

eral legislation and policy would concentrate power in Canberra to the detriment of State business communities. He said that, during the years when he was chairman of the TPC, he had experienced no difficulties with concentration of policy in Canberra or the removal of access from the States. He described the structure of the TPC as having regional offices in each State, with common policy emanating from head office. Regular meetings of regional and head office staff were designed to ensure uniform policy and administration. He said that there was no difference in principle with the proposals outlined by Mr Bowen.

However, a prominent critic of Mr Bowen's proposals, Mr Laurie Shervington, the Convenor of the Commercial and Revenue Law Committee of the Law Society of Western Australia, criticised the comments made by Mr McComas (*Australian Financial Review*, 2 August 1988). Mr Shervington said that the TPC is totally centralised. Each regional office has sufficient staff to act as a post office and no more. Mr Shervington gave as an example the Perth office which has a staff of 10. He said that Mr McComas had failed to acknowledge that a federal takeover of companies legislation would be at the cost of practical experience and expertise at the State level and would greatly increase the costs to business, particularly in the less populous states.

*inquiry.* The Federal Government has the numbers to secure passage of the corporations legislation. It is supported in principle by the Australian Democrats, although they are concerned to ensure that the proposal to deregulate prospectuses maintains adequate protection for investors (*Australian Financial Review*, 28 July 1988). However, following a meeting between the Attorney-General and the Deputy Leader of the Australian Democrats, Senator Michael Macklin, it

has been agreed to set up a parliamentary inquiry to examine the legislation. Senator Macklin said that the need for an inquiry did not alter the 'strong in-principle' support of the Democrats for Federal responsibility for companies and securities law but was directed solely at ensuring unintended legal and commercial consequences were identified and corrected (*Sydney Morning Herald*, 1 August 1988). The inquiry is expected to finish its report before the first day of Parliament next year. In view of the intense opposition to the proposals by the States and certain business groups, the inquiry may prove to be an orderly way of gauging the extent of community support for, and potential problems with, the proposed legislation.

\* \* \*

### child support

From each according to his abilities, to each according to his needs.

Karl Marx.

*shifting the burden.* The new Child Support Scheme, which came into force on 1 June 1988, has brought together in one integrated system the private and public means of ensuring support for children in one parent families. The State has finally taken over responsibility for enforcing maintenance orders against the non-custodial parent, and for paying the amounts collected to the custodial parent. At the same time, the primary responsibility for supporting children has been placed on the parents and away from the social security system.

The factors leading to this change were the large proportion (70% or more) of child maintenance orders not being paid regularly, the cost to the community of

providing for children in single parent families and the poverty trap in which those children nevertheless remained. The changes to the Family Law Act mentioned in the last issue of *Reform* were aimed at strengthening the liability to maintain children. The Child Support Scheme, stage one, deals with enforcement.

The agent for enforcement under the Scheme is the Child Support Agency, a division of the Tax Office. The machinery for registration, notification and review, outlined in the last issue of *Reform*, has now been settled in its details. This transition will be completed with the implementation of stage two, referred to later. The essence of the scheme is as follows:-

*duty to apply for maintenance.* Most people applying for a means tested pension or benefit will now have to take reasonable action to obtain a maintenance order, within three months after starting to receive benefits. This usually means getting maintenance regularly under an existing or new order or agreement or voluntarily, or starting proceedings, unless there has been advice that the Court would not make an order or the whereabouts or identity of the other parent are not known. If no reasonable action has been taken within three months the Department may consider terminating the pension or benefit. People on pensions with maintenance orders made after 1 June 1985 also have to take reasonable action to ensure payment of maintenance.

Under the Social Security guidelines there may be special circumstances which mean it is not reasonable to ask a parent to seek maintenance from the other parent. For example:-

- the custodial parent may fear violence or be concerned for her/his safety or health or that of the children;
- the custodial parent might be unwilling to disrupt the domestic affairs of

that parent or the parent who should pay maintenance (for example, where a child was born after rape, or as a result of incest, or where paternity is not acknowledged);

- the other parent may be known to have too little income to be able to pay maintenance.

*registration of maintenance orders.*

1. Maintenance orders or agreements made in favour of a parent receiving a pension or benefit after the Scheme comes into force have to be registered in the Child Support Agency and will be enforced by deduction from wages or salary, unless there are special circumstances.
2. Parents who separate after 1 June 1988, or whose child is born after 1 June 1988 (when they have not lived together), are also covered, and can choose to register maintenance orders and agreements.
3. Those people already receiving pensions or benefits who have a maintenance order made on or after 1 June 1985, which is high enough to affect the pension rate (if paid), may also apply to the Agency to have the order registered and enforced unless the maintenance is being regularly received.

Any other recipient of a means tested pension or benefit who has a maintenance order that they would like enforced has the option of joining the Scheme. Anybody who currently has an order that is lodged for collection with a State Agency on 1 June 1988 will have their orders transferred to the Child Support Agency in due course.

Spouse maintenance can be collected under the new Scheme where the spouse is also receiving child maintenance, or is over 45 and in receipt of a pension, or is covered by a State Scheme.

When an order is registered, the Child Support Agency notifies the employer of the person liable to pay maintenance and the amount of maintenance is then deducted from the salary or wages of that person and sent to the Agency. Under this automatic withholding system there is a minimum protected earnings amount. A payer who is not employed has to pay direct to the Child Support Agency.

The Department of Social Security arranges for the maintenance amount to go to the custodial parent, after making any necessary adjustments to the pension or benefit (if any). This is usually done monthly. If the maintenance is not paid, the pension is adjusted to compensate for this.

The amount of maintenance to be paid will continue to be determined by the Family Court or magistrates court for the time being. Both parents have to contribute to the support of their children if they have any income. The amount of maintenance depends on the needs of the child and the actual cost of caring for the child as outlined in the last issue. In Stage Two the amount of maintenance will be calculated using a legislative formula.

In Queensland and Western Australia, which have not referred powers over children, maintenance for ex-nuptial children may not be covered by the Scheme in all cases.

*effect of maintenance on level of pension, etc.* Under the scheme the way in which maintenance affects the amount of a social security pension (other than family allowances and Veterans' Affairs Service pensions) is subject to a new test. There is

a "free area" of \$15 maintenance per week for the first child plus \$5 per week for each other child. For spouse maintenance only, a free area of \$15 per week applies. Up to these amounts, maintenance does not affect the pension. Over that figure every dollar of maintenance reduces the pension by 50c (except in cases of hardship).

On the other hand, the Family Law Amendment Act provides that the receipt of a pension by a person claiming maintenance is not to be considered. The overall result is likely to be higher maintenance orders and lower payments of social security. Taken together with the other family law changes this ensures that the burden of maintaining children is more fairly shared by the non-custodial parent.

*property, maintenance and pensions.* If the court orders a lump sum or transfer of property, it will now have to say how much of it is for maintenance of the child or partner, so that the social security income tests can be applied. The court also has to state the period of maintenance covered by the order. Otherwise, it will be assumed that the whole amount is to cover maintenance until the child is 18 or until the spouse is 65. Social Security works out how this affects a pension according to a formula.

Maintenance may include non-cash or in kind maintenance or payments to other people for the benefit of the custodial parent (for example, purchase of food, rent payments, household bills, school fees). This kind of payment can affect the amount of the pension under the Scheme, but cannot reduce it by more than 25%

- if it is paid in the first six months after separation; or
- if it is to help with the expenses of a disabled child.

If payments of this kind are made to help the parent and the children to stay in the matrimonial home (e.g. payment of mortgage or rent) or an interest in the home is transferred to the parent, special provisions ensure that the Social Security pension is not reduced by more than 25% because of this.

*stage two: the child support formula.* In May 1988 the Child Support Consultative Group, chaired by Justice Fogarty of the Family Court of Australia presented its Report, *Child Support: Formula for Australia*. The Committee had been asked to advise on a legislative formula for the administrative assessment of child maintenance. The approach adopted by the Committee in regard to the system was stated to be:-

- (a) the formula preserves the right of parents to reach their own agreement (with suitable protection for the revenue when the custodial parent is on a pension or benefit);
- (b) it ensures that each parent has an unqualified right to have the matter determined by the court if he/she is not satisfied with the administrative assessment. It continues the *right* to go to court but will remove the *need* to do so in many cases;
- (c) at the same time it provides a method which will remove the present obligation on parents to go through expensive court proceedings and relieve the courts of the burden of many of these cases;
- (d) it provides for the automatic updating of orders annually in accordance with any changes in the financial or other circumstances of the parties;
- (e) the percentages which have been chosen have regard to evidence of the proportion of income ordinarily spent on chil-

dren who live with both their parents and are aimed at achieving reasonable levels of orders proportional to income."

The proposed formula will apply to parents separating after its introduction (or to parents of a child born after that date who did not live together). In other cases the Court will have a discretion whether to apply the formula when dealing with maintenance.

The Scheme allows for agreement and consent assessments between parties provided the amounts paid are not less than the formula amounts, in the case of recipients of income tested pensions or benefits. Where child support is provided in forms other than periodic cash payments (e.g. by capital or lump sum payments), the system envisaged will enable these to be taken into account. However, these forms of "substituted maintenance" could not reduce the means tested pension or benefit below 75%. This recommendation is consistent with the current position, outlined above.

The question of who is a parent is to be determined in accordance with the existing law. Primary liability for maintenance is placed on parents and secondary liability can be imposed on step-parents at the discretion of the Court. The Scheme applies to children under 18.

A person who, in a factual sense, exercises the responsibility for the ongoing care of the children will be regarded as the custodian of that child. A parent not so regarded is a non-custodial parent and is liable to pay maintenance in accordance with the formula. Special provision is recommended for apportionment of liability in cases of shared and split custody, with Court review as an option.

Step-parents are to be liable to pay maintenance only if the Court so deter-

mines, in which case the formula can be adjusted in its application to natural parents. The Court can adjust the level of child support payable by a non-custodial parent under the formula to take into account that parent's obligations to a step-child. In general, the income of new partners of either parent is not to be considered. Substantial income of the child whose maintenance is in issue can be taken into account.

*the formula.* The proposed scheme provides that the non-custodial parent should pay a certain percentage of the income of that parent by way of maintenance for children. The formula is to operate in this way:

- The non-custodial parent's income is assessed in a similar way to taxable income;
- Part of the income of the non-custodial parent is established as a component for self-support and for the support of children in the same household. This component is, in most cases, the same as the standard pension rate which would apply to that non-custodial parent;
- The custodial parent's income is disregarded up to the level of average weekly earnings (plus actual child care costs up to a limit). Any income of the custodial parent above that level reduces the non-custodial parent's liability.
- The following formula is applied to that part of the income of the non-custodial parent which remains after deducting the self-support component and the relevant surplus income of the custodial parent:-

One child	Two children	Three children	Four children	Five or more children
18%	27%	32%	34%	36%

- The maximum income of the non-custodial parent to which the formula can apply is twice average weekly earnings. However, this is subject to review by the Court.
- There is to be no minimum payment by non-custodial parents.

This is only a summary of the main points of the recommendations. There are many details about defining income. The Court is to have regard to the "income and recurrent financial resources" of the parties in applying the formula. However, the Court may depart from the formula where it would be inequitable not to do so, in order to account fairly for the full financial resources of the parties.

Other circumstances in which the Court may vary the levy are where there are special needs of children in either household, where there are high costs associated with access (e.g. travel, or frequent extended access), or where there is serious hardship to the non-custodial parent. The Court is to remain the ultimate arbiter, is to hear cases promptly and to provide reasons for its decision.

Child Support obligations under the formula are to be updated at least annually or where there is a significant change of circumstances.

The Report recommends that the principle be laid down that child support payments paid for the benefit of children should be spent on those children. Children are to have the right to apply to the Court for an order for child support.

The Consultative Group emphasises the need to inform parents of their rights and obligations under the scheme and recommends that counselling and financial counselling services be made available. Community agencies should be resourced to do this.

The Consultative Group has a continuing role in monitoring and evaluating stage one. Evaluation studies have been commissioned from the Australian Institute of Family Studies.

Parents separating in future would be well advised to supply themselves with slide rules or calculators and statistical tables relating to weekly earnings.

\* \* \*

## domestic violence

Everybody's always talking about people breaking into houses . . . but there are more people in the world who want to break out of houses.

Thornton Wilder, *The Matchmaker*,  
(1955)

*domestic violence legislation.* The Australian Law Reform Commission's Report, Domestic Violence (ALRC 30) recommended the enactment of protection order legislation for the Australian Capital Territory as well as other changes to the law relating to arrest, bail, compellability and powers of entry. These legal changes were made very quickly with the passing of the Domestic Violence Ordinance 1986 (ACT) and the Domestic Violence (Miscellaneous Amendments) Ordinance 1986 (ACT).

*non-legal measures.* The Report stressed that non-legal measures for dealing with domestic violence were just as, or more, important than legal changes. Public education and support services were

seen as essential. A very significant step in implementing these aspects of the Report has now been taken with the establishment of the Domestic Violence Crisis Service in the ACT. The service operates as a crisis intervention unit with radio controlled cars available 24 hours a day seven days a week. The unit also provides confidential support, information and referral to the parties involved in domestic violence. The service has 12 part-time crisis workers and has a full-time co-ordinator and office assistant. The crisis workers operate in close co-operation with the police and are on hand at every 'domestic' attended by police. The demand for the service has been high. It opened on 26 April 1988 and in its first two months of operation approximately 650 calls were received. 75% of which were new cases. In the same period approximately 60 home visits were made. The Crisis Service keeps a close eye on legal and support services and alerts the government to short-falls in these areas.

*community education.* The unit is responsible for community education relating to domestic violence. It provides immediate relevant information to victims and also conducts advertising programmes aimed at changing attitudes to the problem of domestic violence over the longer term. Advertisements have appeared on television and will be appearing in Canberra buses shortly. A multi-lingual poster has been distributed.

*protection orders.* On the legal front, the Legal Aid Commission and the Magistrates' Court have been all but overwhelmed by the demand for protection orders under the Domestic Violence Ordinance. At times the over-taxing of resources available for the obtaining and processing of protection orders has been at crisis point. No additional resources have been provided either to Legal Aid or to the Court to cope with the demand.