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CHILD SUPPORT

Ups and downs

Almost five years on VIRGINIA RYAN asks whether the Child Support Scheme is working.

The Child Support Scheme was introduced in 1988 with three main aims:

- to assist in ensuring a proper standard of living for children whose parents are not living together as part of a policy aimed at improving the welfare of children in general;
- to confirm that the responsibility for the support of children lies equally with both parents;
- to reduce the cost to government of the support of children.

The Scheme was introduced in two stages. Stage One allowed people with an existing court order or registered agreement to register with the Child Support Agency. From June 1988, all payments of child support, previously called maintenance, were able to be collected by the Agency direct and forwarded to the parent with whom the children were living. Stage Two, commencing on 1 October 1989, provided a formula to assess the amount of child support which applied to all parents separated or with children born after that date.

The Child Support Agency is part of the Australian Taxation Office. Money can be automatically withheld from wages, and enforcement of debts becomes the province of the Agency.

The Scheme represented a very significant change from that previously operating in the courts. Four and a half years on, there have been numerous critiques of the scheme, ranging from the vented spleen of talk-back radio, through commentary by groups such as Lone Fathers and QCOSS to a long and detailed analysis by the Child Support Evaluation Advisory Group and, most recently, a report from the Commonwealth Ombudsman.

Strengths

Some of the notable strengths of the Scheme are:

- There is strong evidence that the number of people receiving child support has increased. Prior to 1988, only 30% of child maintenance was being paid. The Agency now collects 70% of the child support liabilities registered. This is reported as being the highest collection rate in the world.

  The amount of child support has increased. Prior to the scheme, the average court order was $27 per week. The average for the 1992-93 financial year under assessment is $46 a week per child. For those who still require orders or agreements because they are under Stage One, the amount has increased to around $40 per week.
- The administrative procedure is centralised and is free to both payers and payees.
- Locating the Agency in the Tax Office gives access to tax records and provides a straightforward method of employer-deducted payment.
- Pension recipients receiving child support number over 100 000. This has the dual advantage of increasing their income and savings on welfare spending by the Commonwealth Government.
- The cost of collection is relatively low in comparison with maintenance actions through the courts.
- Since July 1992, the Scheme has provided a free and independent review process for any payer or payee dissatisfied with their assessment. Prior to this, the only option was to commence proceedings in court.
- The Scheme interposes the Agency between the two parties, which means that contact between the payer and payee need not occur.

These strengths were recognised in the Child Support Evaluation Advisory Committee's Report tabled in Parliament in March 1992 which was based on a wide consultation process.

Problems

It is important to look at the problems of the Scheme from two perspectives: those relating to administration and those inherent in the structure of the scheme. This approach will assist with the implementation of solutions, although users of the Scheme will rarely make the distinction.

Administrative problems

- Insufficient initial funding of the Child Support Agency resulted in long delays, and gave the Agency an aura of inefficiency which has persisted despite a great improvement in the time taken to process applications.
- There is a perceived inflexibility and unresponsiveness which frustrates all users of the Agency. On a bureaucratic level, policies are made which may aim to give better service to clients, but show an insufficient commitment to open and straightforward communication. Letters and forms sent to clients are often confusing.
- Agency staff appear not to have been sufficiently resourced for training in both the details of the Scheme and in dealing with the emotional nature of the subject matter.
- The rate of enforcement of arrears frustrates clients who lose their right to take individual action when they register with the agency. There appears to be insufficient recognition of the fact that debt recovery is most useful early in the default period rather than when substantial arrears have accrued.

  There are delays in receiving payments, and calculations made to change payments are not explained to clients.

Structural problems

Issues often raised relating to the structure of the Scheme are:

- It is unreasonable that the formula makes no distinction between babies and teenagers when the costs are greater for older children.
- The children of second families are prejudiced, both in terms of the percentages allowed for each, and because of the high level of child support applicable for the first family. Payers often claim they cannot afford to start a new life.
- Payment of child support should not be required where access to the children is denied by the custodial parent.
- The formula allows the custodial parent to earn more than average annual earnings of $30 000 before the payer is entitled to any reduction in child support payable. The paying parent is only entitled to an exempt income equal to the pension.

  Child support should not have to be paid while the children are on access visits to the paying parent.
- Non-custodial parents whose income is not liable to PAYE tax are difficult to exact payments from where they are unwilling to pay.

The Commonwealth Ombudsman's Report released on 6 October 1992 was highly critical of the Child Support Agency, understandably emphasising the administrative aspects of the Scheme rather than inherent structural problems. Particular emphasis was placed on the Agency's inability to deal with criticism. The most common response seems to be to assert the supposed excellent level of service and advert to the difficult nature of the subject matter.

It is no doubt true to say that some of the emotion arising from the relationship breakdown is directed at the Agency, and often both parties may be displeased with the result of an application for an assessment — the payer says the assessment is too high and the payee finds it insufficient.

Whichever way one views the scheme, the structured national commitment to the support of children has meant that maintenance is now a serious issue for parents and not a right and a duty of doubtful enforceability and variable application. The Scheme is working to an extent. It has much as yet unrealised potential, for example, in existing but unregistered liabilities, and in enforcement.

Many of the criticisms of the Scheme result from societal attitudes to maintenance which were not instantly changed by legislation, and led to an insufficient commitment to making the Scheme itself as efficient as possible. There can be no doubt that an understanding of the real consequences of projecting one's genetic material into the next generation will evolve. The pace of this process is significantly dependent on the way in which the legislature and the Child Support Agency meet the challenge of continuing changes in family structure and financial pressures on all stake-holders.

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Legal Education Column continued from p. 37

The suspicion that not law but something else provided the intrinsic interest for studying law is supported by our finding that the curricula of law schools by themselves had practically no appeal whatsoever for the students when they decided to study law.[10]

The School of Law wants to reverse the trend of high school specialisation and make it possible, with a broader range of universities now offering law studies, for each university to tailor its entry criteria to the specific pedagogy applied at the institution and/or to the specific student population that the program would suit best. In a very crude sense, admissions policy should require aspiring law students to make a choice about studying law, and in particular how and where they study law, rather than the simple choice currently offered to study law.

Conclusion

In short, an opportunity is available to law schools to diversity their educational offerings and seek to specialise teaching techniques and academic focus. This will not only cater to applicants more appropriate to the program offered but will provide the legal profession and other employers with a greater range of graduates who have different pedagogical experiences to draw upon. The tendency towards uniformity in legal education can be broken in favour of diversity, both in pedagogical terms, but also in a variety of other ways, such as regionalism (e.g. the selection criteria for Macquarie's distance legal program, for example, includes a preferential system based on regional location and professional attainment), ethnic composition (e.g. preferential admission for Aboriginal students), legal specialisations (e.g. teaching and research strengths) and so forth. Universities can break the increasing tendency towards replication and focus on their unique capacities.

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