major tax default) it is questionable whether the principle of non-retrospective legislation should be allowed to outweigh the principle of equity, not to mention the social value of reducing this form of avoidable child poverty.

And it is hardly satisfactory to assert that the distinction will disappear over time, when most Stage One children reach the age of 18, for this will not resolve for another 12 years.

Discrimination Against Non-custodial Parents

Another allegation of discrimination commonly raised in relation to the Child Support Scheme is that of discrimination against non-custodial parents. While this may be partly attributable to the deep and loudly-expressed resentment of this interest group at being held liable at all, there are undoubtedly a number of areas in which non-custodial parents have legitimate grounds for claiming discrimination.

In the first place, the formula itself has been attacked for applying different exemptions (exempting income from consideration) to non-custodial parents compared with custodial parents. That is, non-custodial parents become liable when they earn an amount even marginally over the annual single rate of pension, while a custodial parent may earn an amount up to average weekly earnings without this being taken into account in reducing the non-custodial parent's liability. The argument goes: if both parents are equally responsible for the support of their child, why is there such a discrepancy in their respective exempt income amounts? This criticism has been repeated virtually since the Scheme's inception (Commonwealth Parliament 1992:365)

In 1994 the Joint Select Committee raised this issue again, and recommended that amendments be made both to the stated objectives of the Child Support Scheme – to include reference to the child maintenance responsibility of both parents, and not only non-custodial parents – and to the basic formula factoring in custodial parent income (Commonwealth Parliament 1994:5).

Other commonly alleged forms of discrimination, which can only be briefly noted here, are: failure to take into account forms of support other than direct payments; lower percentages applicable in the formula to the children of second families, so that non-custodial parents 'often claim they cannot afford a new life'; failure to reduce liability where the non-custodial parent has substantial access, and supports the children directly during these access visits; rigid application of the formula, without consideration of the difference in costs of supporting children of different ages (these generally rise as the child grows older); failure to take into account the non-custodial parent's real ability to pay the liability, particularly following a property settlement; failure to take into account voluntary direct payments made additionally to normal collections.

The general criticism that the Child Support Agency applied the formula too inflexibly to non-custodial parents without taking into account specific individual circumstances, such as those noted above, was acknowledged to some extent by the enactment of the Child Support Legislation Amendment Act 1992, in particular the provisions allowing for wider review of assessments. This, however, also created a whole new area of controversy for the Child Support Scheme (see accompanying boxed inset).

CONCLUSION

In the light of all of the above criticisms, it seems clear that the Child Support Scheme is deeply flawed in its operations and, to some extent, in its structure. However, most of its critics would not argue that the Scheme be abandoned, and recognise that the Scheme is a substantial improvement on the court-based arrangements that preceded it. While it seems clear that the collection rate is not of the impressive order claimed by the Agency, it is undoubtedly significantly better than the pre-1988 rate.

And it is recognised that the Scheme, particularly Stage Two, possesses a number of extremely important advantages over court-based arrangements. Administrative assessment according to a relatively flexible formula is infinitely preferable to the subjective, often unrealistic and always un-indexed assessments made by court order. Other advantages are: no-cost application, assessment and review; independent collection, which removes it from direct transaction between the parties to a broken relationship, often during access hand-overs; direct collection from salary, by automatic withholding, which minimises evasion, at least by employee liable parents; and direct input of income information to the Department of Social Security, thus minimising the

possibility of overpayments to custodial parents who are social security beneficiaries, with the attendant hardship when these are recovered.

The major problems with the Scheme, then, lie not in its basic conception and structure, but in the way in which it has been implemented. This is made very clear in the 1994 Joint Select Committee's Report, which also recommends reforms which may overcome these operating deficiencies.

The Committee's recommendations may be summarised as: providing a clear legislative basis for the Scheme's essential administrative arrangements (in particular the Agency and review bodies); improved resourcing, including making the full information resources of the Tax Office available to the Child Support Agency to maximise collection; improved training of staff; improved service through case management; and improved cooperation between the Agency and the Department of Social Security.

The controversial issue of whether or not the Agency should be located in the Tax Office was postponed by the Committee for a later review, presumably partly to allow time to first implement the proposed reforms. Given the entrenchment of a particular institutional culture in that Office, it is debatable whether the operating reforms will be allowed to work, but this remains to be seen.

It seems clear that the other main controversial question – of whether the Stage Two scheme should be extended to include all children currently under Stage One – must be answered in the affirmative if equity is to be achieved.

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