CHiLD POVERTY ACTION GROUP

Child Support:
a summary and comparison of legislation and policy in New Zealand and Australia

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Preface

Child Poverty Action group is pleased to publish this backgrounder on child support. It is a policy issue that is overdue for attention.

Ministry of Social Development's 2009 figures show that the hardship rate for sole parent families is around 4 times that for those in two parent families (39% and 11% respectively). Over 50% of sole parents and their children who are supported by a benefit live in conditions described as 'serious hardship' (Perry 2009 Table E2.8). Inappropriate Child Support policy is part of a wider picture that keeps one in five New Zealand children below the poverty line.

It is also clear that the current Child Support arrangements can often be destructive to family harmony while failing to ensure that the custodial parent and their children are supported sufficiently to prevent hardship.

This backgrounder highlights that both The Child Support Act 1991 and the Liable Parent Contribution Scheme that preceded it have emphasised that where a solo-parent is on a benefit, their former partner ought to provide recompense to the tax-payer. The interests of the child or children are not the central concern.

There are lessons to be learned from the experience of Australia and the UK who have both reformed their child support arrangements toward a child-centred approach and focus.

[1] This backgrounder was prepared by Oscar Casswell-Laird who held the 2010 CPAG summer scholarship, with assistance from Dr Susan St John and Dr M. Claire Dale, CPAG Executive.

The Minister for Revenue Peter Dunne has signalled that the current Child Support Act falls short on many criteria and will be reviewed. In an address to Employers and Manufacturers Association's Tax Summit 2009 – 25 September 2009 he said:

> *The state-run child support system helps to provide financial support for more than 200,000 children whose parents live apart, or about 20 percent of all dependent children under the age of 19. It is obviously important that the scheme operates as effectively as possible, and in the best interests of the children involved.*
> *A lot has changed – in patterns of raising children, in workforce participation, and in family law – since the scheme was introduced in 1992. It is now time to look at updating it in key areas.*
> *To this end, I am planning to release a discussion document soon that seeks people's views on proposals to update the child support formula that determines how much child support a parent must pay. The proposed changes will take into consideration levels of shared care, the cost of raising children today, and both parents' income*. (Dunne 2009)

This backgrounder provides a context for CPAG to make submissions and suggestions to that review.

Executive summary

- Currently, the Child Support Act emphasises the responsibilities that non-resident parents have toward their children, as opposed to the child's welfare.
- In addition, the way in which child support liability is calculated can create inequity.
- There has been a suggestion that the Child Support Act 1991 may be reformed in 2010.
- This reform may be informed by recent changes made to the Australian and British child support schemes, which have included adopting a child-centred approach.
- In addition, the Australian child support scheme has moved away from a responsibility emphasis towards one sympathetic to liable parents.
- It is timely and relevant for New Zealand to look at the implication of this move and the other changes that have been made.

Introduction

Australia, with whom New Zealand has traditionally shared many aspects of its child support system, has recently moved away from emphasising the responsibility of parents in their child support scheme, towards a scheme much more sympathetic to liable parents. There are lessons that New Zealand can learn from the recent Australian and British reform experiences.

In contrast to Australia, the basic framework of New Zealand's child support legislation has remained fundamentally unchanged since the Child Support Act 1991. Although this act represented a significant improvement over what had gone before many felt that it fell short

of its stated objectives in a number of key areas. Recently there has been a growing sense of disillusionment with the act and its amendments. In particular, Revenue Minister the Hon. Peter Dunne has indicated that he has been working on an 'overhaul' of the Act which he plans to present to Cabinet early this year (Hopkins 2009; Lynch 2009). It has been suggested that this overhaul may be informed by several major changes that have been made recently to the Australian child support scheme.

A reworking of the Child Support Act appears long overdue. The 1991 Act reflects the values and needs of a society that has changed considerably since its inception. The Report of the Working Party to the 1994 Child Support Review (Trapski, Halsted et al. 1994) raised many issues that have not been acted upon, and it is timely to review these. Others (see, for example Birks 2000) have argued that the current child support system does not fulfil many of the objectives set out in the Child Support Act.

This paper describes the general background to the Act and summarizes the issues with it. A particular focus will be the Child Support Review 1994 and the recent changes in the Australian child support scheme. This paper will look at where these two sources coincide and where they differ, with a view to changes that might be made to the Child Support Act 1991 in the future.

Current child support legislation

The Child Support Act 1991

Child support is legislated in New Zealand by the Child Support Act 1991 and its various amendments. The primary focus of this Act is the assessment of the level of child support owed by liable parents in respect of their children, and to provide for the collection and payment of this child support. These responsibilities are administered by the Child Support division of Inland Revenue, formerly by a Child Support Agency.

An application to have child support assessed by Inland Revenue can be made by the primary caregiver of a child. Such an application must be made in situations where that caregiver is receiving a benefit but is otherwise optional. A child is defined as a person under the age of 19 who is not married, in a civil union or a de facto relationship, or is otherwise financially independent, such as being in fulltime employment or receiving a student allowance.

Under the act, child support is paid by a liable parent to the primary guardian of the child, typically but not necessarily a custodial parent.[2] Whether a parent is a custodian is dependent on the number of nights the child or children spends in their care. If it is higher than 40% of nights in a year the parent is considered to have custody of the child.[3]

The amount of child support payable by the liable parent is determined by taking their previous year's taxable income, up to a maximum level set at two and a half times the national average earnings of that year. From this income a living allowance is deducted.

[2] Parenthood is defined fairly broadly by the Act, including birth and adoptive parents, people who were in a legal marriage when the child was born to the other partner of that marriage and those people declared 'step-parents' by the Family Court.
[3] This criterion allows for two custodial parents, with the child or children spending a minimum of 40% of the nights in the year in their care.

There are six living allowance levels, determined by whether the liable parent lives alone or with a partner, and whether or not they live with dependent children. Finally the remaining income is multiplied by a percentage which varies with the number of children being supported.

The assumption of the Act is that due to economies of scale the first child is more expensive than each additional child, and the liable parent is assessed accordingly. This formula provides the amount of child support owed for the year and is then divided into weekly amounts owed. If this formula would result in a child support amount less than an established minimum, the liable parent pays the minimum amount instead. In 2009 the minimum was set at $15.35 a week or $799 a year. One of the issues signalled for review is that the assessment under this formula does not take into account the income of the liable parent's partner, nor does it include any forms of wealth other than taxable income.

If the parties feel that the assessment under the Act is inappropriate because of special circumstances they are able to apply for a Departure Order. There are a number of conditions set out in the Act which may justify such a departure being made. These grounds for departure include the financial needs of the parent, including any commitment they might have to support other children; the special requirements of the child; and other factors which might make the determination of child support 'unjust and inequitable'. In addition to these conditions, a departure order must be 'just and equitable as regards the child, the qualifying custodian, and the liable parent', and 'otherwise proper' (Section 96C). The term 'otherwise proper' is not defined in the Child Support Act, though it is in its Australian counterpart (Trapski, Halsted et al. 1994). There has been much discussion about what makes a departure order 'otherwise proper' and different judges have interpreted the requirement of properness differently when ruling on departures from the formula (Atkin and Black 1999).

The assessed amount is paid to the custodial parent unless that parent is on a Domestic Purposes, Sickness, or Unemployment Benefit. In that case the money paid is held by the Crown to offset the cost of the benefit to the taxpayer. If the liable child support is greater than the benefit, the custodial parent receives the excess.

This Act is generally accepted to be a significant improvement over the previous provisions for child support payment in New Zealand. However, from the outset the Act has been criticised for a number of perceived failings (Trapski, Halsted et al. 1994). There have been a number of amendments of varying impact in the years following its adoption, though these chiefly stemmed from changes in other areas of the law. In 1994 there was a major review of the child support legislation which made a number of recommendations. Despite these amendments, and the recommendations of the Child Support Review, and the dramatic changes in social relations, the fundamental features of the Act have gone largely unchanged since 1991.

The Child Support Review 1994

Known as the *Trapski Report* after one of its authors, the *Report of the Working Party to the Child Support Review 1994* is the most significant analysis of the Child Support Act 1991. Although many of its recommendations have been overlooked since the review's publication, it is useful to observe how closely many of those coincide with issues addressed in the

recent changes made in Australia and the review of the Australian Ministerial Taskforce on Child Support (Ministerial Taskforce on Child Support 2005). This section will summarise only the most important of the many recommendations made by the 1994 Trapski Report regarding the 1991 Child Support Act.

Welfare of the child

The first major issue the Child Support Review 1994 highlighted was the omission of the concept of the welfare of the child from the Act. This was anomalous not simply because of intuitive notions that the child's welfare ought to be the major concern of child support legislation, but also because every other piece of legislation directly affecting children included welfare as a major goal. Instead, the Child Support Act 1991 listed eleven objects. These objects focus on parents almost to the exclusion of children and in particular emphasize the responsibilities and obligations of non-custodial parents. The implication is that the Act is a method for the punishment of absent parents.

In terms of its objectives the Act seems to be the ideological successor of the Liable Parent Contribution Scheme which preceded it. This Scheme was designed to recover a proportion of the benefits paid by the Department of Social Welfare to single parent households from the absent parent, typically the father. The welfare of the child was not a concern for this Scheme and was not a stated concern of the 1991 Act.

The formula

The Child Support Review made a number of recommendations on the formula used to calculate child support amounts for liable parents. It proposed a formula that differed in several ways from that set out in the Act. The Review recommended that a pool of child support income be established, from which a percentage would be deducted for child support. This percentage would be based on the number of children dependant on the liable parent. There would be no living allowance for the parent deducted from the pool, as, in the authors' view, the living allowance provisions were responsible for many of the distortions and anomalies present in the 1991 Act.

The child support amount determined by the formula would then be divided equally amongst all the natural and adoptive children of the liable parent. Step-children would not share in the pool by right. Instead where dependence existed between a child and a step-parent it would be the responsibility of the parent to prove that dependence as well as its extent. Once dependence was demonstrated, the step-child would be allowed to share in the child support pool in proportion to that dependence. Finally the Report recommended retaining a level of minimum payment for liable parents on a low income, in part to affirm the goals of the Act and the rights of children to receive some amount of maintenance from their parents. It also recommended establishing a maximum level that these low-income parents ought to pay in recognition of the financial realities of these parents.

The basis of assessment

A key issue for child support is that of avoidance of responsibility by liable parents. Using the previous year's taxable income as the basis for assessment, the Child Support Act 1991 creates a situation where some liable parents are assessed for much less than their capacity to provide. This can occur through assets and income being concealed in trusts or written off

by parents claiming deductions against their taxable income for items like depreciation and developmental expenditure. The Report of the Working Party recommended empowering the Commissioner of the Child Support Agency (as it was then) to be able to go beyond lagged taxable income in assessing a liable parent's true capacity to pay child support. It recommended a basis of wealth, as defined in Section 105 of the Act in relation to departure orders, be used instead of taxable income. In addition, the Report suggested the adoption of an anti-avoidance section like that in use in the Income Tax Act in order to respond to similar issues as they arose.

The Report noted the negative implications that expanding the basis of assessment might have to the efficiency and cost-effectiveness of the Act, as well as the possible privacy issues that might occur as a result of expanding the power of the Agency and its Review Officers to enquire into a person's financial situation in depth. One could add to these issues the negative consequences of requiring individuals to provide complex personal financial information at a particularly emotional time. In the opinion of the Working Party these dangers were outweighed by the assessment anomalies already occurring and recommended that "every effort…be made to remedy that injustice" (Trapski, Halsted et al. 1994). The Report conceded however that taxable income was an appropriate measure of capacity to pay for most liable parents and advised that the Commissioner should only enquire beyond income where evidence of these anomalies existed.

Another key issue in the report was the determination of maximum liability. Under the Child Support Act the maximum amount of child support for which a liable parent can be assessed is set at 2.5 times the average income for the most recent tax year (Section 29). The Report recommended the abolishment of this maximum on the grounds that where a greater capacity to pay existed there was no justifiable reason to limit that capacity. The Working Party stated that children have a right to share in the standard of living of the liable parent, and limiting child support liability to a set maximum is in conflict with that right. In the minority of cases where the removal of maximum liability might produce inappropriate assessments, the Working Party considered the departure order provisions of the Act sufficient to restore equity.

Importantly, the Report rejected the consideration of any concept of the costs of children in liability calculations, except insofar as they were already considered in the form of child support percentages. The several reasons provided for this rejection included the conceptual issues around cost of children studies that made settling on a precise amount very difficult, a difficulty compounded by the lack of research on this topic in New Zealand compared with the United States, Australia and the United Kingdom.[4] Furthermore the Report noted that children's full share of household expenditure is not generally recognised and is often significantly underestimated. The Report also noted that at the time of its publication very few liable parents paid anything close to the estimated costs of children, and that the national average child support was significantly less than even unrealistically low figures. Although it was suggested that the true cost would place an unbearable financial burden on many liable parents, the Report recommended more research into the true costs of children in New Zealand.

[4] Since the Report's publication some research has been undertaken into the costs of children in New Zealand, for example, Claus, I., G. Leggett, et al. (2009). Costs of raising children. NZAE Conference 2009, Inland Revenue**:** 21.

State retention of child support payments

The Child Support Act 1991 was explicitly designed to retrieve some of the benefit paid to solo-parents from their absent partners. As a result, the Act maintained the practice of withholding child support from beneficiary custodial parents up to the level of their benefit. The retention of child support has been responsible for some of the major complaints highlighted in the Working Party's Report. In particular, the Report noted that liable parents had little incentive to pay their child support where the custodial parent was on a benefit, as in this case the child support had no material impact on the welfare of the child. Furthermore, as the state retained child support up to the full level of the custodian's benefit, some liable parents felt that they were being asked to support the custodian as well as the child.

By a similar token, where the custodian is on a benefit they have little incentive to ensure that the liable parent is paying an appropriate level of child support by accurately reporting their true income or financial situation. The Trapski Report recommended making the reporting of the financial position of former partners a prerequisite to receiving a benefit for liable parents. However, it is hard to imagine custodians going to much effort to ensure that their reports are accurate where there is no real benefit to them for doing so. In addition, requiring custodians to report on liable parents may very well further antagonise their relationship.

The passing on of some or all child support to custodial parents, whether or not they were in receipt of a state benefit, would serve to mitigate most of these issues, but would, of course, result in a significant loss of revenue for the state. The Report recommended that child support payments be passed on to the custodial parent up to a certain figure, and beyond that figure would be withheld to pay for the benefit. Although this system would have contributed to the philosophical coherence of the Act, as well as its palatability to liable parents, the Report concedes that the loss of revenue to the state would be a significant barrier to its adoption.

These issues continue to cause problems with compliance levels. In terms of the goals of the Act, any system of passing on of child support to beneficiary custodians would seem to accord well with considerations of the welfare of the child. In addition, it would support many of the current goals of the Act, which have to do with the responsibility of parents towards their children, and the rights of children to be supported by their parents. As already noted, the retention of benefits seems to be a hangover from the Liable Parent Contribution Scheme designed for the punishment of 'dead-beat dads,' rather than for the benefit of children.

The custodial parent's income

A key controversy in New Zealand for many years has been that the income of the custodian is not considered in the formula for child support. This has led to situations where a liable parent on a low income is paying money to a wealthy custodial parent. In addition to income, the broader financial situation of the custodial parent is not accounted for in the child support formula, and the income of the custodial parent's partner is not eligible for consideration. The Family Court case of Lyon v. Wilcox[5] is a well-known example of this issue. When the income of the step-father, who had acted as the child's de facto father for eight years, was

[5] (1994). Lyon v. Wilcox NZFLR 634, 638, Court of Appeal.

included in the assessment, the liability of the natural father was significantly lower. However, the court decided that under the Act only strict economic considerations, and not the social reality of the situation, were relevant for departures from the formula (Atkin and Black 1999). Peter Dunne has said of this issue, “You take a poor, struggling guy in the suburbs with three kids whose partner has run off with a millionaire. You can certainly say it’s a bit anomalous in a way for him to be paying a high level of child support to kids where the money is being used to pay for the upkeep of the kids’ ponies.” (Lynch 2009)

After consideration, the Report of the Working Party recommended against including the custodial parents’ income in child support calculations, arguing that the provision for departure from formula orders (Sections 104-7) were sufficient to deal with those cases where that omission from the calculation resulted in an inappropriate assessment. Chiefly, the Working Party felt that the principle that liable parents have a responsibility to support children not in their custody in accordance with their capacity to do so was just. In addition to this point the Report noted the direct, indirect and opportunity costs incurred by the custodial parent as a result of their custody, and suggested that including the income of the custodial parent in the formula calculation would provide them with a disincentive to work, as every dollar they earned would result in a proportionate loss in child support.

An important advantage of including the custodial parent’s income in child support is that where a parent is liable to two or more children with two different custodians, the bulk of their child support payments is likely to go to the child with the greater need for them. If children are to be treated equivalently, but the income of the custodian is not considered, as the Working Party recommends, inequity may arise because of the differing financial positions of the custodians. Keith Rankin has said, “A father in such a situation may wish to help most the child in greater need. The law will prevent him from doing so.” (Rankin 1993)

Shared custody

The Child Support Act 1991 provides two tiers of care for parents (Section 13). Where a parent cares for a child for 40% or more of nights in the year they are considered to have custody of that child, and custody may be dual. Where two parents share custody, their liabilities in respect of one another are offset. This system is designed to recognise the comparable costs of parents given roughly equal custody, however the fact that there are only two tiers of custody have led to issues where liable parents narrowly make or fail to make the 40% test. Liable parents with a significant level of care, but less than the required 40%, may feel disadvantaged, as the costs of that care are not recognised by the formula. Similarly, custodial parents may be disadvantaged where the liable parent has care for 40% of nights as their child support income may be reduced by more than the cost of their care. This is especially so where both parents have custody, and the formula uses a lower percentage rate to calculate child support liability.

A key issue is that financial considerations should enter into custody decisions as little as possible. Where the liable parent cares for the child a little more or less than 40% of nights either parent may seek a change for financial reasons and these disputes may worsen the relationship between the parents. Despite this, the Report recommended retaining the 40% threshold for custody, arguing again that the existing Section 105 departure order provisions were sufficient to manage the cases in which the formula resulted in an unjust situation.

Departure order provisions

The Report emphasised the need for departure order provisions in the Act to balance accessibility with appropriateness. The Working Party felt that the existing provisions struck the balance between avoiding being so restrictive as to prevent departure orders being made where there is injustice; and being so available as to make them obtainable in situations where the formula produces acceptable results. They recommended only that the relevant portions of the Act be redrafted for simplicity and clarity, and that the 'otherwise proper' term be defined to reduce confusion.

The Australian changes and their implications for New Zealand

In 2005 the Australian government began the process of significantly modifying their child support scheme. These modifications were adopted in July 2008. Because these changes have been offered as a possible model for similar changes in New Zealand (Hopkins 2009), and because New Zealand and Australia have historically shared a number of similarities in their child support systems (Baker 2008), these changes are addressed in some detail. This section summarises these changes and considers their applicability for New Zealand.

Consideration of the income of both parents

From 2008, the Australian child support scheme takes the income of both parents, subtracts a living allowance, and totals the remaining income to determine the child support liability. Each parents' share of the total sum of their incomes determines their responsibility for meeting that liability.[6]

The Australian child support system differentiates between children aged below 13 years, and those who are older, to reflect the idea that teenagers are generally more expensive than younger children. This position, for which there is significant evidence, is reflected in the New Zealand research on the subject (Families Commission 2005; Ministerial Taskforce on Child Support 2005; Claus, Leggett et al. 2009). Furthermore, the Australian scheme categorises parents according to their total child support income, with each category of income paying a different proportion of that to the upkeep of that child. In stark contrast, in New Zealand's system, while there is variation based on the number of children, parents pay the same proportion of their income, regardless of what that income is. The Australian system reflects a belief that "the cost of children is different in households with different income levels" (The Child Support Agency Australia 2008). Australian research indicates that as income increases, the amount parents spend on children increases as a dollar amount, but decreases as a percentage of income (Ministerial Taskforce on Child Support 2005). The Australian scheme represents this decrease by reducing the child support percentage for parents on higher incomes.

The Australian changes have also attempted to more fairly reflect the level of care of both parents in their child support liability calculations. Now, the minimum threshold for recognition under the formula begins at 14% of nights, at which point it is considered that the parent will need some allowance for accommodation for the child to stay overnight regularly. In an effort to minimise conflict over levels of care this allowance is the same for any level of

[6] An example of how the Australian system works, taken from the Child Support Agency website, is given in an Appendix.

care between 14% and 34% of nights. At 35% of nights parents are considered to have shared care of the child, and that point the child support arrangement becomes based on shared care formula, effectively a transfer from the wealthier parent to the less wealthy parent after accounting for the amount of time the child spends in the care of each parent. This change reflects an increasing emphasis on shared parenting in Australian family policy (Fehlberg and Maclean 2009).

A new formula for New Zealand based on the costs of raising children

In the past, New Zealand has not explicitly considered the costs of raising children in its child support liability formulae. The focus has been on the responsibility and capacity of the liable parent to pay, rather than on the welfare and financial maintenance of the child. In part this is because there is little research on the costs of children in New Zealand. The costs of the child are tacitly considered in the child support percentage, the amount by which a liable parent's income is multiplied to determine their child support liability. This number varies with the number of children a parent is liable for, but otherwise is constant for all parents – one child is 18%, two children are 24%, three are 27% and four or more children are 30%.

There are several competing ideologies to consider here. If the purpose of child support is to maintain the child financially then there seems to be no reason why the income of the custodial parent should be omitted from any calculations of liability. If, however, the purpose of child support is to enforce notions of parental responsibility and to ensure that non-custodial parents continue to contribute in some measure to the upkeep of their children, then it seems that the only relevant consideration ought to be the level of upkeep the non-custodial parent can provide. It is important that the Child Support Act 1991 does not include the welfare of the child among its objects, and instead focuses on parental responsibility. It is thus unsurprising that the financial position of the custodial parent is omitted in the Act, as this is perfectly in line with the philosophy of the legislation. Ultimately, whether or not the financial position of the child's custodian is relevant is dependent on the underlying philosophy of the child support scheme in New Zealand.

Better reflection of the level of care provided by both parents

As the New Zealand scheme stands, the amount of child support for which a parent is liable does not change for any level of contact with the child up to 40% of nights of the year. At 40% of nights the liable parent is considered to be sharing in child care substantially equally and may be entitled to child support themselves (Section 13). Prior to that point the only opportunity to offset some of the costs of access is through the mechanisms for obtaining a departure from the formula under Part 6 of the Child Support Act 1991. This system largely ignores the potentially significant costs of access to children, in particular the costs of household infrastructure and transport necessary for regular parental contact. This has been a major source of dissatisfaction with the scheme (Colmar Brunton 2009). Whether the focus of the Act is on the welfare of the child or on the maintenance of parental responsibility, facilitating contact is an important goal.

There are several issues to be considered in any analysis of "level of care" allowances. In particular, having parents compete with each other over care arrangements in order to reduce their child support liabilities is not a desirable outcome. It is clear that the Australian Ministerial Taskforce on Child Support gave this issue some thought before making their

recommendations (Ministerial Taskforce on Child Support 2005), and it may be that their findings are applicable to New Zealand.

Equality of all natural and adopted children

As in New Zealand's Child Support Review 1994, the equal treatment of all of a person's natural and adopted children was a key concern for the Australian Ministerial Taskforce. The Taskforce felt that: "Children from first and second families ought to be treated as equally as possible." (Ministerial Taskforce on Child Support 2005), and the Australian scheme now deducts an amount from a parent's child support income for the upkeep of children in second and subsequent families. This "relevant dependent child amount" is calculated with the same table as child support liabilities so that all children receive similar treatment.

Currently, in New Zealand, where a liable parent has dependent children living with them, they are entitled to an adjustment in their living allowance amount to reflect their responsibilities of care. This adjustment is a fixed dollar amount modified only by inflation and as a result it may well exceed a parent's liability to their other children where that parent is on a low income. Similarly, for liable parents on a high income the allowance for the children they live with will be significantly less than their liability for their other children.

This unequal treatment of children is a significant problem with the Act, but one that can be easily mended by basing allowances for dependent children on the child support formula rather than fixing it at a particular amount. While this change would make the Act more administratively complex, it would measurably improve equity.

Addition of factors used to calculate parents' income

As discussed above, the Child Support Act 1991 uses a liable parent's taxable income lagged to two years previously, adjusted for inflation, to calculate that parent's child support amount. Since 2008 the Australian scheme has expanded the definition of taxable income used in their formula to include fringe benefits, foreign income, net rental property losses, and a number of tax-free benefits. These mostly minor changes were designed chiefly to bring the formula's definition of income into line with definitions of income used in other areas of government policy. Expanding the definition may have lessened the degree to which liable parents can evade their responsibilities by concealing income, but even prior to these changes, the definition of income used in the Australian scheme was considerably broader than that used in New Zealand, and included, for instance, fringe benefits. Whether or not deliberate avoidance is a major issue, a more realistic income from which child support liability is calculated cannot help but improve the scheme's operation.

Conclusions

It is clear that the Child Support Act 1991 is in need of reform. Many issues identified in the Child Support Review of 1994 have yet to be addressed. The way in which child support liability is calculated is in particular need of reform. The changes would need to include expansion of the income base from which child support is calculated; consideration of the costs of raising children; and decisions about whether or not to include the income of the custodial parent when calculating child support liability.

The recent changes to the Australian child support scheme have demonstrated one possible path that reform might take. Many of the arguments made during the Australian decision

making process are valid for New Zealand. The new Australian scheme is not without flaws, however. Many of the changes have been to the benefit of liable parents, and to the detriment of custodial parents (Fehlberg and Maclean 2009). If the focus of child support policy is to be the child's welfare this may not be a desirable outcome.

A particularly important aspect of the current Child Support Act is the retention of child support where the custodian is on a benefit. This benefit offset has caused a number of compliance and data collection issues, and has been a key cause of dissatisfaction with the Act since its introduction. More importantly, the practice of withholding child support where a benefit is being received seems an ideological better fit with the Liable Parent Contribution Scheme that preceded the Act than with the Act itself. Where there is support for withholding child support in the objectives of the Act it is in its focus on parents not shirking the responsibilities they have toward their children. However, the rights of children to be maintained by their parents are not advanced by the state recouping its welfare losses in this way.

It is important that before the problems of child support are considered, some thought be given to the philosophy of child support more broadly, and the goals which child support legislation ought to foster. This reform is an opportunity to make the welfare of the child paramount, as it is in other areas of family policy.

Appendix 1: A table of comparisons

	Child Support Act 1991	**Child Support Review 1994 recommendations**	**Australian Child Support Scheme**
Assessment base	Lagged taxable income	Wealth ('income, earning capacity, property and financial resources')	Lagged taxable income + fringe benefits, foreign income and some benefits
Maximum liable income	2.5 times national average income	None	2.5 times national average income
Living allowances	Dependent on domestic situation, keyed to invalid and unemployment benefits	None	One third male total average weekly earnings
Passing-on	Only in excess of the custodian's benefit	Up to a set figure passed on with no abatement to benefit	All child support passed on
Costs of children	Not considered	Not considered	Basis of the formula
Custodian's income	Not considered	Not considered	Both parent's income used to calculate child support
Shared custody	40% of nights	40% of nights	35% of nights, with liability reductions for other levels of care
Equal treatment of children	Fixed allowance for dependent children living with liable parent	Parent's children treated equally	Parent's children treated equally

Appendix 2: The Australian Child Support Scheme

Example of the basic formula:[7] Phil and Amanda

Amanda earns income in her full-time job. For 2006-07, her taxable income was $42,000. Phil's income support from Centrelink in 2006-07 was $15,550. They have two relevant children—Fran is 14 and Jack is 11. The children stay with Amanda during school holidays and some weekends, which equates to about 80 nights a year (14-34% care). Phil has the children the rest of the time.

Stage 1: Each parent's child support incomes	**Amanda**	**Phil**
Work out each parent's adjusted taxable income	$ 42,000	$ 15,660
Deduct the self-support amount from each parent's adjusted taxable income	- $18,252*	- $18,252*
Deduct a relevant dependent amount	- $ 0	- $ 0
Deduct a multi-case allowance amount	- $ 0	- $ 0
Each parent's child support income	**= $ 23,748**	**= $ 0**

Stage 2: Parents' combined child support income	**Amanda**	**Phil**
Add each parent's child support income together	$ 23,748	$ 0
Combined child support income	**= $ 23,748**	

Stage 3: Each parent's income percentage	**Amanda**	**Phil**
Each parent's child support income	$ 23,748	$ 0
Divide each parent's child support income by the combined child support income	1	0
Multiply this amount by 100	x 100	x 0
Each parent's income percentage	**= 100 %**	**= 0 %**

Stage 4: Each parent's care percentage	**Amanda**	**Phil**
Each parent's care percentage	**21 %**	**79 %**

Stage 5: Each parent's cost percentage	**Amanda**	**Phil**
Each parent's cost percentage	**24 %**	**76 %**

Stage 6: Each parent's child support percentage	**Amanda**	**Phil**
Each parent's income percentage	100 %	0 %
Deduct each parent's cost percentage	24 %	76 %
Each parent's child support percentage	**+ 76 %**	**- 76 %**

Stage 7: The costs of the children	**Fran and Jack**
Total cost of all the child support children (using Table 3C)	= $ 6,293
Cost of each child (divide the total cost by the number of children)	**= $ 3,147**

Stage 8: How much child support Amanda pays to Phil	**Amanda**
The parent's child support percentage	+ 76 %
Multiply this percentage by 100	x 100
Multiply this amount by the cost of each child	$ 3,147
Child support payable for each child per year	**= $ 2,392**

* The self-support amount for child support periods starting in 2008 is $18,252. This amount is indexed each year. You will be advised in writing when this amount changes.

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