

# WHAT SEPARATING PARENTS NEED WHEN MAKING CARE ARRANGEMENTS FOR THEIR CHILDREN

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**families** commission  
kōmihana ā **whānau**

> Giving New Zealand families a voice *Te reo o te whānau*

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## EXECUTIVE SUMMARY

### **The Families Commission has an important role in advocating for the interests of families generally. A key strategic goal for the Commission is to promote the positive functioning of all types of families.**

This paper explores the challenges facing separated parents when deciding on care, contact and financial arrangements for their children. These issues are interconnected from the families' point of view and decisions on these issues are usually made at the same time. Our paper pulls together key themes and issues from recent Families Commission research and other literature on separated parents and making care and contact arrangements for their children.

The Minister of Revenue has announced a review of the Child Support Scheme and is expected to release a discussion document in September 2009. Our paper seeks to place what the Commission has learnt about parents' experiences in this area in the broader context of post-separation parenting.

It is not clear in New Zealand exactly how many families with dependent children have been affected by separation. Only a minority of separating parents either approach the Family Court for assistance or use the formal Child Support system.

Research strongly suggests that children benefit from ongoing relationships with both parents after separation unless there are concerns for children's welfare due to abuse by parents or mental illness of either parent.

It is also clear from both the work of the Commission and other literature that the quality of the parents' relationship and their ability to communicate with each other is a key factor in satisfactory care arrangements for children after separation. Parents who are satisfied with the care arrangements also report that the ability to be flexible is an important factor. They experimented with patterns of care and contact until they found those that worked for them and were able to vary them as circumstances required for either parent.

The research undertaken by the Commission affirms the view that parents who were able to co-operate and make arrangements by themselves (without having these arrangements imposed by the Family Court or Inland Revenue), were more satisfied with the arrangements they made for their children than those

with imposed arrangements. These parents were able to arrange for their children frequent and regular contact with both parents.

### **Information and support for separating parents – co-ordination and integration**

A key issue for separating parents is getting information and support about the best arrangements to make for their children. There is a range of support services (information sessions, conciliation and mediation services, adjudication processes, a process for collecting and enforcing child support) for separating parents. What is not clear is whether the range of available support meets the needs of separating parents; nor is it known how accessible and available it is seen to be by parents.

Our research highlights evidence that informal and semi-formal support and information (ie, from professionals whose role is not directly related to providing information and support for parents, such as GPs, teachers and church leaders) is preferred over formal sources of support (such as counselling and psychologists).

A unified information and support strategy could be developed within the current system for those who provide services to separated parents. Key issues that need to be considered in developing such a strategy include:

- > Where, how and from whom can parents access information, advice and support to promote co-operative parenting after separation, and information about financial support?
- > Who are the key influencers of separated parents (lawyers, counsellors, Inland Revenue, WINZ, other semi-professional supports?); and how can information be disseminated to reach them?
- > How can support services and the Family Court change negative perceptions of their services so that more people access support when they need it?

- > What opportunities are there for linking information and support on care, contact and financial arrangements?
- > How can an impartial information and support service be provided to assist with the totality of care, contact and financial arrangements for children post-separation?

### Changes in the Child Support Scheme

There are a number of compelling reasons for changing the current Child Support Scheme. In particular, there are issues with the way the current formula for calculating child support operates for many parents.

When there is regular contact between children and both separated parents, the costs increase because of the need to duplicate housing and related costs such as those of utilities, furnishings, play/study spaces, toys and equipment and additional transport.

There is some concern that the definition of shared care used in the Child Support Scheme sets too high a threshold and is too rigid. Parents who have care of their children for less time still incur costs in providing for them during contact. A formula based on the combined income of both parents and more equitable shared care thresholds might encourage better compliance with the Child Support Scheme and also provide a better guide for parents who are making private arrangements for the financial support of their children.

A more equitable formula might reduce the perceived unfairness of the current scheme. This in turn may reduce conflict between parents.

Any change to the Child Support Scheme must be flexible enough to accommodate frequent changes in care arrangements without being too onerous a burden for parents.

### Passing on child support payment to custodial parents on social security benefit

The majority of parents who use the Child Support Scheme are beneficiaries and receive little or no child support.

Child support can make a difference to the level of hardship of a sole-parent family. The rate of poverty is five times as high for children living in sole-parent families, as that for children in couple households.

It may be time for New Zealand to consider whether child support payments should be passed on to the custodial parent in receipt of the social security benefit.

### Cultural considerations

There is limited recent research on how Māori families negotiate care and financial arrangements. It may be timely to consider more research into the needs of Māori families when negotiating care, contact and financial arrangements for their children.

### Needs of fathers

Early findings from the Commission's survey on fathers indicate that most do not have significant support needs.

However, some separated fathers need support through the separation process. It may be worth investigating whether targeted services for those who have a difficult relationship with their former partner may need to be developed to help fathers deal with the process of separation.

## 1. INTRODUCTION

### **The Families Commission undertakes research to explore issues that affect families, and find ways to increase families' strength and resilience.**

Parental separation and divorce present significant challenges to families when the parental relationship breaks down. The patterns of life will change for all family members, but the children are the most vulnerable. Home and school are obvious possible changes, but relationships also change as parents renegotiate patterns of contact, and if they re-partner.<sup>1</sup> Maintaining stability amidst these changes is critical to a child's wellbeing.

This paper explores the challenges facing separated parents when deciding on care, contact and financial arrangements for their children. These are interconnected issues from a family's point of view.

Negotiating the care, contact and financial arrangements for children after separation can be challenging emotionally, logistically and financially, and these difficulties can be compounded when parents re-partner to form stepfamilies or blended families. While many parents manage to find a path through these challenges and come to private arrangements amicably, others find conflict and disagreement difficult to resolve.

Research has shown that the wellbeing of children can be compromised when parental conflict is obvious and children are drawn into it, whether the parents are together or apart. Separation can be very difficult for children. Helping parents to separate as amicably as possible is critical to ensuring that children are not adversely affected by parental conflict.

#### **Purpose of paper**

This paper pulls together themes and issues from recent Families Commission research and other literature on separated parents and the care and contact arrangements made for their children.

The paper also considers the extent to which current social policy settings and services meet the needs of separating parents and encourage parents to establish co-operative parenting relationships.

By co-operative parenting, we mean a parenting style in which parenting practices are consistent, conflict is low and parents can communicate effectively about their children. 'Shared care' is used to mean arrangements in which the child spends a specified amount of time in the care of each parent. In co-operative parenting, the parents prioritise the needs of the child over their own needs, regardless of the proportion of the time a child is in their care.

It is important to note that co-operative parenting and/or shared care arrangements may not be practicable in some family situations. Where there are issues of abuse or mental health problems, it may be appropriate for contact between parents or with children to be restricted or supervised. Such situations are complex and beyond the scope of this paper.

In particular the focus is on the issues that arise when parents seek support and information, and when they use the Child Support Scheme. It is important to improve support and information for separated parents in order to improve outcomes for families. It also specifies the areas where the knowledge base is deficient.

The Minister of Revenue has announced a review of the Child Support Scheme, and is expected to release a discussion document in September 2009.

Our paper seeks to inform public discussion and debate before the release of the Child Support Scheme discussion document. It contextualises the Commission's understanding of separated parents' experiences in making financial arrangements.

The Commission has an interest in ensuring that families going through separation are appropriately supported in a way that encourages co-operative parenting and that the Child Support Scheme reflects the complexities of actual parenting arrangements and is as fair as possible given their diversity.

<sup>1</sup> Pryor and Rodgers (2001).

## The New Zealand context

Over the past 60 years, the family in New Zealand has changed in many ways,<sup>2</sup> which mirror similar developments in other countries. The family now takes many diverse forms, and families are, on average, smaller. Irrespective of their form and size, however, families fulfil the same functions, caring for all their members, bringing children into the world, nurturing them and preparing them to participate as productive and valuable contributors to society.

With increased rates of divorce and separation of cohabiting couples, a growing number of children in New Zealand and elsewhere are affected by the dissolution of their parents' partnership. Over the last two decades most Western countries have focused their social policy on encouraging the support of children by both parents after separation. There has been increasing emphasis on and understanding of the rights of the child, the role of fathers in raising children and the need for both parents to be involved in the decisions that affect their children. Increasing child poverty in sole-parent households has also heightened the focus on the financial support of children of separated parents and the State's role in providing support.

New Zealand has undertaken a major review of the laws relating to the care of children. The Law Commission has also reviewed the dispute resolution processes of the Family Court, and numerous measures have been introduced to improve court processes and promote co-operative parenting.

Specifically, these measures include the following:

- > the introduction of the Care of Children Act 2004
- > a pilot of non-judge-led mediation
- > the introduction of Parenting Through Separation programmes
- > the piloting of Parenting Hearing programmes in six Family Courts in New Zealand.

Family Court Matters legislation, enacted on 16 September 2008, introduces provision for counselling for children and families, and non-judge-led mediation. These provisions are not yet in force.

These changes reflect a growing understanding that prolonged litigation and conflict between parents adversely affect children, and that in most instances children benefit from continuing relationships with both parents.

The underlying principle for child support in New Zealand is that parents should be the first port of call for the financial support of their children, whether or not they are living with them. The Child Support Act came into force in 1991. It underwent a review in 1994 led by Judge Trapski, in which it was noted that the formula did not take account of family circumstances, and that beneficiaries in effect received nothing unless the amount paid exceeded their sole-parent benefit entitlement.

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<sup>2</sup> A more detailed discussion of these changes can be found in *The Kiwi Nest – 60 years of change in New Zealand Families* (Families Commission, 2008).

## A profile of separated families

It is not clear exactly how many families with dependent children in New Zealand have been affected by separation. Census data for 2006 reported that 10 percent of all households (and 21 percent of households with dependent children) were single-parent families. These proportions are projected to remain relatively stable until 2021 (Statistics New Zealand, 2007).

The latest data from the Survey of Family, Income and Employment (SoFIE)<sup>3</sup> provides some indication of the movement in family type over time. While these data do not provide a complete picture, they do suggest approximate numbers of families with dependent children who may be affected by separation and re-partnering.

The latest SoFIE data provide information on the family type individuals were living in, at their wave one and their wave four interviews:

- > Eight out of 10 people (81 percent) were in the same type of family at their first interview as they were three years later.
- > At their first interview, 842,600 individuals were in a couple-only family. Three years later, 664,000 (78.8 percent) of these individuals were in a couple-only family, 93,800 (11.1 percent) were in a couple with child(ren) family, 80,200 (9.5 percent) were not in a family nucleus and 4,600 (0.5 percent) were in a one-parent with child(ren) family.
- > 1,586,400 people (84.3 percent) who were in a couple with child(ren) family at their first interview were in the same type of family three years later, while 106,900 (5.7 percent) were in a couple-only family, 92,800 (4.9 percent) were in a one-parent with child(ren) family and 95,600 (5.1 percent) were not in a family nucleus.
- > Of the 431,600 people who were in a one-parent with child(ren) family at their first interview, 307,800 (71.3 percent) were in a one-parent family three years later while 63,500 (14.7 percent) were in a couple with child(ren) family, 50,800 (11.8 percent) were not in a family nucleus and 9,500 (2.2 percent) were in a couple-only family.

The latest data from the Family Court<sup>4</sup> indicate that approximately 13,000 cases in 2007 related to applications under the Care of Children Act. Parents who separate will not necessarily file applications in the same year, and these applications may relate to change in their circumstances or needs rather than to very recent separation.

In March 2009, there were 136,222 parents liable to pay child support in respect of 208,040 children, and 137,821 custodians entitled to receive child support.<sup>5</sup> There were 16,050 people who were both custodians and liable parents.

It needs to be noted, however, that a minority of separating parents either approach the Family Court for assistance or use the formal child support system.

<sup>3</sup> SoFIE is the largest longitudinal survey ever run in New Zealand. Its primary focus is to look at the changes in individual, family and household income, and the factors that influence these changes, such as involvement in the labour force and family composition. The survey interviews the same group of individuals over eight years from 2002-2011 (or 'waves') in order to build a picture of how their circumstances and lifestyles change over time. Approximately 22,000 individuals are interviewed.

<sup>4</sup> *Family Court Statistics in New Zealand in 2006 and 2007*, Ministry of Justice, April 2009.

<sup>5</sup> Written communication, Inland Revenue, July 2009.

## 2. FAMILIES' EXPERIENCES OF SEPARATION AND THE CHILD SUPPORT SCHEME

### Research strongly suggests that children benefit from continued relationships with both parents after separation.

This does not just mean contact, however; a meta-analysis by Amato and Gilbreth (1999) of several studies indicated that the amount of contact, in itself, does not make a difference to the wellbeing (measured in terms, for example, of academic success or behavioural problems) of children after separation.

They found that a close relationship between the non-resident parent and children conferred some advantages, but that the factor with most impact was the extent to which the non-resident parent was involved in day-to-day parenting of the child and thus in a position to be an authoritative parent (warm, monitoring and supportive). Such involvement included monitoring, preparing children for school and various tasks associated with the child's overnight residence with that parent. However, a caveat may apply to these findings. Amato and his colleagues did not distinguish between children living with lone parents and children living in stepfamilies; more recent studies suggest that, for children in stepfamilies, contact is important as a predictor of wellbeing (Rigg & Pryor, in press).

Overall, research indicates that, unless there are issues of abuse by parents or mental illness of either parent, regular and involved contact with non-resident parents is in the interests of children's wellbeing in both the short and long term.

Over the last 18 months the Commission has undertaken or commissioned three research reports on issues for families and couple relationships that are relevant to this paper. These studies are described in detail below.

### Support for sustaining couple relationships

*Reaching Out – Who New Zealanders turn to for relationship support* (Roguski, Duckworth, Chauvel & Guy, 2008) is a qualitative study of the ways people gain information and support for their couple relationships. Fifty people from diverse backgrounds and life experiences were interviewed for the study.

The study investigated how, why, when and from where people obtained support. It also examined the barriers to getting information and support, and what

enabled access to them. Semi-structured interviews were conducted with participants of varied ethnicities, genders, ages and sexual orientations.

The findings indicated that most people sought support from those they knew. For relationship issues, they preferred the informal support provided by family and friends. Generally the participants felt that this informal support met their needs and that the issues were often resolved as a result.

This research also revealed a class of relationship support that was happening widely, but is not discussed in other research literature to any extent – what the study called semi-formal support. General practitioners, nurses, school teachers, church ministers and community elders were identified as playing important roles in supporting couple relationships. Semi-formal support included assistance from non-counselling professionals in community settings, such as general practitioners, nurses and teachers. Support was provided above and beyond these professionals' primary roles and responsibilities.

Formal support, from counsellors, psychotherapists, psychiatrists and psychologists working in communities, was sought by less than half the participants in the study. Negative attitudes towards formal support were relatively common, among them scepticism, and fear of being judged. Many participants also demonstrated little awareness of the options for formal support.

While this research involved couples who were together, the findings provide a useful indication of where couples are likely to go first for support when they separate. The negative attitudes about formal support found by this study are likely to be heightened in the fraught emotional environment of separation.

### Decisions on care and contact arrangements

In the research *Putting the Kids First – Caring for children after separation* (Robertson, Pryor & Moss, 2008), a sample of parents were interviewed to find out about the pathways by which parents make decisions on post-separation parenting arrangements for their children. We were also interested in how well

these arrangements work for these parents, and how and why the arrangements may have changed over time.

This study interviewed 39 separated parents, including eight former couples. The majority of parents in the study had come to their own care arrangements, which in most cases meant that they had negotiated an agreement.

Parents who had negotiated an agreement typically discussed how much involvement each of them wanted, and what was in the best interests of their children. Most of the parents interviewed concluded that it was in the child's best interest to maintain contact with both parents.

Fewer than half the parents sought the assistance of a counsellor or lawyer to help them reach an agreement. The presence of a neutral third person appeared to help these couples to focus on the needs of the children, and to put aside their own relationship issues. The majority of parents interviewed had informal care agreements, which were not formally recorded.

The parents had made various kinds of post-separation parenting arrangements. Ten of the 31 families had shared care of children (a 30/70 or more even split between parents' households). Twelve of the families had children residing mainly with one parent, but children stayed overnight with the other parent at least every other weekend. A few families reported more occasional contact, or infrequent and irregular contact.

Parents considered a number of factors important in influencing their post-separation parenting arrangements.

Most important was the quality of the parental relationship. Parental co-operation was linked to evenly shared care. Contact was more infrequent or irregular where parents were in conflict.

Other factors influencing the arrangements were where parents lived in relation to one another:

- > whether either had entered a new partnership
- > the experiences of and advice given by family and friends
- > parents' individual personal circumstances (eg, mental health issues).

Almost all the parents who were interviewed were clear that children's needs and best interests took priority in their deliberations. Children's needs were understood as maintaining contact with both parents, stability and not being much involved in decisions about the care arrangements. Both mothers and fathers held a clear belief that fathers should be significantly involved in the parenting of children post-separation.

Generally, those parents who share care were happy with the arrangements. Conversely, those with intermittent contact were more likely to want changes – in the form of either more or less contact between the children and the other parent.

Overall, there was a strong sense of self-sufficiency in the parents interviewed. For some, sessions with counsellors had proved to be useful sources of information. Family and friends were seen primarily as sources of support rather than information. In a few cases lawyers had assisted with finalising agreements. Some parents expressed a reluctance to get lawyers involved in their separation.

## Making financial arrangements

In 2008 the Families Commission commissioned a larger, quantitative study from Colmar Brunton. The resulting report, *New Zealand Child Support Arrangements*, provides further information on the needs of separated parents and the challenges they face. The main objectives of the research were to generate information on the following matters:

- > arrangements that separated parents come to regarding the frequency, amount and type of contact they have with their children
- > how well these arrangements work
- > how and why the arrangements change over time
- > the financial arrangements that separated parents make for the care of their children
- > how well these arrangements work for parents
- > separated parents' views of the Child Support Scheme.

Colmar Brunton conducted a postal survey of separated parents who were in either Inland Revenue's Child Support or the Working for Families Tax Credits databases. The Tax Credit database allowed the Commission access to parents who had

private child support arrangements. A total of 1,602 questionnaires were returned (a response rate of 16 percent). The sample comprised 983 parents who received or paid child support through Inland Revenue and 656 parents who received or paid child support through private arrangements.<sup>6</sup> To protect the identities of separated parents, the quantitative survey was carried out using an anonymous paper-based questionnaire methodology. Because of the limitations of this methodology, this report cannot provide a comprehensive view of all families' experiences and their child support arrangements. Given the response rate, there are also likely to be non-response biases in the survey findings. However, despite these limitations, the information provides a useful indication of the experiences of a large number of parents.

### ***Satisfaction with arrangements***

The results indicated that three-quarters of parents who came to private arrangements were satisfied with their child contact arrangements. Receivers of child support (usually mothers) were also generally happy with care and contact arrangements. Two-thirds of these parents were satisfied with their arrangements. One-third were not happy – some wanted the other parent to have more contact to reduce the time commitment on their part, while others wanted to block the other parent's contact entirely.

Fewer than half the payers of child support (typically fathers) were happy with care and contact arrangements, and two-thirds wanted more contact.

Many receiving parents also believed that child support payments are too low to meet the needs of the children (note that many of these parents are also beneficiaries). In contrast, many paying parents considered that the Inland Revenue-assessed amount was too high.

We concluded from this study that the key variables that determine these separated parents' satisfaction with their contact and care arrangements, and their financial arrangements, were as follows:

- > the amount and quality of contact with their child
- > the perceived affordability of and value of/return on payments

- > the ability to negotiate, agree and regularly review
- > 'parenting terms' allowing each parent to feel they have the amount of contact and input they want
- > 'financial terms' allowing each parent to feel that the financial costs of the child are being met and that their own costs are affordable
- > personal control over:
  - finances (not control by the other parent or Inland Revenue)
  - the quantity and quality of interaction with their children (not court imposed/regulated, and neither parent 'gatekeeps' or obstructs)
  - parenting values, boundaries and behaviours
- > the happiness of the child – children who appear to be happy, settled, cared for, loved and prioritised by both parents.

### ***Additional expenses***

Respondents were asked about payments for other expenses apart from those covered by child support payments. Both parents (paying and receiving) reported that they incurred substantial one-off costs. Few of the parents interviewed discussed and agreed in advance how 'additional' costs will be met, and those who did are most likely to be those who have a private arrangement.

The qualitative research suggests that, when forming private arrangements, parents mainly take account of the daily expenses of the household, such as food, power, rent/mortgage and transport. Some one-off costs can also be reasonably predicted (eg, school fees, stationery, uniform, clothes, doctor visits, trips, activities/sports), but these costs are generally not budgeted into a regular payment amount and tend to be dealt with as they arise. Consistently with other findings, it appears easier for parents with shared parenting to work out how to share costs.

Paying parents indicated that in their situations these costs are not offset against the amount paid to the main parent. These parents could not put an amount on these expenses, but they were frustrated that they were not taken into account. They perceived that they paid twice, and that these costs are not explicitly recognised by either the main carer or Inland Revenue.

<sup>6</sup> Parents can have multiple arrangements, so the total is more than 1,602 respondents.

### ***Overnight care and shared care***

Survey respondents from the Colmar Brunton (2008) study who were paying parents reported on the sleeping arrangements for children when staying overnight. Over 60 percent of paying parents reported that children had their own rooms when staying overnight at the paying parents' homes. Many of the paying parents resented the fact that costs incurred in providing overnight care are not recognised by Inland Revenue.

Many parents were concerned that payments were not based on the costs of raising a child and of appropriately sharing costs between parents, taking into account individual contact and care arrangements and the actual costs incurred. It was felt that a formula based on the needs and costs of the child would be more equitable than a formula based on income. There was a clear view that income should not be the main factor in the formula.

### ***Using Inland Revenue's services***

Two of our reports found that Inland Revenue is also a key point of reference for parents making decisions on their financial arrangements.<sup>7</sup> This applies to both parents with private arrangements and those with arrangements administered through Inland Revenue. Many use Inland Revenue as a starting point. Many of the parents in the Robertson et al (2008) study based their financial arrangement on the Inland Revenue formula but did not use Inland Revenue to transact the payments.

The Colmar Brunton (2008) study found that 20 percent of survey respondents receiving child support through Inland Revenue could not determine how much they received monthly. A further 19 percent of this group reported that they received no child support payments.

In the qualitative interviews, parents who received the Domestic Purposes Benefit (DPB) had little or no knowledge of the dollar amount the paying parent contributed unless they had been specifically told by the paying parents. There was also uncertainty among those paying child support administered by Inland Revenue as to the proportion or amount of the payments received by the other parents.

A significant proportion of paying parents felt that more consideration should be given to the circumstances of paying parents (including their ability to pay and their other expenses). Survey respondents who were receiving parents also felt that there should be harsher consequences for paying parents who do not pay.

### **Summary of key points**

In summary, several important trends emerge from these three studies.

The quality of the inter-parental relationship and the communication between parents are key factors in resolving care, contact and financial arrangements for children.

There is a wariness of formal systems such as the Court, and professional counsellors etc. Participants reported feeling most comfortable with informal or semi-formal support, and this is mirrored by the greater satisfaction of those who made their own care and contact and financial arrangements.

Finally, users of the Inland Revenue system tended to report that child support was insufficient for raising their children, especially for those receiving benefits. These matters will be discussed later in the paper.

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<sup>7</sup> *Putting the Kids First – Caring for children after separation* (Robertson et al 2008) and the Colmar Brunton (2008) study.

### 3. OVERVIEW OF NEW ZEALAND'S SYSTEM SUPPORTING ARRANGEMENTS FOR THE CARE OF CHILDREN AFTER PARENTAL SEPARATION

**We do not have a clear idea how many families are affected by separation, and neither do we know how many of those families use formal support to help them make arrangements for the care of their children. It is likely, however, that many do not use formal support at all, as the research reported in the previous section suggests.**

The formal system that provides support for families and children where parents separate is underpinned by various policy and administrative instruments, including the United Nations Convention on the Rights of the Child (UNCROC), the Care of Children Act (COCA) 2004, the Family Proceedings Act 1980 and the Child Support Act 1991.

The functions performed by these and other legal instruments include:

- > the counselling, mediation and adjudication process of the Family Court, which support parents with making agreements and getting orders on post-separation care arrangements for children
- > the administrative function of Inland Revenue in determining amounts and enforcing payment of child support (under the Child Support Scheme)
- > the income support system administered by the Ministry of Social Development.

It can be argued that the current system has all the requisite components to support families facing separation – we have a conciliation, reconciliation, mediation and adjudication process, and a process for collecting and enforcing child support.

The Ministry of Justice also funds a course, called Parenting Through Separation, which is a free voluntary information programme to inform parents about the effects of separation on children, and teach parenting skills to reduce children's stress during separation. The programme covers:

- > how separation affects children
- > what children need during separation
- > talking with children
- > talking with ex-partners about arrangements for the children
- > keeping children away from parental arguments
- > how the Family Court works.

Information pamphlets and two free DVDs, one for parents and the other for their children, are also available to participants. This programme has been evaluated by the Ministry of Justice, and the evaluation has recently been released.<sup>8</sup> The Family Court also provides free counselling sessions for separating parents.

What is not clear is whether the range of support provided meets the needs of separating parents. We also do not know how accessible and available parents find the current range of information and support services provided.

#### The Care of Children Act 2004

COCA, which came into force in July 2005, was a comprehensive review of the law affecting children and families following parental separation. The legislation promotes the continued involvement of both parents in the lives of their children after separation.

The purpose of COCA is to promote children's best interests and welfare, and to help ensure optimal arrangements for their guardianship and care. The Act makes the welfare and best interests of the child the first and most important consideration in any decision about the child. It also incorporates many of UNCROC's key principles, and shifts the focus away from parents' rights, towards parents' responsibilities towards their children. It encourages co-operative parenting decisions. It also emphasises that children should be given reasonable opportunities to express their views, and that any views they express must be taken into account. It emphasises, too, that decisions affecting a child should be made and carried out within a timeframe that fits with the child's sense of time.

The words used in COCA reflect a shift to shared responsibilities by providing for the parents or other caregivers to share day-to-day care of the children, in a way that works best for the children and individual families.

<sup>8</sup> Evaluation of Parenting Through Separation Programme, August 2009, Ministry of Justice.

COCA introduced principles to help determine a child's welfare and best interests, as set out below. These principles strongly signal the importance of a parent in a child's life:

- > The child's parents and guardians should take the main responsibility for looking after them and making arrangements for their care, development and upbringing.
- > There should be continuity in the arrangements for the child's care, development and upbringing.
- > Links between the child and their whānau or other wider family group should be preserved and strengthened.
- > There should be co-operation between parents, guardians and others who are involved in looking after the child.
- > The child must be kept safe and protected from all forms of violence.
- > The child's identity, including their culture, language and religion, should be preserved and strengthened.

The principles in COCA support shared parental responsibility; however, there is no presumption of equal time spent with each parent. The Act sets out the equal status of parents as joint guardians for their children. Parents are considered to have equal responsibility for making major decisions such as education, non-routine medical treatment and where a child lives.

Separated parents are encouraged to co-operate and agree on arrangements for the care of the children. The Act sets up an expectation that the parents' roles as guardians should be exercised jointly, with consultation where practicable.

COCA also introduced the term 'day-to-day care' in place of 'custody and access'.

An application for a parenting order must include a statement by the applicant about the extent to which an order should provide for any other person's involvement with the day-to-day care of or contact with the child. If a parent does not have day-to-day care, the Court must consider contact arrangements. The Family Court will only become involved if the caregivers disagree about the care of the children and

cannot sort out the disagreement themselves or with the help of counselling arranged by the Court.

The majority of couples do not use the Family Court in deciding on arrangements for care of their children after separation. Of those who go to the Family Court, according to the latest data,<sup>9</sup> most applications for parenting orders are made by agreement of both parties (around 68 percent). A further 23 percent are not contested, and are made by formal proof (this is where the other party has not taken any steps regarding the application). Parties that reach a final defended hearing before a judge are a very small proportion (eight percent) of those that have made applications to the Family Court.

Parenting orders can be made for both day-to-day care and contact. When parents separate some arrangements will give one parent day-to-day care, and the other contact. Parenting orders may provide a child with day-to-day care from both parents, with the time the child spends with each of them stipulated in the order. The terminology used and the type of orders that can be made suggest that we are getting away from the old dichotomy of custody and access under previous legislation.

Recent Family Court statistics show that in 2007 one person was given day-to-day care in 80 percent of cases. These statistics also show that a higher proportion of applications for a parenting order are made by mothers than by fathers, and mothers are more likely to be granted a parenting order giving them day-to-day care (most commonly with the consent of the other party).<sup>10</sup>

Overall, from the 2007 Family Court statistics, fathers had full or shared responsibility for the day-to-day care of their children in 24 percent of cases. It is important to note that when fathers apply for a parenting order (whether singly, or jointly with mothers) they are more likely to receive full or shared care.

Interestingly, approximately 15 percent of applicants for parenting orders were the grandparents of the children, and a further 12 percent were other parties. Sixty-six percent of all applications were resolved 12 months from the date of filing the application. It should be noted, however, that 12 months can be a very long time from the perspective of children.

<sup>9</sup> *Family Court Statistics in New Zealand in 2006 and 2007*, Ministry of Justice, April 2009.

<sup>10</sup> This does not necessarily mean that the person making the application is more likely to be granted day-to-day care of the child. It may mean that the person who already has primary responsibility for day-to-day care seeks a parenting order to confirm existing arrangements, as 91 percent of applications are either made by consent or are not contested. *Ibid.*, p. 32.

We know relatively little about the arrangements made by couples who do not enter the Family Court system, or how they make them. We also do not have representative data on the arrangements parents make for their children.

The following Australian work provides some indication of the variety in arrangements. Drawing on customised data from the Australian Bureau of Statistics, Smyth (2005) found six patterns of parenting post-separation. Most common (34 percent) was what is termed 'standard' care. This involves a set schedule of every weekend or every other weekend, with the child staying one or two nights with the non-resident parent (usually the father). Daytime-only care (16 percent of children) and holiday-only care (10 percent of children) were more common than 'shared' care, defined as at least 30 percent of nights with each parent (six percent of children). A quarter of the children had little or no contact with their non-resident parents, and seven percent had occasional contact.

Although we have no *directly* comparable data in New Zealand, from the Family Court statistics we know that the most common type of contact order is 'other' – that is, the arrangements do not fit into the categories of holidays only, weekends or indirect.<sup>11</sup> Indirect contact (where contact is not in person and may be by telephone or email etc) was ordered in three percent of cases in 2007.

## Child support arrangements

Until 1981, maintenance orders and agreements were determined and/or administered by the Family Courts. In 1981, the Liable Parent Contribution Scheme was established to collect maintenance for the benefit of children living with parents who received a benefit. The scheme was administered by the Department of Social Welfare. Arrangements for parents not in receipt of a benefit continued to be made through the Family Court.

In 1991, the Child Support Act established the Child Support Scheme and the administration of child support payments moved from the Department of Social Welfare to Inland Revenue. The Act removed first-instance decision-making from the Family Court in respect of child maintenance, and set up a new system whereby Inland Revenue, in accordance with a statutory formula, determines the amount of child support the liable parent must pay.

Custodial parents, who receive some kind of social security benefit (eg, the DPB or sole-parent benefit), must use the Child Support Scheme. In such cases, any payment made by the liable parent is paid to the State, unless the amount assessed is higher than the amount of the benefit. Other parents can use the formula voluntarily, either as a guide for their own agreements, or by including financial support arrangements in their parenting order from the Court.

Any parent (whether paying or receiving) can initiate a review of the amount of child support assessed. In the first instance, an administrative review is carried out by Inland Revenue. If the parent is still not satisfied, the only recourse is to apply for a departure order in the Family Court.

The objectives of the Child Support Act include:

- > affirming the rights of children and the obligations of parents regarding the maintenance of children
- > providing for children's 'caregivers' to receive financial support from the 'non-custodial parents of the children', according to their 'capacity to provide financial support'
- > providing a mechanism for determining child support 'without the need to resort to court proceedings' and ensuring 'equity exists between custodial and non-custodial parents, in respect of the costs of supporting children'.

To this end, Inland Revenue:

- > receives applications for child support, generally from the 'person caring for the child'
- > calculates how much child support must be paid by the paying parent (who does not normally care for the child)
- > lets the paying parent know how much they need to pay and the custodial parent how much they will receive
- > collects payments
- > advises employers of their obligations in regard to deductions for child support from employees' salaries or wages
- > organises administrative reviews of child support.

<sup>11</sup> Contact details are entered into the Courts management System (CMS) as 'other' when they do not fit into the standard categories available. It may mean that either the arrangements are unspecified or that they do not match the standard categories.

### **Who uses the Child Support Scheme?**

In March 2009, there were 136,222 parents liable to pay child support (81.4 percent of them male) in respect of 208,040 children.

As at March 2009, there were 137,821 custodians entitled to receive child support, 85.03 percent of them female. There were 16,050 who were both custodians and liable parents.

The average income for the purposes of the 2008 assessments was \$27,287, with a median of \$21,280. There were 1,300 liable parents (less than one percent) assessed on an income of \$100,000 or more, and 59,350 (45 percent) at the minimum for the assessment period of \$749 per annum.

In March 2009 the number of custodial parents with a child support-related benefit was 77,200. This means that 56 percent of all child support payments collected by Inland Revenue are paid in respect of a custodial parent on a benefit. These payments are not passed on directly to the beneficiary, but absorbed into the Government's consolidated fund to offset some of the costs of the benefits paid.

### **The formula**

The basic level of child support payable by a liable parent is established by the standard formula set out below. It takes into account a parent's taxable income, their current family circumstances and the number of children they are required to support.

The standard child support formula is:

$$(a - b) \times c$$

where

'a' is the child support income amount

'b' is the living allowance

'c' is the child support percentage

The child support income amount is the taxable income of the liable parent in the most recent income year. The maximum amount that can be assessed is set at two and a half times the amount of the relevant average weekly earnings as at mid-February of the tax year before the year of assessment. Currently the maximum child support income amount is \$114,191.

The living allowance is an amount deducted from the taxable income of the liable parent to provide for their living costs. There are six separate living allowance

levels depending on whether the liable parent is living with a partner and/or other children. The living allowance is based on benefit rates, plus a set amount for each dependent child up to a maximum of four.

Once the living allowance has been deducted from the taxable income, the result is multiplied by the child support percentage for the number of children being supported. In the absence of shared care, these percentages are:

- > 18 percent for one child
- > 24 percent for two children
- > 27 percent for three children
- > 30 percent for four or more children.

The current standard formula assessment does not take into account the principal care provider's financial circumstances. It relies solely on the financial circumstances of the liable parent and his or her ability to provide financial support for their children.

The maximum level of child support payable by a liable parent under the standard formula is \$30,046, for the year ended 31 March 2010. This would be the amount payable by a liable parent who was single, had no dependants, was paying child support for four or more children and whose taxable income exceeded the maximum child support income earnings of \$114,191.

It should be noted that there is also a minimum amount of child support payable by a liable person each year (even if the standard formula indicates a negative amount). The minimum level of child support payable by a liable parent is \$799 per liable parent for the year ended 31 March 2010.

The Child Support Act 1991 provides for variation in the standard formula assessment when the care of children is shared between their parents. Shared care is defined under the Child Support Act to be when a parent has care of the child for 40 percent of the nights (146 nights) of the child support year. When shared care is established, the effect on the child support assessment for the liable parent is that the percentage rate in the child support formula is reduced to take shared care into account.

## 4. DISCUSSION

**Several key issues emerge from the research, with important implications for parents when they separate. It is apparent that decisions about care, contact arrangements and financial arrangements are interlinked.**

It is also clear from both the work of the Commission and other literature that the quality of the parents' relationship and their ability to communicate with each other are key factors in making satisfactory care arrangements for children after separation. In practice this can be difficult, since rarely is a separation completely amicable. The *Putting the Kids First – Caring for children after separation* (Robertson et al, 2008) study showed that nevertheless it is possible for parents to set aside their own issues in order to put the needs of the children first. One parent said:

*Forget about the reason that you are separating because, from my experience, you both have different reasons about why you are separating and there is no one reason – probably a whole host of reasons and there might be one thing that will stick in your mind the most – and you won't agree – because at the end of the day your kids love you both and you both love the children. That will never change. You have to do it for the sake of the children. It also prevents the kids from playing one off against the other. We have never had that. (Mother, two children with father two weekends in three, Putting the Kids First)*

It was also apparent from the Colmar Brunton (2008) study that parents who were able to make financial arrangements without resorting to Inland Revenue were also most satisfied with the care arrangements made for their children; we can assume that they communicated effectively in coming to their agreements. The pattern of more frequent and regular contact, including overnight contact, among those with a private arrangement was also apparent. Those who did use the Inland Revenue system reported less contact between non-resident parents and children and were less satisfied with the arrangements. Given that the quality of the relationship between parent and child is related to children's outcomes, and that contact is a necessary component of parenting, it might be important to encourage those who do not have to use the system to communicate well and obviate the need for it.

The importance of compromise, particularly when it came to financial matters, was highlighted by some parents. For them, it was more important to keep the peace for the sake of their children than to get all they wanted from their ex-partners.

Parents who are able to communicate well in making their decisions also reported being flexible in their arrangements, in two ways. They experimented with patterns of care and contact until they found those that worked for them; and they varied these patterns as circumstances required for either parent:

*Like on my week off, I might babysit so she could go out and vice versa. Also if there was a special occasion coming up or some work commitment, [my wife] was a shift worker, so if she had a night shift coming up – then we have had extra nights and generally we try to be accommodating of each other. If everybody owes favours, then everybody gives favours. (Father who sees daughter in holidays and occasional weekends – Putting the Kids First)*

### Key issues

#### **Information and support for separating parents**

A key issue for separating parents is getting information and support about the best arrangements to make for their children. In the Colmar Brunton (2008) study about half (43 percent to 57 percent) of parents said they had no assistance when making initial care and contact arrangements. Those who did have assistance most commonly used lawyers (29 percent to 38 percent).

Many parents appear to start by using Inland Revenue's Child Support Scheme as a basis for discussion when they first separate. Parents perceive Inland Revenue as a well-known, independent and relatively quick means of sorting out and enforcing the financial side of things.

The Colmar Brunton (2008) study also suggests that while parents seek assistance from Inland Revenue with making their financial arrangements (or have it imposed), they generally do not seek (or have imposed) assistance with their child contact and care arrangements. This may be because they:

- > are not aware of avenues of assistance, such as the Family Court, lawyers and counsellors
- > are wary of using these avenues (for fear of costs or escalating conflict)
- > have genuinely been able to work it out themselves.

Parents who report that they have come to their own agreements (and are happy with the terms) are generally able to trust, and communicate and negotiate with, the other parent and focus on what they think is best for the child.

In the Robertson et al (2008) study, counselling was a source of guidance for some parents. Fourteen couples out of the 31 families interviewed sought the assistance of a counsellor.

Counselling was used both in the lead-up to the separation and after they had stopped living together. The pre-separation counselling tended to focus on their relationship, and the later counselling on how to separate. Attending counselling was seen as a way of focusing on the parenting of the children, rather than on the relationship. All but one of the parents involved had found it helpful in focusing their attention on the needs of their children. Counsellors were seen to be impartial in reminding parents to consider the perspective of the child.

Inland Revenue is essentially a tax collection system, and does not have the resources nor the mandate to provide information on making care and contact arrangements for children when their parents separate. Nevertheless, we have seen that, for parents, these two domains are interlocking – care arrangements are inextricably linked to financial decisions.

Given that it is not the role of Inland Revenue to provide information on care arrangements, it is important that parents approaching Inland Revenue for financial information are given links to other sources of guidance at every opportunity. It is also important that services and organisations offering

support to parents who are making care arrangements inform them of the services Inland Revenue can offer. As we have seen, the most advantageous situation is where parents can make financial arrangements without formally involving Inland Revenue. However, we have also noted that many parents find the official formula a useful starting point for the arrangements they make.

The Colmar Brunton (2008) study also pointed to the need to clarify the nature of Inland Revenue's role to its clients – many were not aware of the interface between the DPB and Child Support Scheme. Many respondents in this study also assumed that Inland Revenue has more discretion than the legislation allows. It is clear from our studies that there are distinct information gaps which need to be addressed.

*When we split up, we didn't really appreciate how the Government would step in with support. [Ex-partner] was on DPB at the time. I made the decision to take on the family debt so she could have money to look after the kids properly. What I didn't realise, I would have the child support as well, so it pretty much screwed me... It was very hard to pay off and pay child support as well. Every cent was gone, nothing extra... I had to make a choice whether I moved into a flatting arrangement – which would limit my access to the kids. I was a bit stuck. I love having the kids – the thought that I had to move, it didn't make sense.*

*So [my ex-partner] and I discussed it and, looking through all the fine print, if I had the children 40 percent of the time, it qualified as a shared care arrangement so basically that was the six-day set up – to save the child support money... But I did not mind upping the care for them. So the way that the child support is set up actually forced me to take this option. (Father, shared care of two children, Putting the Kids First)*

It is also clear from our studies that informal or semi-formal support and information (from professionals, such as GPs, teachers and church leaders) are preferred over that from formal sources. This has clear implications for the provision of information and support. It also raises the question on the extent to which informal and semi-formal supporters can recognise when the needs of the parents are beyond their expertise, and refer appropriately.

Parents from qualitative interviews in the Colmar Brunton (2008) study suggested that third-party involvement at the outset would help parents reach joint decisions on contact and care arrangements. For example, mediation and support services could be useful for parents who are somewhere between being able to work things out for themselves, and being conflicted and thus requiring formal legal or Inland Revenue intervention.

These findings suggest that information and support should ideally be tailored to meet the needs of the parents in different situations – those who can negotiate, those who need some support in reaching agreement and those in conflict. They also suggest that support services need to consider how well they inform couples and engage them with their services: for example, by providing flexible hours and different ways of delivering support and information.

In Australia, Family Relationship Centres were established in 2006 to provide guidance and referral for families for their various information and support needs. These centres provide a holistic service for families in community settings.

The question arises whether a comparable impartial information and support service is needed in New Zealand to deal with the totality of support, care, contact and financial arrangements for separating parents. As noted previously, the key factors in satisfactory care arrangements are the quality of the parents' relationship and their communication. Other factors that need attention will come into play as well: grief over the end of the relationship; the financial impact of the breakdown of the relationship; and the ages and needs of the children. There is a case for more systematic, integrated coverage of these areas of need.

### ***Child support formula***

There seem to be a number of pressures for changing the current Child Support Scheme, including social changes since the current child support scheme has been implemented. For example, the intervening period has seen:

- > more social and legislative emphasis on both separated parents remaining actively involved in their children's lives (eg, COCA)

- > an increase in workforce participation by mothers, leading in turn to more active involvement of fathers
- > a probable increase in both shared care arrangements and in the variety and variability of arrangements that parents make for their children.

There is evidence from the United Kingdom (Blackwell & Dawe, 2003) and the United States (Whiteside & Becker, 2000) that payment of child support by non-resident parents is associated with frequency of contact with the children. The direction of the effect is not clear: those parents who pay child support may be encouraged to seek contact, or being in contact may promote payment of support.

When there is regular contact between children and both separated parents, the costs of children increase because of the need to duplicate housing and related costs such as utilities, furnishings, play/study spaces, toys and equipment, and because of additional transport costs.

There is some concern that the '40 percent of nights' threshold for recognition of shared care is too high and too rigid. Parents who have care of their children for less time still incur similar costs in providing for their children during periods of contact. The costs often include additional accommodation, food, clothing and recreational resources, and may affect the ability of the liable parent to provide financial support.

Different shared care arrangements are provided for in other areas of the law. For example:

- > To qualify for Working for Families Tax Credits, a parent needs to have a child in their care for at least one-third of the year (note that this test is not based on care for a proportion of nights, but on care for 122 days a year).
- > For entitlements to certain benefits, a parent must show that they have primary responsibility for the care of a dependent child for at least 40 percent of the time (again, this is not a test based on care for a number of nights).

Consistency in defining shared care in all areas of government administration (eg, in tax and/or benefit entitlement) could be useful – along with recognition that wherever there is overnight care there may be resultant additional costs.

In Australia, after a three-year review, substantial research and a ministerial taskforce, a new Child Support Scheme was introduced. It built on a wider reform of the family law system, which sought to encourage shared parenting, reduce conflict and make sure child support is paid in full and on time. The new formula bases the cost of children on Australian research, which shows that as income rises, spending on children rises in dollar terms but falls as a percentage of income, and that expenditure rises with a child's age.

The new formula also uses an 'income shares' approach to calculate and share the cost of children (ie, the cost of children is based on the parents' combined incomes, and distributed between the parents by their capacity to pay and the cost of regular or shared care). The formula also recognises costs of contact as contributing to the costs of children.

Although the research by the Families Commission sought information on how much parents were paying towards the costs of their children over and above child support payments, the findings are not detailed enough to allow any firm conclusions on the costs of children, or the percentage of income the costs are likely to represent for New Zealand parents. Inland Revenue is replicating some of the work undertaken in Australia on the costs of children for the purposes of their discussion paper. This work will be useful input into any amendments to the assessment formulas.

A more equitable formula may help reduce many parents' perceptions of unfairness in the system. This has the potential to reduce conflict between parents. Moreover, changes to the formula to take adequate account of the costs of children and/or the combined income of parents, and more equitable shared care thresholds may encourage better compliance in the Child Support Scheme. It may also provide a better guide for parents who are making private arrangements for the financial support of their children.

A separate issue is the fact that the current average and median incomes of paying and receiving parents are low. It is questionable whether any changes to the formula will make enough difference to most of the children who are supported by the Child Support Scheme, although any change may help the paying parent when the receiving parent is a beneficiary.

### ***Passing on child support payment to custodial parents on social security benefit***

This is a significant issue in terms of alleviating the burden felt by many receiving and paying parents, especially where the custodial parent is a beneficiary.

We know that child poverty is unevenly distributed across society. For children living in sole-parent families, the rate of poverty is five times as high as that for children in couple households. The poverty rate for children in households where there is no full-time worker is six times as high as for those where at least one adult is in full-time work. The most recent figures show that almost two-thirds of children in poverty are in households without paid employment or with only part-time work; many of them will be in families receiving a social security benefit (Fletcher & Dwyer, 2008, p.4).

Child support can make a difference to the level of hardship of a single-parent family. The majority of parents who use the Child Support Scheme are beneficiaries, and many receive little or no child support.

The Colmar Brunton (2008) study found that parents who receive child support through Inland Revenue are less likely to feel that the financial arrangements provide sufficiently for the needs of their children. Nearly three-quarters of survey respondents who receive child support through Inland Revenue reported the Inland Revenue child support amount to be too little to meet the needs of their child. Thirty-eight percent of survey respondents who receive child support through a private arrangement reported that the amount was too little to meet the needs of their child.

The qualitative interviews suggest that this is because parents who have a private arrangement continue to negotiate on important issues and have provision for a review when circumstances change. It may also reflect the fact that a substantially larger number of parents paying and receiving through Inland Revenue are beneficiaries, so money is more of an issue for them.

Where a custodial parent is in receipt of a social security benefit, child support payments are not passed on to them. The payments are retained by the State in accordance with the Child Support Act 1991. The Inland Revenue-administered child support payments are only passed on as tax-exempt income

when the custodial parent is receiving a benefit other than the DPB, or living with a partner (not the parent of the child) and in receipt of a married benefit.

This withholding of child support by the Government may reduce the resources available for a paying parent who has to meet the costs of shared care, and it reduces the overall financial resources available for the child. It may also contribute to making the scheme “unpopular with the parent liable for paying child support. New Zealand is increasingly out of step with other countries in not allowing child support to be passed on to children whose custodial parents are on a carer’s benefit” (Fletcher & Dwyer, 2008, p.44).

In Australia, child support payments are treated as income if the receiving parent is on state assistance. The United Kingdom is bringing in phased changes to child maintenance. From October 2008, beneficiary parents can keep \$20 per week of the payment before the benefit is abated. From April 2010, they will be able to keep all of their maintenance payments. A key purpose of these changes was to lift children out of poverty.

It may be time for New Zealand to consider whether child support payments should be passed on to custodial parents in receipt of the social security benefit.

### ***Changing or flexible arrangements***

Our research suggests that in the first few years of separation there are many changes as parents (and children) adjust to their new circumstances. Then, as people settle into their respective roles, there may be more stability in the frequency or regularity of contact and care.

Triggers for changes in frequency or regularity are likely to be changes in partners, new families or children, work (changes in hours, shifts, location, income etc), children’s age, needs and preferences, parents’ lifestyle choices and parents’ ability to communicate over time.

Any change to the Child Support Scheme must be flexible enough to accommodate frequent changes in care arrangements without placing too onerous a burden on parents. This is particularly relevant given the latest Family Court statistics indicating that only 66 percent of applications are resolved within 12 months. Delays in resolving issues relating to care

or financial arrangements must be minimised as these delays can have the effect of embedding conflict between parents.

### ***Cultural considerations***

The Robertson et al (2008) study included six Pacific and six Māori parents. Key informants and cultural consultants indicated that, traditionally, both Māori and Pacific peoples emphasise the role of extended family (whānau and aiga) in caring for children whose parents have separated. Parental separation and the care of the children are not seen as a private matter confined to the parents, but a concern of the wider family, who play an active role in determining post-separation parenting arrangements.

Some of the Māori parents indicated that they were not particularly embedded in their culture and did not think that cultural considerations featured in their deliberations. One parent, who had little contact with her family, specifically excluded her whānau from involvement in her decisions. On the other hand, she had involved the father’s family in ensuring the child had contact with his paternal extended family.

In 2002, the Ministry of Justice commissioned research into Guardianship, Custody and Access: Māori perspectives and experiences (Pitama, Ririnui & Mikaere, 2002). The literature review indicated that the key principles in the care and upbringing of children are as follows:

- > whakapapa
- > that children belong to whānau, hapū and iwi
- > that rights and responsibilities in raising children are shared
- > that children have rights, and responsibilities to their whānau.

The literature review was intended to provide a context for understanding the views and experiences offered in the interviews, and to link them to key principles. The report suggested that the starting place for understanding how Māori might view guardianship, custody and access should not be attempting to find equivalent Māori concepts, but rather locating the principles and practices regarding the care and upbringing of children within a Māori philosophical framework.

This study was undertaken prior to the implementation of COCA. The data from the recent Family Court statistics indicate that 27 percent of applicants and 31 percent of respondents in parenting order applications are Māori.

It may be timely to consider whether more research is required to understand the needs of Māori families when negotiating care, contact and financial arrangements for their children.

### ***The needs of fathers***

The Commission has been involved in two pieces of work that may provide some insight into the needs of fathers. The first was a telephone survey of 1,700 fathers, which will be published in late 2009.

Early findings of the survey paint a very positive view of New Zealand fathers. It shows that most fathers are satisfied with their performance; are fully involved with their children and partners; would like to spend more time with them; do not talk much to others about fathering; do not attend fathering courses (apart from antenatal courses); and do not have significant support needs. The most frequently mentioned barrier to fathering is the time they spend at work. Many fathers said more fathering courses would be a good idea but the research shows that they may not have the motivation to attend – given their satisfaction with their own performance and the time pressures many of them faced.

Additional analysis was carried out on separated fathers not living with their birth children, fathers heading sole-parent families and stepfathers. About 75 fathers in each of these three groups were included in the main survey.

Overall, the pattern of responses of these groups of fathers to the survey questions was similar to that of all the fathers taken together. There were some small but important differences, however. The most relevant one for the purpose of this paper, is that in all three of these groups, higher proportions stated they had support needs, ranging from 82 percent to 70 percent, compared with 54 percent of fathers in general. It is important to note that very few fathers specified the type of support they would need.

The Commission also funded an Innovative Practice Report, *Pathways Through Parental Separation* (Mitchell & Chapman, 2009), on the experiences of non-residential fathers. It was based on a small qualitative study of 20 fathers in the South Island.

The fathers indicated they were not prepared for the realities of the stress and tense environment of the process of separation. They also reported adverse effects on their health and wellbeing. They mentioned difficulty accessing support, both informal and formal, rating the need for support as the most important of all the themes and subthemes presented to them.

They acknowledged a need to manage the changed relationship with their children's mothers, and to develop strategies for accepting, supporting and maintaining this changed relationship. It was recognised that, although separation is a major life transition, it can lead to a redefined and fulfilling parental role.

These two reports strongly indicate that further investigation may be necessary to determine whether targeted services may need to be developed for fathers to assist in dealing with the process of separation. Targeted services may be particularly useful for fathers who have a conflicted relationship with the other parent and who are having difficulties coping with the separation.

## 5. CONCLUSIONS AND IMPLICATIONS

**This paper has highlighted several important aspects of the provision of knowledge and support for separating parents when they make care and financial arrangements for their children. Foremost is the conclusion that support for a workable relationship between parents after separation will go far in enabling them to make optimal arrangements for them and their children.**

Our work has also highlighted issues with the current formula in the Child Support Scheme, which need to be addressed if the need of families for flexibility and diversity in arrangements is to be met.

Finally, there is a need for better co-ordination of information and support for parents.

### **Information and support for separating parents – co-ordination and integration**

The Commission believes parents should be able to access support for their ongoing relationship and information on how to communicate well. This is clearly supported by the finding that the ability of parents to communicate well after separation determines the likelihood that living and financial arrangements will be made to the best effect.

Since it is also apparent that information and advice are received mostly from informal or semi-formal sources, these sources (particularly semi-formal sources) should be provided with evidence-based information, for them to convey. Such sources include health professionals, lawyers, Citizens' Advice Bureaux, Birthright, schools and so on.

The Family Court provides conciliation and mediation services. The Ministry of Justice provides Parenting through Separation programmes. Our research indicates that many parents are either not aware of these services or wary of services provided by the Court. These perceptions act as a barrier to access these services, so the challenge is to ensure that such services are known, and available to parents when they need them.

Many parents do not understand the interface between the DPB and the Child Support Scheme. Key information points may provide some information but not all that separated parents need at the appropriate time. A unified information and support strategy could be developed within the current system for the provision of services to separated parents.

Key issues for such a strategy are:

- > Where, how and from whom can parents access information, advice and support to promote co-operative parenting after separation and information about financial support?
- > Who are the key influencers of separated parents (lawyers, counsellors, Inland Revenue, WINZ, other semi-professional supports?); and how can information be disseminated to reach them?
- > How can support services and the Family Court change negative perceptions of their services so that more people access support when they need it?
- > What opportunities are there for linking information and support on care, contact and financial arrangements?
- > How can an impartial, information and support service be provided to assist with the totality of care, contact and financial arrangements for children post-separation?

### **Changes in the Child Support Scheme**

The formula for assessment of child support is a significant issue, which is a concern for many parents. It is widely felt that a formula based on the needs and costs of the child would be more equitable than the present formula based solely on income of the paying parent. Any review of the scheme needs to consider appropriate provision regarding these key issues:

- > the costs of the care of children
- > shared care and costs of contact
- > the age of children
- > the incomes of both parents and differences between them
- > any additional children of both households
- > flexibility for changing conditions (care arrangements or income fluctuations).

A 'formula' has many benefits (transparency, simplicity, efficiency, value as guidance), and Inland Revenue is favoured as an administering agency because it is seen as a neutral assessor, leaving less room for conflict.

However, it is imperative that any new Child Support Scheme is flexible enough to accommodate any changes without creating a significant burden on parents.

### **Passing on child support payment to custodial parents on social security benefits**

This is a significant issue in terms of the burden felt by many receiving and paying parents, especially where the custodial parent is a beneficiary. Child support can make a difference to the level of hardship of a sole-parent family.

The Commission believes that it may be time for New Zealand to consider whether child support payments should be passed on to the custodial parent in receipt of the DPB – sole-parent rate.

### **Cultural considerations**

There is little recent research on how Māori families negotiate care and financial arrangements. It may be timely to consider more research to understand the needs of Māori families when negotiating care, contact and financial arrangements for their children.

### **Needs of fathers**

Our commissioned research suggests that on the whole fathers do not have significant support needs. However, some fathers may need support through the separation process. Targeted services focused on specific needs such as managing the relationship with the other parent might be useful for separated fathers.

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## APPENDIX – OVERSEAS CHANGES TO CHILD SUPPORT SYSTEMS

**Both Australia and the United Kingdom have recently reviewed and amended their systems for the payment of child support. The following section briefly outlines some of these changes.**

### Australia

A new Child Support Scheme has been developed to serve the best interests of children, balance the interests of parents better and reflect today's community. The new scheme also takes into account the costs of raising children.

These changes build on the reform of the family law system to support shared parenting, and aim to reduce conflict and make sure child support is paid in full and on time. They complement the establishment of a network of Family Relationship Centres and extra funding for existing family relationship services.

An independent Ministerial Taskforce on Child Support found that the Child Support Scheme needed to be updated to reflect the substantial changes in Australian society since the scheme was established in 1988. It highlighted the need for a much greater emphasis on shared parental responsibility and a growing recognition of the importance of both parents remaining actively involved in their children's lives after separation.

The new scheme:

- > calculates child support payments based on the costs of raising children
- > uses the combined income of both parents to calculate child support payments, treating both parents' incomes in the same way
- > recognises both parents' contributions to the cost of their children through care and contact
- > treats children of first and second families more equally than previous legislation.

These changes have required extensive changes to the law. They include:

- > increasing the minimum payment so child support payments keep pace with inflation
- > strengthening the Child Support Agency's (CSA) capacity to ensure parents pay their child support payments in full and on time

- > recognising non-resident parents on Newstart and related payments (Newstart Mature Age, Sickness Allowance and Youth Allowance) who have contact with their children, by paying them a higher rate of payment
- > reducing the maximum amount of child support payable by higher income earners to ensure these payments are better aligned with the costs of children
- > fairer arrangements for assessing the capacity of parents to earn income
- > enabling parents who pay child support to spend a greater proportion of their payments directly on their children
- > helping separating parents agree on arrangements for their children, including child support, by providing access to Family Relationship Centres, the Family Relationship Advice Line and other expanded services.

More resources were also invested to improve the service delivery of the CSA. These changes include the wider availability of intensive assistance to parents with difficult or complex circumstances, better training of CSA staff and better quality control mechanisms. For example, the introduction of call recording means individual CSA staff are even more accountable for information and advice they provide to parents.

Other changes included:

- > the introduction of independent reviews of all CSA decisions by the Social Security Appeals Tribunal (SSAT) to improve its accountability and transparency
- > broadening the powers of the courts to ensure that child support obligations are met; and strengthening the relationship between the courts and the Child Support Scheme, making the process easier and more responsive to parents' needs
- > allowing separating parents more time to work out parenting arrangements before their Family Tax Benefit is affected.

Final changes included:

- > the introduction of a new child support formula that changes the way child support payments are calculated, ensuring more balanced assessments, supporting shared parenting and recognising the costs of contact
- > ensuring a minimum payment is made for each child support case
- > in certain circumstances, allowing parents to have extra income earned after separation excluded from their child support assessment to assist with re-establishment after separation
- > allowing parents to apply to have their responsibility for dependent step-children recognised when calculating their child support liability
- > improving the arrangements for parents who wish to make agreements for ongoing child support or lump sum payments
- > making the child support rules easier for parents who are getting back together
- > closer alignment of the income definitions used to calculate child support and Family Tax Benefit to ensure more consistent treatment of certain tax-free pensions and benefits, and tax-exempt foreign income
- > changing the way Family Tax Benefit is calculated for people who share care
- > changing the way child support affects the amount of Family Tax Benefit paid.

The new scheme was introduced in three stages over a two-year period, and the Australian Government has commissioned an evaluation of these changes.

## United Kingdom

Significant changes to Britain's child maintenance system come into effect from October 2008. All parents with day-to-day care of children are now free to choose the child maintenance arrangements which best suit their own circumstances. Previously, those claiming benefits – currently around 400,000 – have been required to use the statutory service provided by the Child Support Agency (CSA).

## A Child Maintenance and Enforcement

Commission has been established. As well as providing information and support to parents, the Commission has a broad remit to promote the financial responsibility parents have for their children and deliver an efficient statutory maintenance service with effective enforcement.

The Commission's main statutory objective is to "maximise the number of those children who live apart from one or both parents for whom effective maintenance arrangements are in place". To achieve this, the Commission has three core functions:

- > promoting the financial responsibility of parents to their children
- > providing information and support about the child maintenance options available to parents
- > providing an efficient statutory maintenance service with effective enforcement.

The change coincides with the doubling from £10 to £20 per week of the amount parents with day-to-day care can keep before their benefit entitlement is affected. It paves the way for a full 'disregard' in 2010 when all connection between the benefits system and child maintenance will end.

The introduction of the full maintenance disregard in April 2010, combined with existing child maintenance reforms, will help lift a further 100,000 children out of poverty.

A new, impartial, information and support service, Child Maintenance Options will help parents to understand the options for arranging child maintenance and to decide for themselves the arrangements that best suit their circumstances.

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The Families Commission was established under the Families Commission Act 2003 and commenced operations on 1 July 2004. Under the Crown Entities Act 2004, the Commission is designated as an autonomous Crown entity.

Our main role is to act as an advocate for the interests of families generally (rather than individual families).

Issues papers are designed to promote public debate on emerging and current issues. Issues papers are the result of the Families Commission listening to families, whānau and organisations that work with families combined with the knowledge gathered from research and our own analysis.

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