

Child Support

Introduction

- 6.1 The third term of reference for the inquiry examines whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children after separation.
- 6.2 The Child Support Scheme (CSS) is administered by the Child Support Agency (CSA), which is part of the Commonwealth Department of Family and Community Services (FaCS).
- 6.3 The committee is deeply concerned by the level of community dissatisfaction and distress associated with the CSS. These are some of the principal reasons why the Attorney-General and the Minister for Children and Youth Affairs referred this inquiry to the House Standing Committee on Family and Community Affairs.
- 6.4 The committee notes that the CSS has a number of complex interrelated components, so any change in one part could impact significantly on other parts of the scheme. Changes to payers will have consequences for payees and vice versa.
- 6.5 This chapter begins with an outline of the CSS as it currently operates, particularly in relation to parents' care of and contact with their children, then focuses on significant criticisms of the formula and the way it applies to individual circumstances. In this context fairness is a particularly difficult issue to determine as many payees will inevitably think they are not being paid enough, and payers will think they are paying too much. Achieving the balance is a delicate act. There has been no attempt in this chapter to pick up the new terminology in Chapter 2 as this would make discussion of the detail of the current CSS confusing.

- 6.6 As with all other aspects of this inquiry, the focus of the committee's consideration is the best interests of the child.

The current Child Support Scheme – how it works

- 6.7 The CSS was introduced in 1988 with the bi-partisan support of Parliament to:
- ... strike a fairer balance between public and private forms of support [for children] to alleviate the poverty of sole parent families and to achieve some constraint on Government outlays on sole parent payments ...¹
- 6.8 The objectives of the scheme are that:
- parents share in the cost of supporting their children according to their capacity;
 - adequate support is available to all children not living with both parents;
 - Commonwealth involvement and expenditure is limited to the minimum necessary for ensuring children's needs are met;
 - work incentives for both parents to participate in the labour force are not impaired; and
 - the overall arrangements are non-intrusive to personal privacy and are simple, flexible and efficient.²

The current child support formula

- 6.9 The amount of child support payable is calculated according to a formula set out in the *Child Support (Assessment) Act 1989*. The formula was developed by the Child Support Consultative Group (CSCG), a group appointed by the Government on 22 May 1987, whose functions included:
- ... to act as a mechanism for consultation with major interest groups and to advise the Government on a legislative formula and the administrative assessment of child support ...³
- 6.10 The formula is expressed in percentage terms in relation to the payer's income. The other parent's income is also taken into account. The formula is applied to taxable income after deducting an amount for personal

1 Cabinet Sub-Committee on Maintenance, *Child Support: A discussion paper on child maintenance*, AGPS, Canberra, Oct 1986, p 14.

2 *Child Support Scheme facts and figures 2001-2002*, Child Support Agency and Attorney-General's Department, Canberra, 2003, p 7.

3 Child Support Consultative Group, *Child Support: Formula for Australia: A report from the Child Support Consultative Group*, Department of Social Security, Canberra, May 1988, p 3.

support ('exempt income'). The percentage varies according to the number of children.⁴ The formula is based on taxable income rather than on expenditure on children.

6.11 The formula is adjusted to recognise a range of different circumstances, including when a parent has another child as part of a new relationship (see 'Second families' later in the chapter), or where children spend 30% or more time with each parent (see 'Levels of care' later in the chapter). Thus the formula itself links time spent with children and money.

6.12 The formula is expressed as:

$$\{ (A - B) - (C / 2) \} \times D = E$$

where

- A is the payer's child support income amount (taxable income)
- B is the exempted income amount
- C is the amount of payee income above the disregarded income amount
- D is the child support percentage
- E is the amount of child support payable by the payer.⁵

6.13 An examination of several overseas jurisdictions (New Zealand; United Kingdom; Canada - Ontario; USA - New York State, Wyoming State, Washington State, Wisconsin and Delaware; France; Germany and the Netherlands) revealed in each jurisdiction the child support formula calculation is linked to the taxable or net income of one or both parents.⁶

Levels of care⁷

6.14 The CSA's data shows that few families currently share the care of their children equally (see Table 6.1).

6.15 The child support formula recognises four ways in which parents share the care of their children:

- Sole care – a parent has sole care of the children when they live with that parent most of the time (256 nights or more) and are in the other parent's care for less than 30% of the time;

4 Child Support (Assessment) Act 1989, s 37. The child support percentages payable are 18% for 1 child, 27% for 2 children, 32% for 3 children, 34% for 4 children and 36% for 5 children or more.

5 *Child Support Scheme facts and figures 2001-2002*, p 8.

6 Department of Family and Community Services, sub 1700, pp 15-16.

7 Child Support (Assessment) Act 1989, s 8 ss 47 – 49.

- Major care – a parent has major care of the children when the children are in their care for between 60% and 70% of the time (220 to 255 nights);
- Shared care – the parents share care when they each have care of the children for between 40% and 60% of the time (146 to 219 nights); and
- Substantial care – a parent has substantial care of their children when the children are in their care between 30% and 40% of the time (110 to 145 nights).

Table 6.1 CSA Caseload by care (May 2003)

Time children spend with payee		CSA Collect		Private Collect		Total	
Care code	% of nights	Number	%	Number	%	Number	%
Substantial	30.0 – 39.9	953	0.3	2 105	0.6	3 058	0.5
Shared	40.0 – 59.9	6 349	2.0	20 500	6.1	26 849	4.1
Major	60.0 – 69.9	5 661	1.8	10 629	3.2	16 290	2.5
Sole	70.0 and over	308 263	96.0	301 465	90.1	609 728	93.0
Total		321 226	100.0	334 699	100.0	621 871	100.0

Source: Department of Family and Community Services sub 1251, p 14.

- 6.16 Where the parents each have care of the children for at least 30% of the time both parents are assessed as liable to pay and are also eligible to receive child support, and the calculations are offset. In addition, the exempt income and the percentages used to calculate child support change. This is to recognise that there are costs associated with having care of the children, and that where a child is living in two households the overall costs are greater than for a child living in only one household.⁸
- 6.17 It follows that there are financial consequences, for both non-resident parents who are child support payers and resident parents who are child support payees, of decisions on contact with their children. Contact above the threshold of 30% will reduce the payer's liability to pay child support and reduce child support payments available to the payee, except where the payer is on a minimum assessment of \$260 per year or \$5 per week.

Change of assessment⁹

- 6.18 Either parent can apply to have their child support assessment changed if they believe it does not accurately reflect their circumstances or those of

⁸ Department of Family and Community Services, sub 1251, p 13.

⁹ Child Support (Assessment) Act 1989, Part 6A.

the other parent. The CSA can only change the assessment if one or more of ten identified reasons is established.

- 6.19 Of the ten reasons, Reason 1 is particularly relevant to issues of care and contact with children:
- ... the costs of maintaining a child are significantly affected by either parent's high costs of contact with the child ...¹⁰
- 6.20 A parent's contact costs are considered to be high if they are more than 5% of the parent's income for child support purposes. Of the 54,110 applications for change of assessment made in the year ending June 2003, 4,124 applications related to Reason 1, and changes were made to the assessment in 1870 of those cases.¹¹

The child support population

Who pays, who receives?

- 6.21 The CSA estimates at November 2003 that 85% to 90% of separated families with children have some involvement with the CSS.¹² Parents can make their child support arrangements in three ways:
- Self-Administration: an entirely private arrangement between the parents, which includes cases where child support is not sought;
 - Private Collect: registration with the Child Support Agency but with payment made directly between the parents; or
 - CSA Collect: registration and collection by the Child Support Agency.¹³
- 6.22 The CSA's caseload as at 30 June 2003 consisted of 711,541 cases, representing 640,707 paying parents and 636,694 payee parents, with responsibility for the financial support of almost 1.1 million children. Of this caseload, 50.6% were Private Collect cases and 49.4% were CSA Collect cases.¹⁴
- 6.23 Around 91% of CSA Collect payers are male and 9% are female. Likewise, around 9% of CSA Collect payees are male and 91% of CSA Collect payees are female.¹⁵

10 The Guide: CSA's online technical guide, viewed 12/10/03, http://www.csa.gov.au/guide/2_6htm#r1
Child Support (Assessment) Act 1989, s 117 (2)(b)(i)(A)

11 Department of Family and Community Services, sub 1605, p 40.

12 Child Support Agency, unpublished data, Nov 2003

13 *Child Support Scheme facts and figures 2001-2002*, p 10.

14 Department of Family and Community Services, sub 1251, p 11.

15 Department of Family and Community Services, sub 1605, p 9.

How much do parents pay?

6.24 In July 2003 the average child support payable was \$57.23 per week,¹⁶ and over 50% of payers paid \$40 or less per week (see Table 6.2).

Table 6.2 How much do parents pay? (June 2003)

Proportion of CSA payers		Weekly child support
Cumulative %	%	
39.7%		\$5 or less
56.2%		\$40 or less
78.5%		Less than \$100
	21.5%	\$100 or more

Source: Department of Family and Community Services sub 1251, p 12, Based on CSA Client Research Dataset, June 2003.

6.25 The low levels of child support paid reflect the low incomes of child support payers. Over 40% of payers have child support incomes of \$20,000 or less (see Table 6.3).

Table 6.3 Child support income of payers and payees [June 2003]

Income Range	Payer		Payee	
	\$	Number	Percentage	Number
0-10 000	217 808	31.8	*506 466	*74.0
10 001-20 000	125 245	18.3		
20 001-30 000	129 117	18.9	97 843	14.3
30 001-40 000	85 468	12.5	42 218	6.2
40 001-50 000	55 910	8.2	20 485	3.0
50 001-60 000	31 890	4.7	9 984	1.5
60 001-70 000	16 240	2.4	3 644	0.5
70 001-80 000	8 275	1.2	1 432	0.2
80 001-90 000	4 585	0.7	729	0.1
90 001-100 000	2 651	0.4	413	0.1
100 001-110 000	1 671	0.2	265	0.0
110 001 and over	5 290	0.8	669	0.1
All	684 150	100.0	684 148	100.0

* This number and percentage for payees relates to the income range \$0 – 20 000.

Source: Department of Family and Community Services, sub 1605, p 8.

16 Department of Family and Community Services, sub 1605, p 8.

The formula

- 6.26 There is broad acknowledgment that parents should accept responsibility for the financial support of their children. However, it is clear from this and other inquiries that there is a widespread community perception that the CSS does not work fairly for parents. Significant criticisms of the major components of the child support formula follow.

The cost of children

- 6.27 The formula uses the following percentages to calculate the paying parent's child support liability (see Table 6.4):

Table 6.4 Child support formula percentage by number of children

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

Source: *Child Support Consultative Group, Child support: Formula for Australia: A report from the Child Support Consultative Group, Department of Social Security, Canberra, May 1988, p 67.*

- 6.28 The starting point for the CSCG in determining those percentages was available evidence that might indicate the proportion of family income normally devoted to children in a two parent family. Additional factors considered were: costs of rearing a child where parents do not live together; indirect costs of children to resident parents, such as loss of workforce participation; contact costs incurred by non-resident parents; retention of appropriate incentives to earn for non-resident parents; and the views of the community on what would be considered a fair level of child support.¹⁷

- 6.29 The CSCG stated that:

... The fundamental precept of the Consultative Group is that all children of a parent share equally in that parent's income ...

... The Consultative Group has been concerned to design the formula so as to ensure fairness between the parents and equal responsibility for contribution to their children's financial support, according to their capacity to do so.¹⁸

- 6.30 In commenting on the formula Professor Parkinson explained:

There are two basic ways, as I understand it, to structure a child support scheme. The first is to look at costs and allocate the costs

17 Child Support Consultative Group, p 68.

18 Child Support Consultative Group, p 7.

... The second is to look at incomes and allocate incomes. We [Australia] made a policy choice, whether consciously or not, to go down the second route and say, 'A percentage of your income should be made available.' So the higher the living standard of the parent, the higher the living standard of the child and the other family.¹⁹

- 6.31 There appears to be a perception that the formula is related to previous lifestyles of the intact family because the concept of capacity or income is often translated as standard of living.
- 6.32 As the CSCG pointed out 'Separating the discrete costs of children from total family costs is a problem confronting all studies in this area ...'²⁰ The following facts revealed from research available at that time were highlighted by the CSCG in developing the formula:
- as the number of children in the family increases the per child costs decline;
 - more money is spent on children as they grow older;
 - an average percentage of family income devoted to a first child was about 20%. When the Australian data was separated from the international data a lower figure of about 16% was arrived at;
 - shares of income devoted to the second and third child were each about half the first, and shares devoted to subsequent children were about half that for the second and third;
 - it costs less to maintain an intact family at a given standard of living than it does to maintain the same family after parents separate; and
 - the share of income devoted to a child in a one parent family is higher than in a two parent family.²¹
- 6.33 Age of the child was rejected for inclusion in the original formula to avoid undue complexity. Apparently a similar decision had been made in most states in the USA.²²
- 6.34 In developing the formula percentages a wide range of overseas research on the cost of children was considered but there was limited comparable Australian data. It was not explained how the overseas research was used, nor how it translated into the Australian taxation and social security context.²³ In addition, the committee notes in comparison to today,

19 Parkinson P, transcript, 13/10/03, p 51.

20 Child Support Consultative Group, p 69.

21 Child Support Consultative Group, pp 70-72.

22 Child Support Consultative Group, p 70.

23 Department of Family and Community Services, sub 1605, p 20.

- computing technology available precluded detailed analysis of data for the formula.
- 6.35 In 1993/1994 a review of the formula by the Joint Select Committee on Certain Family Law Issues found the formula percentages to be arbitrary and recommended research into the cost of children in Australia be conducted to determine whether the percentages correctly reflected the true costs of children.²⁴
- 6.36 Both the Social Policy Research Centre, University of New South Wales (SPRC) and the National Centre for Social Economic Modelling Pty Ltd, University of Canberra (NATSEM) undertook research for the then Department of Social Security and/or FaCS to establish a methodology to calculate the cost of children.²⁵
- 6.37 The Budget Standards estimates produced by SPRC, and later updated by FaCS, estimates what parents need to spend to provide a particular standard of living for their children. NATSEM's research estimates the actual average spending on children by Australian families using Australian Bureau of Statistics (ABS) 1993-94 Household Expenditure Survey data.²⁶
- 6.38 Limitations on NATSEM's estimates are that they are for intact families, not separated families, at selected income levels and are constrained by the quality of the ABS sample survey data. Limitations of the SPRC estimates are the highly subjective assessments of the expenditure required to deliver a particular standard of living. Both estimates are constrained by not taking account of indirect costs of children especially for those exercising substantial care of children.²⁷ The committee believes that the SPRC research examined during this inquiry was not realistic in terms of the costs associated with raising a child. In particular, the

24 Joint Select Committee on Certain Family Law Issues, *The operation and effectiveness of the Child Support Scheme*, Parliament of the Commonwealth of Australia, Canberra, Nov 1994, p 303.

25 Saunders P et al, *Development of Indicative Budget Standards for Australia*, Social Policy Research Centre, University of New South Wales, Sydney, Mar 1998, pp xxxiv 633p, Policy Research Paper Number 74; Percival R, Harding A & McDonald P, *Estimates of the costs of children in Australian families 1993-94*, Report prepared for the Department of Family and Community Services by the National Centre for Social and Economic Modelling (NATSEM), University of Canberra, FaCS, Canberra, Mar 1999, vi 82p, Policy Research Paper No 3.

26 See: Department of Family and Community Services, sub 1605, p 21; McHugh M, *The costs of children: Budget standards estimates of the Child Support Scheme*, Social Policy Research Centre, University of New South Wales, SPRC, Sydney, July 1999, 22p app, SPRC Discussion Paper No 103; National Centre for Social and Economic Modelling, University of Canberra, All they need is love... and around \$450,000, *AMP-NATSEM Income and Wealth Report*, Issue 3, Oct 2002, 11p.

27 Department of Family and Community Services, sub 1605, p 27.

committee was concerned with the scope of the expenditure items considered in the analysis.

6.39 A summary of findings from this research²⁸ is:

- costs for one child are considerably more than the amount that the majority of child support payers pay (see Table 6.2);
- NATSEM's research found that it is only at higher income levels that the research shows current child support liabilities can exceed basic costs (see Table 6.5);
- costs of children generally increase with age of the child (which suggests parents with older children do less well than those with younger children);
- NATSEM research found that while the costs of children rose in line with rising family incomes, at the same time they were found to fall as a proportion of income; and
- both pieces of research state there are economies of scale for a second child, however, not to the extent that they are only half the cost of the first child as is reflected in the formula assessment (18% for one child, 27% for two).

Table 6.5 AMP NATSEM Estimated average costs of children, by number of children & family income, March 2002

Level of Income	Average Income \$pw	Number of Children		
		1 child \$pw	2 children \$pw	3 children \$pw
Low income	\$567	111	196	266
Middle income	\$1 195	173	295	390
High income	\$2 426	281	467	606
Average	\$1 324	183	310	410

Source: AMP NATSEM Income and Wealth Report, Issue 3, Oct 2002, Table 2, p 4.

6.40 Despite this research there are many child support payers who believe that they pay far more than the cost of raising their children.²⁹ They believe that any excess to these costs is in effect spousal maintenance. For example, a father said:

... I am a father who has joint residency of my eight-year-old daughter...[The child support formula] is a ridiculous method that

28 McHugh M, pp 19-20; NATSEM, pp 3-5; Harding A & McHugh M, transcript, 3/11/03, 25p; Department of Family and Community Services, sub 1605, p 27.

29 Witness 1, transcript, 5/9/03, p 3; Brown D, sub 1611, p 3; Astle C, sub 913, p 5.

we have a percentage based on assessable annual income that is just taken out of net income and I do not think it really has any relevance to the standard costs of raising children...I do not see where that percentage really comes into play...Those parents who are paying parents who have an income in excess of, say, \$55,000 a year are going to be paying more than the costs of providing for their children in terms of child support. That money...will be considered as de facto spousal maintenance.³⁰

- 6.41 A number of contributors to the inquiry believe that child support payments should be directly related to the cost of children.³¹ Whether the formula should be based purely on the cost of children or, as it currently is, on the principle of 'parents sharing in the cost of supporting their children according to their capacity' is a contentious one.
- 6.42 Professor Parkinson suggested that '... So I think we can go down a cost model as long as we find some balance for lower income families ...'³²

Conclusion

- 6.43 Unfortunately after all of the valuable work of the SPRC and NATSEM the committee finds itself in a similar position to the Joint Select Committee on Certain Family Law Issues on the question of the cost of children. Some analysis has been done, but for intact families only, not separated families. After some seven years the answers needed to accurately evaluate the formula percentages are still not available. Key researchers from both NATSEM and SPRC agreed that modelling the cost of children in separated families is needed.³³ The committee concludes that all available research portrays what intact families spend on children not what children cost.
- 6.44 Substantial complaints about the cost of child support continue to be made very forcibly. The anger and frustration amongst child support payers and payees continues.
- 6.45 The committee believes it is imperative that independent modelling of the cost of children in separated families should be undertaken and published to establish what the impact would be if child support payments were based upon those results. In any event, the results of the study should be used to determine the basis of future child support payments.

30 Peter, transcript Robina, 4/9/03, pp 36-37.

31 Allan, transcript, 24/9/03, p 98.

32 Parkinson P, transcript, 13/10/03, p 51.

33 Harding A, transcript, 3/11/03, p 4.

Taxable income or after tax income

6.46 The child support formula currently uses the parents' taxable income from the most recent tax assessment plus any supplementary income which includes overseas employment income that is exempt from Australian tax, less rental property losses and reportable fringe benefits.

6.47 In devising the child support formula the CSCG recommended it apply to taxable income (before tax) rather than after tax (net income). This was done because:

- this was consistent with placing child support as a primary responsibility equivalent to paying tax;
- before tax income is readily identifiable during the year, thus allowing a non-resident parent to more easily predict their liability, compared with after-tax income that is not certain until after a tax assessment;
- a before tax base impacts less heavily on lower income earners because lower marginal tax rates apply at lower income levels;
- it is easier for the CSA to calculate;
- using taxable income would not add to the difficulties likely to be encountered in calculating more complex cases (such as self-employed persons); and
- administrative assessment under a formula which takes into account a tax liability could not apply to recent years of income figures for provisional taxpayers.³⁴

6.48 Subsequent reviews of the formula by the Child Support Evaluation Advisory Group in 1991 and the Joint Select Committee on Certain Family Law Issues in 1994 supported the use of taxable income.

6.49 However, many non-resident paying parents provided evidence that suggested child support should be calculated on after tax income, rather than taxable income.³⁵ For example, the Lone Fathers Association (Aust) Inc said:

If the present Child Support Scheme continues, the Child Support formulae should calculate child support payable, at appropriate flat or declining percentage rates, on the basis of net income after tax rather than gross taxable income. This should be done in order

34 Child Support Consultative Group, p 90.

35 Witness 4, transcript, 5/9/03, p 16; Jo1, transcript, 29/8/03, p 45; Dennis, transcript Wollongong, 1/9/03, p 50; Lone Fathers Association SA, transcript, 24/9/03, p 68; Name withheld, sub 128, p 1; Name withheld, sub 699, p 1; Girdali F, sub 503, p1.

to base the formulae on a truer assessment of actual capacity to pay.³⁶

DADs Australia stated:

To take child support on gross wage is ridiculous. It should be based on the cost of raising the child.³⁷

One father with shared care said:

We need a fair child support system to be based on the minimum wage, not gross income.³⁸

6.50 One witness noted while there is no tax consideration for the payer, payee child support is tax free.³⁹ Consideration was given by the committee to the possibility of allowing a tax deduction for child support payers.

6.51 Professor Harding of NATSEM prefers the formula based on after tax income because it currently takes no account of tax scale changes. She noted there has been a significant change in the tax system since 1988 when the formula was developed.⁴⁰

6.52 FaCS suggested that payers have criticised the taxable income approach because payers believe:

... after tax income more realistically reflects the resources available to payers from which to pay child support, and other parents support their children from after tax income ... [and] that a payee on social security is financially better off than a low earning payer, considering the net value of disposable income available to them.⁴¹

6.53 Similar criticisms were raised by the Joint Select Committee on Family Law Issues as part of its review of the CSS.⁴²

6.54 From the outset the CSCG stressed that:

... a formula that operates on income without deducting income tax will have lower percentage figures and a higher disregard for the custodial parent's income than would a formula that operated on income after deducting income tax.⁴³

6.55 FaCS advised that using after tax income:

36 Lone Fathers' Association (Aust) Inc, sub 1051, p 36.

37 DADs Australia (Hardwick R), transcript Blacktown, 1/9/03, p 18.

38 Martin, transcript, 24/9/03, p 96.

39 Witness 1, transcript, 5/9/03, p 3.

40 Harding A, transcript, 3/11/03, p 7.

41 Department of Family and Community Services, sub 1251, p 19.

42 Joint Select Committee on Certain Family Law Issues, pp 350-351.

43 Child Support Consultative Committee, p 89.

... may disadvantage paying parents earning lower incomes, as they pay lower levels of tax, and would therefore pay a higher proportion of their after-tax income in child support ...⁴⁴

- 6.56 In other words assessing child support on the basis of after tax income with different percentages in the formula would not necessarily change the overall amount of child support paid.

Conclusion

- 6.57 The committee agrees that:
- after tax income gives a more accurate indication of the income available to non-resident parents to pay child support;
 - the impact of the critical changes in the taxation system since 1988 on the application of the child support formula needs to be determined as a priority with a view to deciding whether the income base should be moved to after tax income; and
 - if after tax income were used to calculate income in the formula, the percentages would need to be re-examined, together with the relationship between such a change and the results of the cost of children modelling.

Exempt income and disregarded income⁴⁵

- 6.58 In establishing the formula the CSCG included a self support component of income for the non-resident parent

... below which there could reasonably be said to be no capacity to pay without impoverishing the non-resident parent and any second family ...⁴⁶

- 6.59 This is now called exempt income and is described as:

... an allowance for living expenses and is deducted before the child support percentage is applied. It is based on 110% of the single rate of social security pension. If the payer has care of other natural or adopted children, the exempt amount is increased to 220% of the partnered pension rate plus an allowance for each child depending on their age.⁴⁷

- 6.60 The current exempt income is \$12,315. If the paying parent has more children from a second family, the amount increases to \$20,557 plus \$2,235
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44 Department of Family and Community Services, sub 1251, p 20.

45 Child Support (Assessment) Act 1989, ss 39 and 46.

46 Child Support Consultative Committee, p 73.

47 *Child Support Scheme facts and figures 2001-2002*, p 9.

for a child under 13 years, \$3,119 for a child aged 13 to 15 years and \$4,672 for a child aged 16 years and older.

- 6.61 One of the key issues raised with the committee is that the level for exempt income is too low.
- 6.62 In evidence to the Joint Select Committee on Certain Family Law Issues there were concerns that since it is based on the pension rate, it fails to take account of the costs of going to work; appears to be creating serious work disincentives for some non-resident parents; and it does not include the extra concessions that pension recipients are entitled to receive. In response the Joint Select Committee recommended an increase in the allowance of 20%.⁴⁸ This recommendation has not been implemented.
- 6.63 In comparison, the resident or payee parent can earn up to \$36,213 before their income is taken into account in calculating child support. This amount is called the 'disregarded income' and it equals the average weekly earnings figure for all employees. The disregarded income reflects that the resident parent's income is already directly shared with their children through expenditure on things like food and clothing as well as through general household items like housing, furnishings, utilities and transport. If the resident parent earns more than the disregarded income amount, the paying parent's child support income is reduced by 50% of the amount over the disregarded income. It cannot reduce the child support by more than 75%.
- 6.64 The major criticisms of the disregarded income are that the amount is too high especially compared with the non-resident parent's exempt income,⁴⁹ and that it is calculated on average weekly earnings while the exempt income is linked to the pension rate. As over 88% of payees have incomes of \$30,000 or less the disregarded income is not relevant to the calculation of child support for the vast majority of CSA clients (see Table 6.3).
- 6.65 The Joint Select Committee on Certain Family Law Issues believed that there are inequities and recommended that: the level of disregarded income be reduced to the applicable pension cut off point; that the withdrawal rate of child support from the resident parent who earns more than the applicable pension cut off point be reduced to 50 cents in the dollar; and because of government childcare assistance and childcare rebates, the childcare component of the disregarded income be abolished.⁵⁰ The second recommendation was introduced in July 2000 as part of the legislative package for a new tax system and the third

48 Joint Select Committee on Certain Family Law Issues, pp 319-320, 346.

49 Witness 1, transcript, 5/9/03, p 5; Gabriele J, sub 547, p 4.

50 Joint Select Committee on Certain Family Law Issues, pp 331, 336.

recommendation took effect when the disregarded income amount was set at average weekly earnings for all employees with effect from 1 July 1999.

- 6.66 With the inception of the scheme the CSCG pointed out that these two concepts are not comparable as they are designed to fulfil different functions. Exempt income is designed to ensure that the non-resident parent has sufficient income to support themselves and any other dependent children before child support is deducted. Disregarded income is designed largely to avoid inequities in cases where a resident parent is already receiving a relatively high income. The CSCG went on to say disregarded income must be set at a significantly higher level than exempt income because it must recognise the economic contribution already being made by the resident parent to the support of children and it must not seriously impair workforce incentives for the resident parent.⁵¹
- 6.67 Despite that explanation people still ask why the levels of exempt income and disregarded income are different.⁵² This matter was raised with the committee, for example, the Lone Fathers' Association stated:

... The first issue is that any parent's first responsibility is to maintain themselves. If they cannot do that, they are not going to be able to help anyone else, and they need sufficient income to do that – that is ... [where] the exempt level comes in. We would say that it should be the same for both parents ...⁵³

A non-resident mother requested that:

The exempted amounts should be the same for both parties when performing a calculation for child support payments. It is ridiculous to have the individual who is paying the amounts, being exempted a lesser amount than the person who is actually in receipt of money. In particular, this is so because the payments are 'tax free to the recipient'!⁵⁴

Conclusion

- 6.68 The committee agreed that given the changing patterns of work and child care by women and men, the fact that often in property settlements after divorce the resident parent keeps the family home, and the links between second families and exempt income, there is less justification for the large differences between the levels of the exempt and disregarded incomes.

51 Child Support Consultative Group, pp 81-82.

52 Brett, transcript, 29/8/03, p 43.

53 Lone Fathers' Association (Carter J), transcript, 17/10/03, p 61.

54 Drewitt-Smith J, sub 778, p 3.

- 6.69 The low exempt income should be raised because it creates work disincentives.
- 6.70 The committee rejects the notion of the primacy of the children of the first family. Children of both families should be treated alike.
- 6.71 As a matter of principle the committee believes exempt and disregarded income should be adjusted to bring them closer together to reflect the changing work and parenting patterns now evident in the community.

Minimum payment⁵⁵

- 6.72 When the child support formula was introduced no universal minimum payment was included. This occurred because the CSCG believed that: such a payment may push some non-resident parents into poverty; the amount would be so low as to be of little help to the child; it may lead to further demands on the social security system to avoid poverty by the non-resident parent; and it would not be cost effective to collect. At that time welfare groups and non-resident parents opposed even a nominal payment. On the other hand, the positive outcome of such a payment was seen as being consistent with the principle that ‘... there is an obligation on a parent to share income with the child however low that income may be ...’⁵⁶
- 6.73 Resting on the latter consideration, in 1994 the Joint Select Committee on Certain Family Law Issues recommended such a minimum be introduced at \$260 per annum where the formula results in an assessment less than that amount and that the Child Support Registrar waive the minimum in special circumstances.⁵⁷
- 6.74 The minimum liability of \$260 per year or \$5 per week was introduced in the *Child Support Legislation Act 1998* with effect from 1 July 1999. It ensures that most parents, even those who are unemployed, have the obligation and the opportunity to contribute to the financial support of their children post separation.
- 6.75 At 30 June 2003 almost 40% of child support payers paid the minimum of \$5 per week or less (see Table 6.2).
- 6.76 By comparison with other jurisdictions, Australia has one of the lowest minimum payments (see Table 6.6).

55 Child Support (Assessment) Act 1989, s 66.

56 Child Support Consultative Group, p 85.

57 Joint Select Committee on Certain Family Law Issues, p 341.

Table 6.6 Minimum annual child support payable based on income within the jurisdiction: Calculation for one child

	Jurisdiction					
	AUS	NZ	UK	NY State	Wyoming	Washington
	AU\$	NZ\$	GB£	US\$	US\$	US\$
Income						
Minimum	260	677	260	300	600	300

Source: Department of Family and Community Services, sub 1700, p 20.

- 6.77 In evidence to the committee people raised concerns about the low amount.⁵⁸
- 6.78 The committee strongly supports section 3 of the *Child Support (Assessment) Act 1989* which states that a parent's responsibility to support his or her child/children takes priority over all other financial obligations, other than that necessary to support themselves and any other legally dependent children. This obligation is not affected by any other person's responsibility to the child.

Conclusion

- 6.79 The committee endorses the introduction of the minimum payment but considers that the amount of \$260 per year is too low to provide a meaningful contribution to the cost of raising a child. However, in considering higher amounts the committee would not wish to create hardship for any low income or unemployed person who was unemployed through no fault of their own. Some means of averting such hardship may need to be considered.
- 6.80 The committee believes that a fairer amount would be closer to twice the current weekly rate, that is, an increase from \$5 per week to \$10 per week or from \$260 per annum to \$520 per annum, independent of the number of children involved.
- 6.81 If the minimum payment were increased to \$10 per week, the children of 217,000 payees would benefit from more child support.⁵⁹

Maximum payment - the income 'cap'⁶⁰

- 6.82 When the formula was introduced the CSCG recommended a maximum income base (a cap) where income above this level was not taken into account when calculating child support.

58 Frederick, transcript Blacktown, 1/9/03, p 47.

59 Child Support Agency, unpublished data, Dec 2003.

60 Child Support (Assessment) Act 1989, s 42.

- 6.83 Since the inception of the scheme the amount of income on which child support is payable has been capped at 2.5 times the yearly equivalent of average weekly earnings for full time employees⁶¹, currently \$119,470. This means that if a paying parent earns more than \$119,470, their child support is calculated on the cap amount, not their actual income.
- 6.84 The decision to set a cap reflected evidence that: while expenditure on children increases in direct proportion to income, costs of children plateau at relatively high incomes; expenditure on children above the plateau is often discretionary and it was argued that non-resident parents should retain some capacity to control discretionary expenditure and contribute support directly to the child, rather than as part of a child support payment to the former partner; a perception that high levels of child support at high income levels could be perceived as transfer of income to the former partner rather than child support; and to some extent could reduce incentives for child support avoidance by high income earners.⁶²
- 6.85 The CSCG linked the maximum base level to average weekly earnings to ensure that as earnings rise the maximum level would be automatically adjusted, thus removing the need for frequent amendments to the legislation. The CSCG set the amount at an income level twice average weekly earnings.
- 6.86 However, when introduced the amount was 2.5 times average weekly earnings for full time employees. The Joint Select Committee on Certain Family Law Issues reported that the amount was set to ensure that most families post separation were covered by the formula and to minimise the number of resident parents who would seek a departure from the formula.⁶³
- 6.87 In 1994 the Joint Select Committee on Certain Family Law Issues sought to reduce the cap to twice average weekly earnings as evidence suggested that the cap had been set too high and acted as a disincentive to work; the introduction of the no-cost administrative review of child support assessments meant that departure from the formula was not costly; and the fact that as very few non-residential parents earn more than twice

61 That is, full-time adult average weekly total earnings (Child Support (Assessment) Act 1989 section 5 Interpretation definitions.) Note: Weekly total earnings of employees is equal to weekly ordinary time earnings plus weekly overtime earnings. Weekly ordinary time earnings refers to one week's earnings of employees for the reference period attributable to award, standard or agreed hours of work.

62 Child Support Consultative Group, p 83.

63 Joint Select Committee on Certain Family Law Issues, p 338.

average weekly earnings, reducing the level would have minimal impact.⁶⁴ The recommendation was not accepted by government.

- 6.88 As previously outlined subsequent research by NATSEM on costs of children suggested that ‘... the maximum payer income used to calculate child support (the ‘cap’) can result in non-resident parents paying more than the measured costs of children in high-income families ...’⁶⁵
- 6.89 A proposal to reduce the cap to 2.5 times the average weekly total earnings amount for all employees was included in schedule 2 of the *Child Support Legislation Amendment Bill (No. 2) 2000*. This schedule was not passed by Parliament. The schedule sought to reduce the amount by using a different average weekly earnings base from full time employees to all employees rather than by reducing the multiplier applied.
- 6.90 Using the income limit for Family Tax Benefit was considered as another option by this committee, but rejected, as this calculation varies with the numbers and ages of the children involved which adds complexity. Also at higher levels of Family Tax Benefit the income limit exceeds the current child support income cap. For example, the income limit for one child aged 0-17 years is \$85,702, while for three children aged 0-17 years and three children aged 18-24 years the limit is \$126,473.⁶⁶
- 6.91 Of the measures considered, using 2.5 times average weekly earnings for all employees results in a slightly lower cap than using 2 times average weekly earnings for full time employees. On August 2003 figures, the amount for the first measure is \$95,420, while for the latter the amount is \$101,327.⁶⁷
- 6.92 Notwithstanding the cap, many paying parents on higher incomes who have made submissions or appeared as witnesses to this inquiry believe that the child support they are assessed to pay, is too high.⁶⁸

Conclusion

- 6.93 The committee believes that the issue of fairness must be looked at for all categories of payers and payees. Research by NATSEM has suggested for higher income families the cap is set at too high a level. Accordingly, the

64 Joint Select Committee on Certain Family Law Issues, pp 338-339.

65 Department of Family and Community Services, sub 1605, p 27.

66 *A guide to Commonwealth Government payments 20 Sept – 31 Dec 2003*, p 3, viewed 6/12/03, <http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm>

Note children over 18 years would not normally be included for child support purposes.

67 Average weekly earnings figures taken from ABS website <http://www.abs.gov.au>

68 Peter, transcript Robina, 4/9/03, p 37; Witness 1, transcript, 5/9/03, p 3; Giraldi F, sub 503, p 1.

committee would be seeking to reduce the cap to a figure that is more in line with the available data on the costs of raising children.

- 6.94 The committee is interested in the principle of fairness. It is not so relevant whether it is achieved by reducing the cap to 2 times average weekly earnings for full time employees or changing the base to 2.5 times average weekly total earnings for all employees. On the basis of fairness the level should be lowered.

Child support and contact – what are the links?

- 6.95 The committee heard evidence about the interaction between contact and child support. In summary the issues non-resident parents have raised are:
- recognition of how much it costs a non-resident parent to have contact with their children, particularly out of pocket costs such as travel;
 - having to pay child support to the other parent while the children are with the paying parent;
 - the inability to negotiate shared care because of the impact of ‘109 nights’; and
 - having to pay child support even when contact has been denied for no apparently good reason or in contravention of an order.
- 6.96 Whilst the legal position is that child support and contact are not connected, as mentioned in Chapter 4, in the lives of parents in the scheme the connections are practical and real and are seen as having unfair consequences for them. Some examples of what people have said about these issues follow.

The cost of contact

- 6.97 There are two issues about the cost of contact that were raised in evidence. One is about recognising that having contact creates costs for the non-resident parent and the second is how the burden of child support can make it difficult to meet those costs (especially if the child lives interstate).⁶⁹ Two examples follow. The Family Pathways Group at the Gunnedah hearing stated:

The financial circumstances that it may put them in can be difficult—and I can go into my own situation—particularly with the cost of travelling from one spot to another for contact. If the contact is not there, the cost of going to court can be very high—solicitors just say, ‘Give me \$3,500 and I will do something for

⁶⁹ Michael, transcript Knox, 28/8/03, p 39; *Fathering After Separation* (Pearson R), transcript, 5/9/03/ p 37; Witness 1, transcript, 5/9/003, p 3; Name withheld, sub 167, p 3.

you.' If they are broke from the child support, they have no chance of covering the money needed to travel from one point to another for contact.⁷⁰

- 6.98 The second was a father from Cairns whose ex-partner and child had moved to Townsville and he reported that the CSA had taken some costs into account under the avenue of financial hardship. He said:

I was paying child support privately to my ex-partner. Because I travel once a month to Townsville to see my son. I keep saying to her, 'Look it is costing me as much to travel to see my son as I am paying in child support.' She refused to come to an agreement. I currently use the Child Support Agency. I go in to them and say, 'I want you to take charge of this and I will pay through you.' In doing that they assess my situation and take into account the fact that it costs me money for accommodation to travel to see my son.⁷¹

- 6.99 The problem of how to fairly allow for the inevitable added cost of separating families into two households is not easily solved. In his submission Dr Paul Henman notes:

... the reality [is] that children cost more to support and raise in separated households than in intact households...In short, to maintain the same standard of living, the households must jointly spend more on their children than they did prior to separation.⁷²

- 6.100 Dr Henman goes on to note that his research has found that:

... maintaining 20 per cent contact with one child incurs costs of between 39% and 56% of the cost of raising a child full time in an intact couple household...The reasons for this disproportionate cost, relative to the level of contact, results [from] the requirement in providing basic infrastructure for the child/ren...and in telecommunication and travel costs to organise and transfer children between households.⁷³

- 6.101 He also adds:

The critics are, however, right to state that reducing a resident parent's contact from 100% to 80% does not result in a proportional reduction in their cost of caring. Indeed, costs may remain constant or increase...the research remains to be done. Only after a more complete understanding of the changes in the

70 Family Pathways Group (Bennet P), transcript Gunnedah, 27/10/03, p 36.

71 Fathering After Separation (Pearson R), transcript, 5/9/03, p 37.

72 Henman P, sub 1307, p 4.

73 Henman P, sub 1307, p 4.

costs of raising children, including costs of contact, as a result of family separation can an informed and fair child support policy be devised.⁷⁴

Conclusion

6.102 The committee agrees that:

- there is little recognition of the costs for contact;
- however, to attempt to have all the costs incurred by the non-resident parent for contact directly deducted from the amount of child support payable to the resident parent, would produce unfair results; and
- the introduction of a non-resident parenting payment could be a partial the solution (see below).

Paying while caring for the children

6.103 One non-resident father put the issue in these terms:

The system for payments now is unbelievably unfair. You pay 18 per cent of your gross income in child support for one child and 27 per cent for two children. It is usually worked out on a day's basis, but the percentage is only reduced if you have the children for 110 nights. ... We still have to pay for these 90 days that we usually get on every second weekend and half of the school holidays... Why should we pay for these nights as well as paying for when the custodial parent has the children? ...⁷⁵

6.104 This situation of paying when caring for the children would seem inequitable, especially when finances are tight and when periods of contact are extended over one or more payments of child support.⁷⁶ On the other hand, many payee parents are also in difficult financial circumstances and need to rely on regular child support payments to meet their own parenting expenses, many of which do not go away while the children are away. The Brisbane Women's Legal Service said:

Being the resident mother of children is still the most likely predictor of poverty in Australia. Research over the past two decades has consistently shown that women are more likely to experience financial hardship following marital dissolution.⁷⁷

6.105 The committee recognises that to stop or reduce payments during periods of contact could have a negative impact.

74 Henman P, sub 1307, p 7.

75 Dennis, transcript Wollongong, 1/9/03, p 51.

76 Individual A, transcript Robina, 4/9/03, p 41.

77 Women's Legal Service Brisbane, sub 904, p 32.

A barrier to shared care – ‘109 nights’

6.106 There are many examples in evidence to the committee of people who have suggested that the current formula adjustment for shared care above 109 nights in the year has impacted on how parents negotiate parenting arrangements.⁷⁸ Two examples come from a non-resident father and a partner of a non-resident father:

... I have my son every second weekend and every other Monday night after the weekend I do not have him...I asked my ex recently if I could have my son on a Sunday night so that we could pick him up from school Friday night and take him to school Monday...She said ‘Yes, you can have him on one condition – you deduct the Monday night. If I have him on the Monday night as well as every second weekend, it puts us over the threshold of days per year and my child support drops’.⁷⁹

As it turned out my partner had his children more than 110 nights per year, this made him a substantial parent and thus his child support was reduced. The day his payments were reduced, the mother decided that Tuesday night access unsettled the children, and told the court that he was an unfit father ...⁸⁰

6.107 These comments illustrated to the committee the policy dangers in turning the practical links between how much child support is paid and how much time children spend with each parent into legal ones. Parents disagreeing about these circumstances are unlikely to be focused on the needs of their child to have a meaningful relationship with each parent.

6.108 Family Court of Australia (FCoA) data shows a clear preference for contact arrangements below 110 nights in both consent and court ordered arrangements (see Figures 2.2, 2.3 and 2.4).⁸¹ Whether the statistics reflect the reality is not known. Contact during the day is not recognised, only if the child stays overnight.

6.109 The committee has concluded however that for many who have given evidence to the inquiry this aspect of the formula may have created a barrier to shared care for them.

6.110 The committee has noted that proposed amendments to the child support legislation to recognise patterns of care between 10% and 30% of the time by reducing the child support percentages were included in the *Child Support Legislation Amendment Bill (No. 2) 2000*. These amendments were

78 Michael, transcript Knox, 28/8/03, p 39; Witness 1, transcript, 24/9/03, p 8.

79 Brett, transcript, 29/8/03, p 43.

80 Name withheld, sub 1625, p 2.

81 Family Court of Australia, sub 1550, pp 11-14.

not passed by Parliament. However, it is believed that the Parliament may have agreed to the Bill if there had been accompanying compensation to the payee and children.⁸² The committee does not believe that this amendment sufficiently addresses the issues discussed above. In addition, as the Pathways Report asks, “Are financial incentives in child support or family payments an appropriate way to address lack of contact with non resident parents?”⁸³

Denial of contact

- 6.111 Successive governments have taken the view that there should be no link between a parent’s child support liability and actual contact with a child. This view is supported by the Family Law Council:

The council is strongly of the view that contact and child support obligations should not be formally linked, the assessment of child support should not be linked more than it is currently, to levels of contact. However, we recognise that dynamics are at work that do link those in the minds of people, which would probably have to be understood in any enforcement system.⁸⁴

- 6.112 However, the committee is concerned that there is widespread distress in the community among non-resident parents who meet their child support obligations but are denied contact with their children.⁸⁵ Similarly, there are significant concerns among resident parents whose former partners choose not to meet their child support commitments, however, still insist on contact with their children⁸⁶:

The existing child support system does not work fairly for those who like to blackmail and manipulate the system. I would take the children to the father, but once he started putting a price on contact visits I could no longer take them to him. I then left it up to him to pick them up – and he really could not make the effort.⁸⁷

- 6.113 There are many cases where contact is denied for legitimate reasons such as genuine fear of violence or abuse. These reasons are recognised by the Family Law Act, under the reasonable excuse for breaching an order in the parenting compliance provisions referred to in Chapter 4. Decisions about these matters should quite rightly be made by courts rather than be dealt

82 Evans C Senator, *Senate Parliamentary Debates*, 6/11/00, p 19169.

83 Family Law Pathways Advisory Group, p 79.

84 Family Law Council (Dewar J), transcript, 17/10/03, p 21.

85 Leo, transcript Robina, 4/9/03, p 37; Witness 4, transcript, 5/9/03, p 16; Name withheld, sub 1696, p 1.

86 See Tracey, transcript Knox, 28/8/03, p 33.

87 Name withheld, sub 262, p 2.

with by administrative consequences such as non payment of child support.

- 6.114 Research by the Australian Institute of Family Studies and Parkinson and Smyth suggests that many resident mothers would welcome greater contact by their former partners with the children.⁸⁸

Conclusion

- 6.115 A parent has a liability to pay child support regardless of the level of contact. What we want to do is to minimise all impediments to the level of contact.
- 6.116 The committee does not believe there should be any link between the lack of parenting time and child support payments. Other recommendations to improve enforcement of contact are set out in Chapter 4. Enforcement of child support is discussed later in this chapter.
- 6.117 The committee believes that the impact of the child support formula on decisions parents make around care and contact with children is significant. Similarly, the committee does not believe that the formula adequately reflects what it actually costs separated parents to care for their children. Both these issues need to be re-evaluated in the light of more specific research into the cost of contact and modelling of alternative treatment of contact arrangements.
- 6.118 The introduction of a non-resident parenting payment by the Commonwealth Government could be considered. This payment would be paid to payers who have met their obligations in relation to previous payments to payees (child support obligations). The payment would commence when 10% of nights was achieved. This would mean no reduction in the transfer of monies from the payer to payee, but would involve an unquantified expenditure by the Commonwealth Government. The aim of this measure is to reduce conflict between parents about the issue of care being sought or denied where money may be the motivator.
- 6.119 Ultimately, strategies to support parents' capacity to focus on the interests of their children separately from financial issues are more likely to resolve the dilemma than a simplistic legislative reform (see Chapter 3).

88 Australian Institute of Family Studies, sub 1055, p 8; Parkinson P & Smyth B, When the difference is night & day: Some empirical insights into patterns of parent-child contact after separation. *8th Australian Institute of Family Studies Conference, Steps forward for families: Research, practice and Policy, Melbourne Exhibition Centre, Southbank, Melbourne, 12-14 Feb 2003*, 19p.

Client experience and understanding of child support

6.120 The CSA has a legal obligation to inform its clients about the operation of the scheme. This is done largely by way of community information strategies, including fact sheets like *Child Support at a Glance*. It was apparent to the committee that many of the individuals who raised the concerns which have been set out in this chapter and their impact on their own situation had limited knowledge about the details of the scheme that were relevant to them. Also they often appeared unaware of, or had failed to take advantage of, opportunities available to them to vary its application in their individual circumstances through the change of assessment process.

6.121 While the committee recognises that the CSA has improved its performance over the years, it needs to examine more closely the ways in which it provides information and assistance to its clients. One resident mother client of CSA said:

CSA appears to have the opinion that they are severely understaffed and so are not able to cross reference information and so it is the 'paid' parent's responsibility to pursue the matter if they are not satisfied.⁸⁹

6.122 The CSA has a comprehensive web-site and distributes many publications and fact sheets aimed at informing the community and their clients about the CSS. In addition, community education activities of the CSA are regularly held, often in collaboration with other agencies in the family law system.

6.123 Many submissions related unhappy experiences with the CSA. It is not possible to draw conclusions which separate discontent with the legal position people find themselves in from discontent with the process. It is predictable that CSA clients will be experiencing emotional stress that may influence their perceptions of the process and more importantly their ability to absorb information and make good use of it. A more individualised service may improve the situation.

6.124 A few illustrations from hearings as to how clients of the CSA have reflected on their interaction with the CSA:

They say: 'you can afford the commitment. It is your responsibility.' I understand that, but—as has been said today—every case is individual but they treat everybody the same way with the same formula. I think that is very unfair.⁹⁰

89 Name withheld, sub 1139, p 2.

90 Gary, transcript, 26/10/03, p 60.

... They have a derogatory attitude to those people who are liable parents ...⁹¹

... The kid gets sent over with shoes falling to pieces and holes in their socks. And you know what? You cannot do anything about it ... The Child Support Agency is just not interested. They say it is not their department. They are a child support agency and they are not interested ...⁹²

Initially, we had a case manager. His name was Bruce. We never met him, but at least we had a phone number. We could ring Bruce and we knew that he knew something about us and that he was responsible for us. Now, when you ring the Child Support Agency, nine times out of 10 you speak to three or four different people and get put on hold. You have to set aside an hour to ring Child Support. Then they transfer you to somewhere else because they cannot help you.⁹³

- 6.125 Given the emotional upheaval that has gone with the events in people's lives that leads them into dealing with the CSA, a responsive and personalised client service is likely to be more necessary than may be the case with other similar government agencies. The evidence before the committee confirms that clients feel something that is as intrinsically personal to their lives as their financial support for their children is, in their experience, institutionalised.
- 6.126 Complaints to the Commonwealth Ombudsman about child support amongst other things include a '... range of complaints relating to the provision of advice by the CSA to its clients. The complaints canvas the failure to provide appropriate advice, and the reasonableness of advice.'⁹⁴

Conclusion

- 6.127 The committee concluded that the CSA needs to develop more effective strategies for providing specific information about the application of the CSS to each of its clients. One mechanism for this would be through more face to face and individualised communication between clients and case officers.

91 Peter, transcripts Robina, 4/9/03, p 37.

92 Leo, transcript Robina, 4/9/03, pp 37-38.

93 Witness 2, transcript, 29/8/03, p 36.

94 *Commonwealth Ombudsman, Annual Report 2002-03*, Commonwealth Ombudsman, Canberra, Oct 2003, p 32.

- 6.128 As stated discussed later (paragraph 6.133) the committee is committed to an external review of the CSA's decisions by the Families Tribunal, the Social Security Appeals Tribunal or other tribunal.

Fairness to both parents - variations

Introduction

- 6.129 The committee heard many accounts of paying parents who believe that the child support formula has created a financial hardship for them and from which they conclude they are paying too much to support their children.⁹⁵ Some examples from the hearings were provided by two non-resident fathers and a resident father:

I have had a lot of dealings with the CSA in regard to hardship and trying to make ends meet. I have tried to provide a place for my daughter to come and stay. I have bought my own home. My mortgage and my child support payments account for more than 50 per cent of my take-home pay every month, so I am living on the breadline. I cannot afford to take holidays, and there are a lot of things I cannot do, so I feel penalised by the Child Support Agency ...⁹⁶

... This is a system that depletes so much of my salary in child support that I literally struggle to survive. I walk around with painful teeth, I avoid medical treatment, I have to sleep in cars at times, I drive unsafe vehicles and I shop at St Vincent de Paul. There is no light at the end of the tunnel. I will be 52 years old when I finish paying child support and before I can start saving again.⁹⁷

... For four years I paid 32 per cent of my income and I was trying to live off \$20 a week after paying the mortgage, which was really hard ...⁹⁸

- 6.130 Separation inevitably will cause a change in financial circumstances, generally for the worse. For some, re-partnering may help, for others it may not. The AIFS pointed out the results of the Australian Divorce Transitions Project found that a minority of separated people were

95 Ann, transcript Knox, 28/8/03, p 41; Witness 1, transcript, 24/9/03, p 3; Justin, transcript, 29/8/03, p 39; Gary, transcript, 26/10/03, p 60; Michael, transcript Coffs harbour, 27/10/03, p 57; Lake R, sub 938, 2p; Name withheld, sub 167, 6p; Seager P, sub 975, p 1.

96 Gary, transcript, 26/10/03, p 60.

97 David, transcript Coffs Harbour, 27/10/03, p 56.

98 Craig, transcript, 26/10/03, p 66.

repartnering. It was more common for men to repartner than women (44% of men were repartnered compared with 29% women) and that was about six years after divorce.⁹⁹

- 6.131 Dads in Distress said the financial situation following separation will be worse when the starting point is one of low income:

... I had a fellow on the phone a couple of weeks ago who told me that he had a rope hanging off the ceiling. He was on \$36,000 a year and was paying \$81 a week in child support and he could not live, because he had a second family. I wonder if that was an issue of child support and separated living or whether it was just a general issue of the cycle of poverty in this country.¹⁰⁰

- 6.132 It was put to the committee many times during the inquiry that the hardship often increases with the costs of establishing a new home after providing the children and the other parent with the former family home or with trying to support a new family. Many witnesses have related how they have struggled to earn extra money to support all this through overtime and second jobs but still seem not to have enough¹⁰¹ and have in the end decided they would be better off relinquishing their income altogether.
- 6.133 The introduction of the change of assessment process was an improvement particularly on the previous court based processes. However, the committee believes that this is an internal review process. The committee believes that there should be a proper external review process similar to the Social Security Appeals Tribunal processes.

Second families¹⁰²

- 6.134 The child support formula recognises second family responsibilities in two ways. First, as previously outlined if a paying parent has children from a new relationship, their exempt income amount is increased from 110% of the single pension rate to 220% of the partnered pension rate, plus an additional amount for each child. In dollar terms, the exempt income increases from \$12,315 to \$20,557 plus \$2,235 for a child under 13 years, \$3,119 for a child aged 13 to 15 years and \$4,672 for a child aged 16 years and over.
- 6.135 Second, since 2001 the change of assessment process allows a parent to apply to have child support assessment changed because:

99 Australian Institute of Family Studies (Sanson A), transcript, 13/10/03, p 20.

100 Dads in Distress (Lenton R), transcript Coffs Harbour, 27/10/03, p 49.

101 For example: Witness 2, transcript, 24/9/03, pp 39-44.

102 Child Support (Assessment) Act 1989, s 39.

... an amount...of a liable parent's child support income amount was earned, derived or received by the liable parent for the benefit of a resident child or resident children of the liable parent.¹⁰³

- 6.136 In other words, it recognises additional income that is earned specifically for the purpose of supporting children of second families. There is a limit of 30%, however, on how much the child support liability can be reduced under this reason.¹⁰⁴

... When you are the partner of a non-custodial parent and you also have children with the non-custodial parent, the second family is very disadvantaged and it is very upsetting.

I saw what my sister went through. She went through a review. They had a \$600 net wage coming in and they had to pay \$110 to his ex. She had two children—one was new—and the Child Support Agency in the review took the two new children into consideration but not that my brother-in-law was supporting my sister ...¹⁰⁵

- 6.137 Many parents have complained that the treatment of children from subsequent families makes them feel these children are treated as less important than those in the first family. This is seen as unfair, as one paying father said:

Current exempted income amounts for new dependant children of a payer are inaccurate when compared with the amount of child support payable to the major carer for other child/children of the assessment. The net payments of child support are greater than the net amount available to spend on the welfare and development of new dependant children.¹⁰⁶

- 6.138 In developing the formula the CSCG stated '... The basic aim of the Group was to treat all children and all parties involved as equitably as possible.'¹⁰⁷ The committee does not believe this basic aim has been achieved.

Conclusion

- 6.139 The committee notes that the community is not aware of the provisions that currently exist in the CSS to recognise the place of second families in the change of assessment process. Even with these adjustments the impact

103 Child Support (Assessment) Act 1989, s 117 (2) (c) (iii).

104 Bowen J, *Child support: A practitioner's guide*, 2nd ed, Lawbook Co, Sydney, 2002, p 69.

105 Jane, transcript Robina, 4/9/03, p 39.

106 Gabriele J, sub 547, p 4.

107 Child Support Consultative Group, p 73.

still seems to create hardship for second families. The committee concludes that this is a symptom of the inadequacy of the level of the exempt income for second families discussed previously, as well as the adjustments made for second families. Ultimately this may also come down to the limit to which finances can be spread in post separation family circumstances and determining where priorities should lie.

Overtime and second jobs

6.140 Some parents commented that their efforts to get ahead financially by taking on higher paying jobs, overtime or second jobs were thwarted because of the effect of tax and child support on the additional income. They felt that the effort they have had to make did not improve their own situation but all went into paying child support. One non-resident father said:

I acknowledge and agree with the need for child support, and that both parents are financially responsible for their children. What I do not agree with is the fact that overtime is included in the calculation for child maintenance. The current formula which is based on the payers gross income may be applicable for the self employed (such as contractors, sub-contractors etc) who do not generally work to an hourly rate, but it does not take into account the person who is on an average 38 hour pw base wage, such as myself. I currently work a substantial amount of overtime to make ends meet and start afresh after my divorce, i.e. establish and pay for a home...It frustrates me to hear stories of some people hiding their income to avoid paying maintenance while the rest (myself included) have to include their overtime component ...¹⁰⁸

6.141 For many non-resident parents the working of overtime or taking on a second job is necessary just to help them support themselves in their new circumstances and meet their child support obligations. A parent of a paying father told the committee:

... He has the opportunity to work plenty of overtime but when you are paying 50c for each dollar in tax and 18c a dollar in child support, is it worth while working for 32c per dollar?¹⁰⁹

A father sharing care put it similarly:

... I have not had a weekend off in six years; my ex-wife benefits from my overtime, annual leave and sickies, so I feel trapped. My

108 Name withheld, sub 378, p 1.

109 Witness 4, transcript, 27/10/03, p 25.

basic right to achieve and better myself for the kids' sake and mine has been taken away.¹¹⁰

- 6.142 Several people have suggested that overtime should be left out of the assessment of income for the formula altogether and that it be calculated on the payer's base wage, especially if the overtime earned was not a regular part of pre-separation income. In principle, the same argument could be applied to second jobs taken up for the same reasons. A witness speaking on behalf of several workmates who were separated fathers said:

... The suggestion is that child support should be calculated on a person's base rate of pay. Any overtime worked, penalty rates, shift allowance et cetera should not be taken into consideration. This way the person receiving the child support gets money, and the person paying the child support has a chance to save money and start a new life with another partner. As it now stands, any person paying child support has little or no incentive to work any longer than they have to, knowing that any extra money earned is going to increase their child support payments ...¹¹¹

- 6.143 The other possible argument for excluding overtime in income assessment is that, for many, it can be irregular in nature. There will inevitably be a lag between assessment, change of income and re-assessment as the income fluctuates with overtime.
- 6.144 There may be technical and administrative difficulties to be overcome in excluding income from overtime and penalty rates from the calculation of child support as these amounts are not separately identified in taxation records. The committee believes this could be overcome by a simple administrative process by the CSA having a document for employers to sign.

Conclusion

- 6.145 The committee is persuaded by arguments that after families have separated there should be capacity for each subsequently formed family to build its own future, while still meeting obligations to support biological children of the previous family. Exclusion of some income from post separation overtime and second jobs from the calculation of child support for the prior family would help address the issue. Undertaking the change of assessment process may be necessary, however, to ensure that the application was based on appropriate facts and intent.

110 Martin, transcript, 24/9/03, p 96.

111 Witness 4, transcript, 5/9/03, p 16.

- 6.146 The committee is mindful of the impact of the changes on payees. It therefore supports amending the way the payer's child support income is determined by halving the formula percentage applying to the income earned from overtime and second jobs, worked above a set working week of 38 hours. In the event of a person working more than one job, either part time or casual, hours can be combined to achieve the 38 hour limit.

Cost of re-establishing a home after separation

- 6.147 As has been recognised from the beginning of the CSS, the cost of having two households creates financial pressure in separated families independently of the care arrangements discussed in Chapter 2. Most parents need accommodation no matter where the children live. When they acquire second families, setting up a new residence becomes even more necessary and usually more costly.
- 6.148 Many paying parents have commented that, after meeting their obligations to pay tax and child support, they don't have enough money to re-establish a home after separation.¹¹² They particularly highlight the need to provide suitable accommodation for when their children are with them. A non-resident father said:

On child support side, when I wanted to support my children and have accommodation for them after a property settlement I applied for a home loan. I was working full time—and still am—... As soon as I mentioned the words 'child support of 34 per cent', the recalculation of a home loan went from \$70,000 maximum to a princely amount of \$2,800. That was the amount that they were prepared to lend me because of my commitment on child support.¹¹³

- 6.149 Under the change of assessment process a parent may apply to have their child support assessment changed if:

...the parent's necessary expenses significantly affect their capacity to support the child.¹¹⁴

- 6.150 The CSA's online technical guide notes that:

The costs of setting up a household or servicing a debt immediately after separation may also be a necessary commitment. A parent leaving a former marital home will often

112 Men Again Inc (Jerrett R), transcript, 5/9/03, p 22; Richard, transcript, 26/10/03, p 63.

113 Val, transcript Blacktown, 1/9/03, p 56.

114 The Guide: CSA's online technical guide, viewed 12/12/03
http://www.csa.gov.au/guide/2_6.htm#r7, Child Support (Assessment) Act 1989 s 117 (2) (a)(iii)(A)

incur costs in establishing a new residence or obtaining new accommodation. There may also be a variety of debts and obligations incurred during the former relationship which must be paid in spite of separation, and which continue to be paid by a parent...The costs necessarily incurred by a recently separated parent in establishing a new home are unlikely to be a long term consideration.¹¹⁵

- 6.151 The Secretary of FaCS said some administrative improvements to make the change of assessment provisions better known and more easily accessible may be required.¹¹⁶

Conclusion

- 6.152 The committee's analysis of evidence throughout the inquiry revealed the high level of dissatisfaction within the community with the change of assessment process. It is considered to be very machinery oriented.
- 6.153 The committee believes that the change of assessment provisions of the CSS are not well understood among separated parents whose financially difficult situation may be eased by their application. However, the existing provisions may not be sufficient to recognise the often considerable one-off expenses non-resident parents may face after separation. The committee would urge FaCS to undertake the necessary promotional improvements without delay. In all assessment material and correspondence sent out by the CSA promotional material should be included.

Options for payment of child support

- 6.154 Many non-resident parents complained that the regulated method of paying child support made them feel excluded from any influence as to how the money was directed to the child's needs.¹¹⁷ One non-resident father said:

... There are problems when the formula results in a large amount of a paying parent's income being transferred to that parent and the paying parent seems to have little influence over how their hard-earned money is spent. Speaking personally, if I can identify ways of making voluntary payments that are going to benefit my

115 The Guide: CSA's online technical guide, viewed 12/12/03
http://www.csa.gov.au/guide/2_6.htm#r7

116 Department of Family and Community Services (Sullivan M), transcript, 17/10/03, pp 25-26.

117 Individual A, transcript Robina, 4/9/03, p 42; Michael, transcript Knox, 28/8/03, p 39; Leo, transcript Robina, 4/9/03, p 38; Witness 1, transcript, 26/10/03, pp 3, 5; Alex, transcript, 26/10/03, p 59; England I, sub 735, p 3; Name withheld, sub 1625, p1.

child—as opposed to not having influence in it being spent by my former partner on things perhaps not so important to my child—I think that is the way to go.¹¹⁸

- 6.155 These concerns were greatest when the paying parent believed that the child support was being used by the resident parent for their own personal needs or that of a new partner rather than for the benefit of their children.¹¹⁹ A partner of a non-resident father advised:

... But I do have an issue with how the money is spent—how my money will be spent. Once it has gone to the mother there is no guarantee about how the money is spent on the child. An example is that on a recent excursion the child did not have the full school uniform; whereas my partner and I have everything for her—we have to—and we also pay for her mother to buy everything for the child. She did not have a full school uniform for the child but I am sure she does not go without her cigarettes—I am positive of that.¹²⁰

- 6.156 The committee sees these issues as impacting on how the obligation to financially support the child is viewed and accepted by the non-resident parent. The solution to this is not easy, as the administration of a scheme which monitored the spending in the hands of the resident parent would create some policy challenges. It would raise sensitive issues about the level of involvement parents should have in each other's lives after separation. It would raise similar concerns about the even higher level of involvement of the CSA in separated parents' lives. Any process to monitor or account for how money paid as child support is spent would also involve significant administrative expenses.¹²¹

- 6.157 However, the CSS does already contain some provision for paying parents to direct their child support payments to particular goods or services.

Options are:

- **Child Support Agreements.** If the parents agree about how their children should be supported they can make a child support agreement that sets out how child support will be provided. This could be in ways other than by regular payments, including lump sums, irregular payments, payments to third parties, by transfer of property or 'in kind'.¹²²

118 Witness 3, transcript Geelong, 28/8/03, p 36.

119 John, transcript Wollongong, 1/9/03, p 50.

120 Shelley, transcript Wollongong, 1/9/03, p 51.

121 Refer Department of Family and Community Services (Sullivan M), transcript, 15/9/03, p 45.

122 Child Support (Assessment) Act 1989, Part 6.

- **Non Agency Payments.** If the paying parent normally pays their child support through the CSA they can still make some payments directly to the payee parent or to a third party. These can include such things as school fees, medical expenses or insurance, mortgage or car payments.¹²³ These payments are called ‘non agency payments’ and they can be counted as child support where the parents agree that they were intended as child support (up to 100%).
 - **Prescribed Non Agency Payments.** Some non agency payments for particular purposes can be counted as child support without the resident parent’s agreement. These cover expenses such as child care costs, school or preschool fees, essential medical and dental fees and prescribed school uniforms and books, rent, mortgage, utilities and rates and some motor vehicle costs. Up to 25% of the child support liability can be paid in this way. If it is more than 25% of the monthly payment, the remaining amount can be credited each month.¹²⁴
- 6.158 During this inquiry it became evident that a significant number of non-resident parents are not aware of these options.¹²⁵ The CSA provides information on these options by fact sheets and the website. The take up rate for prescribed non agency payments is growing slowly. From a caseload of 657,332 in 2002¹²⁶ there were 1664 applications’ (or 0.25%), in the last financial year¹²⁷. The committee considers this to be a very low rate.

Conclusion

- 6.159 Why the take up rate of non agency payments and prescribed non agency payments is so low is not known, but the committee has concluded from the evidence it has heard that lack of awareness of its availability is likely to be one reason.
- 6.160 The committee has also concluded that more should be done to promote these options amongst both payer and payee clients of the CSA.
- 6.161 In light of the common lack of confidence amongst paying parents that the child support they pay is actually benefiting their children, the committee has also concluded that government should consider expanding the list of possible items for prescribed non agency payments and raising the level to which prescribed non-agency payments can impact on child support liability to 30%. The implications of such a change on the cash flow of low

123 Bowen J, p 44.

124 Child Support (Registration and Collection) Act 1988, s 71, 71A, 71B, 71C, 71D.

125 Men Again Inc (Jerrett R), transcript, 5/9/03, p 23; Witness 1, transcript, 24/9/03, p 7.

126 *Child Support Scheme facts and figures 2001-02*, p 13.

127 Department of Family and Community Services (Bird S), transcript, 17/10/03, p 39.

income resident parents would need to be considered. The committee considered increasing the level to 50% but, due to the lack of awareness of the option and the low take-up rate, selected 30%.

- 6.162 The committee also discussed at length the proposal of increasing the percentage of child support prescribed payments as a penalty for denial of contact.

Self employed non-resident parents

- 6.163 The committee heard from a number of resident parents who were concerned that the CSS did not contain sufficient safeguards if paying parents seek to avoid their child support responsibilities by manipulation of their taxable income.¹²⁸ One resident mother said:

My ex worked privately as well as being self-employed. His wages have been garnisheed since November 1994. However, in November 2000 my maintenance was reduced to \$21.67 per month. I knew about his business and his private work so I appealed. The appeal process involves the other party being notified and any supporting documentation being sent to the other party. The reason for the decrease was his taxable income. For the financial year his gross income was \$930,000. He managed to write all the income down to \$18,900. Subsequently my maintenance was reduced to the minimum of \$21.67. He fought against this and felt he was justified in paying only \$20 per month due to his taxable income.¹²⁹

A paying father said:

When it goes to self-employed, they generally pay less tax than people who work for a company.

...

And they can drop their taxable income as well, not just their net income. It is just that we get into that 48½ per cent bracket and, in my case, paying 27 per cent child maintenance. I am left with less than she is and she is not the one doing 12-hour Sundays.¹³⁰

- 6.164 The apparent inequities in the way the scheme applies to PAYE wage earners compared with self employed people or business people have been highlighted by these and other examples. Paying parents who are
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128 Tracey, transcript Knox, 28/8/03, p 33; Dennis, transcript Blacktown, 1/9/03, p 55; Witness 1, transcript Knox, 28/8/03, p 23; Witness2, transcript Knox, 28/8/03, p 28; Witness 2, transcript Coffs Harbour, 27/10/03, p 12; Name withheld, sub 1656, pp 1-2.

129 Witness 2, transcript Coffs Harbour, 27/10/03, p 12.

130 Witness 2, transcript, 24/9/03, p 39.

self employed have the capacity to minimise their taxable incomes – often quite legitimately so far as the taxation system is concerned – to reduce their child support liabilities. One contributor to the inquiry put it as follows:

Many fathers use the taxation system in which to minimise their incomes. The following is a factual example. I know of a professional in his own business who shows a ‘nil’ income. It is virtually impossible for the other parent to ‘prove’ the existence of income and assets of an ex-partner.¹³¹

From a partner of a non-resident payer parent:

...I said to my partner, ‘No way are you getting a wage earning job’. So I opened a business, made us joint partners and, with all the tax deductions, we were earning the same wage and getting the same income coming in, but we were paying \$5 a week [for child support]. I felt justified in doing that because I saw what the child support system was doing to other families and I felt my family should come first. I had no qualms about the fact that my partner’s first family was only getting \$5 a week, as she had got 75 per cent of the property settlement. I would suggest to any non-custodial parent, given the unfairness of the Child Support Agency, that they open up their own business, not become a wage earner, and do the same thing.¹³²

6.165 FaCS Secretary Mr Mark Sullivan notes that:

...the child support arrangements...work best where we can use the taxation system to enforce compliance where there is not voluntary compliance...It tends to...set out where the basic compliance issues are. They might be where the taxation system is not capable of enforcing compliance either through people who do not lodge tax returns or people who do not correctly state their income to the tax office.¹³³

6.166 One witness commented:

... Self-employed people need to be looked at. Laws for companies and that sort of thing need to be looked at. People can wind down a business and then a family member will take on the lease of the business and the existing partner of that business will be back operating the new company. That is how you get this cover-up of a person who is not employed or unemployed or registered or

131 Name withheld, sub 121, p 7.

132 Jane, transcript Robina, 4/9/03, p 39.

133 Department of Family and Community Services (Sullivan M), transcript, 15/9/03, p 19.

putting in a tax return. They are never to be found. They can sell a business and set up a new one and just keep going like that. Something needs to be in place to monitor that.¹³⁴

- 6.167 The clear implication is that if the taxation system is unable to successfully deal with taxpayers who are exploiting opportunities to avoid their taxation responsibilities, then the child support system will also be compromised.
- 6.168 However, a more equitable solution - but more difficult to administer - may be to calculate child support liability on a different basis for self-employed payers. The objective would be to ensure the obligation to support children is met. The CSA's data at June 2002 shows the average earnings of payers whose incomes are derived from salary and wages was \$35,457 while the average from net income or loss from business was \$19,419. Average earnings from partnerships and trusts was \$16,124.¹³⁵ 87.5% of payments came from the first category, while the latter two were 9.6% and 6.9% respectively. Some payments come from more than one category.
- 6.169 Minimising taxable income is legitimate for taxation purposes, however, it is inequitable for child support assessment. This means that it is undermining the viability of the child support scheme as a universal system.
- 6.170 FaCS said that:
- ...self employed parents are subject to the same formula assessment and collection and enforcement methods as those on salary and wages, however, self employed parents have greater opportunity to manipulate their taxable income.¹³⁶
- 6.171 Particular methodologies relevant for self-employed payers include:
- registrar initiated change of assessment;
 - using ABS data on incomes in a particular industry;
 - using information about income prior to arrangements changing; and
 - Australian Taxation Office data such as 'Business Activity Statements'.
- 6.172 Enforcement powers are standard and FaCS has listed some additional ones for consideration.¹³⁷ These are included in the broader discussion of enforcement issues below.

134 Witness 1, transcript Knox, 28/8/03, p 23.

135 *Child Support Scheme, facts and figures 2001-02*, table 4.12. p 22.

136 Department of Family and Community Services, sub 1700, p 22.

137 Department of Family and Community Services, sub 1700, p 23.

- 6.173 The 1994 Joint Select Committee on Certain Family Law Issues made a series of recommendations for inclusions in the child support income base to redress the imbalance discussed above and to examine the extent to which minimisation of child support responsibilities is achieved. They also recommended research into minimisation of income (see recommendations 142 to 151). Some of these recommendations have been partly implemented.¹³⁸

Conclusion

- 6.174 The above data on sources of payment indicates the likelihood of continuing inequities in this area. The committee was critical of FaCS for not completing the research recommended by the Joint Select Committee on Certain Family Law Issues regarding minimisation of taxable income in relation to child support payments. As a matter of urgency this whole issue should be examined by FaCS and the Attorney-General's Department in conjunction with the Australian Taxation Office.

Non-resident parents leaving employment

- 6.175 The committee heard evidence of a number of examples of non-resident parents leaving jobs or refusing better paid work in order to avoid their child support responsibilities.¹³⁹ The Fairness in Child Support group put the case on this issue.¹⁴⁰ Two non-resident mothers said:

Unlike my ex-husband I take responsibility for my life but if I had any sense I would be on welfare just like him, as there is no motivation for me to work. The more I earn the more I will pay in child support.¹⁴¹

... There is no room in my life for anything else on top of work and children ... I have done the sums: if I left my job, declared myself bankrupt, got rid of those joint debts and got income support, yes, the sums are that I would be quite a lot further ahead. Of course, it is not an option because my kids would then do without.¹⁴²

138 *Government response to the Report by Joint Select Committee on Certain Family Law Issues, An examination of the operation and effectiveness of the Child Support Scheme*, Attorney-General's Department & Child Support Agency, unpublished, Nov 1997, pp 62-67, 104.

139 Marina, transcript Wollongong, 1/9/03, p 48; Val, transcript Wollongong, 1/9/03, p 52; Gary, transcript, 26/10/03, p 60; Name withheld, sub 917, p 1.

140 Fairness in Child Support, sub 548, Attachment, pp 2-3.

141 Name withheld, sub 687, p 1.

142 Witness 3, transcript Coffs harbour, 27/10/03, p 25.

- 6.176 Committee members also noted numerous reports of similar actions from constituents presenting at electorate offices.
- 6.177 According to information provided by the CSA, child support payers at any income level are financially worse off if they choose to give up paid employment to reduce their child support liability.¹⁴³ CSA data shows that the proportion of payers who are on Newstart is disproportionate to the general community. However, this may be more related to the socio-economic characteristics of the separating population than to the possible motives of unemployed people. FaCS also advised that there are no statistics from Centrelink which support the claim that paying parents are choosing to go onto Newstart in order to avoid child support.¹⁴⁴ The number of unemployed payers in the CSS is 15.8% (112,748) compared with the unemployment rate for the whole population of 5.6% (575,100 persons) seasonally adjusted estimates.¹⁴⁵
- 6.178 However, there is a clear community perception that some parents either choose to exercise this option or contemplate it. A non-resident father said:
- I think the system in its current form encourages non-custodial parents who are overcommitted in a lot of areas to go on the dole, to be dishonest and to work for cash, which they do not pay tax on. The system in its current form is letting a lot of people down—both parents and children—and it sets the wrong example for everybody in the community.¹⁴⁶
- 6.179 If either parent believes that their child support assessment is unfair because of the earning capacity of the other parent, they can apply for a change of assessment under Reason 8:
- If the [non-resident] parent is unemployed, the CSA will look at why the employment ended, including whether it was voluntary or the result of a redundancy. The parent's ability and willingness to get a job will also be considered, taking account of their age, health and job-seeking efforts.¹⁴⁷
- The CSA may determine a more appropriate income for either parent on which to base the child support assessment.

143 *Child support at a glance: better off on the dole?* CSA Form no. 1131, 30 June 2003.

144 Department of Family and Community Services (Sullivan M), 17/10/03, p 29.

145 Child Support Agency, unpublished data, Nov 2003; Australian Bureau of Statistics, 6202.0 *Labour Force, Australia*, viewed 8/12/03, <http://www.abs.gov.au/Ausstats/abs%40.nsf/e8ae5488b598839cca25682000131612/9ff2997ae0f762d2ca2568a90013934c!OpenDocument>

146 Gary, transcript, 26/10/03, p 60.

147 Bowen J, p 67.

- 6.180 In the year ended June 2003, almost 24,000 or over 60% of all change of assessment applications were made under Reason 8, and in over 14,000 of these a change was made to the assessment.¹⁴⁸

Conclusion

- 6.181 It is apparent from the evidence heard by the committee that there is a proportion of paying parents leaving paid employment to avoid child support.

Enforcement of child support obligations

- 6.182 The CSA has an increasing debt recovery responsibility. Annually published figures confirm this. The cumulative gross child support maintenance debt¹⁴⁹ has increased from \$516.6m in 1997 to \$758.7m in 2002. 43.5% of this debt is attributed to 2.6% of payers whose debt is over \$10,000.¹⁵⁰ In commenting on this matter late this year the Minister reported that ‘... The CSA had not collected \$844.1 million out of a total \$14.3 billion in child support liabilities as at the end of June 2003. This means that 5.9 per cent of liabilities have not been collected since Scheme inception.’¹⁵¹
- 6.183 This trend of increasing debt has caused some concern amongst the payee population and services assisting them. The Illawarra Legal Centre said ‘... the Child Support Agency does not take adequate action to collect child support from non-paying parents.’¹⁵² In evidence they expanded on this:

... We see significant problems with the Child Support Agency in a failure to collect child support, resulting in the accumulation of arrears of almost \$700 million to date, based on the Child Support Agency's own figures. That is a huge amount, representing many thousands of children who are not being properly supported by the non-carer parent. It also represents thousands of non-carer

148 Department of Family and Community Services, sub 1605, p 40.

149 Debt figures refer to gross child support maintenance debt for CSA Collect cases – that is, the amount of debt before any debt write-off by the CSA. These figures exclude late payment penalty debts and assumes that Private Collect cases have zero debt. (Australian National Audit Office, *Client service in the Child Support Agency: Follow-up audit*, Department of Family and Community Services, ANAO, Canberra, Sept 2002, p 85, The Auditor-General Audit Report No 7 2002-03 Performance Audit.)

150 *Child Support Scheme facts and figures 2001-2002*, p 30.

151 Anthony L MP, *House Hansard*, 7/10/03, p 20757.

152 Illawarra Legal Centre Inc, sub 238, p 3.

parents who have successfully avoided their child support responsibilities.¹⁵³

- 6.184 The National Association of Community Legal Centres and others in the community sector have supported this view.¹⁵⁴
- 6.185 The committee believes the trend of increasing accumulated debt is cause for some concern but notes that the government has allocated further funding of \$31 million over four years to CSA in 2003-04 to increase its resources to collect this debt.¹⁵⁵
- 6.186 Each year the CSA writes off a certain amount of debt. In 2002 \$85.1m was written off.¹⁵⁶ Concern about the impact such decisions have on payee parents was raised in evidence to the committee.¹⁵⁷
- 6.187 The issue was also raised by others pointing to the impact of this on individual resident parents. Concern was often driven by the fact that many resident parents are on very low incomes and their child support is an important part of their household income.
- ... In 2000, a survey conducted of Child Support Agency (CSA) clients revealed that only 28% of payees reported always receiving payments on time, while 40% reported that payment was never received ...¹⁵⁸
- 6.188 There were a number of specific examples of this in evidence to the committee. One resident mother said:
- ... I have not received ANY CHILD SUPPORT THIS YEAR despite the fact that the father, who runs his own business earns in excess of \$70,000 per year. The child support agency have limited powers over a parent who is self employed and refuses to make "Voluntary Contributions."¹⁵⁹
- 6.189 For some people the inequities that exist in the system are seen to be open to manipulation by which people can avoid obligations without accumulating debt. This time from a non-resident mother:

153 Illawarra Legal Centre Inc (Bartholomew K), transcript, 1/9/03, p 34.

154 National Association of Community Legal Centres, sub 836, p 2.

155 Department of Family and Community Services, sub 1251, p 13; *Budget measures 2003-04*, Circulated by the Hon P Costello MP, Treasurer, CanPrint, Canberra, 13 May 2003, p 140, 2003-04 Budget Paper No 2.

156 *Child Support Scheme facts and figures 2001-02*, p 30.

157 Top End Women's Legal Service (Hughes C), transcript, 25/9/03, p 40; Witness 2, transcript Keperra, 4/9/03, p 4.

158 Women's Legal Service, Brisbane, sub 904, p 32.

159 de Geest S, sub 754, p 1.

... basically, my concerns with the Child Support Agency are that it can be easily manipulated. It does not work in the cases of professional individuals like me where people have company structures and can leave part of their income in that structure or, alternatively, provide spouses with income in order to reduce their own gross income.¹⁶⁰

6.190 Table 6.3 shows that 74% of payee parents have incomes of \$20,000 or less. Other submissions highlight the ongoing risk of financial hardship or poverty of single mothers. For example the National Council of Single Mothers and their Children Inc stated:

Mothers are already more likely than fathers to experience persistent financial hardship after divorce (Weston and Smyth 2000). Mothers who sacrificed career and education opportunities during the marriage to stay at home as primary parents to their children, tend to have lower earning skills and capacities after separation ...¹⁶¹

6.191 The 1994 report of the Joint Select Committee on Certain Family Law Issues made a number of recommendations with respect to debt management and additional enforcement powers.¹⁶² In evidence to the committee FaCS provided a list of additional powers which have been suggested, some of which were included in the 1994 report.¹⁶³ These are:

- Amend CSA garnishee powers so they can be used to collect current child support from non-salary and wage earners;
- Compulsory notification to CSA from insurers re settlements (similar to HIC and Centrelink);
- Collection from [realised] compulsory preserved superannuation;
- Possibility of being able to access joint accounts;
- Credit reference agencies [CRA] – use to obtain information about parents and reporting of delinquent child support accounts to CRA's; and
- Cancellation of drivers/other licences.

In addition, the committee considers it appropriate to add to the list the following powers:

- deeming that assets which have been transferred to avoid liability can be included in income, or assets for recovery of debt purposes; and

160 Witness 1, transcript, 26/10/03, p 3.

161 National Council of Single Mothers and their Children Inc, sub 1311, p 6.

162 See recommendations 90 to 110 (Joint Select Committee on Certain Family Law Issues, pp 245-265.

163 Department of Family and Community Services, sub 1700, p 23.

- access to extraordinary lump sum payments and receipts which are not normally included in the child support income base, should be included when there is an option of using them to satisfy outstanding debt.
- 6.192 On 25 November 2003 the parliament passed the *Family and Community Services and Veteran's Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003* which restored CSA's access to the AUSTRAC database.¹⁶⁴
- 6.193 Given the additional resources the CSA has received to deal with debt the committee believes that the CSA should improve its reporting on this issue in the FaCS annual report. The committee will review the CSA's performance on debt recovery in the next 12 months.

Conclusion

- 6.194 While recognising the improvements by the CSA, it is evident that the CSA is not keeping on top of the accumulating debt in the scheme. The committee notes that the government has resourced the CSA to pursue the debt and believes that extended enforcement powers may be necessary to put this resource to good use.

Relationship between child support and social security

- 6.195 In the course of the inquiry the inconsistencies between the requirements of the CSS and the social security system, and the effect both of these can have on the ability of parents to reach shared parenting arrangements became increasingly clear. The most significant links revolve around how care arrangements impact on various income and family support benefits. There are also financial consequences for social security payments when there are fluctuations in child support.
- 6.196 As the National Welfare Rights Network (NWRN) noted:
- ... It is the contention of the NWRN that there are a significant number of anomalies and inconsistencies under the current arrangements.¹⁶⁵
- 6.197 The anomalies identified by the NWRN primarily are about the impact of increases in shared care arrangements and how that relates to eligibility of parents for various benefits such as Parenting Payment, Newstart, Carer Payment, Youth Allowance and Family Tax Benefit. These anomalies
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164 Bishop M Senator, *Senate Hansard*, 25/11/03, p 17771.

165 National Welfare Rights Network, sub 207, p 1.

could act as a disincentive to parents to more equally share the care of their children. The Women's Economic Think Tank, Women's Electoral Lobby Australia, YWCA of Australia and Children by Choice stated:

... Once the primary carer is dependent on a payment from government, the government pressures them into paid work but this does not start formally until the child turns thirteen. Government policies assume that children need to have a primary carer available with limited other demands on her time for well over their first decade and offer support to make this obvious ...¹⁶⁶

The NWRN made a number of recommendations to address this, in particular the capacity for both parents to apply for Parenting Payment. This view has been supported by others such as the Shared Parenting Council.¹⁶⁷ Ultimately, as shared parenting becomes a more significant part of future post separation parenting, these implications will need to be addressed, along with the implications for expenditure of revenue in family support benefits.

- 6.198 In the particular context of child support, the committee notes that there is also an inconsistency between the way shared care of children is regarded for the purpose of child support and for family assistance purposes. Care of children for more than 10% of the time is recognised for the purposes of adjustments in Family Tax Benefit, but not until 30% of the time for child support purposes. This inconsistency was also identified by the Pathways Report.¹⁶⁸ This is confusing for parents. As the committee has said elsewhere the aim should be to eliminate any direct connection between the time children spend with a parent after separation and financial payments between them. There may be legitimate arguments, however, for government support to take this into account.
- 6.199 Family Tax Benefit Part A (FTBA) also has a number of complex interactions with child support. First the maintenance income test for FTBA takes account of child support as income in the hands of the payee. The test does not apply to Parenting Payment. FTBA reduces by 50 cents for every dollar of child support received over \$1,127.85.¹⁶⁹ This is a problem commonly complained about.

166 Women's Economic Think Tank, Women's Electoral Lobby Australia, YWCA of Australia and Children by Choice, sub 742, p 13.

167 Shared Parenting Council of Australia, sub 1050, pp 46-48.

168 Family Law Pathways Advisory Group, *Out of the maze: Pathways to the future for families experiencing separation: Report of the family Law Pathways Advisory Group*, Commonwealth Departments of the Attorney-General and Family and Community Services, Canberra, July 2001, pp 11, 79.

169 Department of Family and Community Services, sub 1251, p 32.

6.200 In addition, to receive FTBA at an amount above the base rate a separated parent is required to take 'reasonable maintenance action'.¹⁷⁰ This is the maintenance action test. An applicant has 28 days in which to take this action.¹⁷¹ This raises a very different issue about the dynamics of the relationship between the two schemes and the flow on effect to relationships between parents.

6.201 The committee heard evidence from people who had amicable arrangements for sharing care of their children and agreed child support without the involvement of the CSA. They related how, when circumstances changed, one or other parent needed income support and applied to Centrelink. They then had to make their child support arrangements consistent with the formula.

... Everything is straight down the middle, yet we have the Child Support Agency now interfering in our lives. I have recently been required to resign from my job. You can call that what you like. I have had to go to Centrelink and apply for Newstart, because I cannot get parenting allowance.

Previously, I was wanting some assistance with my rent. ... They required that I go and apply for child support. In circumstances where I had 50 per cent shared parenting, I had to apply for child support just to get some rent assistance.¹⁷²

6.202 For some parents this kind of outcome impacted on their previously amicable arrangements.

6.203 When child support becomes irregular those amicable arrangements can become even more complicated. The implications for the rate of FTBA are complicated in practice. When child support received is less than the usual rate, FTBA will be paid at a higher rate. When arrears come in those arrears become relevant to the maintenance income test and the FTBA payment is not only reduced accordingly but Centrelink may find there has been an overpayment and take recovery action. This is explained with some examples in documents provided by FaCS.¹⁷³

Conclusion

6.204 The interaction between child support and social security is complex and confusing. The Pathways Report identified inconsistencies in the

170 A New Tax System (Family Assistance) Act 1999, Schedule 1, Clause 10.

171 Department of Family and Community Services web-site, viewed 12/12/03, www.facs.gov.au/faguide/guide/31530.htm

172 Grant, transcript, 24/9/03, p 100.

173 See: Department of Family and Community Services, sub 1700, pp 27 -28.

legislation for these two areas as requiring review to identify amendments for consistency.¹⁷⁴ The committee believes that this review is essential and it should also consider whether there are rigidities in both social security and child support law and administration which act as disincentives to shared parenting as recommended in Chapter 2.

Retrospectivity

- 6.205 The committee has considered the question of timing of reforms which follow this report, both with respect to family law and child support. All the proposals are intended to be considered as a package but it is recognised that some will be able to be implemented more quickly than others. The committee believes there are legitimate arguments for reaching a different conclusion about implementation of child support reforms from those for retrospective change for family law.
- 6.206 Many families remain clients of the CSS for many years – until the last dependent child/children turns 18. Should adjustments be made to redress the fairness issues raised, all clients in the system at the time should be able to benefit from those changes. The committee has made some recommendations for change in the short term and these should be fully applicable as soon as they are implemented. However, importantly, there should be no suggestion that adjustments to payment levels as a result should be applied retrospectively for existing debt or overpayments.
- 6.207 With respect to a more significant re-evaluation of the basis on which the formula is calculated, the committee also believes that any resultant reforms should be made applicable to all CSA clients at the time. The impact of any changes from the re-evaluation is not expected to change the client base of the CSS. Changes will only ultimately impact on the amounts paid. Adjustments like this have happened since the beginning of the scheme, so there would be no equity or administrative arguments against blanket application.

Conclusions

- 6.208 The committee notes that the issues surrounding child support are numerous and complex. There are also a number of interactions with the social security system which are often overlooked. The committee believes the current CSS has serious flaws and produces inequities for a high

174 Family Law Pathways Advisory Group, p 79.

number of payees and payers. The committee strongly recommends that an overhaul of the CSS needs to be undertaken as soon as possible. The committee acknowledges that this process may take several months. However, due to the gravity of this issue, the committee strongly urges the Government to implement the following changes immediately.

6.209 These are:

- increasing the minimum child support liability;
- reducing the ‘cap’ on the maximum amount of child support income on which it is payable;
- amending the way the payer’s child support income is determined by halving the formula percentage applying to the income earned from overtime and second jobs, worked above a set working week of 38 hours. In the event of a person working more than one job, either part time or casual, hours can be combined to achieve 38 hour limit;
- eliminating any direct link between the amount of child support payments and the time children spend with each parent, by removing the changes to the formula in relation to levels of care of their children (‘109 nights’) by non-resident parents and replacing it with a new parenting payment to non-resident parents with above 10% care;
- raising the limit on prescribed non agency payments from 25% to 30%; and
- giving the following additional enforcement powers to the CSA to improve their collection of child support:
 - ⇒ amend CSA garnishee powers so they can be used to collect current child support from non-salary and wage earners;
 - ⇒ compulsory notification to CSA from insurers re settlements;
 - ⇒ collection from realised compulsory preserved superannuation;
 - ⇒ possibility of being able to access joint accounts;
 - ⇒ credit reference agencies – use to obtain information;
 - ⇒ cancellation of drivers/other licences;
 - ⇒ deeming the transfer of assets; and
 - ⇒ access to extraordinary lump sum payments and receipts which are not normally included in the child support income base, should be included when there is an option of using them to satisfy outstanding debt.

6.210 Beyond these short term measures, the committee believes the time is right for a comprehensive re-evaluation of aspects of the CSS.

- 6.211 Given the committee's extensive work in establishing the wide ranging nature of the problems with the CSS, the focus is now on the detailed research and modelling tasks needed to backup the re-evaluation.
- 6.212 This re-evaluation should include economic modelling of elements of the CSS which are out of step with emerging patterns of parenting post separation. This re-evaluation should take into account:
- updated research into the cost of raising children in separated families;
 - the need to ensure that the CSS does not act as an incentive to residential parents to restrict the contact that non-resident parents have with their children;
 - research into the costs for both parents of establishing homes after separation which will facilitate the shared care of children;
 - the impact of critical changes in the taxation system since 1988 on the application of the formula with a view to deciding whether the income base should be moved to after tax income;
 - ensuring as a matter of principle that exempt and disregarded income are adjusted to bring them closer together to reflect the changing work and parenting patterns now evident in the community; and
 - an examination of the rigidities in the child support system and the social security system which contradict the objective of increased shared parenting with a view to reversing the dynamic towards its support and encouragement.

Recommendation 25

- 6.213 **The committee recommends that the *Child Support (Assessment) Act 1989* be amended as follows:**
- **to increase the minimum child support liability payable under Section 66 from \$260 per year to \$520 per year (that is, from \$5 per week to \$10 per week);**
 - **to reduce the 'cap' on the income of the paying parent on which child support is calculated under section 42 to ensure high income payers are not contributing child support at a rate in excess of cost of children by reducing the cap to twice average weekly earnings for full time employees or changing the base to 2.5 times average weekly earnings for all employees;**
 - **to eliminate any direct link between the amount of child**

- support payments and the time children spend with each parent, amend sections 47 to 49 removing the changes to the formula in relation to levels of care of their children ('109 nights') by non-resident parents, and replacing it with a new parenting payment to non-resident parents with above 10% care;**
- **amending the way the payer's child support income is determined by halving the formula percentage applying to income earned from overtime and second jobs worked above a set working week of 38 hours. In the event of a person working more than one job, either part time or casual, only the first 38 hours can be combined to achieve the 38 hour limit; and**
 - **to give the following additional enforcement powers to the CSA to improve their collection of child support:**
 - ⇒ **amend Child Support Agency garnishee powers so they can be used to collect current child support from non-salary and wage earners;**
 - ⇒ **compulsory notification to Child Support Agency from insurers re settlements;**
 - ⇒ **collection from realised compulsory preserved superannuation;**
 - ⇒ **possibility of being able to access joint accounts;**
 - ⇒ **credit reference agencies – use to obtain information;**
 - ⇒ **cancellation of drivers/other licences;**
 - ⇒ **deeming the transfer of assets; and**
 - ⇒ **access to extraordinary lump sum payments and receipts which are not normally included in the child support income base, be included when there is an option of using them to satisfy outstanding debt.**

The committee also recommends that section 71C of the *Child Support (Registration and Collection) Act 1988* be amended by raising the limit on prescribed non agency payments from 25% to 30%.

Recommendation 26

6.214 The committee recommends that a detailed re-evaluation of the Child

Support Scheme be undertaken by a dedicated Ministerial Taskforce.

- **The objectives of the re-evaluation should include:**
 - ⇒ **establishing the costs of raising children in separated households at different income levels that adequately reflect the costs for both parents having significant and meaningful contact with their children;**
 - ⇒ **adequately reflecting the costs for both parents of re-establishing homes for their children and themselves after separation;**
 - ⇒ **ensuring that the Child Support Scheme and the social security system work consistently to support and encourage both parents to continue to be involved in parenting their children after separation and does not act as a disincentive for workforce participation for each parent;**
 - ⇒ **ensuring the Child Support Scheme appropriately reflects significant developments in the taxation system since 1988 including company tax, trusts etc;**
 - ⇒ **ensuring as a matter of principle that exempt and disregarded income are adjusted to bring them closer together to reflect the changing work and parenting patterns now evident in the community.**
- **The re-evaluation should be completed by 30 June 2004.**

Recommendation 27

6.215 The committee recommends that a Ministerial Taskforce be established to undertake the re-evaluation set out above. The Ministerial Taskforce should include:

- **clients of the Child Support Agency;**
- **child support payer and payee representative groups;**
- **researchers with expertise in the costs of children such as National Centre for Social and Economic Modelling, University of Canberra (NATSEM) and the Social Policy Research Centre of the University of New South Wales (SPRC);**
- **social policy researchers such as the Australian Institute of Family Studies; and**

- **representatives of relevant government departments and agencies.**

Recommendation 28

6.216 The committee recommends that the Child Support Agency, in conjunction with the Commonwealth Ombudsman:

- **undertake a review of its strategies for communication with individual clients and the effectiveness of information flow to clients; and**
- **take whatever steps are required to ensure that clients fully understand all the options available to them in meeting their child support obligations and are enabled to act upon them.**

Recommendation 29

6.217 The committee recommends that the Child Support Agency decisions be subject to external review. This could be done by an arm of the Families Tribunal, the Social Security Appeals Tribunal or any other appropriate tribunal.

**Kay Hull MP
Chair**

5 December 2003

