

**More Money, More Money, More Money – Current Issues in Changes to Assessments/Court Orders, and Enforcement of Child Support/Maintenance between Australia, the United Kingdom, New Zealand and Canada.**

Cath Devine<sup>1</sup>

E: [cdevine@vicbar.com.au](mailto:cdevine@vicbar.com.au)

M: +61 0400 893 896

**Keywords:** International Child Support/Maintenance and the Hague Conventions

**Abstract:**

The *United Nations Convention on the Rights of the Child*<sup>2</sup> sets out<sup>3</sup> that every child has a right to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development, and that the parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development. The *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*<sup>4</sup> (“IRCSFFM”) replaced the former *United Nations Convention on the Recovery Abroad of Maintenance*<sup>5</sup> (“UNCRAM”) and other Maintenance Conventions<sup>6</sup> and sets out the intention of the signatory States to provide a more uniform process for the assessment, registration and international collection of Child Support/Maintenance (“CSM”) on an international scale. This paper follows on from the author’s paper presented at WCFLCR in Dublin in 2017, to further explore the issues associated with changes to any assessment or order, and enforcement of CSM between jurisdictions.

The difficulties associated with applications for changes to any assessment/order, and enforcement of international CSM are manifold, and include:

- How does each contracting State change or alter the costs of a child, or the incomes of the parents, from an administrative or initial Order?

---

<sup>1</sup> LLB, LLM (Family Law), Barrister, Mediator, Arbitrator, Author “A Practical Guide to Child Support”; Foley’s List, Victorian Bar.

<sup>2</sup> Concluded 20 November 1989

<sup>3</sup> in Articles 3 and 27;

<sup>4</sup> Concluded 23 November 2007 – not yet ratified by Australia

<sup>5</sup> Concluded 20 June 1956, see article 49 of IRCSFFM

<sup>6</sup> Including the *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations* (“REDRMO”) (ratified by Australia) and the *Hague Convention* of 15 April 1958, see Article 48 of IRCSFFM

- What processes are in place in each contracting State for the enforcement of international CSM?
- What are the impediments to efficient changes to administrative assessment/Court orders, and enforcement of CSM?

Other complexities include that many countries have ratified different Conventions – for example, Australia has ratified the REDRMO and not the IRCSFFM; China and most of Asia and the Middle East have not ratified any Convention; and many other countries have ratified previous Conventions and not the current Conventions. There are differences between the Conventions which have a significant effect on the international recovery of CSM.

This article will explore the differences between Australia, England, New Zealand and Canada (Ontario) in the applications for changes to any assessment/order, and enforcement of international CSM between those four jurisdictions, including the administrative and judicial interventions and determinations of international CSM.

Suggestions and recommendations for legislative and administrative change may also follow.

#### Article:

Australia and numerous other countries have significant international migration with people regularly moving across borders. In 2024, 31.5% of Australia’s population was born overseas, an increase of 3.5% since 2014<sup>7</sup>. Most migrants to Australia were from the United Kingdom, followed by India, China and New Zealand.<sup>8</sup> In 2024, 16% of families with children in Australia were headed by single parents<sup>9</sup> – down from 19.3% in 2014<sup>10</sup>. In 2024, 78% of one parent families were headed by single mothers<sup>11</sup>.

In an era of increasing global population mobility, it would seem reasonable to assume that a significant proportion of Australian children are likely to have a parent living

---

<sup>7</sup> Australian Bureau of Statistics; “Australia’s Population by Country of Birth” June 2024.

<sup>8</sup> *Ibid.*

<sup>9</sup> Australian Bureau of Statistics; “Labour Force Status of Families”, June 2024.

<sup>10</sup> Census 2011; Australian Bureau of Statistics.

<sup>11</sup> *Ibid.*

overseas at any particular point in time; and may be subject to at least two jurisdictions able to make orders with respect to child maintenance.

The difficulties associated with CSM, particularly in relation to how costs of children or incomes of parents should be changed, and enforcement of international CSM obligations, are manifold. They include legislative, historical and sociological factors which are compounded by speed and ease with which parents can now move across State and country borders.

Australia, the United Kingdom (England and Wales), Canada (Ontario) and New Zealand are four countries whose legislation, stemming from Commonwealth backgrounds, are similar enough to be compared in terms of changes to assessment/orders, and enforcement of international CSM, including any administrative and judicial interventions and methods of enforcement of CSM. They also offer unique opportunities for international co-operation and communication.

### **How does each contracting State change or alter the cost of a child?**

#### *Australia: Original assessment/order*

Australia's Child Support/Child Maintenance system is a Federal system, which does not require any local State/Territory based legislation to register, collect, enforce or vary international Child Maintenance orders between States/Territories. Once registered in Australia, Child Support/Child Maintenance is collected by the Federal Government<sup>12</sup> regardless of the State or Territory in which the payee/payer resides.

In Australia, Child Support refers to an administrative assessment<sup>13</sup> of Child Support made by the Australian collection authority. Child Maintenance refers to an overseas Child Maintenance order registered/registrable for collection by the Australian

---

<sup>12</sup> By Services Australia, Child Support Agency; ("Australian collection authority")

<sup>13</sup> An assessment calculated administratively pursuant to a formula set out in the *Child Support (Assessment) Act* 1989 ("CSAA")

collection authority; or a judicial order made in Australia for a child residing either in Australia or overseas, when the administrative assessment process is not applicable. Australia's administrative assessment process is determined through an "income sharing" approach, which also takes into account:

- a) The income of the parents, less an allowance for living expenses and dependents;
- b) The child's age;
- c) The time the children spends with each parent; and
- d) The Costs of Children Tables<sup>14</sup>.

For international cases, where the administrative assessment process does not apply, the Court<sup>15</sup> takes into account:

- a) The children's rights to have their needs met from reasonable and adequate shares in the income, earning capacity, property and financial resources of both their parents<sup>16</sup>; equitably<sup>17</sup>; and
- b) The proper needs of the children<sup>18</sup>; limited to:
  - a. The age of the child<sup>19</sup>; and
  - b. The manner in which the child is being, and in which the parents expected the child to be, educated or trained<sup>20</sup>; and
  - c. Any special needs of the child<sup>21</sup>; and
  - d. The Court may also have regard to the relevant research in relation to the maintenance of children<sup>22</sup>.
- c) The income, earning capacity, property and financial resources of the child<sup>23</sup>, disregarding any entitlement of the child to welfare benefits<sup>24</sup>.

*Australia: Changing or altering the parents' incomes or costs of children*

---

<sup>14</sup> Annexed to the CSAA; formulated upon statistical data.

<sup>15</sup> The Federal Circuit and Family Court of Australia, exercising jurisdiction under the *Family Law Act 1975* ("FLA")

<sup>16</sup> S66B(2)(a) FLA

<sup>17</sup> s66B(2)(b) FLA

<sup>18</sup> s66J(1)(b) FLA

<sup>19</sup> s66J(2)(a)(i) FLA

<sup>20</sup> s66J(2)(a)(ii) FLA

<sup>21</sup> s66J(2)(a)(iii) FLA

<sup>22</sup> s66J(2)(b) FLA

<sup>23</sup> s66J(1)(c) FLA

<sup>24</sup> s66J(3)(b) FLA; welfare benefits are subsidies given by the Australian government for social welfare and support.

An application to vary a registered overseas maintenance liability may be made to a Court<sup>25</sup> by either parent or the Australian collection authority<sup>26</sup>. The Court has the power to discharge, suspend, revive or vary the liability<sup>27</sup>. The Court may make provisional<sup>28</sup> or permanent Orders depending on the reciprocal jurisdiction: provisional Orders are of no effect until confirmed in the reciprocal jurisdiction<sup>29</sup>. The law applied is Australian law<sup>30</sup>.

Modification of Child Support/Maintenance between Australia and New Zealand is governed by the provisions of the Australia/New Zealand Agreement (Australia)<sup>31</sup> and the Child Support (Reciprocal Agreement with Australia) Order (New Zealand)<sup>32</sup>, and occurs in the country of residence of the child and pursuant to the laws of that country. Administrative assessment and variation/modification of Child Support between Australia and New Zealand has been simplified due to this Agreement.

The Court may discharge the Order if there is just cause for so doing<sup>33</sup>; suspend or revive the Order<sup>34</sup>; otherwise, the Court must not vary the Order unless it is satisfied that:

- a) since the order was made, the circumstances of the child, the payer or the payee have changed so as to justify the variation<sup>35</sup>; or
- b) since the order was made or last varied, the cost of living has changed so as to justify a change<sup>36</sup>; the Court may consider statistics as to cost of

---

<sup>25</sup> pursuant to Reg 119 *Family Law Regulations* 2024 (“FLR”).

<sup>26</sup> Orders registered prior to 20 July 2007 are governed by the now repealed *Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000*; dates of registered orders must be checked; *Haggerty & Gable* [2011] FMCAfam 28

<sup>27</sup> Reg 119(1)(2) FLR

<sup>28</sup> Reg 121 FLR

<sup>29</sup> Reg 124 FLR

<sup>30</sup> Reg 119(6) FLR; s66S FLA applies.

<sup>31</sup> Schedule 1 to the *Child Support (Assessment and Collection) Regulations* 1988

<sup>32</sup> *Child Support (Reciprocal Agreement with Australia) Order* 2000 (SR 2000/85) New Zealand

<sup>33</sup> s66S(2)(a) FLA; if the person is no longer in need, or if it is impossible to pay, or it was made on the basis of false or misleading evidence; see also *In the Marriage of Lutzke* (1979) 5 Fam LR 553 *In the Marriage of Vakil* (1997) 21 Fam LR 508;

<sup>34</sup> s66S(2)(b) and (c); if appropriate due to temporary inability to pay or lack of need; see *Cooper v Cooper and Rogers* (1976) 2 Fam LN 24; *In the Marriage of Crossan* (1976) 2 FamLR 11,374

<sup>35</sup> s66S(3)(a) FLA; also includes legal personal representatives if applicable.

<sup>36</sup> s66S(3)(b) FLA

living<sup>37</sup>, and such an application cannot be brought less than 12 months since the Order was last made or varied<sup>38</sup>; or

- c) the amount is not proper or adequate, but only if the Order was made by consent<sup>39</sup>; or
- d) false or misleading evidence was previously given to the Court<sup>40</sup>.

If the administrative process applies, an application may be made by either parent to the Australian collection authority for departure from the administrative assessment.

Grounds for variation are special circumstances of the case involving:

- a) reduced capacity due to duty to support another child or person;
- b) reduced capacity due to special needs of another child or person for which the person has a duty to maintain;
- c) reduced capacity due to necessary commitments to support themselves or another child/person for which the person has a duty to maintain;
- d) reduced capacity due to the responsibility to maintain another resident child;
- e) high costs of spending time or communication with a child;
- f) special needs of the child;
- g) high child care costs of the child;
- h) costs because the child is being cared for, educated or trained in the manner expected by the parents;
- i) income, earning capacity, property or financial resources of the child or either parent; and
- j) because of any payments or property settlement for the benefit of the child<sup>41</sup>.

Costs of the administrative process are minimal as lawyers are not involved. Costs with respect to a Court application are usually borne by the parties themselves<sup>42</sup>; Legal Aid<sup>43</sup> may be available depending on the income, assets and liabilities of the parties<sup>44</sup>.

---

<sup>37</sup> s66S(4) FLA

<sup>38</sup> s66S(5) FLA

<sup>39</sup> s66S(3)(c) FLA

<sup>40</sup> s66S(3)(d) FLA

<sup>41</sup> s117(2) CSAA.

<sup>42</sup> s114UA-UE FLA

<sup>43</sup> A government body funding legal cases

<sup>44</sup> In Australia, Legal Aid is state-based; each State has different eligibility requirements.

Canada: Original Assessment/Order

The Canadian system of child support/maintenance depends on the relationship between the parents. Children of a marriage, upon divorce, are subject to the *Divorce Act*<sup>45</sup>. *Ex nuptial* children, upon separation, or children of separated (but not yet divorced) parents are subject to the Child Support legislation of the province or territory in which they ordinarily reside<sup>46</sup>.

Pursuant to the *Divorce Act*, the quantum of Child Support is set pursuant to the Federal Child Support Guidelines<sup>47</sup>. There is a presumption that the quantum of Child Support should be as determined in the table, plus any amount for special or extraordinary expenses<sup>48</sup>.

The amounts in the Tables are based on economic studies of average spending on children in families at different income levels in Canada, and take into account that child support is not taxed in the payee<sup>49</sup>'s hands, and not tax deductible by the payer<sup>50</sup>. Each province or territory is subject to a different table due to differences in provincial income tax rates<sup>51</sup>.

The amount of Child Support is solely based upon the income of the payer, and disregards the income of the payee, unless there is split custody<sup>52</sup>, or a parent has the care of the child for more than 40% of a year<sup>53</sup>. In the latter case, Child Support is determined by comparing the applicable amounts pursuant to the table, and the increased costs of shared custody arrangements, and issues personal to the parents<sup>54</sup>.

However, the provisions of the *Divorce Act* do not apply to cases on an international basis. Each Province or Territory of Canada has their own Interjurisdictional Support Act which determines the level of child support for international or interjurisdictional

---

<sup>45</sup> Originally enacted 1968; currently R.S.C. 1985 c3

<sup>46</sup> *Ex nuptial* children are excluded by definition in the *Divorce Act* s2.

<sup>47</sup> *Federal Child Support Guidelines, SOR/97-175*, Child Support Guidelines (“Federal CSG”)

<sup>48</sup> ss3, 7 Federal CSG.

<sup>49</sup> Referred to as “claimant” in the ISOA

<sup>50</sup> Federal CSG Schedule 1, Note 5.

<sup>51</sup> Federal CSG Schedule 1, Note 4.

<sup>52</sup> s8 Federal CSG – where each parent has custody of one or more children.

<sup>53</sup> s9 Federal CSG

<sup>54</sup> s9 Federal CSG

cases. For the purposes of this discussion, the legislation of the Province of Ontario has been reviewed<sup>55</sup>. The Ontario collection authority<sup>56</sup> is responsible for administering, collecting, and enforcing support orders (whether made administratively or judicially<sup>57</sup>) in Ontario.

If the payee and the child are in Ontario, and the payer is resident in a reciprocal jurisdiction, a payee commences a claim by commencing an application to the Ontario collection authority<sup>58</sup>, which then sends a copy of the application to the appropriate authority in the reciprocating jurisdiction<sup>59</sup>.

Some reciprocal jurisdictions<sup>60</sup> require a provisional Order to be made in Ontario prior to the transmission of the application to that jurisdiction. Such Order can be made *ex parte*<sup>61</sup> and on oral or written evidence<sup>62</sup>.

If the payee and the child reside in a reciprocal jurisdiction, and the payer is resident in Ontario, the appropriate authority in the reciprocal jurisdiction is required to send a support application to the Ontario collection authority<sup>63</sup>. The Ontario collection authority will then send the application to the Ontario Court<sup>64</sup>, whose clerk will serve the payer<sup>65</sup>. The payer is then required to appear and provide information and documents to the Court<sup>66</sup>. In determining a child's entitlement to support, the Ontario court shall first apply the law of the jurisdiction where the child ordinarily resides, but if the child isn't entitled to support under that law, then Ontario law shall apply<sup>67</sup>. The

---

<sup>55</sup> Ontario has the largest population of any Province/Territory in Canada; comprising 38.5% of Canada's population *Statistics Canada, 2021 Census*. This Province was selected rather than the federal *Divorce Act* due to the provision for all children, *ex nuptial* and pre-divorce, rather than the limitations in the *Divorce Act* that only apply to divorces.

<sup>56</sup> Family Responsibility Office of the Ministry of Community and Social Services, Ontario ("Ontario collection authority")

<sup>57</sup> s1 *Interjurisdictional Support Orders Act* 2002 S.O. 2002 ("ISOA");

<sup>58</sup> s6(1), ISOA – the Family Responsibility Office ("FRO") is the current appropriate authority.

<sup>59</sup> s6(2), ISOA

<sup>60</sup> Jurisdictions requiring provisional Orders include the United Kingdom, New Zealand, Germany, Cayman Islands, Hong Kong and Quebec.

<sup>61</sup> s7(1), ISOA

<sup>62</sup> s7(2), ISOA

<sup>63</sup> s9, ISOA, provided that the FRO confirms that the payer is ordinarily resident in Ontario.

<sup>64</sup> District Court of Ontario in the area closest to the residence of the payer

<sup>65</sup> s10(a), ISOA.

<sup>66</sup> s10(b), ISOA

<sup>67</sup> s13(1), ISOA

quantum of support is determined by Ontario law<sup>68</sup>. The minimum payment for one child commences at an income level \$10,820 in Ontario<sup>69</sup>.

If an order is made, the Court may order periodic payments, a lump sum, or both<sup>70</sup>. If the payer does not appear, the Court may make an order in their absence, and may draw any inference from their non-attendance as is considered appropriate<sup>71</sup>.

A Ontario Court making an order for child support shall do so in accordance with the Ontario Child Support Guidelines (“CSG”)<sup>72</sup>, unless special provisions have been made in a written agreement or property division orders<sup>73</sup>, or the quantum pursuant to the CSG is inadequate<sup>74</sup>. This may occur by consent<sup>75</sup>, but only if reasonable arrangements have been made that do not require additional public money support<sup>76</sup>. Priority is given to child support rather than spousal support orders<sup>77</sup>.

An Ontario Court may award a different amount than that specified in the CSG on the application of either spouse, on the basis of undue hardship<sup>78</sup>, which includes:

- a) Unusual high levels of debts incurred during cohabitation or to earn a living;
- b) High access costs;
- c) Legal duty to support another person;
- d) Legal duty to support a child; or ill or disabled adult child;
- e) Legal duty to support another child or child in full time education;
- f) Legal duty to support an ill or disabled person<sup>79</sup>.

The Court must not make an order which would improve the standard of living of the household who claims undue hardship over that of the other parent<sup>80</sup>.

---

<sup>68</sup> s13(3), ISOA

<sup>69</sup> Ontario Child Support Guidelines (“CSG”) Schedule 1, Table One.

<sup>70</sup> s14(3), ISOA

<sup>71</sup> s15(1) ISOA.

<sup>72</sup> s11, Family Law Act, R.S.O.1990, cF.3 (“OFLA”)

<sup>73</sup> s12(a) OFLA

<sup>74</sup> s12(b) OFLA

<sup>75</sup> s14 OFLA

<sup>76</sup> s14(b) OFLA

<sup>77</sup> s38 OLFA

<sup>78</sup> s10 CSG

<sup>79</sup> s10(2) CSG

<sup>80</sup> s10(3) CSG

If a parent's income is over \$150,000, the CSG applies for the first \$150,000 of income, and the determination of any higher contribution will be as the Court considers appropriate, having regard to the condition, means, needs and circumstances of the children and the financial ability of each person to contribute to the child's support<sup>81</sup>.

Canada (Ontario): Changing or altering the parents' incomes or costs of children

Judicial variation of an order made or confirmed under the OFLA can be made by a child or a parent<sup>82</sup>. There needs to be a material change in circumstances or new evidence not previously available<sup>83</sup>. A change in circumstances is defined as:

- a) any change in circumstances which would result in a different order;
- b) any change in the condition, means, needs or circumstances of either parent or child<sup>84</sup>;

The Court, in accordance with the CSG<sup>85</sup>, may:

- a) discharge, vary or suspend the order, prospectively or retroactively;
- b) discharge part or all of arrears or interest; or
- c) make a different order within its power<sup>86</sup>.

The Court may depart from the CSG in the same circumstances as in a determination order<sup>87</sup>. Variation applications can not be made within six months of a determination or previous variation order<sup>88</sup>.

Administrative variation of an order made under the OFLA or administratively can only be made with respect to the income of the party<sup>89</sup>.

Modification of orders is usually at each party's individual expense.

New Zealand: Original assessment/order

---

<sup>81</sup> s4 CSG

<sup>82</sup> s37(1) OFLA; or also a personal representative or government agency

<sup>83</sup> s37(2.1) OLFA

<sup>84</sup> s14 CSG

<sup>85</sup> s37(2.2) OLFA

<sup>86</sup> s37(2.1)(c) OLFA; for different types of orders see s34 OLFA

<sup>87</sup> S37(2.2) and (2.6) OLFA

<sup>88</sup> s37(3) OLFA

<sup>89</sup> s39 OLFA

The New Zealand administrative system of Child Support is similar to the Australian system. The Child Support/Child Maintenance system is a Federal based system, which does not require any regional based legislation to register, collect, enforce or vary international Child Maintenance orders between regions. Once registered in New Zealand, Child Support/Child Maintenance is collected by the Federal Government<sup>90</sup> regardless of where the payee/payer resides.

In New Zealand, Child Support refers to an administrative assessment of Child Support pursuant to the NZCSA<sup>91</sup>. Child Maintenance refers to an overseas Child Maintenance order registered/registrable for collection by the New Zealand collection authority; or a judicial order<sup>92</sup> made in New Zealand for a child residing either in Australia or overseas, when the administrative assessment process is not applicable. Overseas Child Maintenance orders can be made regarding Commonwealth countries<sup>93</sup>; Convention countries<sup>94</sup> or designated countries<sup>95</sup>.

The administrative assessment of Child Support is determined through an “income sharing” approach, taking into account:

- a) The income of the parents, less an allowance for living expenses and dependents;
- b) The child’s age;
- c) The time the children spend with each parent (care cost percentage); and
- d) The Child Expenditure table<sup>96</sup>.

For international cases involving Convention countries, a New Zealand resident must apply to the New Zealand collection authority to have their claim for maintenance transmitted to the Convention country<sup>97</sup> to be heard and determined in accordance with

---

<sup>90</sup> By the Inland Revenue Department (“New Zealand collection authority”)

<sup>91</sup> *Child Support Act* 1991 (New Zealand) (“NZCSA”)

<sup>92</sup> Usually made in the District Court of New Zealand

<sup>93</sup> s2 *Family Proceedings Act* 1980 (“FPA”); including the Republic of Ireland; a territory for whose international relations the Government of a country that is a member of the Commonwealth is responsible; the Cook Islands; Niue and Tokelau.

<sup>94</sup> s2 *Family Proceedings Act* 1980; meaning a country that is a party to the United Nations Convention for the Recovery of Maintenance Abroad done at New York on 20 June 1956 (excluding Australia).

<sup>95</sup> The Ministry of Justice may designate any Country that is not a Commonwealth country as a “designated country” s135(1) FPA.

<sup>96</sup> Determined by the average cost of raising a child, based on information provided by Statistics New Zealand.

<sup>97</sup> s149(1) FPA

the laws of the Convention country<sup>98</sup> - unless the Court is satisfied that the other parent is absent from New Zealand or cannot be found<sup>99</sup>.

A resident of a Convention country may make application to the District Court in New Zealand for an order for child maintenance<sup>100</sup>. Each parent is liable to maintain their children until the age of 16 years<sup>101</sup>. In determining an application, the Court considers<sup>102</sup>:

- a) The welfare of the child, including
  - i. The reasonable needs of the child; and
  - ii. The manner in which the child is being educated/trained and each parents' expectations thereto<sup>103</sup>;
- b) The parents' circumstances, including
  - i. The means and earning capacity of the parents;
  - ii. The reasonable needs of the parents and whether they support another person;
  - iii. The contribution of each parent in respect to the care of that child or another child of the relationship;
  - iv. The financial and other responsibilities of the parents;
  - v. Where the application is against a step-parent; the circumstances of that relationship and responsibility towards that child, and any other person's responsibility for the child;
  - vi. Any property and income of the child; and
  - vii. If the child is over 16 years, any earning capacity of the child<sup>104</sup>.

*New Zealand: Changing or altering the parents' incomes or costs of children*

A child maintenance order can be discharged or varied in a New Zealand Court<sup>105</sup>; the law that applies is New Zealand law as at the date of the Order<sup>106</sup>. The Court is required

---

<sup>98</sup> s149(2) FPA

<sup>99</sup> see s147 and s157 FPA; provisional orders can be made in certain circumstances; such orders are of no effect until confirmed by a competent Court in a place outside New Zealand (s147 FPA)

<sup>100</sup> s145A FPA

<sup>101</sup> s145C FPA; in certain circumstances this is raised to 18 or 20 years if the child is undergoing education or training.

<sup>102</sup> s145C(1) FPA

<sup>103</sup> s145C(2) FPA

<sup>104</sup> s145C(3) FPA

<sup>105</sup> s142B FPA

<sup>106</sup> s142C FPA

to take the following circumstances into account when determining a variation application:

- a) The child's reasonable needs.
- b) The manner in which the child is being educated and the expectations of each parent as to their education.
- c) The means, including the potential earning capacity, of each parent.
- d) The reasonable needs of each parent.
- e) The fact that either parent is supporting any other person.
- f) The financial and other responsibilities of each parent<sup>107</sup>.

Variation applications are usually at each party's individual expense; Legal Aid may also be available through the Ministry of Justice<sup>108</sup>.

England: Original Assessment/Order:

The original legislation for reciprocating jurisdictions in the United Kingdom was made in 1920<sup>109</sup>; and was extended in 1959<sup>110</sup>, making provision for the enforcement in England and Northern Ireland of maintenance orders made by a court in a reciprocating jurisdiction. The *Maintenance Orders (Reciprocal Enforcement) Act* and associated legislation<sup>111</sup> enables English courts to make provisional orders of maintenance against persons resident in certain Commonwealth and Hague Convention countries<sup>112</sup>.

The *Child Support Act* 1991 applies where children are residing in countries within the United Kingdom<sup>113</sup> or where the paying parent is employed by certain types of companies<sup>114</sup>. The English collection authority<sup>115</sup> collects and enforces Child Support pursuant to an administrative formula, which takes into account income, other children, amount of care and a rate depending on income<sup>116</sup>.

---

<sup>107</sup> s145C FPA; see also *NE v NR* FAM 1999-002158 [2006] NZFC 46 (13 March 2006)

<sup>108</sup> Legal Aid in New Zealand is a loan rather than government funding.

<sup>109</sup> *Maintenance Orders (Facilities for Enforcement) Act* 1920; as between England and Northern Ireland.

<sup>110</sup> *Maintenance Orders (Facilities for Enforcement) Order* 1959; to include most Commonwealth countries

<sup>111</sup> *The Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order* 1993. ("REMO")

<sup>112</sup> REMO s 3

<sup>113</sup> s44(1) *Child Support Act* 1991.

<sup>114</sup> s44(2A) *Child Support Act* 1991.

<sup>115</sup> Currently the Child Maintenance Service

<sup>116</sup> Schedule 1, *Child Support Act* 1991.

Separately from this administrative regime, there are limited means by which the jurisdiction of the Court may be utilised to make orders for periodical payments for the benefit of children.

First, during a marriage and prior to a petition for divorce, the Court is empowered to make an order for periodical payments where a payer fails to provide for reasonable maintenance for a child<sup>117</sup>.

Secondly, in proceedings to divide property on divorce the Court may order periodical payments for the benefit of a child<sup>118</sup>. These circumstances are generally limited to “top-up” situations in cases of maximum assessments and cases where particular payments are required in connection with a child’s education or disability. In making such an order, the Court must have particular regard to:<sup>119</sup>

- a. the financial needs of the child;
- b. the income, earning capacity (if any), property and other financial resources of the child;
- c. any physical or mental disability of the child;
- d. the manner in which he was being and in which the parties to the marriage expected him to be educated or trained;
- e. the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- f. the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future; the standard of living enjoyed by the family before the breakdown of the marriage;  
the age of each party to the marriage and the duration of the marriage;
- g. any physical or mental disability of either of the parties to the marriage.

---

<sup>117</sup> s27 of the *Matrimonial Causes Act 1973* (“MCA”).

<sup>118</sup> s23(1)(d) MCA

<sup>119</sup> s25(3) MCA

Thirdly, Schedule 1 of the Children Act 1989 (“CA”) provides for a parent, guardian or other person who is named in a child arrangements order as a person with whom the child lives to apply to the Court for orders for financial relief for the benefit of children. Financial relief for the benefit of children includes the payment of lump sums, property transfer orders and, relevantly for the purpose of this paper, periodical payments.<sup>120</sup> Given England & Wales lacks a legal regime for the division of property between unmarried couples, financial relief in Schedule 1 of the CA is most often sought at the end of a cohabiting relationships of unmarried couples.

An order for periodical payments under Schedule 1 of the CA has force until a child turns 17, but may be extended to 18 in certain circumstances.<sup>121</sup> In exercising its powers, the Court<sup>122</sup> must have regard to all the circumstances, including:

- a. The income, earning capacity, property and other financial resources of each party, present and future;
- b. The financial needs, obligations and responsibilities of each party, present and future;
- c. The financial needs of the child;
- d. The income, earning capacity, property and financial resources of the child;
- e. Any physical or mental disability of the child; and
- f. The manner in which the child is, or was expected to be, educated or trained.<sup>123</sup>

Orders of the Court for the payment of periodical payments for the benefit of children under the MCA and CA only oust the jurisdiction of the Child Maintenance Service for a maximum period of 12 months and, thereafter, parties may seek assessment from the collection authority.<sup>124</sup>

*England: Changing or altering the parents’ incomes or costs of children*

---

<sup>120</sup> CA; Schedule 1 cl 1(2).

<sup>121</sup> CA; Schedule 1 cl 3.

<sup>122</sup> Cases under the MCA are heard by the Family Court of England and Wales, whereas cases under CA may be heard by either by the County Court or the High Court of Justice.

<sup>123</sup> CA Schedule 1, cl 4(1)

<sup>124</sup> *Child Support Act* 1991, s 4(10)(aa).

Once an order is registered in a United Kingdom Court, a variation application can be made by the payer or payee, to vary the order as if it had been made by the English Court in accordance with English law<sup>125</sup>. The Court must have regard to the circumstances of the case, including any change in the matters to which the Court was required to have regard when making the Order<sup>126</sup>. Variation of orders is usually at each party's individual expense.

### **How does each contracting State assess a parent's income for the purposes of that assessment?**

The administrative process used to assess a parent's income for the purpose of Child Support/Maintenance in England is governed by the English collection authority to whom the paying parent's income is provided by HM Revenue & Customs.

In Australia, Canada and New Zealand taxation returns are used to assess income.

Australia and New Zealand legislation allows for variance in assessment in certain circumstances. The United Kingdom provides for imputation and estimation. Unique to Canada is a specific provision for payer's involved in a company or business<sup>86</sup>, and specific provision for international cases where taxation is higher<sup>88</sup> or lower<sup>89</sup> than Ontario.

The Australian and New Zealand Courts, consistent with England, usually make an Order for a periodical fixed sum of child maintenance for international cases, thus the income upon which the Order is based does not vary unless an application is made to the Court.

The legislative/administrative process used to alter or amend a parent's income in each contracting State is set out above.

### **What processes are in place in each contracting State for the enforcement of international Child Support/Maintenance?**

---

<sup>125</sup> s9 REMO

<sup>126</sup> Schedule 1, cl 6, *CA*.

## Australia

A registrable overseas maintenance liability for periodic amounts of child maintenance is registrable in Australia for collection by the Australian collection authority<sup>127</sup>, including arrears<sup>128</sup>. Such a liability is also registrable in an Australian Court. Notice is given to the Australian resident who may apply, under certain circumstances, to set the registration aside. Non-periodic amounts (such as lump sums and/or fees payable direct to institutions such as schools or for health matters) are registrable with the Australian collection authority but must be personally enforced by the payee.

Once an order is registered, there are two avenues for enforcement, depending on whether the payee is able to have the Australian collection authority enforce on their behalf, or whether they are entitled or able to enforce themselves. There are administrative options available to the Australian collection authority including:

- a) Garnishment of wages;
- b) Garnishment of bank accounts/debts owing to parties;
- c) Interception of income tax returns;
- d) Departure prohibition orders – whereby the payer is unable to leave Australia until such time as they make satisfactory arrangements to pay the debt;
- e) Applications to Court, including for sequestration (bankruptcy), sale of property/assets (including motor vehicles and personalty), appointment of a receiver and manager to a person's affairs,

## Canada (Ontario)

A support order is registered by the appropriate overseas authority sending a certified copy of the Order to the Ontario collection authority, who will then send it to the Ontario Court, who will register it as an Order of the Ontario Court<sup>129</sup>. Notice is given to the Ontario resident, who may apply, under certain circumstances, to set the registration aside. Once registered, the order may be enforced. There is a discretion

---

<sup>127</sup> s18A; s4 *Child Support (Registration and Collection) Act 1989* (“CSRC”)

<sup>128</sup> s19 CSRC.

<sup>129</sup> ss17-21 ISOA.

available to the FRO Director as to whether or not enforcement action should be taken<sup>130</sup>.

The FRO can enforce the support order through:

- a) Notice of Garnishment (including garnishment of bank accounts);
- b) Garnishment of Federal Government payments;
- c) Reporting to a Credit Bureau;
- d) Reporting to a professional organisation;
- e) Suspension of driver's licence or other federal licence;
- f) Property lien;
- g) Charge against real property;
- h) Writ of seizure and sale;
- i) Default hearing proceedings;
- j) Jail<sup>131</sup>.

The Director of<sup>the</sup> FRO can also publish a payor's name and information on the Internet if they remain in default, in certain circumstances<sup>132</sup>.

The FRO has not released any recent enforcement statistics.

### New Zealand

A maintenance order from a Commonwealth or designated country may be registered in New Zealand by filing a certified copy in the District Court in New Zealand<sup>133</sup>. Once registered, the New Zealand collection authority can take steps to enforce payment.

The options include:

- a) Deduction notice against benefit payments, bank accounts or wages;
- b) Court options, including seizure and sale; and applications for contempt which include penalties such as community service<sup>134</sup>;

---

<sup>130</sup> *Family Responsibility and Support Arrears Enforcement Act* 1996 (S.O. 1996 c.31) ("FRSAEA")

<sup>131</sup> FRSAEA ss40-50

<sup>132</sup> FRSAEA s 61.1

<sup>133</sup> s136 FPA

<sup>134</sup> *Child Support Act* 1991 s 196

- c) Placing a charge against property (including life insurance) until such time as the debt is paid; or
- a) Issuing a summons requiring a payer to come to Court to have their finances examined. Failure to attend may involve an arrest warrant being issued<sup>135</sup>.

In New Zealand, as at 30 June 2024, there were approximately 103,000 liable parents and 102,000 receiving parents, with 145,000 relevant children. In the year 1 July 2023 to 30 June 2024, \$480,000,000 was collected from liable parents; the number of people with child support debt was 77,081; and the outstanding child support debt was \$1,005 billion<sup>136</sup>.

### England

A maintenance order from a Hague Convention country may be registered in England by the English collection authority filing a certified copy of the Order in the Court<sup>137</sup>; such registration may be refused if it is:

- a. manifestly contrary to public policy; or
- b. obtained by fraudulent procedure, or
- c. if proceedings are pending in the UK and were first instituted; or
- d. if the order is incompatible with a UK order<sup>138</sup>.

The registration must be refused if the payer was not given notice of the proceedings or did not have sufficient time to defend them<sup>139</sup>.

The English collection authority (CMS) may collect arrears administratively, including by:

- a) Deduction from earnings; including from those in the Armed Forces; - for Armed Forces, see Reg 7 of the Armed Forces (Forfeitures and Deductions) Regulations 2009, which empowers the Defence Council to make an order in

---

<sup>135</sup> Child Support Act 1991, ss130,131,134, 153-177; 178-207

<sup>136</sup> <https://www.ird.govt.nz/about-us/tax-statistics/social-policy/child-support-customers-collection> obtained 24 June 2025

<sup>137</sup> s6(3) REMO

<sup>138</sup> s6(6) REMO

<sup>139</sup> s6(7) REMO

- similar terms authorising a deduction to be made from the pay of a respondent (member of the Armed Forces) to meet the terms of a maintenance order
- b) Deduction by way of lump sum or regular deductions from bank accounts; and
  - b) If the payer is deceased, from their estate.

If the English collection authority makes an application to Court to enforce child support/maintenance, then the Court may make enforcement orders, including:

- a) Seizure and sale of assets;
- b) Issue of a charge against assets;
- c) Freezing orders;
- d) Passport confiscation;
- e) Driving licence disqualification;
- f) Prison sentences.<sup>140</sup>

A person with the benefit of an order for the payment of periodical payments may apply to enforce an order and arrears under the order as if a judgment debt, including application for committal to prison of the defaulter.<sup>141</sup> Leave of the court is required to enforce arrears due under an order for an interim or final order for periodical payments if the arrears became due more than 12 months before the date on which proceedings for enforcement were commenced.<sup>142</sup>

Between June and September 2024, the English collection authority made 5,100 deduction orders, collecting £4,100,000. In that quarter, there were 140 prison sentences, one passport confiscation and two driving licence disqualifications relating to unpaid maintenance<sup>143</sup>.

### What are the impediments to efficient changes to assessment/Orders and enforcement of Child Support/Maintenance between these four jurisdictions?

The legislative pathway for assessment, registration and collection in each jurisdiction appears to be cohesive and could be anticipated to work relatively smoothly.

---

<sup>140</sup> Maintenance Enforcement Act 1991 s 1 and Child Maintenance and Other Payments Act 2008 sections 20-30.

<sup>141</sup> *L v L (School Fees: Maintenance: Enforcement)* [1997] 2 FLR 252.

<sup>142</sup> MCA, s 32(1).

<sup>143</sup> <https://commonslibrary.parliament.uk/research-briefings/cbp-10082/> accessed 12 May 2025.

However, given there are no requirements for the prompt transmission of overseas orders between jurisdictions, if an order is made in one jurisdiction and not transferred promptly to another jurisdiction, arrears may accrue with or without the payer's knowledge. It is worthy of note that this is true across international and national borders for some dominions.

Changes to parents' incomes and costs of children may be administrative or require judicial intervention, depending upon the nature of the order/assessment and the interjurisdictional recognition of orders.

Each jurisdiction also has powers to enforce Child Support/Maintenance that differ from jurisdiction to jurisdiction. The English collection authority charges fees for payment and collection of Child Support/Maintenance<sup>144</sup>. Each jurisdiction has an administrative assessment pathway as well as a judicial assessment pathway, depending on the residence of the other parent.

### Summary

Each of the four countries change costs of children and parents' incomes in international child support/maintenance assessments/orders in different ways.

Perceived advantages of the Australian and New Zealand systems are that the registration and collection systems are federally based, and thus have uniform legislation across each country. The bilateral agreement between Australia and New Zealand ensures a quick and efficient transmission of support between these jurisdictions.

An advantage of the English system is access to all Commonwealth countries; a disadvantage is the fees charged in order to access the government registration and collection service.

---

<sup>144</sup> including a registration fee of £20; payers pay an extra 20% fee; and payees have a 4% deduction fee each occasion.

An unusual feature of the Canadian system is that it only considers the paying parents' income; and further that the Federal system only extends to children of divorce. Although the Federal CSG and the Ontario CSG are similar, each province and territory has different child support guidelines and levels, making assessment of Child Support/Maintenance different from province to territory. In Canada, collection and enforcement are also province/territory based, as opposed to federally based.

#### Recommendations from an Australian perspective

- A. The extension of intercountry treaties, similar to that between Australia and New Zealand, should be investigated and, if possible, negotiated and enacted, to ensure swifter and more cohesive administrative arrangements between countries, reducing Court resources and costs, and ensuring children are better supported by both parents in a more efficient and cost effective manner. This is in line with Australia's (and other countries') obligations pursuant to *Hague Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations*.
- B. Time limits between the making of a Child Support/Maintenance Order and its transmission between jurisdictions ought to be considered; such consideration should also take into account the date upon which the payer became resident in each jurisdiction.
- C. Given Recommendation B; the enforcement of arrears under a Child Support/Maintenance order should be the subject of judicial discretion at the time of registration.
- D. Further options for enforcement should be considered, including potentially suspension of licences and notification to professional bodies.