

Child support in context

- 2.1 This chapter outlines the context in which the Child Support Program (CSP) operates, and paints a picture of some common experiences of the CSP's clients. It comprises:
- clients of the CSP,
 - the legal and administrative context,
 - relationships and finances after separation, and
 - mediation.

Clients of the Child Support Program

- 2.2 The CSP is one of the largest administrative schemes in Australia. According to the Department of Social Services (DSS) and the Department of Human Services (DHS), 1.3 million parents were in the program as of 2012-13. A substantial number of CSP clients will form new families after separation, with the result that even larger numbers of Australians, both adults and children, are impacted by the scheme indirectly.¹
- 2.3 As of 2012-13, there were approximately 1.1 million children covered by the CSP. 693 000 of these children were less than 12 years old, while 393 000 were aged 13 or older. According to DSS/DHS, 90 per cent of receiving parents are female, and 90 per cent of paying parents are male.²

1 Department of Social Services and Department of Human Services, *Submission 99*, p. 6.

2 Department of Social Services and Department of Human Services, *Submission 99*, p. 6.

- 2.4 Child support can be transferred directly from the paying to the receiving parent (which is referred to as 'private collect') or be collected by DHS and then passed on to the receiving parent (known as 'child support collect').
- 2.5 DSS/DHS data indicates that CSP clients are generally worse off financially than the general population. According to the Departments' joint submission, receiving parents' average taxable income was \$28 500 as at June 2013, while paying parents' average taxable income was \$46 100. Around 58 per cent of receiving parents were eligible for an income support payment from the government, while for paying parents, about 24 per cent of parents received income support. The most common government payments received were Newstart Allowance, Parenting Payment and the Disability Support Pension.³
- 2.6 More than a third of CSP cases involve a liability of less than \$500 per year. As of 31 August 2014, there were 271 775 total cases in which the annual rate of child support payable was between \$0 and \$500. Nearly 140 000 of those were child support collect cases, and of those, just over 60 000 were in arrears.⁴
- 2.7 DHS provided the Committee with a summary of how it collects information on the diversity of its clients. As provided in that summary:
- Since December 2013, the department has routinely collected diversity information as part of the registration process for a new child support case. The department relies on customers to self-identify their diversity indicators. This means that it is the customer's decision to provide this information voluntarily if they choose to, however the department does not require them to do so. ...The actual number of customers with diversity indicators is likely to be higher than reported.⁵
- 2.8 DHS confirmed that it collects information on the following diversity indicators:
- hearing impairment
 - indigenous
 - interpreter required
 - literacy problems
 - mobility problems
 - sight impairment
 - speech impairment.⁶

3 Department of Social Services and Department of Human Services, *Submission 99*, p. 6.

4 Department of Human Services, *Submission 99.1*, p. 9.

5 Department of Human Services, *Submission 99.5*, p. 3.

6 Department of Human Services, *Submission 99.5*, p. 4.

- 2.9 However, there are significant limits on the amount of information collected, and no clear agency policy on how that information should inform the design and provision of its services. This is problematic, because the absence of good information on CSP clients may lead to inadequate or poorly targeted policies.
- 2.10 For example, the Committee has heard that Aboriginal families in particular can experience difficulties with the CSP which arise from inadequate cultural sensitivity. The Family Law Council said:
- Council understands that many Aboriginal children are being raised by their grandmothers in informal kinship care arrangements. Council was informed that it is not uncommon in such arrangements for child support to be paid to the child's mother, rather than the grandmother, because the grandmother is reluctant to report the child's actual care arrangement to the Child Support Agency. This may occur because of the grandmother's fear that the mother might remove the child from her care and place the child in an unsafe environment. Council considers that this situation warrants further investigation, including liaison between the Child Support Agency, Centrelink, Australian Tax Office and the child protection system.⁷
- 2.11 Ms Colleen Wall from Aqua Dreaming (who is also a member of the Family Law Council) argued that any policy affecting Aboriginal people should be developed in consultation with grandmothers' networks to ensure that it is culturally appropriate:
- Aqua Dreaming would advise seeking advice from culturally aware grandmothers to assist in the safekeeping of children, especially those with non-Indigenous carers ... Recognised entities need to have access to cultural grandmothers' networks to ensure decisions are made from a culturally based framework and are not imposing one culture's norms on another.⁸
- 2.12 The extent to which diversity information is collected in the CSP, and the possible impacts of this will be considered further in Committee Comment, below.
- 2.13 More broadly, empirical data on aspects of the CSP is limited. As noted by Dr Bruce Smyth and Dr Bryan Rodgers from the Australian National University, Australian couples' financial practices remain 'one of the most personal and private facets of society'.⁹
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7 Family Law Council, *Submission 69*, p. 3.

8 Ms Colleen Wall, Aqua Dreaming, *Committee Hansard*, Brisbane, 22 July 2014, p. 7.

9 Dr Bruce Smyth and Dr Bryan Rodgers, *Submission 13*, p. 4.

- 2.14 Similarly, Dr Kay Cook noted that there are significant gaps in the research that is currently being undertaken:

What I would suggest is missing across these are the people who lie outside of the system, the people in private arrangements. We do not really know anything about them at all ... We have broad brushstroke reporting of who these people are, but we know very little about how the system actually works in practice, how people experience it and why parents are making the decisions they are.¹⁰

- 2.15 Professor Belinda Fehlberg noted that there is a paucity of empirical data on the CSP, and also highlighted the fact that DHS has reduced the amount of information on the scheme that it makes public:

There is still much that isn't known ... The absence of publically available data in this area is a significant problem.

The CSA used to release a document each year called 'Facts and Figures' which was very helpful indeed in understanding current patterns and trends, but this hasn't been done since 2009.¹¹

The legal and administrative context

- 2.16 The CSP is only one of a number of administrative and legal systems with which separated parents may be involved. There are important links between the CSP and the family law system, as well as with the Government's income support programs. Child support parents may be involved with one or more of these systems simultaneously.

Family law

- 2.17 The majority of separating parents will have some involvement with the family law system in the period immediately following separation or divorce. Regardless of whether they were married or de facto partners, separating parents must come to an agreement on how to treat their joint assets (a property settlement) and on how their children will be cared for (a parenting agreement or custody order).
- 2.18 Parenting and financial arrangements can be determined either by agreement between the parents or as the result of a court process. In relation to parenting, where parents consider it appropriate they can make a non-binding parenting agreement. In many cases these non-binding

10 Dr Kay Cook, *Committee Hansard*, Hobart, 5 August 2014, p. 32.

11 Professor Belinda Fehlberg, *Submission 110*, p. 2.

agreements are facilitated by mediators at Family Relationship Centres (FRCs) or similar services.

- 2.19 Where parents have reached agreement on parenting arrangements but wish to be formally bound by those arrangements, they can apply to a court for consent orders. In such cases, the court reviews the negotiated agreement and approves it if it is satisfied that the agreement is appropriate and in the best interests of the child.
- 2.20 Where parents cannot agree, a court may make orders which specify parenting arrangements. After the 2006 reforms to the *Family Law Act 1975*, parents are required to attempt to resolve their differences through mediation before the courts will hear an application for parenting orders.
- 2.21 Similar conditions apply to the division of joint property. Former partners can agree on how their property will be divided, and no involvement from the courts is necessary if they can do so. If required, the parents can formalise their property agreement through consent orders, which can also be applied for in the Family Court.
- 2.22 Finally, where parents cannot reach agreement, a court may make orders which specify how the property will be divided, and in addition may require ongoing maintenance payments to be made.¹²
- 2.23 In 2013-14, the Family Court of Australia finalised just under 13 000 applications for consent orders, which comprised more than 65 per cent of the total number of applications to the court for that year.¹³
- 2.24 Property and parenting arrangements can be complex and difficult to make, particularly where former partners cannot reach agreement on how they should be resolved. They can generate substantial financial and emotional stress for separating parents. Property and parenting arrangements can also interact with the CSP, and can sometimes generate conflict between parents. This is particularly the case in relation to parenting arrangements, since the amount of time children spend with each parent can affect the amount of child support payable.

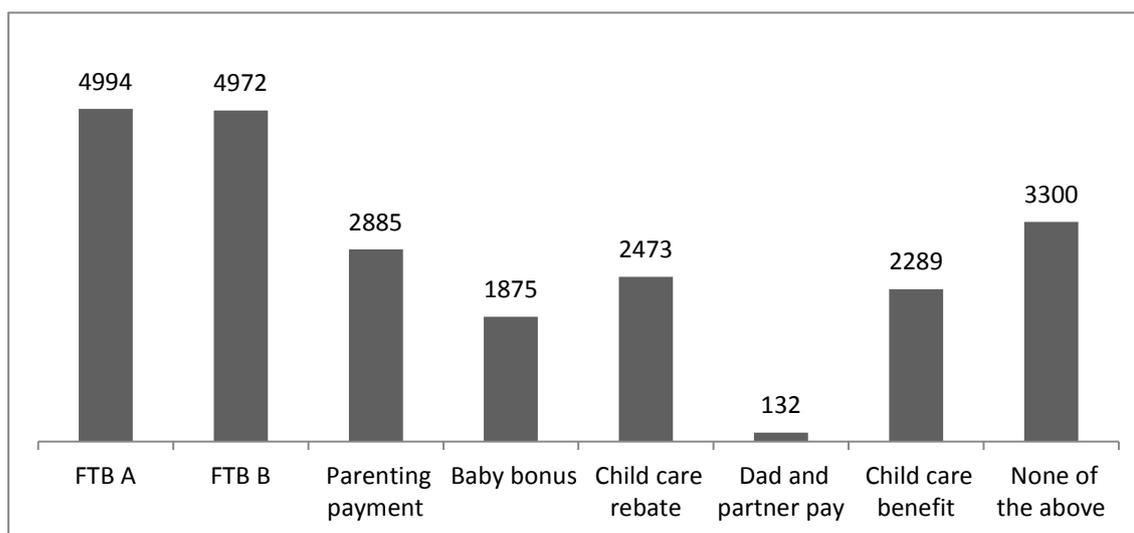
Centrelink

- 2.25 The CSP and the Government's income support framework are linked in a number of ways. This section will briefly outline the links between the two systems and highlight some of the problems those links may cause for child support clients.

12 Family Law Courts, *Property and money after separation*, viewed 3 December 2014, <http://familylawcourts.gov.au/wps/wcm/connect/FLC/Home/Property+and+Money+Matters/Property+and+money+after+separation/>

13 Family Court of Australia, *2013-14 Annual Report*, p. 57.

Figure 2.1 Questionnaire respondents receiving family assistance



2.26 Separation can be a time of substantial financial difficulty, and families may incur a number of costs related to the separation. A person may, for example, need to establish a separate household, purchase a vehicle, fund divorce or other court proceedings, and attend counselling or mediation.

2.27 At the same time, the costs of raising children continue. In a community statement session held in Canberra, Julie said:

Children do not stop needing nappies, food, clothing and a roof over their heads because their parents are no longer together, nor can they wait months for these necessities.¹⁴

2.28 As such, a large proportion of CSP clients receive income support from the government, most often in the form of the Family Tax Benefit (FTB). FTB consists of two parts, parts A and B. FTB-A is intended to help families with the cost of raising children. It is paid for each child and is income tested, which means that the amount received depends on each household's financial circumstances. To be eligible for FTB-A, a person must care for the child for at least 35 per cent of the time. FTB-B is designed to assist single parents and families with one main income and is also income tested.

2.29 The DSS/DHS submission noted that 40 per cent of people who receive FTB-A are involved in the CSP, either as paying parents, receiving parents, or as the spouse of a paying or receiving parent.¹⁵

2.30 One of the most substantial links between the CSP and income support system is through the Maintenance Action Test (MAT). Parents who apply

¹⁴ Julie, Community Statement Session, *Committee Hansard*, Canberra, 29 August 2014, p. 29.

¹⁵ Department of Social Services and Department of Human Services, *Submission 99*, p. 36.

for FTB-A are required take 'reasonable action' to obtain maintenance from the other parent if they wish to receive more than the base rate of FTB, within 13 weeks of being entitled to apply for maintenance:

Where a parent who is entitled to apply for maintenance for a child receives more than the base rate of FTB Part A, they are required, where reasonable, to take maintenance action ... To take reasonable maintenance action, the parent needs to apply for a child support assessment or apply for the acceptance of a child support agreement.¹⁶

- 2.31 If DHS is not satisfied that reasonable action has been taken to secure maintenance from the child's other parent, only the base rate of FTB will be paid:

The consequence of a person not taking reasonable action to obtain maintenance is that their FTB will be reduced to the base rate. This can be a significant reduction and is a powerful incentive to encourage parents to apply for a child support assessment and to collect it.¹⁷

- 2.32 There are a number of circumstances in which receiving parents are not required to take maintenance action. According to DSS/DHS:

Parents may be granted an exemption from the MAT in a range of circumstances. As at the end of March 2014, of all the children of FTB Part A recipients subject to the MAT, 11.7 per cent had an exemption. The top three reasons for exemptions granted were for fear of violence (31.8 per cent), unknown parentage (27.4 per cent) and because of the imposition of a harmful or disruptive effect on the individual or the other parent (12.3 per cent).¹⁸

- 2.33 Although Centrelink and the CSP take steps to advise people of the requirement to take maintenance action, evidence received during the inquiry indicated that some clients, particularly those from Aboriginal or Culturally and Linguistically Diverse (CALD) backgrounds, remain unaware that they might be eligible to receive more FTB, and that they must satisfy the MAT to get it. According to Ms Therese Edwards from the National Council of Single Mothers and their Children:

Many mums miss out on their family payments because they fail a maintenance action test. You need to get child support case started. If you do not get a child support case started, irrespective of your circumstances, the most that you can access is the base rate

16 Department of Social Services and Department of Human Services, *Submission 99*, p. 36.

17 Commonwealth Ombudsman, *Submission 55*, p. 26.

18 Department of Social Services and Department of Human Services, *Submission 99*, p. 36.

of family payment, which is a far cry if you are very poor with a few children.¹⁹

- 2.34 Receiving parents' income can also be affected by a range of relationship dynamics external to the CSP. Dr Kay Cook noted that in many cases receiving parents (most of whom are women) make decisions on child support matters with factors other than income maximisation in mind. Dr Cook noted that women may not take advantage of the full range of benefits available to them because of a need to 'keep the peace' or because of a perceived threat of adverse consequences.²⁰ This can have a detrimental effect on the amount of child support or FTB they receive.
- 2.35 DSS/DHS reported that as at the end of March 2014, FTB-A recipients failed the MAT in relation to nearly 10 per cent of children for whom maintenance action was required. The Departments advised that this group of receiving parents were losing an average of \$3 463 in FTB-A payments per year.²¹
- 2.36 The other primary link between child support and government income support is through the 'Maintenance Income Test' (MIT). As noted above, FTB is income tested. Income received by an FTB recipient and their partner is taken into account when calculating an individual's FTB entitlement:
- 'Child maintenance' (which includes child support) and 'spousal maintenance' are forms of maintenance income. The MIT takes account of maintenance income received by an FTB recipient and/or their partner. It affects the amount of FTB Part A received above the base rate.²²
- 2.37 Where parents have elected to collect child support themselves (that is, in 'private collect' cases), CSP and Centrelink assume that child support is paid in full, regardless of whether the paying parent is in reality meeting their payment obligations. As the Commonwealth Ombudsman has noted, this assumption may have adverse effects on how much FTB will be paid by Centrelink:
- Since 1 July 2012, child support payees on private collect are deemed to have collected the full amount of child support that the payer was assessed to pay in the financial year. This effectively means that private collect payees who do not collect or are unable

19 Ms Therese Edwards, National Council of Single Mothers and their Children, *Committee Hansard*, Canberra, 26 June 2014, p. 6.

20 Dr Kay Cook, *Submission 38*, p. 3.

21 Department of Social Services and Department of Human Services, *Submission 99*, p. 36.

22 Department of Social Services and Department of Human Services, *Submission 99*, p. 36.

to collect their child support are likely to receive less FTB than they would if Child Support had collected the same amount for them.²³

- 2.38 DSS/DHS reports that as at March 2014, 58 per cent (or 301 000) FTB-A recipients had 'some reduction' in their FTB-A payment as a result of the MIT.²⁴
- 2.39 The Commonwealth Ombudsman has expressed concern that the CSP encourages new child support customers to choose private collect without adequately explaining this potential loss of income:
- Child Support encourages new registering customers to choose private collect. If the payer pays in full and on time, this is not a problem. However, we are not confident that Child Support clearly explains to all payees when it is encouraging them to choose private collect how this will affect their FTB payments.²⁵
- 2.40 In Chapter 4, the Committee deals with the lack of information about private collect, and considers how to improve knowledge about the payment rate in private collect.

Relationships and finances after separation

- 2.41 In addition to the complicated legal and administrative environment described above, parents can find the CSP extremely challenging from an emotional point of view. The CSP enters people's lives at a difficult time. Initial child support decisions might be made in the first weeks and months after separation – potentially one of the hardest and most stressful times in a person's life. Conflict between parents is likely to be at its most intense around the time of separation, and so the emotional context for CSP clients is likely to be complex and unsettled.
- 2.42 One of the key reasons for this emotional complexity is the fact that child support combines two of the most powerful influences in a person's life: love and money.
- 2.43 In the context of a relationship, money can exercise a role far more important than its face value would indicate. According to Dr Bruce Smyth and Dr Bryan Rodgers:

23 Commonwealth Ombudsman, *Submission 55*, p. 24.

24 Department of Social Services and Department of Human Services, *Submission 99*, p. 37.

25 Commonwealth Ombudsman, *Submission 55*, p. 24.

Money matters – especially following parental separation – can come between otherwise caring and competent parents, with potentially serious, long term consequences for the children.²⁶

2.44 While little empirical data exists on the financial practices of couples, the Australian Institute of Family Studies (AIFS) said that money can sometimes function as a substitute for other, less measurable aspects of family life:

some family disputes over money can be seen as a proxy for expressions of intimacy (or lack of intimacy) ... This is because where money matters are generally tangible, concrete and measurable, matters of intimacy and relationships tend to be difficult to define and generally prove to be beyond our capacity to measure.²⁷

Questionnaire box 2.1 Emotional context of the CSP

'This is an extremely stressful and anxious time, I have to say, it is without doubt, the most stressful thing I have ever encountered in my life.'

'Separation is extremely upsetting and stressful. When children are involved this stress triples because all of a sudden you have to think about how you are to care for and support your children as well as making sure that the separation has as minimal an effect on them as possible!'

'Child support is complicated and emotional. There is too much information that customers need to know in order to properly manage their child support successfully from the beginning. Unfortunately this information is usually provided at a time where emotions are running high and information overload is at its peak.'

'I found the whole processing of registering for child support very stressful. In particular, I found it very difficult to understand the connection between the Child Support Agency and Centrelink and who to go to for what.'

'I initially communicated with my ex-partner to organise child support but as the communication broke down between us I handed it over the CSA and have not had any issues since. I have found the process easy and contact with CSA positive.'

'Having a bit of compassion would help. I had cancer and no consideration was given to the fact that I had to rebuild my life. Was told that I was going to lose my tax return because I had not correctly guessed what my income was going to be. At the time I put in the income estimate I was on sickness benefit and didn't know when I was going to live or die let alone whether I was going back to work. It added an incredible amount of stress to an already stressful situation but no help from CSA at all.'

'It's a power struggle. I self-collect and do not get the full amount I'm assessed to get. I have tried to change it to have the CSA collect on my behalf but the resulting abuse was too stressful. I just go along with what he wants to keep the peace because I value my mental health over money.'

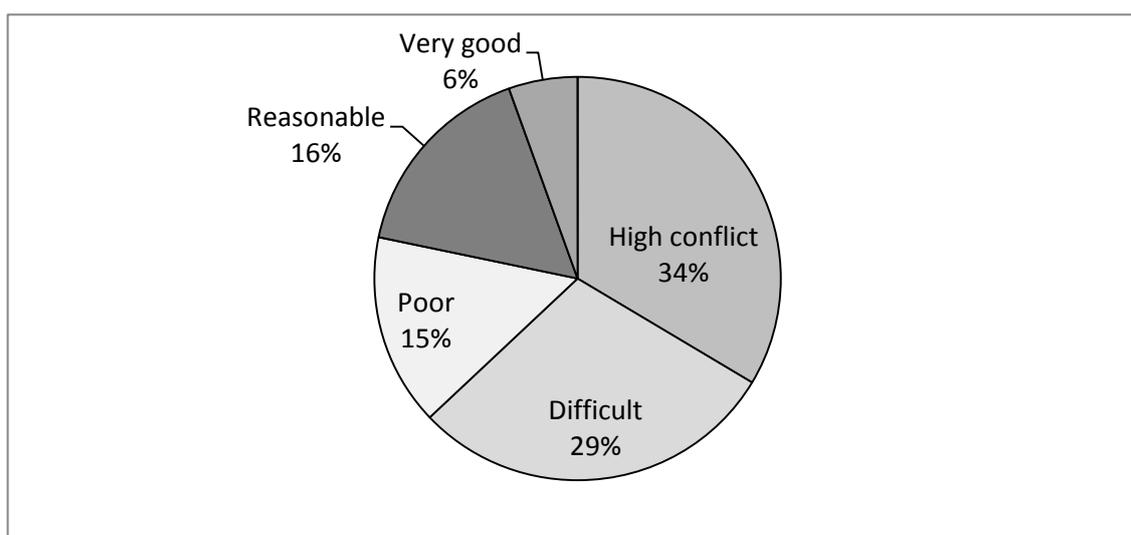
26 Dr Bruce Smyth and Dr Bryan Rodgers, *Submission 13*, pp. 1-2.

27 Australian Institute of Family Studies, *Submission 50*, p. 46.

- 2.45 After a separation or divorce, former couples' views on money can change drastically, as what were jointly-held life goals become separate and as the parents' interests diverge:

Under those circumstances, the assets and income, which formerly were devoted to the projects of familial solidarity, become the object of competing claims.²⁸

Figure 2.2 Quality of questionnaire respondents' relationships with other parent(s)



- 2.46 Consequently, child support is a policy area 'fraught with high personal emotion' for many separating parents. According to Dr Smyth and Dr Rodgers:

For many separated parents, child support continues to act as a 'lightning rod' for much pent-up anger, grief and disappointment surrounding relationship breakdown (including court outcomes) and the loss of everyday family life.²⁹

- 2.47 Child support's tendency to act as a lightning rod for a range of feelings is intensified by the fact that couples tend to experience their relationship and their separation very differently, and so may have very different views on the fairness of their post-separation arrangements.
- 2.48 Dr Smyth and Dr Rodgers note that the subjective experience of a relationship can be quite different between partners – a difference in views that can extend through separation and into their experience of life apart:

we know that men and women tend to report different experiences of the separation process, and tend to hold different

28 Dr Bruce Smyth and Dr Bryan Rodgers, *Submission 13*, p. 1, footnote 6.

29 Dr Bruce Smyth and Dr Bryan Rodgers, *Submission 13*, pp. 2-3.

perceptual frames ... it's not unusual for separated parents from the same relationship to report very different views about their relationship ... and different information about their parenting arrangements.³⁰

- 2.49 In addition to interpreting their relationship and separation differently, parents often have very different views of what 'fair' post-separation arrangements look like. A person's views on fairness can be shaped by the history they share with their former partner:

All separating and separated families bring into negotiations their own history of dealing with intimacy and the exercise of power. Linked to this history, these families also bring with them a sense of the fairness or otherwise of their negotiations with each other, including their financial dealings with each other.³¹

- 2.50 Separating parents' views on fairness can also be affected by a reduction in financial resources while they are still coming to terms with the failure of their relationship:

many separated families must confront the additional burden of realising that the financial pie is likely to be insufficient in the short term (and sometimes in the projected medium to long term) to sustain two households at or even near pre-separation levels. For some parents, the emotional and financial strains can be considerable. These stressors are likely to impact on the quality of post-separation relationships and may colour perceptions of past and present fairness.³²

- 2.51 These issues also affect people's views of the CSP as a whole, which can lead to entrenched views both on the part of receiving parents and paying parents. As a result, from time to time people with a personal experience of the CSP make unsubstantiated generalisations about the CSP itself as well as the parents on 'the other side' of the scheme. Mr Trevor Koops, for example, said:

Higher-income non-resident parents would be more accepting of these excessive amounts if resident parents were more honest about actual expenditures and were prepared to direct any current surplus toward a child's non-current needs.³³

- 2.52 The Lone Fathers Association (Australia) (LFAA) likewise pointed to:
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30 Dr Bruce Smyth and Dr Bryan Rodgers, *Submission 13*, p. 11.

31 Australian Institute of Family Studies, *Submission 50*, p. 46.

32 Australian Institute of Family Studies, *Submission 50*, p. 46.

33 Mr Trevor Koops, *Submission 13*, p. 3.

receiving parents who believe they have a right to purchase cigarettes, alcohol and/or other addictive substances, and/or gamble their child support. Others believe they can just decide to throw their job in, and become unemployed knowing their child support will rise if they are employed.³⁴

- 2.53 The National Council of Single Mothers and their Children (Hobart Branch) suggested that all business owners should be subjected to greater scrutiny, extending a presumption of misconduct to all payees who are business owners:

The minimising of income to artificially deflate or cease child support payments continues to be problematic and we appreciate that it's difficult to manage. We view merit in challenging an income assessment in two categories: for business owners where business finances must come under greater scrutiny; and for lifestyle inaccuracies.³⁵

- 2.54 The Hobart Women's Health Centre pointed to what it saw as a culture that blames single mothers for 'being welfare dependent', and said that:

Many men do not think they should have financial responsibility for children they do not live with and resent having to contribute.³⁶

- 2.55 The practical consequence of these emotional, perceptual and financial issues is that child support can very easily become a venue for conflict between separated parents:

The two party nature of a child support case and the background of parental separation against which it is administered means that there is a greater capacity for things to occur that will lead to dissatisfaction and complaint on the part of one or both parties.³⁷

- 2.56 The particular circumstances of CSP clients who continue in a pattern of conflict with their former partners will be discussed in detail in Chapter 4. It should be noted, however, that in the majority of cases parents manage to overcome the tendency to engage in post-separation conflict. The AIFS said that most parents:

establish and sustain friendly or cooperative post-separation relationships with each other, most resolve issues related to their children and settle their property matters with relatively little professional input. Most also largely conform with the present

34 Lone Fathers Association (Australia), *Submission 42*, p. 16.

35 National Council of Single Mothers and their Children (Hobart Branch), *Submission 32*, p. 20.

36 Hobart Women's Health Centre, *Submission 26*, p. 4.

37 Commonwealth Ombudsman, *Submission 55*, p. 5.

child support regime by complying with the payment requirements.³⁸

- 2.57 A final factor which can influence parents' experience of the child support system is the intricacy of the scheme. The formula for assessing child support liability is complex, and the scheme also provides a number of different avenues for varying or objecting to decisions or assessments (for detail on the assessment formula, see Chapter 3). In addition, CSP communications about the scheme can be difficult to understand or contextualise.
- 2.58 A number of submissions emphasised the problems that the scheme's complexity can cause. Hobart Women's Health Centre said that even 'articulate, highly educated' people can frequently find the scheme hard to navigate. Many 'less empowered' people 'simply do not understand' the program's requirements and often 'take the path of least resistance'.³⁹
- 2.59 Similarly, Victoria Legal Aid (VLA) emphasised that disadvantaged people, those with lower literacy or those from a non-English-speaking background find it particularly difficult to navigate the child support system:
- the complexity of the scheme is a particular challenge. Issues of illiteracy, low education levels, culturally and linguistically diverse backgrounds, disability, and mental illness can make it difficult for clients to understand the system and engage with the system to ensure it provides equitable outcomes ... VLA is concerned that if parents are unable to navigate a system that they perceive as too complex this unnecessarily exacerbates financial hardship and negatively impacts on capacity to provide for the child.⁴⁰
- 2.60 The scheme's complex processes can cause stress and anxiety in parents, many of whom may already be experiencing hardship. Miss Kerry Arch said that:
- During the child support assessments there is an increase in anxiety and depression. I myself have been bedridden with anxiety and depression, just in the last change of assessment, due to financial stresses that I know I should not have been made to experience.⁴¹
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38 Australian Institute of Family Studies, *Submission 50*, p. 47.

39 Hobart Women's Health Centre, *Submission 26*, p. 6.

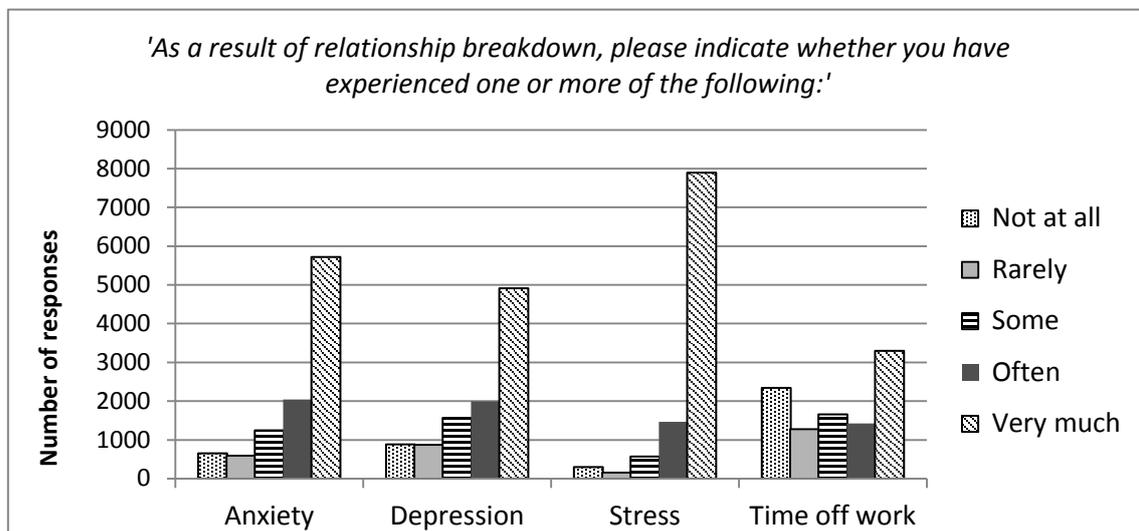
40 Victorian Legal Aid, *Submission 53*, p. 5.

41 Miss Kerry Arch, United Sole Parents Australia, *Committee Hansard*, Melbourne, 21 August 2014, p. 34.

- 2.61 This comment from the Committee's anonymous questionnaire highlights the complex personal circumstances child support clients may have, and how the CSP can appear to them:

I was young and trying to recover from serious domestic violence issues and subsequent failed relationship/marriage; and experiencing severe, related socio-economic disadvantage, with associated complex issues. Letters in the mail from Child Support Agency with bureaucratic-speak and unfamiliar language were difficult to comprehend and not particularly helpful to me in a time of trauma.⁴²

Figure 2.3 Questionnaire respondents and mental health



- 2.62 It is clear from the above that CSP clients can face substantial difficulties when they engage with the scheme. Separating families often experience high levels of stress, conflict, grief, shock and confusion in the months and years after their separation, and they may be involved in multiple administrative processes simultaneously. Although most former partners come to terms with these issues over time, it can be extremely difficult to do so. The following section explores models of support which may assist separating families to create more consensual and durable child support arrangements.

42 Anonymous, *Questionnaire response*.

Mediation

2.63 Mediation can be an effective mechanism to foster cooperation between separated parents and thereby improve child support outcomes. Mediation has been used to good effect in a family law context but is not widely used in child support matters at present. It has been suggested that mediation could play a useful role in the child support system by reducing conflict and increasing cooperation among separated parents. This section will explore the potential for properly resourced and qualified mediators to improve child support outcomes.

2.64 The 2005 Ministerial Taskforce on Child Support noted that the best outcomes in family law disputes are reached by agreement between the parties:

It is a fundamental axiom of family law that the best arrangements are those that the parties negotiate for themselves. They are more likely to last where people feel responsible for the choices and compromises that have had to be made. Imposed solutions can breed resentment and dissatisfaction.⁴³

2.65 Mediation is a process which helps parents to communicate and negotiate after separation. As Professor Belinda Fehlberg noted, functional parental relationships are more likely to lead to good child support outcomes:

ongoing financial support of children depends on several factors, but the quality of the post-separation relationship between parents is very important. Where parents can communicate and can focus on the needs of their children, on-going financial support is more likely.⁴⁴

2.66 In addition to helping separated parents build and maintain cooperative relationships, Professor Fehlberg argued that child support mediation might help bridge the 'perceptual gap' between paying and receiving parents. A shared understanding of what child support is for, and why it is required may lessen conflict between parents:

payers calculate child support differently to payees. ... Payer fathers also struggle with a model that views child support as an entitlement rather than a gift. If parents had a clearly sign-posted, established pathway for becoming informed about child support (another significant problem) and talking about it together, some of these differences may be better understood and resolved earlier

43 Department of Social Services, *In the Best Interests of Children: Report of the Ministerial Taskforce on Child Support*, May 2005, p. 207.

44 Professor Belinda Fehlberg, *Submission 110*, p. 1.

on. Parents might also be more child-focused in relation to their child support arrangements.⁴⁵

- 2.67 Dr Alina Morawska from the University of Queensland highlighted the serious problems conflict can have on children, and emphasised the importance of reducing conflict between separated parents:

Conflict is a common feature of many divorces and we know that it is the conflict that in fact has a huge impact on children ...

high conflict between co-parents places children at a very serious elevated risk of all sorts of behavioural, emotional and academic problems that can endure.⁴⁶

- 2.68 In the same vein, Relationships Australia (RA) noted that children whose parents maintain cooperative relationships tend to do better than children in high conflict families. Since financial issues like child support can generate conflict between parents, RA argued that 'programs which can improve the quality of family relationships' such as mediation should be 'strongly embedded in the administration of the Child Support Program'.⁴⁷

Mediation in family law

- 2.69 Since 2006, mediation has been a requirement – with some exceptions – for people seeking parenting orders in the Family Court. The Law Council of Australia said that:

In the Family Court of Australia, compulsory mediation occurs with a Registrar or Deputy Registrar of the Family Court. In the Family Court of Western Australia and the Federal Circuit Court of Australia, the mediation occurs with a Registrar, or, where the parties have sufficient means, with an outside mediator appointed by, and paid for by, the parties.⁴⁸

- 2.70 According to the Attorney-General's Department (AGD), the requirement to undertake mediation has had a substantial impact:

The introduction under the 2006 reforms of a requirement (with exceptions) to attend FDR [Family Dispute Resolution], either through a private FDR practitioner, a specialised FDR service, or through FDR offered at a Family Relationship Centre, before filing

45 Professor Belinda Fehlberg, *Submission 110*, p. 1.

46 Dr Alina Morawska, University of Queensland, *Committee Hansard*, Brisbane, 22 July 2014, pp. 1-2.

47 Relationships Australia, *Submission 37*, pp. 2-3.

48 Law Council of Australia, *Submission 59.1*, p. 1.

family court proceedings for a parenting order has had a major impact on separating families.⁴⁹

- 2.71 AGD drew the Committee's attention to research conducted in 2013, which found that 'in 2011/12 where both parties attended family dispute resolution conferences in FRCs, full agreement was reached for 4 938 cases, or 52 per cent of the total. Partial agreement was reached for a further 2 644 cases (28 per cent)'.⁵⁰ In other words, full or partial agreement was reached in four out of five cases that would otherwise have come before the court.
- 2.72 On that basis, AGD said that FDR has 'appeared to work well for many parents and their children'. The Department further noted that beyond these measurable positive outcomes there are likely to be other, less obvious benefits derived from mediated outcomes. In particular, AGD pointed to a general reduction of conflict, increased parental ownership of post-separation arrangements, and parents 'refocusing' on what is in their children's best interests.⁵¹

Mediation in child support

- 2.73 These generally positive outcomes indicate that the increased use of mediation in child support matters could be beneficial. The deployment of a mediation-led child support process may be appropriate as a starting point for almost all families entering the child support system and also at other points of potential conflict in the CSP.
- 2.74 While the increased emphasis placed on mediation in family law matters since 2006 is regarded as a positive development, mediation remains under-used in a child support context. DSS/DHS noted in its submission that in most cases, mediators at FRCs do not provide advice on child support matters directly, but rather refer parents to other services which can provide more expert advice:

Under the current Operational Framework for Family Relationship Centres, FRCs assist parents to achieve workable and appropriate child support arrangements for the children, through information, advice and referral to services. FRC staff are not expected to be experts in child support or income support; instead they are able to phone DHS staff to discuss child support and FTB implications

49 Attorney-General's Department, *Submission 95*, p. 4.

50 Attorney-General's Department, *Submission 95*, p. 6.

51 Attorney-General's Department, *Submission 95*, p. 4.

of arrangements they are considering. Parents may also be able to talk to DHS staff directly in private using FRC telephones.⁵²

- 2.75 Dr Smyth and Dr Rodgers noted that so far there has only been 'sparse' interest in 'how separated couples discuss and directly negotiate child support'. While the family law system has led the way in providing formal mechanisms to assist separating couples to make their own parenting arrangements, it has not generally provided similar mechanisms in relation to financial matters. As such, Dr Smyth and Dr Rodgers argued that there may be some 'scope to provide services to assist separated parents to discuss child support matters directly with each other, where appropriate'.⁵³

Questionnaire box 2.2 Mediation and the CSP

The hardest part is separating emotion from the "business" of financial support for children. Neither of us knew where to start or how to proceed. We both had lawyers, but ended up at two separate mediation events with two different mediators. Both of these focussed almost entirely on the emotional welfare of the kids (fair enough to some extent) but failed to get us to an equitable agreement for financial arrangements.

The Federal Dept. of Social Services mediation services are very affordable and this made it possible to go through mediation rather than costly legal system. Please maintain these mediation services.

Make the mediation process more affordable and accessible so children are not denied a relationship with a parent over money, as a form of revenge.

Attempting to negotiate with someone who delays dialogue, avoids communication and is unwilling to negotiate in good faith undermines the process. My experience is that if one person undermines negotiation there is very little the other can do about it.

We attempted care arrangement mediation through the Family Relationship Centre. I found the level of skill displayed by their practitioners was insufficient to manage the behaviour of my ex-husband and to progress to reaching an arrangement/agreement for either care or child support. The administrative functionality of the FRC we attended was also very poor.

As non-custodial parent, the negotiations were heavily influenced by the fact the custodial parent could cause problems with access at any time. There was a need to keep her satisfied and not antagonise her, or risk a long and expensive fight through the courts just to see my kids.

- 2.76 Similarly, the AIFS argued that there is at present a lack of services to assist couples to work out their post-separation financial arrangements:
- there is currently no place for former couples to go to discuss these difficult issues. Rather, they tend to be 'pronounced upon' by citing legal principles or by making a judgement call using the child support formula as an externally-located touchstone ... the data on fairness and on parental (mainly fathers') perceptions about the cost of supporting children, links between payments and

52 Department of Social Services and Department of Human Services, *Submission 99*, p. 41.

53 Dr Bruce Smyth and Dr Bryan Rodgers, *Submission 13*, p. 17.

time etc., suggest that more can be done to assist some parents come to a more settled place with respect to child support.⁵⁴

- 2.77 The mediation process could also provide an opportunity for people entering the child support system to gain skills that may help to navigate some of the CSP's more challenging financial aspects. For example, both paying and receiving parents have highlighted the difficulty of coping with variable incomes. Some payers, notably those on variable income as a result of contract or casual employment, experience difficulty providing the CSP with accurate income figures. This can lead to either under or overpayments. According to one submitter:

Being unable to predict the coming twelve months workload, overtime and bonus payments makes it hard for me to estimate my annual income. In order to maintain an accurate figure I would be required to notify CSA of changes in circumstance every two weeks (pay periods) ... to ensure I was complying and not building an arrears.⁵⁵

Table 2.1 Questionnaire respondents' use of mediation in child support matters

Did you use mediation or counselling to assist in negotiating child support arrangements?	Responses	Percentage
No	7590	80%
Yes	1896	20%
Total	9486	100%

- 2.78 In the same vein, a contributor to the inquiry said that casual or contract work can make it difficult for child support payers:

It makes it really hard to estimate your income and get it right when you are a casual employee and you could spend 1, 2, 3 weeks at home waiting for a new job to start or you are really busy and there is lots of work.⁵⁶

- 2.79 Financial counselling may provide assistance to both payers and payees around how to better manage varying income levels and meet the joint financial obligations of raising children. This would give separating parents the knowledge and skills to deal with the medium and long-term financial challenges that they will face as the separation progresses. As described by the former Minister for Social Services, the Hon Kevin Andrews MP:

I believe the most effective assistance for families – and individuals – is to focus interventions on key transition or

54 Australian Institute of Family Studies, *Submission 50*, p. 48.

55 Name Withheld, *Submission 11*, p. 1.

56 Correspondence received by the Committee, August 2014.

readiness points across the whole of life. Maximising the capacity of people to deal with these life points can help improve the lifetime wellbeing of people and families.⁵⁷

- 2.80 Where needed, financial counselling could be provided as part of a mediation process undertaken when parents enter the CSP. Family and Relationship Services Australia (FRSA) noted that one of its member organisations, FMC Mediation and Counselling Victoria, already addresses financial and child support matters as well as parenting arrangements during mediation:

FMC has a long history of providing family dispute resolution in parenting, property and financial matters. FMC practitioners currently mediate child support arrangements if parents identify it as a need.⁵⁸

- 2.81 As part of the process, FMC mediators take parents through the costs of raising children in a way which can help them come to a common understanding of the mutual needs and obligations in relation to raising their children:

The actual cost of children is one of the tools used to ground both parents and this is done through developing a budget that identifies actual cost of school fees, excursions, books, uniforms, curricula/extra curricula activities, clothes, shoes, gifts, birthday parties, Christmas and entertainment. This approach often highlights what parents are not aware of and the possible blockers for moving forward.⁵⁹

- 2.82 The skills and understanding developed through mediation of this kind may help parents to plan for periods of variable income and help them to avoid or minimise underpayments or overpayments. Accordingly, FMC takes the view that any difficulties arising from child support mediation can be outweighed by the shared understanding and increased financial capacity the program can build:

Following the mediation of child support matters, FMC's practice is always to refer clients to receive independent legal advice and/or child support or Centrelink advice on the impact of the agreements they have made. FMC considers that mediating child

57 The Hon Kevin Andrews MP, *Enhancing prevention and early intervention: opening address at the Family and Relationship Services Australia National Conference*, 4 November 2014.

58 Family and Relationship Services Australia, *Submission 61.1*, p. 6.

59 Family and Relationship Services Australia, *Submission 61.1*, p. 6.

support arrangements is a positive step, as it is in the best interests of the child/ren that all areas of parental conflict be addressed.⁶⁰

- 2.83 As well as setting expectations and building positive habits at the beginning of the child support experience, mediation could also help reduce conflict later in the process. Dr Lawrie Moloney from the AIFS told the Committee that FRCs could help parents work through child support issues on an ongoing basis:

there needs to be a place for parents to talk to each other more about the money issue. I think that is one of the things that has been lacking.

...

It just seems to me a logical next step that a place for parents to go ... to talk about adjustments to their child support would be family relationship centres.⁶¹

- 2.84 In the same vein, Professor Patrick Parkinson argued that more intensive use of mediation in the context of the Change of Assessment process could satisfy an unmet need in the system:

In my experience there are many families who are in continual conflict over child support issues and make repeated Change of Assessment applications year after year. The underlying conflictual dynamics are not addressed through the Change of Assessment process, and it may well be that mediators, able to address the issues in a more holistic way, will be able to achieve better outcomes for similar cost than can be achieved through the Change of Assessment process and subsequent SSAT [Social Security Appeals Tribunal] appeals.⁶²

Cautions about mediation

- 2.85 Although mediation in child support matters has the potential to offer substantial benefits, it is not appropriate for some families. There are also risks associated with expanding the use of guided negotiation in relation to such a complex topic, and a number of submissions raised concerns about the necessity to adequately train and resource mediators for the task.
- 2.86 First and foremost, child support mediation involving victims of family violence should be conducted with extreme caution, careful screening and
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60 Family and Relationship Services Australia, *Submission 61.1*, p. 6.

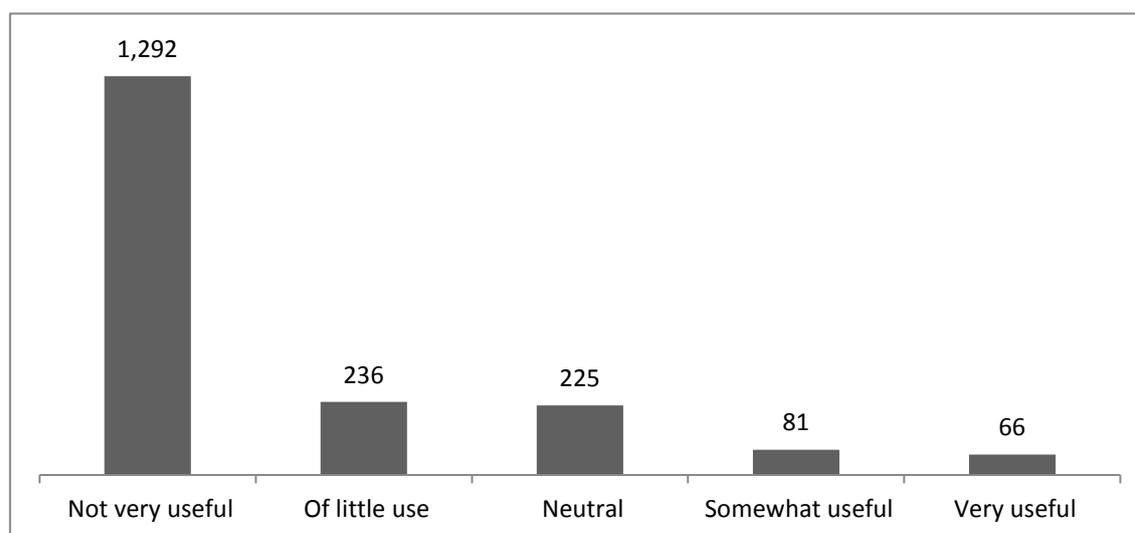
61 Dr Lawrie Moloney, Australian Institute of Family Studies, *Committee Hansard*, Melbourne, 21 August 2014, p. 8.

62 Professor Patrick Parkinson, *Submission 2*, p. 7.

appropriate safeguards. Illawarra Legal Service argued that ‘negotiation is not suitable for those already disempowered and victims of violence ... [since] mediation can be used as another tool for intimidation and abuse’.⁶³

- 2.87 Women’s Legal Services NSW expressed a similar view in relation to family violence, arguing that ‘where there is violence, mediation may not be appropriate’.⁶⁴

Figure 2.4 Questionnaire respondents’ views on the effectiveness of mediation



- 2.88 Dr Don Tustin of Adelaide Psychological Services highlighted research which indicates that mediation may not be appropriate for parents in a relationship characterised by high and entrenched levels of conflict. According to Dr Tustin:

mediation works well with cooperative parents as mediation relies on mutual good-will from both parties. However mediation does not work well and can introduce risks when parents are in constant high conflict. It is concluded that the FRS [Family and Relationship Services] model is less efficient for families with complex needs who require individualised interventions.⁶⁵

- 2.89 On the other hand, Mr Paul Lewis from the Law Society of NSW argued that in some cases, mediation could help people find a way to escape habits of conflict:

63 Illawarra Legal Service, *Submission 52*, p. 5.

64 Women’s Legal Services NSW, *Submission 43*, p. 4.

65 Adelaide Psychological Services, *Submission 18.1*, p. 11.

People, when they are in entrenched conflict, tend to demonise the other party and they cannot find a way out – they become stuck in the conflict ...

there is scope for people to return for family mediation or family dispute resolution to revisit the reasons as to why they are in conflict, with the assistance of skilled practitioners to try to help them change that.⁶⁶

2.90 The problem of how the CSP might deal with cases involving persistent high conflict and family violence will be considered in detail in Chapter 4.

2.91 In addition, given that family law mediation is child focused, the Law Society of NSW expressed concern that extending mediation to cover financial arrangements may lead to a more overt focus on financial interests, thereby detracting from child welfare:

there can be good reasons to separate child support issues from parenting discussions. From a policy perspective, the [Family Issues Committee of the Law Society NSW] would be concerned about parties 'horse-trading' over care percentages and money that may detract from family law principles, such as the best interests of the child.⁶⁷

2.92 The Family Law Council, an advisory body whose members include representatives from the judiciary, academia, legal aid, and the private legal sector, took the view that the CSP could benefit from greater collaboration with the FDR process. However, the Council also expressed caution at:

the potential for negotiations around parenting arrangements to be influenced by negotiations about levels and payment of child support. These risks are particularly concerning where there are issues of violence (including financial control) and power imbalance. For these reasons it is recommended that careful consideration be given to whether matters are appropriate for mediation of both child support issues and parenting issues.⁶⁸

2.93 Ms Jackie Brady from FRSA, the national representative body for more than 170 organisations providing mediation and other family support services in Australia, said that many of FRSA's members were optimistic about the potential of child support mediation. However, Ms Brady expressed caution about how such services were implemented:

66 Mr Paul Lewis, Law Society of NSW, *Committee Hansard*, Sydney, 27 June 2014, p. 11.

67 Law Society of NSW, *Submission 14*, pp. 6-7.

68 Family Law Council, *Submission 69*, p. 3.

There is research to indicate that some parents might be suited to discussing child support when mediating on how they would like to parent their children post-separation, but it is also fair to say that there are some within our members who would say that this would need to be managed very carefully.⁶⁹

- 2.94 FRSA noted that many family dispute resolution practitioners would require additional training to properly mediate in child support matters:

Negotiation, containment and impartiality are all part of the FDR practitioners' tool-kit ... while there is an interest, FDR practitioners would need training and resources to improve their financial literacy, and to know when proceedings should be adjourned so parents could seek further information/advice.⁷⁰

- 2.95 Mediators in child support matters would also need to be culturally aware in order to be effective. Ms Colleen Wall of Aqua Dreaming told the Committee that mediators must be conscious of the particular cultural background and practices of people attending mediation, especially in the case of Aboriginal or Torres Strait Islander parents:

these services need to be culturally appropriate in their process of support, especially in assessing Aboriginal clients; they should acknowledge Aboriginal religious practice and beliefs and not use these against our parents as faults. In a lot of cases, our women and men will not attend mediation and counselling because they do not trust the psychologists and psychiatrists to make informed decisions.⁷¹

- 2.96 There are also potential policy and legislative obstacles to widespread use of child support mediation. Gosnells Community Legal Centre provided one example of a legislative requirement that untrained mediators may run afoul of. Section 66E(1) of the *Family Law Act 1975 (Cth)* prevents courts from approving negotiated agreements that contain financial maintenance arrangements if the parties have not sought a child support assessment. Ms Funmi Adesina from Gosnells said:

where parties wish to translate their parenting plan to a consent order in the Family Court, they are unable to include their financial agreement in their consent order because of the provision of S66E(1) of the Family Court Act [sic] which prevents the court

69 Mr Jackie Brady, Family and Relationship Services, *Committee Hansard*, Canberra, 29 August 2014, p. 9.

70 Family and Relationship Services Australia, *Submission 61*, p. 5.

71 Ms Colleen Wall, Aqua Dreaming, *Committee Hansard*, Brisbane, 22 July 2014, p. 8.

from making child maintenance order if an application for administrative assessment of child support can be made.⁷²

- 2.97 National Legal Aid also noted that moving to a 'mediation-first' child support system would necessitate better resourcing of mediation services. Wait times to access mediation services can be lengthy, and Centrelink's 13-week window to take maintenance action would likely no longer be sufficient. Without additional resourcing, many parents would receive less FTB-A than they should:

The current [child support] application process allows a child support assessment to be created in most cases within the time frame allowed by Centrelink. If the process to commence a case was done by way of mediation, these time frames could not be met without a vast increase in resources available to mediation services.⁷³

Legally assisted mediation

- 2.98 Evidence to the inquiry raised concerns about the ability of mediation alone to address the complexity of the CSP, as well as its ability to deal with entrenched conflict. Some submissions suggested that 'legally assisted' mediation may go some way to addressing these issues and may offer a model for managing child support mediation.
- 2.99 Legally assisted mediation would provide parties to the mediation with access to expert legal advice as necessary through the mediation process, so that they are aware of the consequences arising from their negotiated outcomes. National Legal Aid argued that legally assisted mediation could lead to more positive child support outcomes:

The legally assisted model of FDR offers significant benefits, including that parties are informed of their legal rights and responsibilities at law, and of the interplay between child support and other aspects of family law and family assistance. The model also addresses the power imbalance which is commonly seen between parties. Commission FDR conferences have achieved high settlement rates.⁷⁴

- 2.100 FRSA described legally assisted mediation in these terms:

Lawyer assisted FDR is a multi-disciplinary approach (lawyers and FDR practitioners) to dispute resolution that requires, amongst other things, a shared understanding of each profession's

72 Gosnells Community Legal Centre, *Submission 41*, p. 3.

73 National Legal Aid, *Submission 57.1*, p. 4.

74 National Legal Aid, *Submission 57*, p. 9.

roles, responsibilities and ways of working; trust in the other profession's intake, screening and referral practices particularly in cases involving family violence; and the extension of professional courtesies.⁷⁵

- 2.101 FRSA noted that trials of legally assisted mediation have proved successful in the recent past, and that it has the potential to lead to better outcomes for separating families, and in particular, their children:

FRC legal assistance partnerships program - where legal information, advice and assistance is available on-site is a good example of a program that enhanced the FRCs capability and generated good outcomes. Greater collaborative practice and appropriate resourcing can improve outcomes for children of separating parents.⁷⁶

- 2.102 FRSA concluded that properly resourced legally assisted mediation could be a viable option for separated parents who wish to reach a negotiated solution to complex parenting, financial and property arrangements:

Recent feedback from our members indicates that lawyer assisted FDR has considerable potential if well-targeted and supported by clear protocols. We consider that legally assisted FDR, with each party having independent legal advice, is the preferred practice model for parties who wish to resolve complex property and financial matters (including child support) through FDR.⁷⁷

- 2.103 Evidence to the inquiry has broadly supported an expanded role for mediation to improve child support outcomes. This is achieved by helping parents come to a shared understanding of their situation, and by guiding them through the process of negotiation. Nonetheless, its use must be careful and take account of vulnerable families for whom mediation could be inappropriate. Further, care must be taken to ensure that mediated outcomes are expedited and in the best interest of the child, and that they do not prolong lengthy and costly disputes.

Committee comment

- 2.104 The emotional and administrative context of the CSP can be very challenging for child support clients. Separating families are often dealing with more than one highly technical and complex system, at a time when

75 Family and Relationship Services Australia, *Submission 66.1*, p. 8.

76 Family and Relationship Services Australia, *Submission 61*, p. 6.

77 Family and Relationship Services Australia, *Submission 66.1*, p. 7.

they may already be working through difficult personal circumstances. It is to their credit that the majority of separating parents are able to establish cooperative, child-focused relationships with their former partners given the emotional and financial stresses they face.

- 2.105 The emotional toll of separation can be extremely heavy for some individuals. Those who are distressed following separation should be referred to appropriate support, especially in times of crisis. However, changed family arrangements, financial pressures or emotional turmoil can never be an excuse for abuse. Harming others is never acceptable, and reacting with violence or threats of violence to family members or others can never be minimised or excused.
- 2.106 Administrative practices which do not take diversity into account can make the process of navigating the CSP harder than it already is. Culturally appropriate service delivery is important, but it is made more difficult if DSS/DHS do not know how many CSP clients have special requirements. The Department must know who its clients are to serve them properly.
- 2.107 Given that DHS has acknowledged that there are substantial deficiencies in its information gathering practices for child support clients, the Committee is of the view that DHS should keep better demographic information on all CSP clients.

Recommendation 1

The Committee recommends the Australian Government take steps to collect comprehensive demographic information on all clients of the Child Support Program, and use that information to ensure that child support tools, practices and procedures are culturally and linguistically tailored for the range of Child Support Program clients.

- 2.108 The relative lack of empirical data on a topic of such central importance to the lives of many Australians as the CSP is problematic. The absence of comprehensive information on the program and its clients makes it difficult to assess the impact of past changes to the child support system, and harder still to confidently recommend further changes. The Committee considers that there is a clear need for more empirical data to be made available to Australian social researchers, so that the CSP, its impacts, and its interactions with other policies can be better analysed and understood.

Recommendation 2

The Committee recommends that the Australian Government make anonymised statistical information on the Child Support Program and its clients available so that the effects of the scheme may be better researched, evaluated and understood.

- 2.109 Evidence to this inquiry has highlighted that ex-partners may perceive the events of their relationship and the purpose of the child support scheme very differently, and that they can have very different views on the fairness of post-separation arrangements. A process of guided negotiation which deals holistically with the issues confronting separated parents could help to address this ‘perceptual gap’, reduce conflict and assist former partners to establish a more cooperative post-separation relationship.
- 2.110 Mediation may also serve to create or reinforce habits of cooperation and collaboration between separated parents. The record of mediation in a family law context is encouraging, and on that basis the Committee takes the view that there is scope to increase its role in child support matters.
- 2.111 However, the evidence also suggests that the design and use of mediation services in child support matters should be carefully considered. In cases with a history of family violence, mediation may be used as a tool to continue the abuse of a former partner, and it is therefore inappropriate in such cases. Mediation may also be inappropriate where conflict is so entrenched that parties are not at all willing to negotiate in good faith.
- 2.112 There are also legitimate concerns about the technical complexity of the CSP and its links with the family law and income support frameworks. As such, child support mediation should only be conducted by appropriately trained, suitably qualified mediators. To be effective, mediators must be able to guide parents through each of those systems reliably, and the availability of training and resources is critical to this endeavour.
- 2.113 In addition, legislative and policy impediments exist which may hinder the widespread deployment of mediation in child support cases, most notably the prohibition on a court approving a mediated child support agreement in the absence of a child support assessment and the 13-week ‘maintenance action test’. If mediation is to become a standard part of the child support process, these and any other similar matters must be addressed.

- 2.114 Should these legal impediments be addressed, a properly funded and implemented and culturally appropriate assisted mediation process would help parents to negotiate durable and resilient child support arrangements. Such mediation would also provide useful advice for parents to draw on as they go through the child support system, and could deliver substantial benefits, easing emotional distress for separating families, and reducing the burden of ongoing conflict on the Department and the courts.
- 2.115 The Committee is concerned that prolonged disagreements and lengthy legal proceedings are not in the best interests of the child. In these instances, lawyers can unduly profit from the system rather than contributing to outcomes that are in the best interests of all parties.
- 2.116 Mediation may help avoid these situations, since its aim is to achieve child support outcomes that both parties consider fair without the need for protracted legal processes. However, it is important that mediated agreements are durable enough to offer stability to both paying and receiving parents, so that both parents can make financial decisions and plan for the future of their families.
- 2.117 Therefore, mediation should aim to develop agreements with a minimum life of three years. Mediators should make it clear to parties that one of the expectations of the process is that agreements will be lasting, except in cases where there is a substantial change of circumstances.

Recommendation 3

The Committee recommends that the Australian Government provide additional funding and training to Family Relationship Centres to assist separating or separated parents to negotiate child support arrangements, including:

- the use of mediation at the initial stages of new child support cases,
- the provision of financial counselling and training in the mediation process to assist people to understand and plan for their likely child support liability, especially those on variable incomes, and
- the strengthening of mediation agreements to include appropriate enforcement and review provisions.

The Committee notes that mediation is not considered appropriate for families where domestic violence is present.

Recommendation 4

The Committee recommends that the Australian Government provide additional funding and training to Family Relationship Centres to trial the provision of mediation services in cases involving child support objections or change of assessment processes, where these are in dispute. The Committee notes that mediation is not considered appropriate for families where domestic violence is present.

