

The Administration's Response to the
"Supplementary Information on
Child Support Agencies in Overseas Countries"

Introduction

This paper contains the Administration's response to the research report entitled "Supplementary Information on Child Support Agencies in Overseas Countries" prepared by the Research and Library Services Division of Legislative Council Secretariat in April 1999.

Background

2. In March 1998, in order to assist them in considering a proposal to establish a maintenance board to collect maintenance on behalf of maintenance payees, the Home Affairs Panel of the then Provisional Legislative Council asked its secretariat to carry out a research on the operation and effectiveness of overseas intermediary bodies responsible for the collection and enforcement of maintenance payments. The Secretariat's report, entitled "Child Support Agencies in Overseas Countries" ("the first report"), was discussed by the Home Affairs Panel of the present Legislative Council in December 1998. It covered the Child Support Agencies ("CSA") in Australia, New Zealand, United Kingdom and United States of America. During the discussion, Panel Members requested further information on whether the agencies had reviewed their schemes and on the areas requiring improvements identified in the reviews.

3. The requested information is contained in the report “Supplementary Information on Child Support Agencies in Overseas Countries” (“the second report”). On 28 May 1999, the Clerk to the Panel sent a copy of the second report to Home Affairs Bureau for response prior to the Panel’s meeting on 14 June 1999.

The Administration’s Response

General

4. Like the first report, the second report contains a lot of useful, factual information to assist in considering whether a maintenance board, similar to the CSAs overseas, should be established in Hong Kong. The Administration will take both reports into consideration in its current review of the law and administrative practices which affect divorcees and their children. The review is the subject of another paper presented by HAB to the Panel for discussion on 14 June 1999.

5. While most of the information in the first report addresses the question whether a maintenance board should be established in Hong Kong, the usefulness of the second report lies mainly in highlighting specific operational matters which require attention if a maintenance board is established. Indeed, regardless of whether a board is set up, some of the information is useful in our review. For example, Appendix II to the second report, which describes “State Best Practices in Child Support Enforcement

in the US” has provided us with some new ideas on measures to enforce payments. A maintenance board, it appears, is not a prerequisite to the feasibility or otherwise of such measures.

Assessment of maintenance

6. Para. 5.1 of the second report states that “while all three countries identified weaknesses in their child support schemes, none of them would want to dismantle the schemes and revert to a court-based system”. The “court-based system” refers to the one concerning the assessment of maintenance. One of the problems experienced in the court-based system of these countries, which led to the establishment of the CSAs, was the inconsistency as a result of the differing standards adopted by individual courts within the same country.

7. Such a problem apparently does not exist in Hong Kong. We believe that the proposers of a maintenance board do not, quite rightly in our view, suggest transferring such a judicial power to an executive authority. Yet, the assessment of maintenance is a key function of the CSAs overseas. We wonder whether the omission of such a function would result in the proposed maintenance board being less effective than the CSAs in collecting payments. For example, a CSA will have acquired detailed information on the maintenance payers during the assessment and such information would facilitate tracking them down when they default in payment.

Administration of CSAs

8. We note from paragraphs 6.9 to 6.24 of the second report the importance attached by overseas CSAs to the employment of personnel skilled in human interaction and handling of sensitive and personal issues. This is an important requirement because, as stated in para. 6.12 of the second report, the CSAs have to deal with “the intensely complex nature of human relationships and the stresses and tensions inherent in the aftermath of a relationship breakdown”. According to para. 6.22 of the report, the reviews conducted on CSAs overseas “also reminded the governments the importance of striking a balance between privacy rights of their clients and the need to assess and collect child support”.

9. The above-mentioned paragraphs have led us to the question as to who are the clients of the CSAs. Is a CSA - or the proposed maintenance board - an agent of the maintenance payers, an agent of the maintenance payees or an impartial third party to protect the interests of both? The role of the proposed board must be clearly defined and accepted by the maintenance payers and payees alike. Otherwise, it would be vulnerable to criticisms of breach of confidence.

10. Paragraphs 6.22 to 6.24 of the second report dealing with privacy reminds us of a point overlooked in our earlier discussions on the proposed maintenance board. In Hong Kong, disputes about maintenance payments, like most matrimonial disputes, are regarded as strictly private matters between the two parties. Therefore, we need consider whether

direct intervention by the Government into the privacy of both parties is appropriate, when one of the parties may or may not consent to the intervention.

Enforcement

11. We note from paragraphs 6.25 to 6.36 of the second report the various recommendations made to address the assessment and collection problems faced by the CSAs. It would appear from paragraphs 6.29 to 6.32 that as in Hong Kong, self-employed maintenance payers present particular problems. The overseas reviews have come up with two measures to address the collection problem: sub-contracting debts to private companies (paragraphs 6.33 to 6.36) and encouraging voluntary compliance (paragraphs 6.37 to 6.39).

12. It is worth noting that three of the four countries with CSAs (i.e. Australia and New Zealand mentioned in paras. 6.34 and 6.35 of the second report and USA mentioned in para. 13.19 of the first report) have been considering whether maintenance arrears can be collected more effectively by private companies than the CSAs. On the other hand, we share the view about encouraging voluntary compliance and will consider further, in our review, what can be done by way of public education.

Conclusion

13. The above response to the second report is for Members' reference. We welcome any views which Members may have on the proposal to set up a maintenance board and we will take the views into account in the review referred to in para. 4 above.

Home Affairs Bureau

June 1999