
The Parliament of the Commonwealth of Australia

From conflict to cooperation

Inquiry into the Child Support Program

House of Representatives
Standing Committee on Social Policy and Legal Affairs

June 2015
Canberra

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Foreword

I am pleased to present the report of the House of Representatives Standing Committee on Social Policy and Legal Affairs on the Inquiry into the Child Support Program.

From the outset, a relationship breakdown can be an extremely difficult time for all family members with different points of stress evident between separating parents and children. With a change in family dynamic comes the need to redefine relationships and ensure that decisions taken reflect the needs of all family members, but with a particular focus on the welfare of children involved. In many cases, separating parents are able to come to amicable resolutions in developing new family arrangements, however in some instances a high degree of conflict may be present.

The Child Support Program (CSP) aims to provide administrative support, advice and financial adjudication for separating parents. The CSP is one of the Australian Government's more significant social services programs interacting with the family assistance system, family law and taxation streams, and affecting some 1.1 million children.

The report of the Committee presents a detailed analysis of the issues raised in the context of the inquiry's terms of reference. The Committee received a significant response to its call for evidence, with many written submissions and oral testimonials presented along with some 11 300 responses to a questionnaire developed to gauge the experiences of those who have interacted with the CSP.

The Committee's report addresses a number of themes that emerged as areas of concern in the course of the inquiry - mediation, ensuring that the child support formula reflects contemporary Australia, improving communication between the program and its clients, special support services for where there is family violence and the merits of guaranteed child support payments.

The Committee's findings have resulted in a total of 25 recommendations. In making these recommendations, the Committee notes that the CSP has evolved so that it is able to fit the needs of a vast and varied clientele, some with complex requirements. The system is not designed as a 'one size fits all' mechanism and all decisions made in the context of the CSP must consider the effect on individuals and families as well as the 'flow-on' impacts of the wider program. Key amongst the recommendations were:

- the use of mediation at the initial stages of new child support cases,
- amending the CSP to ensure the adequacy of calculated amounts and equity for both payers and payees with respect to the self-support amount, the cost of children table and indexation mechanisms, the use of gross income levels for payment calculations, and consideration of child support income management where substantiated allegations of payments not being adequately used on the needs of the child;
- significantly improving Australian Government agency communication and explanation of decisions linked to the CSP; and
- the assessment, modelling and potential trial of a limited financial guarantee for either vulnerable families or a randomised sample of CSP clients.

In presenting the report, I would like to acknowledge the input of relevant Australian Government entities, support groups and those with an intimate knowledge of the system for providing the Committee with an in-depth understanding of a very complex scheme. I would particularly like to express my appreciation and gratitude to all of those individuals and families who took the time to provide the inquiry with, quite often, very personal accounts of their experiences with the CSP. The experiences and accounts presented by you as clients within the constraints of a difficult system have provided the Committee with invaluable insight in framing the recommendations presented in this report. The Committee hopes that all of the recommendations presented will be adopted and implemented in a timely and collaborative manner.

Mr George Christensen MP
Chair



Membership of the Committee

Chair Mr George Christensen MP

Deputy Chair Ms Sharon Claydon MP

Members Ms Terri Butler MP

Hon Mark Dreyfus QC MP

Mrs Louise Markus MP

Mr Tony Pasin MP

Mr Graham Perrett MP

Hon Christian Porter MP (until 25/9/2014)

Ms Melissa Price MP (from 25/9/2014)

Hon Dr Sharman Stone MP

Mr Michael Sukkar MP

Mr Clive Palmer MP (supplementary)



Terms of reference

The Committee will inquire and report on the following:

- methods used by Child Support to collect payments in arrears and manage overpayments;
- whether the child support system is flexible enough to accommodate the changing circumstances of families;
- the alignment of the child support and family assistance frameworks;
- linkages between Family Court decisions and Child Support's policies and processes; and
- how the scheme could provide better outcomes for high conflict families.

As part of this inquiry, the Committee has a particular interest in:

- assessing the methodology for calculating payments and the adequacy of current compliance and enforcement powers for the management of child support payments;
- the effectiveness of mediation and counselling arrangements as part of family assistance frameworks; and
- ensuring that children in high conflict families are best provided for under the child support scheme.

In carrying out this review, the Committee should assess whether any problems experienced by payers or payees of child support impact on the majority of parents and other carers involved in the system, or a minority, and make recommendations accordingly (e.g. there may be a case for specialised processes and supports for some parents meeting certain criteria).



List of abbreviations

Assessment Act	<i>Child Support (Assessment) Act 1989</i>
AGD	Attorney-General's Department
AIFS	Australian Institute of Family Studies
ALRC	Australian Law Reform Commission
ANAO	Australian National Audit Office
ATI	Adjusted Taxable Income
ATO	Australian Tax Office
CALD	Culturally and linguistically diverse
COA	Change of Assessment
CS	Child support
CSP	Child Support Program [formerly known as the Child Support Agency, or CSA]
DHS	Department of Human Services
DPO	Departure Prohibition Order
DSS	Department of Social Services
EOI	Expression of Interest

<i>Every picture tells a story</i>	Report of the House of Representatives Family and Community Affairs Committee, <i>Every picture tells a story: Report on the inquiry into child custody arrangements in the event of family separation</i> , 2003.
FaCS	Department of Family and Community Services (predecessor to DSS)
FDR	Family Dispute Resolution
FRC	Family Relationship Centre
FRSA	Family and Relationship Services Australia
FTB-A & FTB-B	Family Tax Benefit Part A and Family Tax Benefit Part B
ICS	Intensive Collection Services
LFAA	Lone Fathers Association (Australia)
Tax Act	<i>Income Tax Assessment Act 1936</i> or the <i>Income Tax Assessment Act 1997</i>
MIT	Maintenance Income Test
MAT	Maintenance Action Test
MTAWE	Male Total Average Weekly Earnings
NAP	Non-Agency Payment
NCSMC	National Council of Single Mothers and their Children
Parent	A child's parent, biological or adopted, or a non-parent carer (such as a grandparent)
The Parkinson report	Department of Social Services, <i>In the Best Interests of Children: Report of the Ministerial Taskforce on Child Support</i> , 2005.
The Price report	Report of the Joint Select Committee on Certain Family Law Issues, <i>The Operation and Effectiveness of the Child Support Scheme</i> , 1994
Registrar	The Child Support Registrar, appointed under the <i>Child</i>

Support (Registration and Collection) Act 1988

Registration and
Collection Act

Child Support (Registration and Collection) Act 1988

RA

Relationships Australia

SSAT

Social Security Appeals Tribunal

VLA

Victoria Legal Aid

WLSA

Women's Legal Services Australia



List of recommendations

2 Child support in context

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.

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.

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.

3 The program

Recommendation 5

In conducting a review of the child support formula, the Committee believes that the Australian Government should have regard to a range of guiding principles including the best interests of the child/ren involved, whether fair and amenable private shared parenting arrangements have been successfully entered into, and whether any family violence is present in the family dynamic.

Taking into account the framing principles of the Child Support Program which aim to ensure that the system operates in the best interests of the child, the Committee recommends that the Australian Government review the Child Support Program to ensure the adequacy of calculated amounts and equity of the program for both payers and payees with respect to:

- the current self-support amount and indexation mechanisms;
- the cost of children table and indexation mechanisms;
- the use of gross income levels for child support payment calculations; and
- consideration of child support income management where there are substantiated allegations of child support payments not being adequately spent on the needs of the child.

Recommendation 6

The Committee recommends the Australian National Audit Office conduct a performance audit of the cooperation between the Australian Taxation Office and the Department of Human Services to address the non-lodgement of tax returns by clients of the Child Support Program. The recommendations of the audit should be incorporated into the next memorandum of understanding between the Australian Taxation Office and the Department of Human Services relating to this area of cooperation, negotiations of which should not commence until the audit has been presented in Parliament.

Recommendation 7

The Committee recommends the Australian Government amend current policy to ensure that the penalties applicable to the non-lodgement or late-lodgement of tax returns are enforced for all clients of the Child Support Program. The penalty should allow for defences where the individual has a reasonable excuse for non-lodgement, such as circumstances outside their control. Consideration should also be given to the annual indexation of the penalty. A working group comprising representatives of the Australian Taxation Office, the Department of Social Services and Department of Human Services should be established to recommend the size of the penalty.

Recommendation 8

The Committee recommends that the Australian Government amend legislation to enable a greater period of time before determining when to adjust the amount of child support payable in interim care determinations. The Committee considers that the current fourteen week period, after which Department of Human Services changes the child support payable to reflect the care taking place at that time, does not provide sufficient time for relevant legal proceedings to be completed or for prior agreed arrangements to be enforced by a court or for revised arrangements to be agreed upon. The best interests of the child must be paramount in any amendment made.

Recommendation 9

The Committee recommends that the Australian Government consider international models for enforcing contact/parenting orders through the child support program and how these models may be applied to the Australian context. The Committee notes that where family violence is present, these models may not be appropriate.

Recommendation 10

The Committee notes that the intent of the “capacity to earn” criteria is to prevent payers deliberately avoiding their financial responsibilities in respect to shared parenting. However there are also genuine instances where a person’s earning capacity may decrease due to decreased market demand for certain skills, the need to retrain, health issues or other life changes. A greater degree of flexibility is required. The Committee therefore recommends the Australian Government review “capacity to earn” as a rationale for initiating Changes of Assessment under Reason 8.

Recommendation 11

The Committee recommends that the Australian Government seek to develop a clearer system for resolving disputes about the payment of school fees as Non-Agency Payments.

Recommendation 12

The Committee recommends that the Australian Government consider matters pertaining to:

- the hurdle for courts to set aside Child Support Agreements made before 1 July 2008, and to set aside all Binding Child Support Agreements, and
- the amendment of section 56(2) of the *Child Support (Assessment) Act 1989* to allow the Registrar to take into account amended tax assessments.

4 The agency

Recommendation 13

The Committee recommends that the Australian Government institute an ongoing internal audit of the consistency of advice and decision-making by Child Support Program staff, with results published regularly and summaries provided in the Department of Human Services Annual Report.

Recommendation 14

The Committee recommends that the Australian Government introduce a Centrelink policy to actively ask all CSP clients with an FTB entitlement which FTB calculation method they wish to use, at least every six months, thereby reducing unintentional financial hardship.

Recommendation 15

The Committee recommends the Australian Government expedite the conclusion of the Department of Human Services videoconferencing trial, and prioritise the provision of videoconferencing services to all Child Support Program clients, for non-routine or significant Child Support Program processes.

Recommendation 16

The Committee recommends the Australian Government address the Child Support Program's issues of complexity and proliferation in communications by seeking advice on how to incorporate insights from behavioural economics and best-practice in the communication of financial information.

Recommendation 17

The Committee recommends the Department of Human Services appoint dedicated and suitably trained ‘information officers’ in the Child Support Program to clearly explain how advice or a decision was arrived at in a particular case. Such officers:

- should be senior APS-level officers (APS 5-6),
- should be experts in child support legislation, policy and procedures,
- should proactively contact clients with a history of disputed decision making when any decision is made,
- should consult with individual decision makers as necessary to fully comprehend a case before contacting a client,
- should be able to explain any documentation created by the Child Support Program,
- should be provided with comprehensive interpreting facilities for culturally and linguistically diverse clients, and
- should not be tasked with collecting any information from clients.

Recommendation 18

The Committee recommends the Australian Government create a mechanism for Child Support Program clients to nominate preferred communication methods, including restriction to phone calls or letters, to ensure that communication by the Child Support Program does not cause harm.

Recommendation 19

The Committee recommends the Australian Government conduct ongoing statistical surveys of the rate of actual payment for Child Support Program clients using Private Collect, with results published regularly and summaries provided in the Department of Human Services annual report.

Recommendation 20

The Committee recommends the Australian National Audit Office conduct a performance audit of the Child Support Program’s Legal Enforcement service, including the extent of the Child Support Program’s public criteria for pursuing litigation.

Recommendation 21

The Committee recommends the Australian Government seek to amend the legislation governing Departure Prohibition Orders (DPOs) such that DPOs are only issued by a tribunal or court on the application of the Registrar and after providing an opportunity for the subject of the DPO

to be heard. In cases of urgency, the Registrar should have a limited power to issue an interim DPO, for a non-renewable period of no more than 30 days. Whenever a DPO or interim DPO is considered in relation to a person who resides outside of Australia, the tribunal, court or Registrar must give special consideration to those circumstances

Recommendation 22

The Committee recommends that the Australian Government ensure equity in the collection of child support debts and of overpayments, in particular that the same flexibility that applies to the collection of overpayments is applied to the collection of debts, especially where the debts were unintended. In implementing this recommendation the Government should at all times take into account the best interests of the child.

Recommendation 23

The Committee recommends that the Australian Government respond to Australian Law Reform Commission *Report 117 Family Violence and Commonwealth Laws – Improving Legal Frameworks* as a priority.

Recommendation 24

The Committee recommends that the Australian Government recognise the importance of specialist response and support to separated families where family violence has been present. Accordingly, the Committee recommends the establishment of a dedicated family violence response unit within the Department of Human Services. This response unit should be responsible for ensuring that the safety and wellbeing of the child are paramount and should be tasked with:

- providing a one-stop point of contact for all enquiries and support services
- providing a means of intermediary communication between parties
- coordinating access to services across Australian Government Departments

Recommendation 25

The Committee recommends that the Australian Government:

- examine the social and economic impacts in other jurisdictions of a limited child support guarantee system,
- conduct modelling to assess if there is capacity to apply such a limited guarantee to the Australian context, and then

- consider the feasibility of conducting a trial of a limited guarantee for either vulnerable families or for a random sample of Child Support Program clients.

Introduction

Summary of findings

- 1.1 Australia's Child Support Program (CSP) has now been operating for over a quarter of a century. During the course of its life, over \$45 billion of child support payments have been transferred from one parent to another.¹ Today, around 1.3 million parents are clients of the program, with payments transferred to support the raising of about 1.1 million Australian children.²
- 1.2 The CSP is a central part of Government social policy. It is woven into the fabric of family support, having a strong and dynamic relationship with the family assistance system, family law, and taxation. The Program has been developed and refined over its many years of operation, and enjoys broad acceptance in the community.
- 1.3 Of course, many clients of the Program may wish that they did not need its assistance. Its mission is to help separating and separated parents to support each other in the raising of their children. When relationships break down, parents need to address many tough questions: amongst the most difficult is how to care for and support their children now that they are separated from the other parent.
- 1.4 The CSP is designed to provide administrative support, advice and financial adjudication for such parents, rather than leaving those parents to seek resolution in the courts. However, no administrative program can

1 Mr Bruce Young, Department of Human Services, *Committee Hansard*, Canberra, 28 August 2014, p. 9.

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

fix the emotional and psychological results of a broken relationship, nor can it resolve differing priorities or approaches to parenting. Nonetheless, it has served millions of families, and has provided a framework for parents to negotiate and implement support arrangements.

- 1.5 Given the Program's history, and its comprehensive integration into social policy, the inquiry has often focussed on finessing elements of the program to improve responsiveness to client needs and to recognise the diversity of contemporary family arrangements. The recommendations in this report will make the CSP a more sophisticated and agile program, improving its service delivery and providing greater clarity to the assessment process.
- 1.6 One of the primary aims of this report is to promote mechanisms which may lessen the conflict between separated parents and to strengthen elements of the CSP that focus on children's wellbeing in a holistic manner. Consequently, the Committee has commenced with a focus on mediation: the next generation of Family Dispute Resolution services should include child support matters. The Committee has questioned the currency of parts of the formula underpinning child support calculations and concluded that work is required to ensure that the formula's 'universal inputs' are reviewed and up-to-date.
- 1.7 The Committee has developed a plan to take the CSP to a new generation of service, with sophistication in its communication, targeted support systems for victims of family violence and high-conflict families, and better systems to learn from the millions of decisions made in the program each year. The Committee has also made strong recommendations for better enforcement of child support payments, to protect the scheme from abuse and to protect children from poverty. In addition, the Committee has made recommendations for better enforcement of parenting orders, to minimise parental disputes around access issues.
- 1.8 The Committee has also made two recommendations directed at assisting the most vulnerable CSP clients. Firstly, the Committee has recommended that the Government create a specialist family violence unit within DHS. This is a substantial reform, and one that will ensure families who have experienced violence find the support they need from properly trained staff.
- 1.9 Secondly, the Committee has recommended that the Government explore a limited financial guarantee for some CSP clients. As directed by the terms of reference, the Committee has considered how to provide for the minority of parents for whom the standard child support processes do not work: the answer may be a limited guarantee. It is beyond the scope of the

Committee to determine how such a scheme might be designed or what impacts it may have. However, the Committee believes that the Government should conduct a thorough investigation which considers how limited guarantee schemes have worked in other countries, whether one might be appropriate here, and what its benefits and costs may be.

The inquiry process

- 1.10 On 27 March 2014, the Minister for Social Services, the Hon Kevin Andrews MP, wrote to the Committee requesting an inquiry into the CSP. The Minister asked the Committee to inquire into:
- the methods used by the CSP to collect payments in arrears and manage overpayments,
 - the flexibility of the CSP to accommodate changing circumstances of families,
 - the alignment of the child support and family assistance frameworks,
 - linkages between Family Court decisions and child support policies, and
 - how the scheme could provide better for high conflict families.
- 1.11 In conducting the inquiry, the Committee expressed a special interest in:
- assessing the methodology for calculating payments and the adequacy of current compliance and enforcement powers for the management of child support payments,
 - the effectiveness of mediation and counselling arrangements as part of family assistance frameworks, and
 - ensuring that children in high conflict families are best provided for under the child support scheme.
- 1.12 The terms of reference also provide a general direction that the Committee:
- should assess whether any problems experienced by payers or payees of child support impact on the majority of parents and other carers involved in the system, or a minority, and make recommendations accordingly (e.g. there may be a case for specialised processes and supports for some parents meeting certain criteria).

- 1.13 Finally, it is important to note that the terminology used throughout this report is as general as possible: frequent references to 'parent' should be read widely, to include adoptive parents, guardians, grandparents, non-parent carers, kinship carers, and others who provide ongoing care for children.
- 1.14 The phrase 'best interests of the child' is used throughout this report. In using the phrase, it is emphasised that, along with financial support, a healthy, loving relationship with both parents that is not marred by conflict over child support is in the 'best interests of the child'. It should also be understood that the child's best interests are distinct from the best interests of the custodial parent, or of one particular parent over the other.

Community engagement strategy

- 1.15 This inquiry touches on issues that are of significant importance to a large number of Australians. As a result, the Committee expected that there would be significant public interest in its inquiry, and recognised that many people would want to share their experiences and tell their personal stories to the Committee.
- 1.16 It was important to the Committee to ensure that everyone who wanted to participate in the inquiry could make a contribution and that the Committee could hear a wide range of experiences. To make it as easy as possible for people to contribute, the Committee provided multiple ways for individuals to share their views on the child support system.
- 1.17 In addition to the standard Committee practice of accepting submissions and holding public hearings, the Committee provided an online questionnaire, held numerous community statement sessions at which individuals could speak to the Committee in person or by phone, and received a large amount of correspondence in which members of the public shared their personal stories. The Committee estimates that almost 12 000 people contributed to the inquiry.
- 1.18 This section will provide some detail on the ways in which members of the community participated in the inquiry and give some examples of the valuable contributions they made in response to the inquiry's terms of reference.

Questionnaire

- 1.19 The Committee created an online questionnaire to encourage as many people as possible to share their views on the child support system anonymously. The questionnaire was designed to be a convenient, accessible and flexible avenue for members of the public to contribute to the inquiry. It required very little time to complete and could be filled out at any time of day. The questionnaire was anonymous, which enabled people to speak freely about their own experiences without the need to be concerned about their, or their family's, privacy.
- 1.20 The Committee promoted the questionnaire so that as many people as possible could have the opportunity to complete it. The Committee issued a number of media releases highlighting the questionnaire, promoted it on social media, distributed information about it to stakeholder groups, promoted it through Ministerial correspondence and distributed material publicising the questionnaire at all of its public events. As a result, the questionnaire received national media coverage.
- 1.21 The questionnaire was launched at the beginning of May 2014, and remained online until early September 2014. During those four months, the Committee received approximately 11 300 responses. The questionnaire asked people about themselves and their experience of the CSP, using a series of multiple-choice questions and several opportunities to comment on different aspects of the CSP in their own words. It took approximately twenty minutes to complete.
- 1.22 The information provided by people who completed the questionnaire has proved very useful to the Committee. It has drawn the Committee's attention to aspects of the child support system which may require review, while also highlighting areas where the program is working well. Various forms of information from the questionnaire have been included in the report, including text boxes, tables and charts, and the Committee published a number of 'snapshots' over the course of the inquiry. When looking at the data included in the report, it is important to note that not all respondents answered all questions.
- 1.23 The questionnaire was not designed to produce scientifically rigorous statistical information, and so the Committee has not attempted to use it to design child support policy. Rather, the questionnaire provided valuable insights into the lived experiences of those interacting with the CSP. A concern was raised during the inquiry that people or groups might seek to influence the questionnaire's results by completing it multiple times. There is no indication that this has occurred.

Who completed the questionnaire?

1.24 The questionnaire was completed 11 316 times in the four months it was online. Questionnaire respondents provided the following demographic information:

- 57 per cent of respondents were women and 43 per cent were men.
- 353 respondents (or 3 per cent) identified as Aboriginal or Torres Strait Islander.
- While 35 per cent of respondents had one or more parents who were born overseas, only 418 respondents (or 4 per cent) said that English was not their first language.
- 79 per cent of respondents said they currently undertook paid work, while 21 per cent said they did not. 16 per cent of respondents said they undertook unpaid work.

Table 1.1 Age of questionnaire respondents

Age range	Responses	Percentage
18 – 25	296	3%
26 – 35	2307	20%
36 – 45	4976	44%
46 – 55	2965	26%
56 – 65	620	5%
66 – 75	136	1%
76 – 85	7	0%
86 or older	9	0%
Total	11316	

Figure 1.1 Age of questionnaire respondents

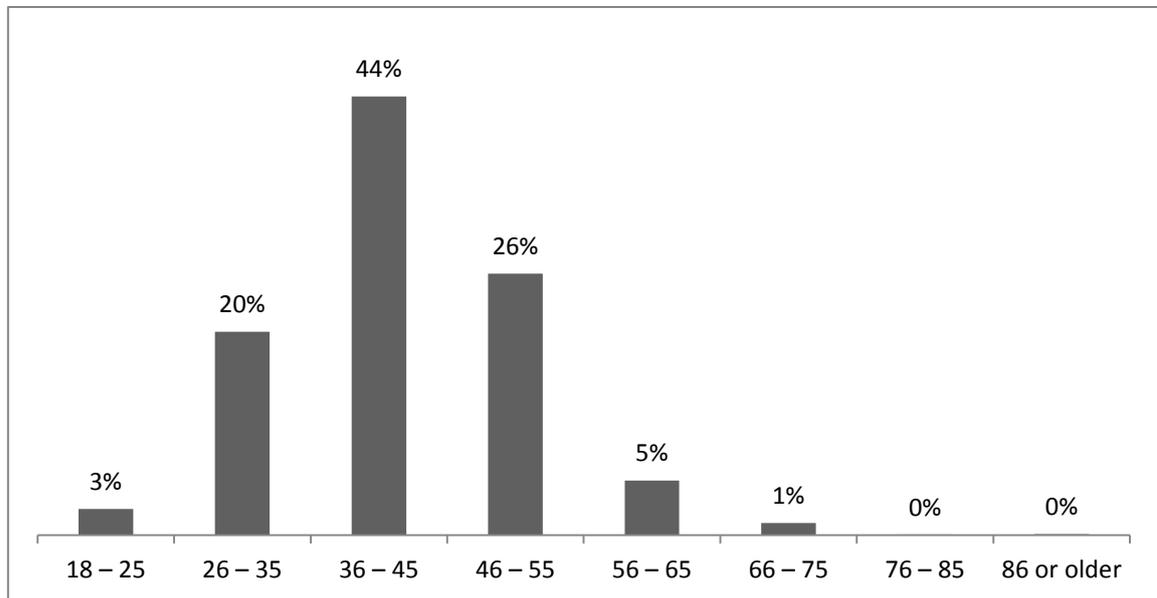


Table 1.2 Employment status of questionnaire respondents

Do you do paid work?	Responses	Percentage
No	2376	21%
Yes	8807	79%
Total	11183	100%

Figure 1.2 Where questionnaire respondents live

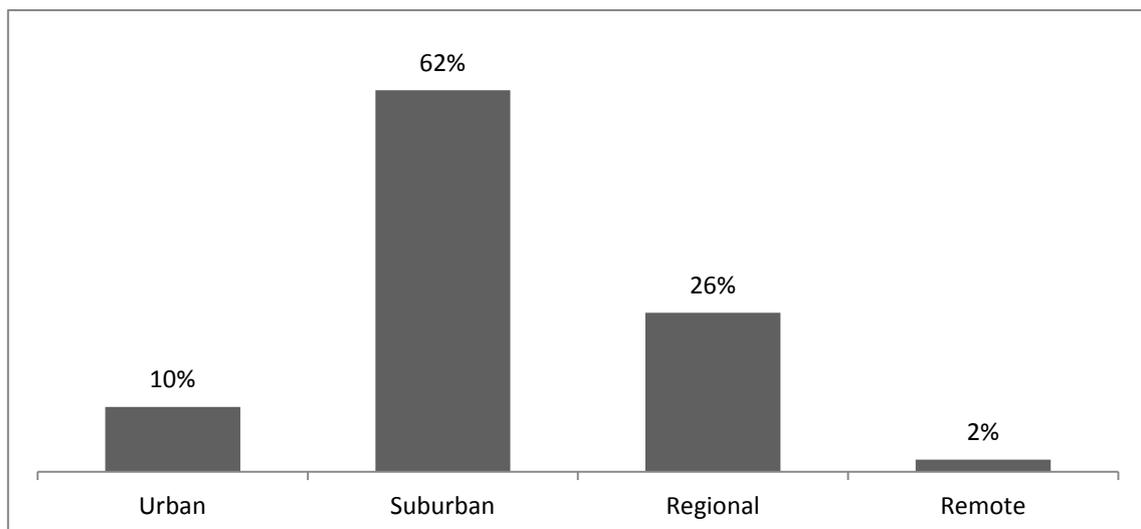
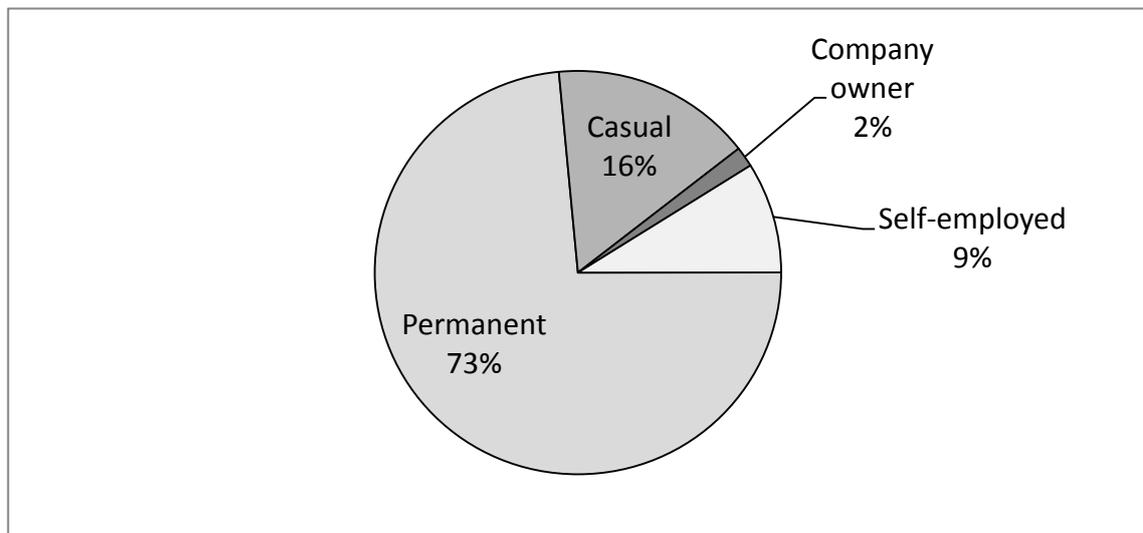


Figure 1.3 Type of work done by employed questionnaire respondents



Community statement sessions

- 1.25 The community statement sessions gave members of the public the opportunity to talk to the Committee directly, either in person or by teleconference. The Committee decided to hold the sessions so that it could hear first-hand how the CSP affects the lives of Australians, and to hear from people with a personal experience of the CSP about how it meets their expectations or how it could be improved.
- 1.26 The Committee was aware of the very high levels of public interest in the inquiry, and expected that large numbers of people would wish to participate in the sessions. As such, the Committee asked for expressions of interest (EOIs) from members of the public who wished to take part, aware that it would not be possible to offer a place to all individuals. More than 1500 EOIs were received in less than two months. EOIs were received from every state and territory, as well as from countries in Europe and North America.
- 1.27 So that the limited places could be allocated as fairly as possible, the Committee used a randomised selection process and issued invitations to EOIs on the basis of that process. Many people who were invited to participate declined the invitation, and so the Committee continued issuing invitations according to the randomised process until all places were filled. For some sessions, the Committee issued invitations to more than five times the number of individuals who eventually accepted the invitation to participate.
- 1.28 The Committee heard statements from a geographically diverse cross-section of the Australian public. Community statement sessions

were held during public hearings in Sydney, Brisbane, Melbourne, Hobart, and Adelaide. The Committee also held three sessions in Canberra, at which participants from the ACT appeared in person, while participants from North Queensland, Western Australia, the Northern Territory, and regional NSW appeared by teleconference. In total, the Committee heard from more than a hundred people during its community statement sessions.

Table 1.3 Community Statement Session Participation

State	Expressions of interest	Community statement participants
ACT	33	4
NSW	450	38
QLD	372	14
VIC	354	14
TAS	42	10
SA	103	14
NT	15	1
WA	169	10
TOTAL	1538	105

- 1.29 Community statement participants were invited to address the Committee and to share their thoughts on the CSP. Participants were encouraged to be constructive and to focus on how they thought the CSP could be improved, as well as explaining how their personal experiences had shaped their perceptions of the CSP.
- 1.30 Each community statement was recorded and a transcript of it published on the Committee website. In order to safeguard the privacy of participants, their families and especially their children, speakers were identified by their first name only. Where participants inadvertently shared personally identifying information, the transcript of proceedings was edited to remove the private information.
- 1.31 The issues raised in these sessions were often deeply personal, and frequently involved discussion of difficult and emotional personal circumstances. However, almost without exception, community statement participants provided thoughtful and constructive contributions to the inquiry.

Correspondence

- 1.32 In addition to the completing the questionnaire and participating in community statement sessions, many people took the opportunity to write to the Committee to share their personal stories about the CSP.
- 1.33 The Committee received personal stories from more than 170 people. Often, they contained detailed accounts of individual and family experiences with the CSP. The Committee carefully reviewed each of them, and has accepted them as part of the inquiry's evidence.
- 1.34 The Committee found valuable insights in these stories, but due to their private nature, they will be kept confidential. Though the stories - which are formally called correspondence - have not been published, they have been considered by the Committee as it prepared this report, along with all other evidence to the inquiry.

Publicity, submissions and hearings

- 1.35 Since child support is an issue that generates many constituent inquiries to Members of the House of Representatives, the Committee invited all Members to promote the inquiry within their electorates. The Committee distributed material which publicised the inquiry and invited people to complete the online questionnaire.
- 1.36 The Committee issued a media release announcing the inquiry and the questionnaire, invited stakeholders in the child support system to make a submission to the inquiry, and publicised the inquiry via both traditional and social media. In the ensuing months, the Committee provided several updates on the progress of the inquiry, including a number of 'snapshots' highlighting responses to the questionnaire. In addition, the Committee's Chair and Deputy Chair appeared in several YouTube clips which provided further details on the inquiry's progress. These snapshots and YouTube clips are available on the inquiry website.³
- 1.37 The Committee received 130 submissions, 24 supplementary submissions and 30 exhibits, from government departments, academics and research bodies, judicial bodies, national legal groups, community legal centres, representative groups and individuals. It received more than 11 000 responses to the online questionnaire, accepted more than 175 pieces of private correspondence and spoke to more than 70 witnesses at public hearings in addition to community statement session participants.

3 The inquiry website is at <http://www.aph.gov.au/childsupport>.

- 1.38 The Committee held 13 public hearings and community statement sessions in Canberra, Sydney, Brisbane, Melbourne, Hobart and Adelaide. Witnesses from Western Australia, North Queensland and regional NSW were heard by teleconference. In addition, the Committee conducted a site inspection at a Department of Human Services 'Smart Centre' in Melbourne.
- 1.39 Due to the potentially sensitive nature of the evidence to this inquiry, the Committee withheld the name of many submitters, and identified community statement session participants by their first names only. This practice was adopted to protect the privacy of inquiry participants, their families, and in particular their children.

Report scope

- 1.40 Although the child support system is not perfect, it works well in the majority of cases. Data from studies conducted by the Australian Institute of Family Studies (AIFS) indicates that the majority of separated parents establish cooperative relationships with each other and meet their child support obligations.⁴ Submissions from professional bodies also argued that the scheme usually works. National Legal Aid concluded that, despite the system's complexity, the CSP could be considered generally effective,⁵ while similar conclusions were reached by Family and Relationship Services Australia, and the Queensland Law Society.⁶
- 1.41 These views are borne out by statistics on the collection of child support. An exact finding on child support payment rates is not possible, as the CSP does not track how much is transferred in 'private collect' child support cases, which make up more than 50 per cent of active cases. That being the case, AIFS research has found that approximately 90 per cent of payers and 75-80 per cent of payees reported that the amount of child support paid was as much as, or more than, the assessed amount. On that basis the AIFS concluded that 'most payers met (or exceeded) their obligations regarding payment amounts'.⁷

4 Australian Institute of Family Studies, *Submission 50*, p. 47.

5 National Legal Aid, *Submission 57*, p. 2.

6 Family and Relationship Services Australia, *Submission 61*, p. 4; Queensland Law Society, *Submission 100*, p. 2.

7 Australian Institute of Family Studies, *Submission 50*, pp. 19-20.

- 1.42 Nonetheless, there are areas in which the design of the CSP could be improved, and areas in which its administration is not good enough. In particular, a substantial minority of CSP clients experience ongoing difficulty with the system. The challenge faced by the Committee is to propose changes to the CSP that generate positive outcomes for people who are experiencing problems with the system while not disrupting the ways in which the scheme is working well.
- 1.43 On that basis, this report will focus on identifying areas where the CSP could be made fairer or in which its administration could be improved without impairing the scheme's ability to deliver equitable outcomes to the majority of its clients.

Report structure

- 1.44 This report consists of four chapters:
- Chapter 2 discusses the various contexts in which the CSP operates and the role of mediation in a child support context,
 - Chapter 3 examines the design of the program, including the formula and how it is applied to produce a child support assessment, and
 - Chapter 4 focuses on the administration of the CSP by the Department of Human Services.
- 1.45 Each chapter considers the evidence in detail, with Committee comment and recommendations included at the conclusion of each chapter.

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
-

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.

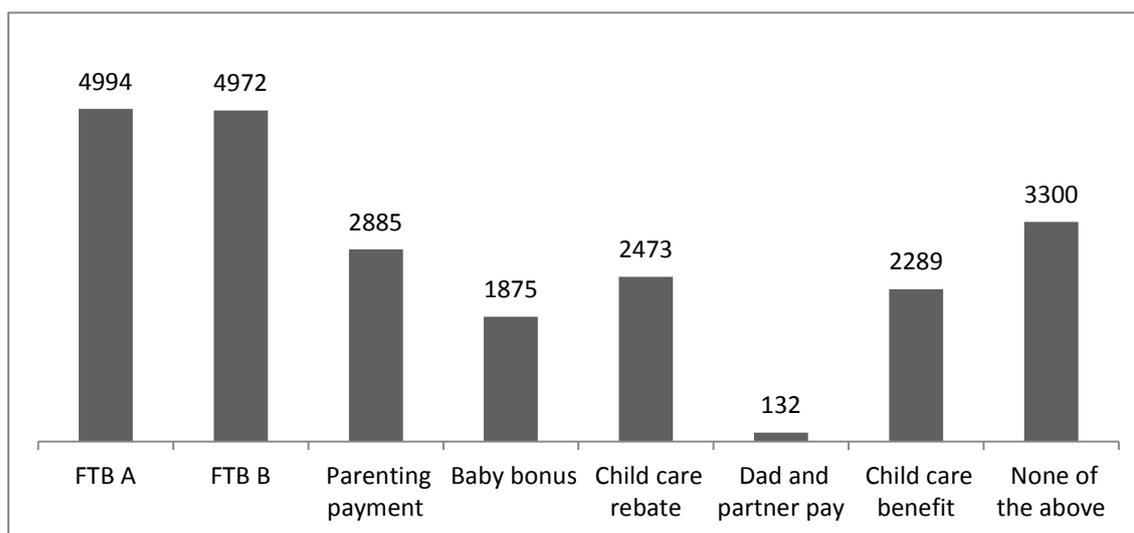
Centrelink

- 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.'

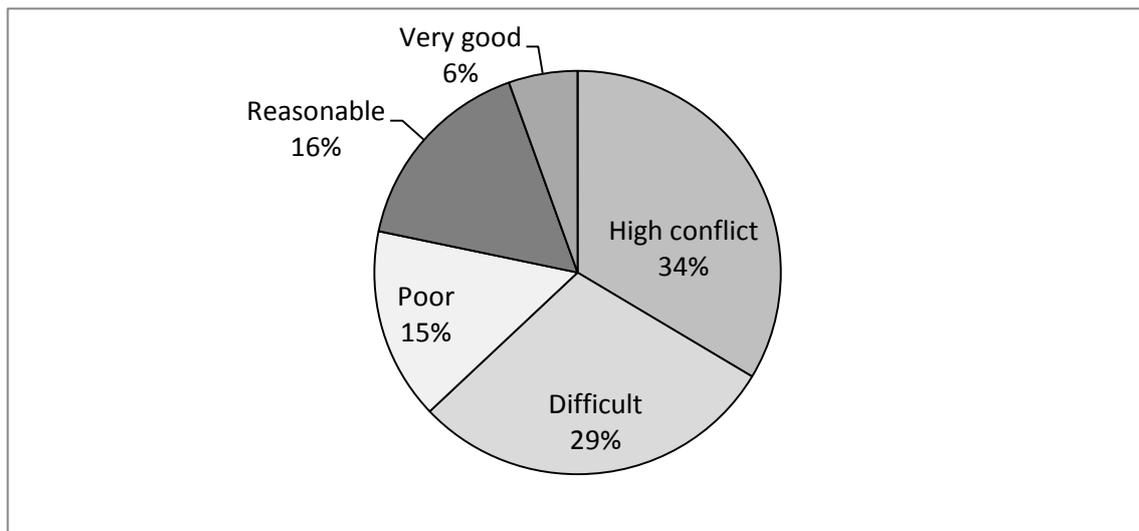
26 Dr Bruce Smyth and Dr Bryan Rodgers, *Submission 13*, pp. 1-2.

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:

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

38 Australian Institute of Family Studies, *Submission 50*, p. 47.

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

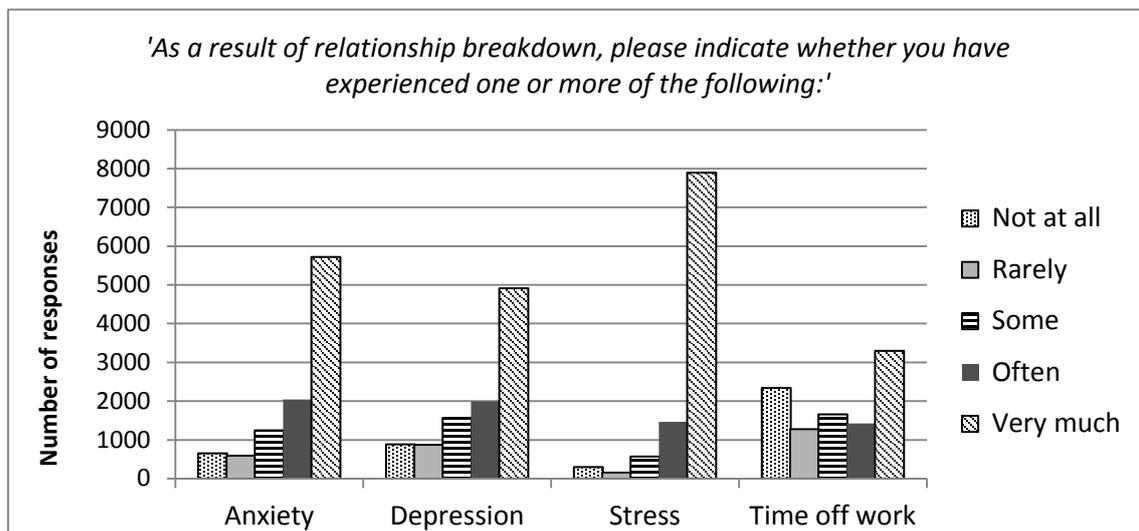
40 Victorian Legal Aid, *Submission 53*, p. 5.

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.

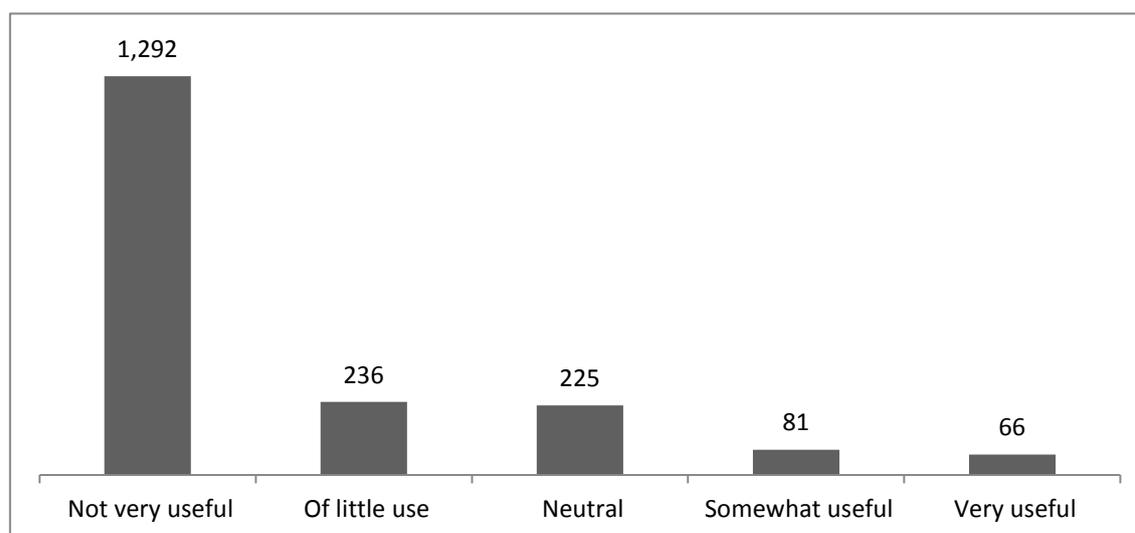
61 Dr Lawrie Moloney, Australian Institute of Family Studies, *Committee Hansard*, Melbourne, 21 August 2014, p. 8.

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.

The program

- 3.1 The Child Support Program (CSP) traces its origins back to the late 1980s, when the Australian Government introduced the first Child Support Scheme. That first scheme was the result of almost ten years of work and reports by many groups, including the Joint Select Committee on the Family Law Act (1980), the national maintenance inquiry (1984), the Family Law Council (1986), a Government discussion paper (1986), and the Child Support Consultative Group (1988), the last of which was chaired by Justice John Fogarty of the Family Court.¹
- 3.2 The culmination of this long sequence of work was a two-stage Child Support Scheme, which progressively came into operation in 1988 and 1989. The final legislation for the scheme was introduced into the House of Representatives on 1 June 1989, was passed on 7 September 1989 and entered into force on 1 October 1989. The two Acts that regulate the CSP today are those from 1988 and 1989 (as amended):
- *Child Support (Registration and Collection Act 1988* (the *Registration and Collection Act*), and
 - *Child Support (Assessment) Act 1989* (the *Assessment Act*).
- 3.3 The first stage of the scheme dealt with existing child support liabilities, namely 'maintenance orders and agreements made, registered or approved in the courts.'² Whilst these liabilities predated the scheme, they could be enforced by the Child Support Agency. The second stage introduced, for the first time, an administrative assessment process for new child support cases.

1 Dr Neal Blewett, Acting Minister for Social Security, *House of Representatives Hansard*, 1 June 1989, p. 3441.

2 Dr Neal Blewett, Acting Minister for Social Security, *House of Representatives Hansard*, 1 June 1989, p. 3442.

- 3.4 In the years since the first scheme commenced, there have been major reviews and reforms at reasonably regular intervals:
- the Joint Select Committee on Certain Family Law Issues (37th Parliament) was established in May 1993, and reported on the Child Support Scheme in November 1994 (the *Price report*), making 163 recommendations,
 - numerous *Child Support Legislation Amendment Acts* were passed in 1997, 1998 and 2000, making various reforms, some enacting recommendations in the Price report,
 - the House of Representatives Family and Community Affairs Committee (40th Parliament) conducted an inquiry into child custody arrangements in the event of family separation, and reported in December 2003 (*Every picture tells a story*), making five recommendations regarding the Child Support Scheme, including recommending the creation of a Ministerial Taskforce,
 - the resulting Ministerial Taskforce, chaired by Prof Patrick Parkinson, reported in June 2005 (the Parkinson Report), with recommendations for considerable changes to the Scheme, and
 - reforms stemming from the Parkinson Report were implemented in three stages, between 2006 and 2008, and other changes have been implemented in the years since these last major reforms.
- 3.5 Many smaller reviews have also been conducted since the scheme's creation, including by the Commonwealth Ombudsman and the Australian National Audit Office.
- 3.6 This chapter looks at the present CSP through its central tool: the assessment formula. It will first consider the design of the formula, it will second examine how the formula is used to make an assessment, and deal with two additional matters, as follows:
- formula design
 - ⇒ history of the formula
 - ⇒ the formula today
 - ⇒ income
 - ⇒ care
 - ⇒ cost of children
 - assessments
 - ⇒ income
 - ⇒ care
 - ⇒ changes of assessment

- payment
- child support agreements, and
- committee comment.

Formula design

3.7 The child support formula is at the centre of the CSP, and this has always been the case: the first generation of the child support system, introduced in 1988, included a formula, based on recommendations of the Consultative Group chaired by Justice Fogarty.³

Questionnaire box 3.1 The CSP formula

The formula is ridiculous. It is based on kids having to go without basic needs. Does anybody have any idea of the cost of raising children?

The formula used is based on my tax return. But as mentioned, the more I earn the more I pay. How do I regain some financial stability or rebuild after divorce?

The formula is too complex and too hard to understand, you need to be a mathematician to work it out.

We have had no problem negotiating child support as we are both reasonable people. My ex-husband agrees that the formula used to calculate the cost of raising children is absolutely flawed (the cost is much higher than the formula suggests!) so I'm thankful that he is willing to provide extra money when necessary for 'extras' like health, school uniforms, some sporting etc. Other majority care parents are not so lucky.

The formula needs to be updated to reflect the true costs of raising a child which includes before and after school care, vacation care, sick days, health insurance, medical/Dr visit costs, medicines, specialists etc.

The formula for assessing the amount to be paid is confusing so I just pass on my earnings for the year and hope it's all good.

The formula is ridiculous, overcomplicated, convoluted, and unfair. Children shouldn't be worth more because their parents make more money.

The system has become so complex that you need to be an accountant and solicitor just to understand it. It is not possible for the average person to make sense of it and you can't get the formulas that are used.

3.8 One of the most difficult tasks in designing or improving a child support system is to establish a formula according to which assessments are made. A simple formula is easy to understand and administer, but unresponsive to the nuances of human lives in contemporary economic conditions. A complex formula can better respond to a particular family's circumstances, but it is therefore more difficult to administer, less comprehensible, and potentially less predictable.

3 Patrick Parkinson, 'The Future of Child Support', *University of Western Australia Law Review*, (2007) 33:2, pp. 180-1.

3.9 Victorian Legal Aid (VLA) illustrates the dangers in complex systems with reference to its clients:

For VLA clients 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 that deliver for children. When providing legal advice, VLA lawyers are first spending time educating clients about the system and how it relates to their current circumstance in order to reduce confusion and frustration.

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.⁴

History of the formula

3.10 The current formula, in place since 2008, reflects the considerable work undertaken by the 2005 Ministerial Taskforce. The Chair of that Taskforce, Prof Patrick Parkinson, expressed the nature of such a task, and the results it brings:

any child support system anywhere in the world involves rough justice. It has to because one is dealing with so many different circumstances, so many different families. One has to then summate that in a formula or formulae. Our system is quite complex compared to those of other countries. I met with, I think, three different ministers for child support in the UK between 2005 and 2009, and each of them expressed amazement that we had developed such a complex scheme. Theirs was much cruder, much simpler, but in my view therefore more unjust. The nature of these things is that one has to deal with averages and can only produce a roughly fair system.⁵

3.11 The current formula is a significant departure from the previous formula. The previous formula was based on the 'percentage of obligor income' approach, where the child support liability was 'based upon a flat percentage of the liable parent's income.'⁶ This approach produced a

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

5 Prof Patrick Parkinson, *Committee Hansard*, Sydney, 27 June 2014, p. 1.

6 Patrick Parkinson, 'The future of Child Support', *University of Western Australia Law Review*, (2007) 33:2, p. 181.

formula relying on 'fixed percentages of income across the income range, and taking account of the income mainly of just one parent.'⁷ This had been the case since the establishment of the scheme, in the late nineteen-eighties, and was common in many schemes around the world that had been in place since that time.

- 3.12 The current formula, by contrast, follows the 'income shares' approach, taking the income of both parents into account, and recognising the care provided by each parent. As explained by Prof Parkinson, under this approach:

The income shares approach begins with a dollar figure for the costs of the child based upon combined parental income, and then distributes that cost between the parents in accordance with their respective capacities to pay. The primary caregiver is assumed to meet his or her share of that cost in kind. The non-resident parent's share becomes the child support obligation.⁸

- 3.13 According to the Department of Social Services (DSS) and Department of Human Services (DHS), the formula 'is based on research into the cost of raising children in Australia', and takes into account 'both parents' incomes, the level of care they provide for their children, and the associated estimated costs of the children.'⁹

The formula today

- 3.14 As noted above, child support assessments are calculated according to the formula. In order to formally determine the child support liability that applies to a particular case, the Child Support Registrar (the Registrar) makes an administrative assessment of the child support under the *Assessment Act*.
- 3.15 When making an assessment, the Registrar must have the following information about each parent:
- their income, and
 - the amount of care they provide to the child.
- 3.16 In certain cases, further information that is particular to an individual might be relevant to an assessment, such as other dependent children, or the exclusion of some income in the first three years after separation.

7 Patrick Parkinson, 'The future of Child Support', *University of Western Australia Law Review*, (2007) 33:2, p. 181.

8 Patrick Parkinson, 'The future of Child Support', *University of Western Australia Law Review*, (2007) 33:2, p. 181.

9 Department of Social Services and Department of Human Services, *Submission 99*, p. 11.

- 3.17 There are also two ‘universal’ inputs to each assessment, which are both updated each year. They are set independently of any particular assessment, and are based on Male Total Average Weekly Earnings (MTAWE). MTAWE is calculated and published by the Australian Bureau of Statistics twice a year (for the June and December quarters):
- the ‘self-support amount’ is set at one-third of annual MTAWE, and is based on MTAWE for the June quarter.¹⁰ The self-support amount for 2014 is \$23,523.¹¹
 - the ‘costs of children’ table was created by the Taskforce in 2005, and is also based on MTAWE. Each year DHS publishes an updated version.¹²
- 3.18 There are eight steps in making a basic assessment:
1. calculate each parent’s **child support income**, which is their **adjusted taxable income** (ATI) minus the ‘self-support amount’,¹³
 2. combine both parents’ child support income, producing the **combined child support income**,
 3. calculate each parent’s **income percentage**, which is their share of the combined child support income,
 4. establish each parent’s **percentage of care** for the child,
 5. calculate each parent’s **cost percentage**, which assigns a percentage of the total costs of the child, according to the amount of care they provide to the child,
 6. calculate each parent’s **child support percentage**, which is their income percentage minus their cost percentage: any parent whose percentage is positive will have a child support liability,
 7. determine the **cost of the child**, according to the costs of children table, which takes account of the combined child support income, and the age and number of children for which the assessment is being made, and
 8. calculate the **annual rate of child support**, by applying the child support percentages to the cost of the child.¹⁴

10 Section 45, *Child Support (Assessment) Act 1989*.

11 Department of Social Services, *Child Support Guide*, section 2.4.2.

12 Section 155, *Child Support (Assessment) Act 1989*.

13 The self-support amount is a universal figure, set at one-third of annual Male Total Average Weekly Earnings (MTAWE), which is published by the Australian Bureau of Statistics twice a year (for the June and December quarters). Under section 45 of the *Child Support (Assessment) Act 1989*, the self-support amount is updated yearly, based on MTAWE for the June quarter.

14 Part 5, division 2, *Child Support (Assessment) Act 1989*.

- 3.19 The 'annual rate' of child support will be payable by one parent to the other parent, generally over the course of a year at regular intervals. Under the basic formula, there would be the possibility that no child support payments would be necessary, if both parents had the same income and provided the same amount of care. They would both have an income percentage of 50, and a cost percentage of 50, and therefore would both also have a child support percentage of 0.

Income

- 3.20 As noted above, the income of both parents must be included in a formula assessment. According to DSS/DHS, 'child support assessments are generally based on parents ATI [Adjusted Taxable Income]', which comprises an individual's taxable income, taxable pension and benefit payments, and also includes:
- reportable fringe benefits,
 - target foreign income,
 - total net investment losses,
 - certain tax-free pensions and benefits, and
 - reportable superannuation contributions.¹⁵
- 3.21 The ATI is generally assessed by the Australian Taxation Office (ATO), most commonly when the parent lodges a tax return following the end of a financial year.
- 3.22 According to DHS, the overall design of the formula takes account of the fact that an individual's ATI is their 'gross' rather than 'net' income, and many individuals' disposable income is less than their ATI. In an information booklet for parents, it states:
- While the formula uses taxable income, the impact of tax on your disposable income is taken into account when we work out the costs of raising your children.¹⁶
- 3.23 According to Prof Parkinson, the Taskforce considered using net, rather than gross, income. However, this was rejected, for the following reasons:
- taxable income is more readily identifiable and predictable; that using after-tax income could impact more heavily on low income earners; and that using taxable income allows for greater

15 Section 43, *Child Support (Assessment) Act 1989*.

16 Child Support Agency, *The Parent's Guide to Child Support*, 2009, p. 2.

simplicity and alignment with the income definitions used for other government purposes.¹⁷

3.24 However, there was considerable debate throughout this inquiry about the appropriateness of calculating child support based on taxable (gross) income, rather than on post-tax (net) income.

3.25 Many submissions, particularly from individuals, called for child support to be assessed on the basis of post-tax income:

Assessment should be based on net not gross income. When my child lived with me what was spent on her – as with what was [and] is spent on myself – came from what was left after income tax.¹⁸

3.26 Some submissions called for assessments to be made on the basis of post-tax-income, with the self-support amount also removed:

Payer's adjusted income in the formula (adjusted income → Gross income minus self-support amount) does not take in to account the Tax the payer pays every year. The formula should be based on the net Income (Net Income → Gross income minus Tax & Self Support amount).¹⁹

3.27 Submissions also questioned the tax treatment of child support payments, with some calling for payments to be tax-deductible for payees:

The receiving parent of Child Support receives this payment tax free so it only seems fair if the Child Support payments should be made taxable deduction so to provide a taxable break for those workers who are on a fixed salary and make payments.²⁰

3.28 The inquiry was the focus of considerable debate about the best way to take account of individuals' incomes for child support purposes. There were numerous calls for change, with attendant increases in complexity. Many suggestions for change did not appear to deliver any substantial greater fairness to the way the formula operates.

3.29 The interaction of child support and personal income taxation is very complex, and many clients of the CSP are not satisfied with the explanations offered by the CSP. Chapter 4 considers how the CSP communicates with its clients, and the reforms suggested there should go some way to improving general understanding of the CSP and taxation.

17 Patrick Parkinson, 'The future of Child Support', *University of Western Australia Law Review*, (2007) 33:2, p.191.

18 Name Withheld, *Submission 96*, p. 10.

19 Name Withheld, *Submission 89*, p. 2.

20 Name Withheld, *Submission 111*, p. 1.

Self-support amount

- 3.30 Considerable evidence to the inquiry questioned the appropriateness of the current 'self-support' amount, which was \$23 523 in 2014. Some submissions argued that the self-support amount was too low:

The self-support income needs to be increased to a realistic value, clearly a single person would be unable to sustain anything near a reasonable life on approximately \$20 000 per annum pre-tax. The current single newstart allowance is \$26 546 which one would assume the Government deems to be the minimum support needed for self-subsistence.²¹

- 3.31 Other submissions pointed out that the self-support amount was not set according to an individual's location, disregarding regional variations in living expenses:

The self-support does not even come close to addressing the minimum needs of someone to support themselves. I challenge anyone to find accommodation for the year for that amount in Darwin – it is not possible to do so, let alone feed yourself and put fuel in your car to get to work.²²

- 3.32 Other evidence questioned why the self-support amount was the same for all individuals regardless of their income, and did not rise with income as child support payments do:

However, the CSA self support amount remains static. It is illogical to apply the same 'self care amount' to all parents as with increase in income, comes additional responsibility and expenses.²³

- 3.33 Criticisms also focussed on the application of a single self-support amount to all parents, regardless of how much care they provide:

We are against the equalisation of the self-support for the primary carer.²⁴

The 2006 reforms to the child support program saw the equalisation of the self support amount. This move blatantly ignored the need for the residential parent to establish and maintain a family home suitable for raising children (via high rental or mortgage).

Accommodation costs, on average, consume one third to a half of the available income to the residential parent who then needs to

21 Name Withheld, *Submission 87*, p. 3.

22 Name Withheld, *Submission 33*, p. 4.

23 Name Withheld, *Submission 74*, p. 6.

24 National Council of Single Mothers and their Children, *Submission 40*, p. 5.

attempt to fund the ongoing day-to-day costs of the child. In contrast the non-custodial parent's living costs for one are substantially less as they can access shared accommodation or pay lower rental for substantially smaller accommodation.²⁵

- 3.34 A common suggestion was for the self-support amount to be made variable, at a set proportion of an individual's income, such as twenty-five percent.²⁶

Questionnaire box 3.2 Self-support amount

I think the formula does not take account on individual circumstances enough, or is flexible enough to do so. My opinion is that the amount of child support should be based on the estimate of the cost of the child, but not increased with the income parents. The self-support amount should take account of disparities between self-support living expenses in Sydney and Melbourne versus cheaper cities.

The financial costs of raising my son are 95% borne by me. It's not possible to raise a child on the amount that my child support assessment has 'left over' after the parent self-support amount and the allowance taken out for his older children.

The self-support amounts are not high enough for Payer and Payee. The cost of living is significant and the self-support amount does not reflect this.

The self-support amount is set HIGHER than any form of government social security amount. The self-support amount should be equal to a pension (or the pension the same as the self-support amount). It also only considers up to 3 children.

The self-support amount of \$26,000 is not realistic. As a one income family, this amount only covers my mortgage and nothing else. Realistically, no one can self-support themselves on \$26,000. This needs to be looked at in comparison to the average daily living expenses including average mortgage repayments.

- 3.35 The self-support amount has been the subject of debate during the whole life of the Program: the Price report recommended the 'non custodial parent's basic formula self support component be increased by 20 per cent';²⁷ and *Every picture tells a story* recommended that the then versions of the self support amount (at the time set at different levels) be brought 'closer together to reflect the changing work patterns in the community.'²⁸
- 3.36 As noted at the start of this Chapter, formula design involves a careful balancing of complexity and responsiveness. Some suggested reforms to the self-support amount advocate for responsiveness to an individual's circumstances – such as the region they live in, their postcode or their gross income. Such changes would erase the 'universality' of the self-support amount. They would also increase the complexity of the program

25 National Council of Single Mothers and their Children Hobart Branch, *Submission 32*, p. 8.

26 Name Withheld, *Submission 1*, p. 1.

27 Joint Select Committee on Certain Family Law Issues (37th Parliament), *The Operation and Effectiveness of the Child Support Scheme*, November 1994, recommendation 123.

28 House of Representatives Standing Committee on Family and Community Affairs (40th Parliament), *Every Picture Tells a Story*, December 2003, recommendation 26.

- making it more expensive to administer, and more difficult for clients to understand - and also reduce its predictability.
- 3.37 Other suggested reforms advocate the reintroduction of unequal self-support amounts - that is, allowing a higher amount for 'primary carers'. This would be a fundamental change to the formula, designed as it is to assess each parent's liability on the same criteria. It would clearly have ramifications for every other element of the formula, and it is not clear that these ramifications have been elucidated and taken account of. It also fails to take account of parents who have shared care of children (i.e. where there is no 'primary carer').
- 3.38 At a more general level, many suggestions have a similar underlying concern: that the self-support amount is not the true cost of a single adult's basic needs in today's economy. The current amount is set by reference to MTAW, based on recommendations of the Parkinson report. There have been considerable changes to the social security system in the years since the Parkinson report was implemented, and there is considerable popular belief that the cost of living in Australia is notably higher than in comparable countries.²⁹
- 3.39 The appropriateness of the self-support amount is difficult to assess in the absence of rigorous data, and most of the evidence advanced in support of change was anecdotal or vague at best. However, there is a strong argument for expert analysis and review of the current setting. This will be considered further in Committee Comment, below.

Care

- 3.40 As noted above, an assessment for child support will take account of the amount of care ('percentage of care') provided by each parent or non-parent carer. This ensures that the assessment recognises the contribution made by caring for a child, and that this is reflected in the child support liability produced by the assessment. The formula does this by assuming that the carer meets some of the costs of raising a child 'directly through the care they are providing.'³⁰
- 3.41 The 'percentage of care' amount is 'usually calculated based on the number of nights [the carer] is likely to provide care for the child in the relevant care period (usually 12 months).'³¹ However, care is not assessed

29 Daniel Hurst, 'Most Australians believe the cost of living has soared over the past year', *Guardian Australia*, 21 October 2014; Amy Bainbridge, 'Australians struggling to cope as cost-of-living pressures bite: Choice survey', *ABC online*, 8 August 2014.

30 Department of Social Services and Department of Human Services, *Submission 99*, p. 14.

31 Department of Social Services and Department of Human Services, *Submission 99*, p. 14.

on a full range from 0 to 365 nights of care. Rather, the percentage of care is grouped into five broad categories, or 'care types' (see table 3.1 below):

- below regular,
- regular,
- shared,
- primary, and
- above primary.

3.42 The amount of care provided by both parents (or a parent and non-parent carer) must amount to 100 percent. So, for example, if one parent has 15 per cent care (regular care), the other will have 85 per cent care (primary care).

3.43 From the care percentage, the formula assigns the corresponding 'cost percentage', within the broad 'care types'. Importantly, there is a threshold amount of care (regular) that must be met before any cost percentage is assigned. So, for example, providing 50 nights of care (below regular) will result in a cost percentage of zero, as the formula does not assume that any direct costs are met with this level of care.

Table 3.1 Care and cost percentages

Amount of care			Cost percentage
Care type	Number of nights	Percentage of care	
Below regular	0 to 51	0% to less than 14%	0%
Regular	52 to 127	14% to less than 35%	24%
Shared	128 to 237	35% to less than 48%	25% plus 2% for each percentage of care point over 35%
		48% to 52%	50%
		More than 52% to 65%	51% plus 2% for each percentage of care point over 53%
Primary	238 to 313	More than 65% to 86%	76%
Above primary	314 to 365	More than 86% to 100%	100%

Source DSS/DHS, Submission 99.

3.44 The formula is designed so that, within some 'care type' ranges, different amounts of care are assigned the same cost percentage. For example, a cost percentage of 24 per cent is assigned to a parent who provides 14 per cent of care as well as a parent who provides 34 per cent care.

- 3.45 Prof Patrick Parkinson explained the rationale behind the cost percentage scale, and its introduction at 24 per cent:

At the point at which the child is living across two households and there are two lots of bedrooms and so on, there needs to be some allowance for that. We placed that at one night per week through to almost five nights per fortnight as a band of situations in which, in all probability, costs other than food were being expended across two households to care for the child. The 24 per cent figure was a research based one based upon our analysis of how those costs are distributed across the two households. We used what is called a budget standards approach and another approach as well, and the experts on our committee came up with the 24 per cent figure as the best average for how to share those costs.³²

- 3.46 There were many concerns expressed about the link between care and the cost percentage. Some evidence disputed the fairness of the cost percentage for the low end of regular care, referring to the result as a 'discount'. The National Council of Single Mothers and their Children (Hobart branch) recommended the removal of:

the 24% discount for one overnight stay per week and introduce a sliding scale that accurately reflects the percentage care in the child support assessment. We remain completely unconvinced that 24% discount in child support payments in exchange for as little as 13% care is a fair or equitable outcome and consider that the significant and disproportional outcome is an economic driver which is contradictory to 'the best interest of the child'.³³

- 3.47 In addition to concerns about the equity of the cost percentage scales, some evidence pointed out the potential for the amounts of care to be a point of conflict. According to this suggestion, parents might seek to provide amounts of care that serve their financial interests, particularly given the considerably different assessment that would result from 13 per cent care as opposed to 15 per cent care.

- 3.48 Putting aside claims about the intentions of parents' care decisions, the inquiry heard many concerns about the appropriateness of the care and cost percentages, particularly in the ranges of regular and primary care. As with the self-support amount, there is merit in expert analysis and review of the current settings and whether the current limit of five care types is adequate. This will be considered further in Committee Comment, below.

32 Prof Patrick Parkinson, *Committee Hansard*, Sydney, 27 June 2014, p. 7.

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

Cost of children

3.49 Prof Parkinson has detailed the rationale and process for including the costs of children in the child support system. The Australian approach is generally referred to as the 'continuity of expenditure principle':

the [child support scheme] is based upon the notion that the non-resident parent should contribute a similar level of support to the children as he or she would have contributed if the parents were living together... the Fogarty Committee [which designed the first Australian scheme] therefore drew upon estimates of the percentage of gross income that is spent on children in an intact relationship.³⁴

3.50 Prof Parkinson noted that there are possible objections to this approach. In particular, after separation, standards of living often decline as the separated family will need two separate homes to live in, and will incur many other 'double' costs. According to such an argument, it is unreasonable to expect that it would be possible to continue providing the same standard of living after separation. However, Prof Parkinson notes that much can change over the eighteen years of a child's growth to adulthood:

However, while the standard of living of many resident parents falls after separation, this loss in living standards may be ameliorated if they re-partner. The child support formula needs to apply generally until the children are 18, and the circumstances of parents can change considerably over this time.³⁵

3.51 Prof Parkinson finally notes that the approach is 'widely accepted', and that:

The idea that a parent ought to contribute approximately what he or she would have been paying if the parents had not separated is a reasonable moral position to take. It justifies the requirement that liable parents on higher incomes pay more than those on lower incomes. It allows the children to continue to share to some extent in the living standard of the liable parent. It is a morally defensible basis for calculating child support even where for the liable parent

34 Patrick Parkinson, 'The Future of Child Support', *University of Western Australia Law Review*, (2007) 33:2, p. 183.

35 Patrick Parkinson, 'The Future of Child Support', *University of Western Australia Law Review*, (2007) 33:2, p. 184.

with new housing costs and other additional costs after separation, finances are much tighter than they were before.³⁶

3.52 The process for establishing the 'costs of children' has been subject of many recommendations over the life of the child support scheme. The Price report recommended in 1994 that:

the Minister for Social Security commissions an independent study into the costs of children to enable a critical evaluation of the current child support formula percentages.³⁷

3.53 In 2003, *Every picture tells a story* recommended the Ministerial taskforce review the costs of children, including:

- 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, [and]
- adequately reflecting the costs for both parents of re-establishing homes for their children and themselves after separation.³⁸

3.54 The work of the Taskforce, as recorded by Prof Parkinson, relied on three different sources information to inform the costs of children:

The Child Support Taskforce utilised three different methodologies to reach the best and most up-to-date estimates possible of the costs of children in Australian families. The Household Expenditure Survey was used to examine actual patterns of expenditure on children. The budget standards approach was utilised to assess how much parents would need to spend to give children a specific standard of living, taking account of differences in housing costs all over Australia. A review was also done of all previous Australian research, so that the outcomes of these two studies could be compared with previous research findings.³⁹

3.55 The current 'costs of children' table was introduced in 2008, as part of the final stage of implementing the Taskforce's recommendations. As noted

36 Patrick Parkinson, 'The Future of Child Support', *University of Western Australia Law Review*, (2007) 33:2, p. 184.

37 Joint Select Committee on Certain Family Law Issues (37th Parliament), *The Operation and Effectiveness of the Child Support Scheme*, November 1994, recommendation 116.

38 House of Representatives Standing Committee on Family and Community Affairs (40th Parliament), *Every Picture Tells a Story*, December 2003, recommendation 26.

39 Patrick Parkinson, 'The Future of Child Support', *University of Western Australia Law Review*, (2007) 33:2, p. 186.

above, the table relies on data from the Australian Bureau of Statistics, and is updated annually.

- 3.56 In the event that there are changes to parents' Family Tax Benefit (FTB) entitlements, the costs of children table may require revision. DSS/DHS pointed out that the current table relied on assumptions about the average level of family assistance through FTB payments:

Child support payments are calculated based on broad estimates of the average costs of children that are net of the estimated average levels of FTB that parents are assumed to receive.⁴⁰

- 3.57 However, there were many contributors to the inquiry who criticised the cost of children table (see Table 3.2).

- 3.58 Some evidence criticised the policy basis for the table, arguing that the cost of children should be fixed:

the cost of children should be fixed and should not be dependent on the level of income of the parents. The current formula assumes that it costs more for parents on higher incomes to raise their children. As [another speaker] mentioned, in reality it does not cost any more to buy a loaf of bread or a carton of milk depending on income. In fact, there are no general costs of living that are dependent on a person's level of income. It makes no sense that the cost of raising children is deemed to vary depending on the parents' income, yet the cost of supporting yourself – the self-support amount – does not.⁴¹

- 3.59 Some submitters suggested that the table could lead to 'exorbitant' assessments, when applied to individuals on high incomes, beyond the real cost of raising a child.⁴² One witness called for the table to be drastically reduced, with an income cap introduced at \$70 569 (2014 dollars), rather than at the current level of \$176 423. Under such a recommendation, the maximum yearly cost of a single child in 2014 would be \$11 291 (aged 0 – 12 years) or \$15 878 (13+ years).⁴³

40 Department of Social Services and Department of Human Services, *Submission 99*, p. 10.

41 Simon, Community Statement Session, *Committee Hansard*, Adelaide, 6 August 2014, p. 22.

42 Mr Trevor Koops, *Submission 12*, p. 2.

43 Mr John Flanagan, *Committee Hansard*, Sydney, 27 June 2014, p. 20.

Table 3.2 Cost of children (2014)

Number of Children	Parents' combined child support income (annual figure & fraction of MTAW)					
	\$0 – \$35,285	\$35,286 - \$70,569	\$70,570 - \$105,854	\$105,855 - \$141,138	\$141,139 - \$176,423	\$176,423 and above
	0 – ½ MTAW	½ - 1 MTAW	1 – 1 ½ MTAW	1 ½ - 2 MTAW	2 – 2 ½ MTAW	above 2 ½ MTAW
<i>Children aged 0 – 12 years</i>						
1	17c for each \$1	\$5,998 plus 15c for each \$1 over \$35,285	\$11,291 plus 12c for each \$1 over \$70,569	\$15,525 plus 10c for each \$1 over \$105,854	\$19,053 plus 7c for each \$1 over \$141,138	\$21,523
2	24c for each \$1	\$8,468 plus 23c for each \$1 over \$35,285	\$16,583 plus 20c for each \$1 over \$70,569	\$23,640 plus 18c for each \$1 over \$105,854	\$29,991 plus 10c for each \$1 over \$141,138	\$33,520
3+	27c for each \$1	\$9,527 plus 26c for each \$1 over \$35,285	\$18,701 plus 25c for each \$1 over \$70,569	\$27,522 plus 24c for each \$1 over \$105,854	\$35,990 plus 18c for each \$1 over \$141,138	\$42,341
<i>Children aged 13+ years</i>						
1	23c for each \$1	\$8,116 plus 22c for each \$1 over \$35,285	\$15,878 plus 12c for each \$1 over \$70,569	\$20,112 plus 10c for each \$1 over \$105,854	\$23,640 plus 9c for each \$1 over \$141,138	\$26,816
2	29c for each \$1	\$10,233 plus 28c for each \$1 over \$35,285	\$20,113 plus 25c for each \$1 over \$70,569	\$28,934 plus 20c for each \$1 over \$105,854	\$35,991 plus 13c for each \$1 over \$141,138	\$40,578
3+	32c for each \$1	\$11,291 plus 31c for each \$1 over \$35,285	\$22,229 plus 30c for each \$1 over \$70,569	\$32,815 plus 29c for each \$1 over \$105,854	\$43,047 plus 20c for each \$1 over \$141,138	\$50,104
<i>Children of mixed age</i>						
2	26.5c for each \$1	\$9,351 plus 25.5c for each \$1 over \$35,285	\$18,348 plus 22.5c for each \$1 over \$70,569	\$26,287 plus 19c for each \$1 over \$105,854	\$32,991 plus 11.5c for each \$1 over \$141,138	\$37,049
3+	29.5c for each \$1	\$10,409 plus 28.5c for each \$1 over \$35,285	\$20,465 plus 27.5c for each \$1 over \$70,569	\$30,168 plus 26.5c for each \$1 over \$105,854	\$39,518 plus 19c for each \$1 over \$141,138	\$46,222

Source Department of Human Services

3.60 Evidence also raised concerns about the presumption that there was no cost difference between raising three and four children:

Furthermore, we remain confused about the original assertion that there is no cost impact in raising the fourth or subsequent child and that the cost of tables cease at the third child. NCSMC [National Council of Single Mothers and their Children] has not

located one larger family who has found this finding to be accurate.⁴⁴

- 3.61 There were more general comments that the table did not reflect contemporary family finances, calling for the formula to be changed 'to more closely resemble parents' income and the costs of children'.⁴⁵ Evidence also suggested that the method of estimating the 'cost of children' needed to be reviewed and updated:

NCSMC calls for a review of the 'basket of goods' formula assessment, which is out of date. For example it excludes medical costs because it assumes that all medical costs for sole parents are covered by Medicare and bulk billing doctors. Not all sole parents are on an allowance and therefore are not eligible for bulk billing or a health care card. It was also developed at a time when government made a greater contribution to supporting low income sole parent families.⁴⁶

- 3.62 Dr Bruce Smyth and Dr Bryan Rodgers point out that the current system was designed and implemented at a time when government support for families was substantially different, and subject to ongoing change:

Disentangling the impacts of the child support reforms from the Welfare-to-Work changes and the Global Financial Crisis stimulus package is extremely difficult.⁴⁷

- 3.63 Prof Parkinson agreed to suggestions that the table would benefit from review:

I think it would be very wise to regularly review the basis of the research which led to our proposals. They were based upon 2004 data and we are now in 2014. In the United States, they review every four years. It is obviously sensible but it does need the kind of group like the ministerial task force that was set up back then for this extremely complicated work.

...

We did include certain automatic elements. For example, we based a number of parts of the formula on MTAW, which is male total average weekly earnings, so it was self-updating in accordance with changes in incomes in the Australian population, so in that sense we did build it in. But it was a recommendation that the research capacity be maintained in this area, which had been

44 National Council of Single Mothers and their Children, *Submission 40*, p. 14.

45 Ms Lynn Cresswell, *Committee Hansard*, Adelaide, 6 August 2014, p. 10.

46 National Council of Single Mothers and their Children, *Submission 40*, p. 5.

47 Dr Bruce Smyth and Dr Bryan Rodgers, *Submission 13*, p. 28.

allowed to lapse, and that the formula should certainly be considered if there were significant changes, particularly to the welfare system affecting a significant proportion of the child support population.⁴⁸

3.64 And, as confirmed by DSS/DHS:

[The costs of children] take into account a number of assumptions about the differences between couple families and separated parents, *FTB policy settings at a point in time*, administrative simplicity and the need for certainty for families.⁴⁹ [emphasis added].

3.65 As noted above, the cost of children has been criticised for its appropriateness, despite its indexing through the use of MTawe. Changes in the economy and the levels of Government income support since it was established have caused many to doubt its fairness. This is particularly problematic given the way that the cost of children is stated to account for the formula's use of gross incomes. As with the self-support amount and cost percentages, it is important to ensure that the cost of children provides the best setting for the overall fairness of the CSP. This will be considered further in Committee Comment, below.

Assessments

3.66 The central process of the CSP is the administrative assessment. Using the formula, the 'universal inputs', and information about each parent (including their incomes and how much each cares for the child), an assessment of the child support liability is made. The administrative assessment is performed by the Child Support Registrar, a senior official in DHS.⁵⁰ The Registrar generally delegates this function to more junior officers of the Department.

Table 3.3 Questionnaire respondents' views of the assessment process

Do you understand the basis on which the assessment was made?	Responses	Percentage
No	2273	26%
Yes	6371	74%
Total	8644	100%

48 Prof Patrick Parkinson, *Committee Hansard*, Sydney, 27 June 2014, p. 7.

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

50 Section 10, *Child Support (Registration and Collection) Act 1988*.

Figure 3.1 Questionnaire respondents' reasons for having a CSP assessment

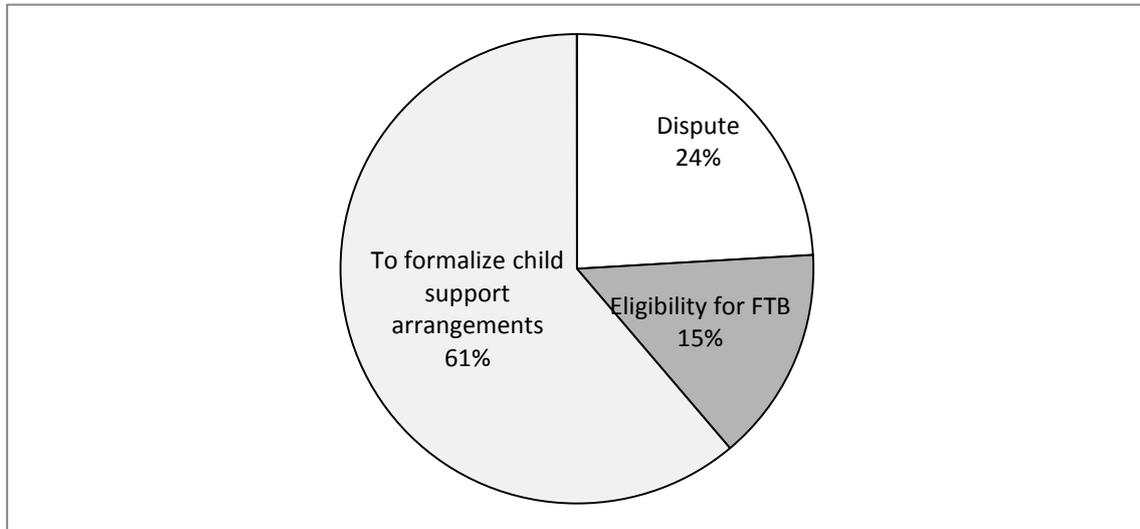
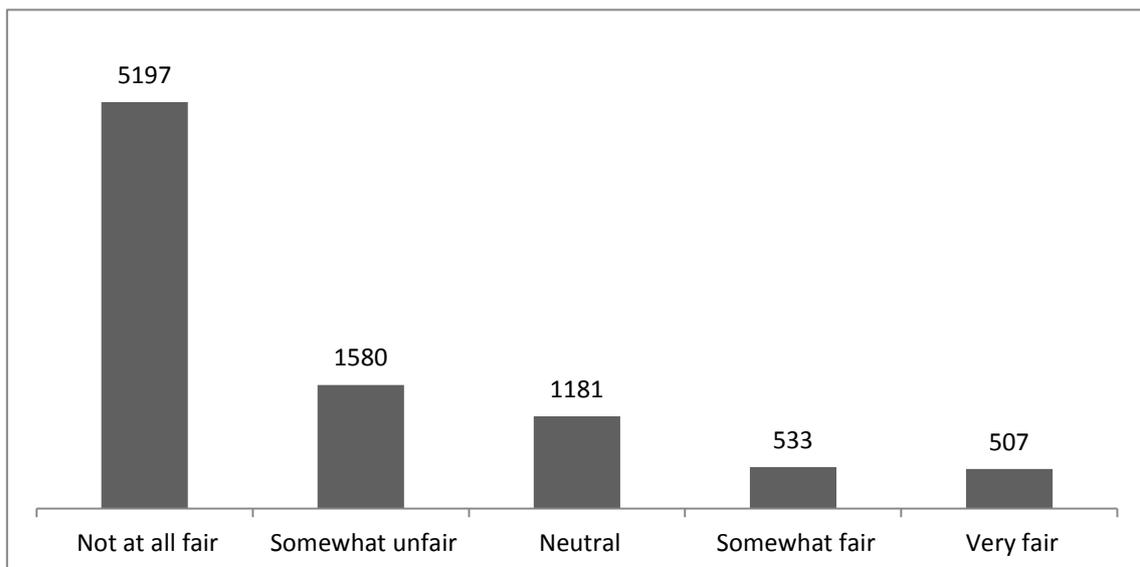


Figure 3.2 Questionnaire respondents' views on the fairness of assessments



Income

3.67 An assessment uses information that can come from a number of sources. In respect of information about income, such information might come from:

- parents themselves,
- DHS (for example, through Centrelink processes),
- the ATO,
- employers, and

- other sources.⁵¹
- 3.68 Under the *Assessment Act*, an administrative assessment will generally rely on a parent's taxable income, as assessed under either the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*. This should relate to the *last relevant year of income*, which is 'the last year of income that ended before the start of the [child support] period.'⁵² As discussed in relation to the formula, additional components of income may be included in the ATI, which is the starting point for making an assessment.
- 3.69 However:
- Where a parent has not lodged their tax return, or the ATO has deemed that a parent is not required to lodge a tax return, Child Support must make a determination of the parent's adjusted taxable income based on the income information available.⁵³
- 3.70 Other information that may enable such a determination is:
- information (either orally or in writing) or a document that specifies or allows the Registrar to work out the parent's adjusted taxable income...For example, the customer may have informed the Registrar of their income for the year, the ATO may have full year payment summary information recorded for a parent or the Registrar may have information about the Centrelink payments made to the parent for the year or the Registrar may have information from an overseas authority about the income earned by a parent who was resident in a reciprocating jurisdiction.
- The Registrar must be satisfied that the amount specified or worked out is a reasonable approximation of the parent's adjusted taxable income for the year. In making that decision the Registrar will have regard to ATO assessments for previous years or information available from the ATO or other sources about the year in question.⁵⁴
- 3.71 In addition, the Registrar may use an ATO assessment for the year before the 'last relevant year of income', and apply the 'ATI indexation factor'. Where the last two relevant years of income are not available, the Registrar may use an earlier ATO assessment multiplied by the ATI indexation factor, or 2/3 of current MTAW, whichever is greater.⁵⁵ In the

51 Department of Social Services and Department of Human Services, *Submission 99*, p. 13.

52 Section 5, *Child Support (Assessment) Act 1989*.

53 Department of Social Services, *Child Support Guide*, section 2.4.4.

54 Department of Social Services, *Child Support Guide*, section 2.4.4.

55 Department of Social Services, *Child Support Guide*, section 2.4.4.

absence of any information, the Registrar may determine that the ATI is at least 2/3 of MTAWAWE.

- 3.72 It is also possible for a parent to make an estimate of their income. Whilst there are some circumstances where this cannot be done, in general an individual can elect to estimate their income, in order to take account of a change in their circumstances not reflected in the ATO assessment for the last relevant year of income. The estimate must be no more than 85 per cent of the ATI for the last relevant year of income, and must be advised to the Registrar.⁵⁶
- 3.73 There were two principal areas of complaint regarding how incomes are used to make administrative assessments, which will be discussed below:
- the inflexibility of a yearly income estimate (and regular uniform payments), particularly for self-employed individuals whose incomes fluctuate greatly over the course of a year, and
 - the capacity for individuals to artificially lower their CSP liability by failing to lodge a tax return, or by hiding income from the assessment process.

Questionnaire box 3.3 CSP assessments

The assessment has never been fair as the father is self-employed. I always have to apply for change of assessment, and sadly it is I that has to provide ALL the evidence. Child support should have more investigative powers.

The support decreases each year as he finds more ways to minimise his income. Nobody at the Child Support Agency insists he provides evidence so he gets away with it, year in, year out. I am too worn out to go through any more Child Support processes.

Mostly everything seems quite fair and reasonable. But I was a bit puzzled why payments went down when he has another child with someone else. The daily costs of looking after our daughter did not change.

I don't see that its fair when the assessment is [calculated] on my gross income and then paid out of my net wage.

The senior case officer did not involve me in any of the decision making process and tried to force through an assessment that did not take into account all the facts.

It was made on assumptions, and when my partner and I questioned it we were told too late, the decision was made and we would have to apply through a review process if we wanted it changed (which we did not and were told the decision was upheld and final only thing left was a SSAT review.)

Current assessment is based on my "potential to earn" and is further adding to my stress because I am being charged money that I am not earning.

Yearly estimate

- 3.74 Many clients of the CSP have argued that the current assessment and payment system is too inflexible, as it does not take account of their regular fluctuations in income. This can cause significant problems, including accruing debts under the CSP as well as debts to Centrelink through social security payments:

I acknowledge that overpayments often come about through no one's fault, my husband is a shift worker so it is incredibly difficult to estimate his income, and it often fluctuates from year to year.⁵⁷

- 3.75 Economic Security 4 Women pointed out the difficulty payees experience when relying on fluctuating child support payments:

they are really very reliant on those child-support payments being regular and understanding what they are going to be – they cannot fluctuate too much; there is enough fluctuation in their income earning as it is.⁵⁸

For example:

It is my experience that this information can be vague, inconsistent and, often at times, not even available. Indeed, this month my payment was less than expected and I had no notification or explanation supplied. Whilst I would like to be in a financial situation where I did not require every dollar possible, my family lives on a tight budget where we responsibly manage every cent of our income so that I can provide my children with every possible educational and sporting opportunity available.⁵⁹

- 3.76 This is particularly common with self-employed individuals, and small business owners:

incomes can vary from between 200 and 300 per cent from the taxable income amounts determined through the taxation department.

...

For example, an individual owning a small business may have a taxable income of approximately \$30,000. Child support could then counter-determine that same person's income as \$70,000 per annum based on a lot of unsubstantiated assumptions. An insurance company assessing the same individual's income for an

57 Name Withheld, *Submission 33*, p. 4.

58 Ms Sally Jope, *Economic Security 4 Women, Committee Hansard*, Canberra, 29 August 2014, p. 25.

59 Sharon, *Community Statement Session, Committee Hansard*, Brisbane, 22 July 2014, p. 37.

income protection claim may then come up with an annual income of \$35,000.

Incomes from small businesses are dynamic – constantly changing with time – and it is essential that they are treated in such a way during the assessment process. There needs to be a constant income review in place for these types of incomes – maybe a periodic assessment every three months. I firmly believe that small business owners will give up trying to maintain their businesses if they are going to be treated unfairly and thus causing unwanted stress and anxiety in an already difficult situation.⁶⁰

and

Income estimates for the self-employed. I am self-employed. I run a business. As you are aware, businesses experience peaks and troughs, especially in the current economic conditions – try explaining that to a child support team. If you are over then you pay more; there is no refund. But, if you are under, the fines and the harassment can drive you insane. I think the system would work best with the GST system, because you have to report anyway; so have the ATO linked to this.⁶¹

- 3.77 The CSP has its roots in the 1980s, when the economy and workforce were in a vastly different structure from today. According to the Australian Bureau of Statistics, casual employment has risen to more than 20 per cent of the workforce since the CSP began in the late 1980s, part-time employment has risen to more than 30 per cent, and the self-employed make up 15 per cent of the workforce.⁶²
- 3.78 Despite the clear changes in Australia's economy and workforce structure since the 1980s, the CSP is designed around assessments that provide certainty to parents for a year or more. However, the broader problem remains: many parents do not have incomes that are stable across the year, and many find it difficult to make accurate estimates of future earnings. At the same time, this is not a problem that is restricted to CSP clients: many families with un-separated parents have to deal with similar uncertainties in their incomes, while managing fixed liabilities such as rent, loan repayments, insurance etcetera.
- 3.79 Chapter 2 considered how the Government might improve the budgeting and financial knowledge of CSP clients. This should increase the financial planning skills and resilience of families with uneven incomes, and

60 Andrew, Community Statement Session, *Committee Hansard*, Brisbane, 22 July 2014, pp. 34-35.

61 Vicki, Community Statement Session, *Committee Hansard*, Brisbane, 22 July 2014, pp. 35-36.

62 Australian Bureau of Statistics, *Australian Labour Market Statistics July 2014*, 8 July 2014.

improve their capacity to deal with financial uncertainty throughout the year.

Minimising income

- 3.80 Other evidence argued that some ATIs, whilst apparently based on the last relevant year of income, do not reflect the actual financial means of a parent. This was commonly associated with claims about an individual's business structures, earning untaxed (cash) income, capital assets, or the amount of support provided by a new spouse.
- 3.81 One of the most common criticisms of the CSP is the capacity for individuals to lower their ATI below their real income, thereby fraudulently minimising their child support liability. This is particularly problematic where individuals fail to lodge a tax return in circumstances where their income is increasing.
- 3.82 The NCSMC noted that '[t]he perennial issue of not having an accurate and timely assessment of income corrodes the overall effectiveness of the [CSP].'⁶³ Echoing this sentiment, Mr Barry Williams gave evidence that:

What we are saying is that we believe when you are paying child support both payers and payees should be made to do a tax return every 12 months. There can be no hassle there then.

...

I am horrified that there are some cases where they can go seven years and there have been no tax returns and they have to try and calculate it. They calculate by asking the employers what their average weekly wages are. But on the payee side there are a lot of payees who are working in family businesses and getting cash in the hand that they do not declare. So it is not an all-round fair system. We believe that a time should be put on it if you are paying child support and if you are receiving child support. A lot of the payees are also working but not putting in tax returns. It is very hard then for the CSA to calculate a fair and equitable figure for both. So what I am saying is that it is the government of the day's job to decide whether we are going to make these people put in a tax return every year, like normal people mostly have to do.⁶⁴

63 National Council of Single Mothers and their Children, *Submission 40*, p. 12.

64 Mr Barry Williams, Lone Fathers Association (Australia), *Committee Hansard*, Canberra, 17 July 2014, p. 13.

3.83 Numerous submissions from individuals emphatically reiterated the necessity of ensuring both parents comply with the law and lodge tax returns every year:

Increase powers of the CSA to enforce tax return lodgements where these are outstanding 3 or more years, particularly where there are arrears.⁶⁵

it appears to me that current methods for collection and enforcement are very difficult to apply in circumstances where payers are not working as employees, not lodging tax returns, when payers can not be located and/or are residing overseas.⁶⁶

The recipient [payee] parent reduces hours of work and also works cash in hand several years post separation. These factors result in a reduction of the income declared by the recipient to the ATO. When CSA calculates the combined income, it is not a true reflection of earning ... In my experience it is not always the paying parent who tries to avoid the responsibility of child support; the recipient parent can make decisions to manipulate the system to their own financial advantage.⁶⁷

3.84 Evidence from the ATO suggests that there may be scope for additional cooperation between it and DHS, in order to provide as much information as possible where a tax return has not been lodged.⁶⁸

3.85 In addition to information sharing, the ATO and DHS have a memorandum of understanding (MOU) under which the ATO pursues the outstanding tax-returns of thousands of CSP clients each year. According to the ATO:

the ATO has agreed to pursue 105,000 lodgments [sic] annually drawn from a prioritised referral list provided by the Child Support Agency.⁶⁹

3.86 However, DHS has stated to the Committee that it provides details of all CSP clients with at least one outstanding tax-return to the ATO, each year. According to DHS, it referred the following numbers of such clients to the ATO in the past three financial years:

- 2011-12: 488,208
- 2012-13: 447,999

65 Name Withheld, *Submission 10*, p. 1.

66 Ms Giovanna Arrarte, *Submission 46*, p. 3.

67 Name Withheld, *Submission 74*, p. 4.

68 Mr Chris Jordan, Australian Taxation Office, *Committee Hansard*, House of Representatives Standing Committee on Tax and Revenue, Canberra, 27 August 2014, p. 15.

69 Australian Taxation Office, *Submission 128*, p. 1.

- 2013-14: 435,425
- 3.87 There is clearly a large gap between the number of clients who have an outstanding tax-return and the number pursued by the ATO each year. It would appear that the ATO is pursuing barely one-quarter of individuals who have failed to lodge their tax-return.
- 3.88 The MOU between the ATO and DHS has been in place since November 2012. It is due to expire in on 30 June 2015, and a replacement MOU will need to be negotiated and agreed⁷⁰. This provides a good opportunity for a comprehensive review of the way the ATO and DHS cooperate in this area, to inform the next MOU. This will be considered further in Committee Comment, below.
- 3.89 The ATO also has the capacity to enforce penalties against individuals who lodge their tax-return late. According to the ATO's guidance to individuals:
- We may apply a failure to lodge on time penalty if you lodge your tax return late. However, it's our policy not to apply a penalty if your tax return:
- is lodged voluntarily, and
 - does not result in any tax payable.
- We are likely to apply a penalty if:
- you have more than one tax return outstanding
 - you have a poor lodgment history, or
 - you have not complied with a request to lodge your tax return.⁷¹
- 3.90 Under current practice, the ATO does not take into account an individual's child support liability – whether fully paid or in debt – when considering whether to apply a penalty:
- [the penalty regime] operates purely on the act of lodgement. So if there is a failure to lodge there is a penalty that is applied when you do not lodge a tax return. There is nothing in the criteria that says that it applies if you are a child support client.⁷²
- 3.91 DHS has advised that it:
- ...does not have any information sharing or coordination arrangements in places with the ATO regarding tax-penalty
-

70 Department of Human Services, *Submission 99.5*, p. 12.

71 Australian Taxation Office, *What if you don't lodge?*, <https://www.ato.gov.au/Individuals/Lodging-your-tax-return/Do-you-need-to-lodge-a-tax-return--/What-if-you-don-t-lodge-/>, viewed 21 January 2015.

72 Mr David Diment, Deputy Commissioner, Australian Taxation Office, *Committee Hansard*, Canberra, 2 October 2014, p. 5.

remission. The remission of tax penalties falls under taxation law and the department has no authority in this regard.⁷³

3.92 Ms Erin Holland, Deputy Commissioner of the ATO, advised that any change to the penalty regime, to apply penalties to child support clients with a child support liability, would have resource implications for its operations:

Yes, there would be resourcing issues both from a technology perspective but also from an administrative perspective because penalty regimes result in increased contact from the community. So you would have people calling, and obviously there would be requests for remission of penalties.⁷⁴

3.93 The question of penalty regimes for the non-lodgement of tax-returns by CSP clients will be considered further in Committee Comment, below.

3.94 Some individuals, however, frustrate the assessment process by ensuring that their ATI does not reflect their real income. In this context, the inquiry considered the possibility of introducing an anti-avoidance mechanism to prevent individuals from artificially lowering their income through the structuring of their financial affairs, where this is done primarily to reduce their CSP liability. This would be relevant only where a client used legitimate financial and business arrangements with the primary intention of lowering child support payments through the regular assessment process.

3.95 The most apt model for such a mechanism is found in Australian taxation law. Part IVA of the *Income Tax Assessment Act* is designed 'to counter schemes that comply with the technical requirements of tax law but have a dominant purpose of avoiding tax.'⁷⁵

3.96 Under the general anti-avoidance law, there are three requirements for Part IVA to apply:

- there must be a 'scheme',
- the taxpayer must have received a 'tax benefit', and

73 Department of Human Services, *Submission 99.1*, p. 14.

74 Ms Erin Holland, Deputy Commissioner, Australian Taxation Office, *Committee Hansard*, Canberra, 2 October 2014, p. 5.

75 Australian Taxation Office, *Clarifying the operation of the income tax general anti-avoidance rule (Part IVA)*, [https://www.ato.gov.au/General/New-legislation/In-detail/Direct-taxes/Income-tax-for-businesses/Clarifying-the-operation-of-the-income-tax-general-anti-avoidance-rule-\(Part-IVA\)/](https://www.ato.gov.au/General/New-legislation/In-detail/Direct-taxes/Income-tax-for-businesses/Clarifying-the-operation-of-the-income-tax-general-anti-avoidance-rule-(Part-IVA)/), viewed 19 January 2015.

- having regard to eight listed factors, the ‘scheme’ was entered into with the purpose of obtaining the benefit.⁷⁶
- 3.97 An analogous method of dealing with individuals who have structured their financial affairs to reduce their income for child support purposes would follow largely similar lines. In particular, it would need to operate where:
- an individual has structured their financial affairs so that their ATI is lowered, and
 - that structure was used for the primary purpose of lowering their income for Child Support purposes.
- 3.98 In these cases, such a mechanism would allow the Registrar to make an income determination that was based on an individual’s actual financial means, not their lowered income. This will be considered further in Committee Comment, below.
- 3.99 Finally, on a technical matter, the Ombudsman raised concern about the rigidity of rules around the Registrar’s ability to amend an assessment when a tax assessment turns out to be incorrect. As described in the Ombudsman’s case study:

Mr D’s accountant made an error when completing Mr D’s income tax return for 2010-11. As a result, the ATO assessed that Mr D’s taxable income for 2010-11 was \$292,000 instead of \$92,000. The ATO notified Child Support of this assessment and Child Support amended Mr D’s child support assessment accordingly, increasing it dramatically [compared to the previous assessment].

Mr D notified the ATO of the error and the ATO amended his taxable income to \$92,000.

Mr D asked Child Support to correct his child assessment. Child Support told him that it was obliged to continue using the information in the ATO’s first assessment, and that his only option was to apply for a “Change of Assessment in special circumstances”. Mr D did not want to do this, because he believed Child Support should have been able to correct his assessment once it was aware that the ATO’s first assessment was wrong... Mr D has the option of applying for a change of assessment; however this is a complex, intrusive and time consuming process to rectify a simple error.⁷⁷

76 Michael Kobetsky, *Income Tax: Text and Essential Cases*, (7th Edition) Federation Press, 2008, p.638.

77 Commonwealth Ombudsman, *Submission 55*, p. 19.

3.100 Under the *Assessment Act*, the Registrar must not amend the assessment in the kind of circumstance described above, unless one of four criteria are met.⁷⁸ As clearly shown by the case study above, such criteria clearly lead to unfair outcomes for CSP clients. This will be considered further in Committee Comment, below.

Care

3.101 As discussed above, the formula also relies on a determination about the amount of care provided by each parent. Under the *Assessment Act*, there are three kinds of determinations that the Registrar may make:

- actual care: a ‘determination of the percentage of the actual care that each parent provides’, which is based on a pattern of care⁷⁹,
- care arrangement: an interim determination (in certain circumstances), based on ‘a written agreement, parenting plan, or court order rather than on the actual care’⁸⁰, and
- below regular care: where ‘a parent’s care falls below 14 per cent despite the child being made available to the person’.

3.102 Care determinations are not permanent, and the Registrar will revoke and remake determinations if the care of a child has changed. DHS shares information with Centrelink so that, if either CSP or Centrelink makes a care determination, the other will use the same determination.⁸¹

3.103 As discussed above, the amount of care provided by a parent will likely have an impact on the amount of child support they pay or receive. Some parents complained that the actual care determination – based on actual care – did not reflect the agreed care arrangements. This was a particularly common complaint of parents who stated that they were being denied from providing the agreed (higher) level of care by the other parent.

3.104 Parents in this situation had two sources of distress: they were denied the ability to provide the agreed amount care for their children, and were also paying increased child support payments as a result of their diminished actual care. These parents typically called for both better action to enforce care agreements, and for child support assessments to be based on care agreements – the amount of care they expected to provide – rather than on actual care.

78 Section 56(2), *Child Support (Assessment) Act 1989*.

79 Sections 49-50, *Child Support (Assessment) Act 1989*.

80 Sections 51, 52 & 54C, *Child Support (Assessment) Act 1989*.

81 Department of Social Services, *Child Support Guide*, section 2.2.2.

- 3.105 Disputes about care arrangements are generally resolved by the Family Law courts. There is no capacity for the CSP to directly enforce care arrangements, and the inquiry heard very little evidence in support of such a capacity. However, there were many suggestions for the CSP to better take account of agreed care arrangements, in situations where the actual care did not reflect the agreement.
- 3.106 Under current legislation, an interim care determination can be made, so that the assessment will reflect the agreed care rather than the actual care. The logic behind this is that it gives both parents time to resolve the disputed care agreement before the assessment changes. However, this will generally only apply for up to 14 weeks (around 3.2 months), which in many cases is not long enough for a care agreement to be enforced in court or for mediation to commence.⁸²
- 3.107 As noted by the Attorney-General's Department:
- it may be difficult for parents to seek a resolution through the family law system within [the interim care determination] timeframe. ... the average time between contacting a Family Relationship Centre and the first FDR session is approximately 12 weeks. The Federal Circuit Court sets a target of finalising 90% of cases within 12 months and the Family Court of Australia sets a target of finalising 75% of cases within 12 months.⁸³
- 3.108 The Lone Fathers Association (Australia) highlights the impact that this change of assessment can have, noting that the 14 week period where access has not been granted places 'heavy pressure on the parent who is paying child support and also has commitments to pay for legal assistance to enforce the access order'.⁸⁴ The Association suggests that an independent mechanism for the enforcement of court orders should be established.
- 3.109 This will be considered further in Committee Comment, below.

Changes of assessment

- 3.110 The Change of Assessment (COA) process is used to remedy administrative assessments that do not 'provide a fair level of child support' in situations where 'parents or children have special circumstances.'⁸⁵ According to the Child Support Guide:

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

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

84 Lone Fathers Association, *Submission 42*, pp. 5 – 6.

85 Department of Social Services, *Child Support Guide*, section 2.6.1.

The Registrar can only change an assessment if one or more of 10 listed reasons ... is established in the special circumstances of the case ... If one of the reasons for a change of assessment is established, the Registrar must also consider whether changing the assessment would be 'just and equitable' and 'otherwise proper'.⁸⁶

- 3.111 The listed reasons for a change of assessment are, in summary:
1. the high cost of spending time with or communicating with the child,
 2. the high cost associated with the child's special needs,
 3. high costs of caring for, educating or training the child in the way both parents intended,
 4. the child's income, earning capacity, property or financial resources,
 5. the payer has paid or transferred money, goods or property to the child, the payee, or a third party for the benefit of the child,
 6. the high child care costs for the child (if under 12 years of age),
 7. the parent's necessary expenses significantly affect their capacity to support the child,
 8. the income, earning capacity, property or financial resources of one or both parents,
 9. the parent's duty to maintain another child or person, their necessary expenses in supporting another child or person they have a duty to maintain, or their high costs of enabling them to spend time with or communicate with, another child or person they have a duty to maintain, and
 10. the parent's responsibility to maintain a resident child.⁸⁷
- 3.112 There are two major areas of concern relating to the COA, which will be discussed below:
- the COA reasons, especially reason eight, and
 - the COA process, especially for those with persistent special circumstances.

Reason eight

- 3.113 The most controversial reason for a change of assessment is number eight – *the income, earning capacity, property or financial resources of one or both parents*. Professor Parkinson pointed out that the COA process 'balances the need for certainty and simplicity with the need to take account of individual financial circumstances', but that reason eight is 'particularly

⁸⁶ Department of Social Services, *Child Support Guide*, section 2.6.1.

⁸⁷ Sections 98C & 117, *Child Support (Assessment) Act 1989*.

broad and vague', and there are 'numerous problems' with its practical application.⁸⁸

3.114 Many submissions criticised reason eight for its wide operation:

In particular [r]eason 8, of the 10 reasons listed for applying for a change of assessment due to special circumstances is regarded as overly broad and non-specific leaving it open to exploitation.⁸⁹

3.115 Professor Parkinson added:

I am concerned about some aspects of it, particularly what we call reason 8, which is the income, property and financial resources of the parties. It is very vague language. I do not think the courts do terribly well in understanding it, with great respect. I have seen some fairly dodgy decisions over the last few years. I think it needs a lot more clarification.⁹⁰

And:

One of the difficulties with reason 8, which is on financial resources, is that it covers a whole variety of different situations. Let me respond first in relation to deemed income where it is alleged somebody is in the cash economy. I do not know there is much more we can do on that than we do, because it is inherently subjective. The agency does have powers to look at bank accounts and so on. The key issue, I think, is that, before deeming somebody to have an income which according to their tax records they do not have, there should be an opportunity given to them to explain what is in their bank accounts. A number of cases I have come across where assumptions have been made about money travelling in and out of a bank account which has a perfectly innocent explanation where the child support review officer has not confronted the payer with that issue and sought their response. So some basic issues of natural justice and procedural fairness would definitely help.

The other big issue in terms of deemed income is capacity to earn. We made recommendations in 2005 for changes to the law which were partially accepted. It seems to me there ought to be a very high bar before we say that somebody has an income they do not in fact have because they have the capacity to earn in a job they do not have. Only yesterday I was dealing with that very issue with a client where nobody is saying he is hiding money or acting in the

88 Prof Patrick Parkinson, *Submission 2*, p. 6.

89 WIRE Women's Information, *Submission 35*, p. 8.

90 Prof Patrick Parkinson, *Committee Hansard*, Sydney, 27 June 2014, p. 2.

cash economy; it is simply that he left a job. He had good reason to leave that job. He was concerned the department did not think he had good reasons, and then he was deemed to have an income he did not in fact have. So I think we do need to look at the law again and to set a very high bar in those situations.⁹¹

3.116 Other evidence supported greater clarity about how reason eight is to be applied:

Ms Lynch: I think that could assist with consistency. We would imagine that there probably is inconsistency. We would probably say that there is inconsistency in decision making even at a court level between judges, so we would imagine that even at an administrative level there is probably inconsistency. It is a real issue of balance between having discretion and having absolutely no discretion. I think we would support some sort of practice directions to assist.

Ms Coulston: We would. I think part of the issue with inconsistency would arise in situations where they have to look at what is just and equitable in the circumstances of changing an assessment. I do not know how you provide a practice direction around that because that is within the legislation and it is one of the requirements of the decision maker. I know that the agency has guidelines already in place and I think having firm guidelines and revisiting those would be very welcome, but I do not know essentially how you would get rid of that issue, although I do have some faith in the fact that there are next steps available to try and address the issue if inconsistency has arisen in a particular matter.⁹²

3.117 Without being prescriptive about its form, evidence to the inquiry overwhelmingly supported greater clarity about how reason eight should be applied. This will be considered further in Committee Comment, below.

Persistent special circumstances

3.118 Families with persistent special circumstances must apply for yearly assessments that are inappropriate, and then submit themselves to immediate COA in order to remedy the unfair assessment:

91 Prof Patrick Parkinson, *Committee Hansard*, Sydney, 27 June 2014, p. 3.

92 Ms Angela Lynch & Ms Erica Coulston, Women's Legal Services Australia, *Committee Hansard*, Brisbane, 22 July 2014, pp. 43-4.

I have endured several COAs, due to the fact that my child suffers a chronic illness... Because of the chronic illness, I have to apply each year to have the same costs considered. Because the father works for cash running his own business, I have to apply each year for CSA to consider his real income. This is traumatic, arduous and something I have to do along side providing 100% care for my child, managing her chronic and life threatening illness, working a professional job and managing a household alone. COA is not straightforward; it requires providing substantial evidence, incurring significant out of pocket costs for appointments and it takes months to complete.⁹³

- 3.119 Whilst the basic path of assessment and COA is appropriate in most cases, there are clearly some instances where circumstances are so similar that going through both stages each year is administratively wasteful and distressing to families. Streamlined 'special assessments' that incorporate both stages for a limited group of CSP cases would address this problem. This will be considered further in Committee Comment, below.

Payment

- 3.120 An assessment will result in a child support liability – the amount for one parent to pay to the other parent at (usually) fortnightly intervals over the course of the coming year or child support period. There are two ways for the liability to be paid – it may either be transferred directly between clients (private collect) or be paid by one parent to the CSP, which then pays it on to the other parent (child support collect or 'child support collect'). By the end of the 2013-14 financial year, 53.3 per cent of cases were 'private collect',⁹⁴ accounting for \$2 billion of assessments. The remaining cases were 'child support collect', with \$1.5 billion transferred.
- 3.121 It should be noted that the CSP assumes all 'private collect' liabilities are transferred, when in reality this is not true. According to evidence from DSS:

Data from internal DSS research prior to 2008 suggested that 21 to 38 per cent of payees in private collect cases report not receiving their payment in full or on time.⁹⁵

93 Name Withheld, *Submission 56*, p. 3.

94 Department of Human Services, *Annual Report 2013-2014*, September 2014, p. 71.

95 Ms Cath Halbert, Group Manager, Department of Human Services, *Committee Hansard*, Canberra, 28 August 2014, p. 1.

- 3.122 Equally important, the \$1.5 billion transferred in ‘child support collect’ is less than the full amount assessed, given that almost a quarter of parents with an ‘active case’ have a child support debt. The Committee sought further information from DHS about the assessment and collection rates in child support collect in the 2013-14 financial year, to understand the recent collection performance in the CSP. The evidence provided by DHS shows that the 2013-14 collection rate for child support collect was about 95 per cent – that is, about 5 per cent of liabilities in 2013-14 were not paid.⁹⁶
- 3.123 A child support collect liability may also be paid for indirectly, rather than by the transferring money to the CSP. Such ‘Non-Agency Payments’ (NAPs) are subject to limitation. As explained by the Child Support Guide:
- In some circumstances the Registrar may credit payments made directly to a payee or to a third party against a child support liability that is registered for collection. The Registrar may also credit the value of non-cash payments or the provision of services in the same way.⁹⁷
- 3.124 NAPs can be:
- a payment made directly to a payee,
 - a payment to a third party in discharge of a debt owed by the payee, payer or both, or
 - a non-cash transaction such as property transfer, or the provision of services.⁹⁸
- 3.125 In general, for the Registrar to credit such payment, both parents must have intended for the payment to be a credit towards the child support liability.
- 3.126 However, some payments may still be accepted by the Registrar as NAPs even if both parents did not share the intention that it would be credited against the liability. To qualify, the payment must be found in a list prescribed in regulation, hence the name ‘prescribed payments’. The current list, in general, comprises payments for:
- child care,
 - school or preschool fees,
 - uniforms and books for school or preschool,
 - essential medical and dental services,
 - payees’ housing costs, and

96 Department of Human Services, *Submission 99.5*, p. 1.

97 Department of Social Services, *Child Support Guide*, section 5.3.1, viewed 23 December 2014.

98 Sections 71, 71A & 71B, *Child Support (Registration and Collection Act) 1988*.

- payees' motor vehicle costs.

3.127 'Prescribed payments' are also subject to conditions about the amount of care provided by the payer parent, the requirement that the child support liability not relate to an international case, and the NAP cap of 30 per cent of the total liability.

3.128 School fees are an issue that links both assessments and payments. As noted above, a COA may be sought on the basis of school fees, and school fees are also a 'prescribed payment'. The treatment of school fees under the CSP is problematic when there is no agreement by the parents about schooling, or where the agreement about schooling existed in different financial circumstances.

3.129 Prof Parkinson noted the 'arbitrariness' of decisions relating to school fees under the CSP. He suggested that reform might improve the status quo, under which:

the formula will be varied to take account of school fees if the parents had planned on a private school education while they were together and it remains reasonable for the liable parent to contribute to these costs now. I would prefer to see a test along the lines of whether it is reasonable in all the circumstances that a child should have an education at a particular private school taking into account a) the income of the parties b) the previous educational plans of the parties c) the circumstances in which the child has been educated to date and d) the current needs of the child. There are circumstances where due to the particular needs of a child, he or she may best be educated at a private school which can cater to those needs. If the father has sufficient income, it may well be reasonable to ask him to contribute notwithstanding that this had not been planned by the parents at a time before those needs emerged.⁹⁹

3.130 These concerns were echoed by other evidence to the inquiry, including from the Queensland Law Society. The Society said that the when some clients are discouraged from seeking the review of assessments on the basis of school fees, due to the apparent inconsistency in decisions:

School fees are a very good example and one of the most common scenarios where an application for review is lodged. Our members report that clients often receive advice from child support officers that they should not consider a review because they may be worse off.... there appears to be no uniform approach adopted by child support with respect to the payment of [school fees]

99 Prof Patrick Parkinson, *Submission 2*, p. 6.

...

Given that school fees are an increasingly common issue for separated parents, it is our recommendation that child support consider the implementation of guidelines to assist parents and lawyers in dealing with this area.¹⁰⁰

- 3.131 The Social Security Appeals Tribunal (SSAT) also noted the prevalence of applications for review on the basis of school fees:

In the context of applications for review of decisions made under Part 6A of the Assessment Act, costs of education of a child in a private school are a common source of dispute.¹⁰¹

The SSAT also noted that, whilst one of its decisions relating to school fees was challenged in court:

The case does not establish a clear principle as to the point in time when mutual expectation must exist and whether a change of expectation after separation must be mutual.¹⁰²

- 3.132 A number of individuals who spoke during a Community Statement Session raised concerns about the treatment of school fees, both payers and payees. There is considerable support for a specific rule applying to school fees, and this will be considered further in Committee Comment, below.

Child Support Agreements

- 3.133 Parents can also choose to make an agreement about child support, which can then be implemented with the assistance of the CSP. These agreements may be 'limited' (without needing legal advice), or 'binding' (with legal advice). Evidence to the inquiry supported the use of such agreements, but many contributors noted that lawyers could be reticent to assist clients to make binding agreements, because of the complexity and consequences of such agreements:

with respect to Binding Child Support Agreements, being a form of binding financial agreement, lawyers are wary of and reticent to use them because of the state of the law and the real possibility of them being overturned for technical legal reasons.¹⁰³

100 Ms Alison Ross, Law Society of Queensland, *Committee Hansard*, Brisbane 22 July 2014, p. 20.

101 Social Security Appeals Tribunal, *Submission 94*, p. 3.

102 Social Security Appeals Tribunal, *Submission 94*, p. 3.

103 Queensland Law Society, *Submission 100*, p. 5.

- 3.134 Additionally, some evidence questioned the ‘high bar’ that has been set for their review by courts:

where the parties have entered into a Binding Child Support Agreement, it is much more difficult to set aside the Agreement...All of the reported decisions of the Family Courts (that is, the Family Court of Australia and the Federal Circuit Court of Australia) illustrate that setting aside such Agreements requires an applicant to jump a very high hurdle. There is a need to establish “exceptional circumstances” and consequential “hardship” if the Agreement is not set aside.¹⁰⁴

- 3.135 Evidence also pointed to problems with the treatment of binding agreements made before the current legislation came into force:

The law relating to child support agreements was changed from 1 July 2008 to recognise that it should be open to parents to make binding child support agreements provided they receive appropriate legal advice (which must be certified)...However, there is a category of clients who entered the agreements prior to 1 July 2008, when legal advice was not a requirement. Most of these agreements were transitioned by Child Support as "deemed binding agreements". However, the transitional arrangements made no provision for these agreements to be treated differently by the court, and so these agreements are also subject to the "exceptional circumstances" provisions...This would appear to be a legislative oversight given that agreements made before 1 July 2008 were often made without legal advice, and were also made under entirely different legislation.¹⁰⁵

- 3.136 Whilst the use of child support agreements is not widespread, expert evidence to the inquiry clearly believes that their treatment under legislation merits reconsideration. This will be considered further in Committee Comment, below.

Committee Comment

- 3.137 As discussed throughout this chapter, any administrative child support scheme must find a balance between simplicity and complexity. In the Australian scheme, the formula is designed to achieve this balance. However, public confidence in any scheme depends on a shared belief

104 Law Council of Australia, *Submission 59*, p. 3.

105 National Legal Aid, *Submission 57*, pp. 5-6.

about its innate fairness. The basic principles of the current formula are sound: parents should contribute to the raising of their children, both through direct care and financial support, regardless of separation; contributions should reflect both the costs of raising children as well as parents' capacity to pay; the scheme should vigorously pursue those who misuse the system; and Government should not attempt to prescribe the way that parents make legitimate decisions about caring for their children.

- 3.138 Despite this background of principle, there are nonetheless elements of the current formula that clearly need expert attention. The Committee believes that the current system has a number of shortcomings and elements of the formula may not reflect current costs and practices.

The formula

- 3.139 The formula's use of pre-tax income has been criticised during the inquiry. The Committee notes the potential inequity in the way tax relating to child support is calculated, since child support funds are taxed at the payer's tax rate, but actually received by the receiving parent, who will frequently be in a lower tax bracket. This can generate more tax for the Government, but may not be the most equitable outcome. However, care must be taken to ensure that proposed solutions do not result in greater complexity, without delivering any greater fairness. It is also important to ensure that estimation of costs in the child support formula to calculate payment amounts are current and reflect actual costs. The Committee considers that a number of elements used in the child support formula require reconsideration.
- 3.140 In addition, the Committee considers that, in order to ensure the best outcomes for children, Government has a role in assisting families to transition to new financial arrangements, understand and plan for their liabilities. As recommended in Chapter 2, the provision of financial counselling should be an integral party of family support services.

Self-support amount

- 3.141 There have been three major themes in calls to change the self-support amount:
- making it responsive to an individual's circumstances,
 - reverting to differentiated amounts for parents depending on how much care they provide, and
 - reviewing the appropriateness of its alignment with Male MTAW.
- 3.142 While the use of a 'universal' self-support amount has some drawbacks, there is no compelling argument for introducing an individualised self-

support amount. Most of Australia's taxation and social security system applies identically across all of its regions and postcodes. Individuals make decisions about where they live based on the balance of employment, travel, housing and living costs and proximity to friends and family. Further, while individuals on higher incomes might spend more money on food, rent and transport, the price of covering the basic necessities of life do not increase merely because someone earns more money.

- 3.143 The argument for reintroducing unequal self-support amounts would appear to address the poverty of some parents who provide primary care. However, it is fundamentally at odds with the equality at the centre of the formula. It also presupposes that children have a primary carer. While this may be true in many cases, the Committee strongly supports shared care parenting arrangements, and believes that policy should not be changed in such a way that discourages shared parenting arrangements.
- 3.144 The self-support amount was fixed to one-third of MTAWWE almost a decade ago. While using this reference point means that the amount grows in line with wages growth, it does not respond to an increase in the cost of living such as through growth in the consumer price index (CPI). If basic living costs are rising more quickly than wage growth, the ability of parents to survive on the self-support amount will be eroded over time.
- 3.145 Given this, the self-support amount should be reconsidered and amended as necessary, to ensure that it is set at an appropriate level, and that it has a method of indexation to ensure that it is appropriate in future.

Administering the cost and care of children

- 3.146 The formula's treatment of care – through the 'care and cost percentages' – was raised throughout the inquiry. This was particularly controversial in relation to regular and primary care. The Committee believes that this should also be reconsidered, to ensure that it reflects contemporary costs of living, and the costs incurred by parents providing care for their children. It should be reconsidered to ensure that the five broad 'care types' remain appropriate and adequate to reflect current arrangements and costs. The examination should include consideration of the best way to encourage shared care arrangements.
- 3.147 Evidence to the inquiry has reflected a broad range of views about the appropriateness of the current costs of children table, which can be grouped as follows:
- there should be a fixed cost assigned to a child, rather than a cost which reflects the combined income of the child's parents,
 - the costs of children are generally too high, and

- the costs of children are generally too low.
- 3.148 The Committee strongly supports the current underlying principle of the costs of children table: that is, both parents should be expected to contribute approximately the same amount of money as if they had not separated. This is an important principle, because it ensures that parents equally bear responsibility for their own children.
- 3.149 The principle has important implications for families more broadly, and for society. Children should be able to expect that they will be supported as much as their step-siblings, ensuring that there is equity between all children of a parent.
- 3.150 There are, however, criticisms of the costs of children table that bear consideration. Given the near-decade since its creation, given the significant changes in the levels of social security payments in that time, and given the expert advice that a review would be beneficial, the Committee believes that the cost of children table should be reconsidered.

Recommendation 5

In conducting a review of the child support formula, the Committee believes that the Australian Government should have regard to a range of guiding principles including the best interests of the child/ren involved, whether fair and amenable private shared parenting arrangements have been successfully entered into, and whether any family violence is present in the family dynamic.

Taking into account the framing principles of the Child Support Program which aim to ensure that the system operates in the best interests of the child, the Committee recommends that the Australian Government review the Child Support Program to ensure the adequacy of calculated amounts and equity of the program for both payers and payees with respect to:

- the current self-support amount and indexation mechanisms;
- the cost of children table and indexation mechanisms;
- the use of gross income levels for child support payment calculations; and
- consideration of child support income management where there are substantiated allegations of child support payments not being adequately spent on the needs of the child.

Assessments

Income

- 3.151 As noted in this chapter, one of the most frequent complaints about the Child Support Program – from all parents who contributed to the inquiry – is the inaccuracy of income information. The Program relies on individuals providing correct information. When one client intentionally provides incorrect information, or refuses to provide information, the Program’s inability to make fair assessments then erodes the faith of other clients. The long-term success of the Program depends on the perceived fairness of its assessments.
- 3.152 There is evidence that some clients continually frustrate the assessment process by avoiding their tax responsibilities. Whilst DHS and the ATO clearly work together to reduce the impact of this, it is unfortunate that some clients do not to act responsibly and lodge accurate tax returns on time.
- 3.153 It is difficult to assess the effectiveness of current arrangements, particularly given that they rely on cooperation between different agencies. Nonetheless, the disparity between the number of CSP clients who fail to lodge tax returns and the number of such clients pursued by the ATO is alarming. The Committee believes that the cooperation between the ATO and DHS to address the non-lodgement of tax returns by CSP clients needs to be closely audited by the Australian National Audit Office. Further, negotiations of the subsequent MOU between the ATO and DHS should not commence until the audit has been presented in Parliament, and the implementation of the recommendations of that audit may be incorporated into the MOU.
- 3.154 In making this recommendation, the Committee recognises the statutory independence of the ANAO, and the discretion of the Auditor-General in relation to whether or not a particular audit is to be conducted.

Recommendation 6

The Committee recommends the Australian National Audit Office conduct a performance audit of the cooperation between the Australian Taxation Office and the Department of Human Services to address the non-lodgement of tax returns by clients of the Child Support Program. The recommendations of the audit should be incorporated into the next memorandum of understanding between the Australian Taxation Office and the Department of Human Services relating to this area of cooperation, negotiations of which should not commence until the audit has been presented in Parliament.

- 3.155 The Committee also believes that a specific penalty should be introduced to discourage individuals from avoiding their obligation to lodge a tax return each year. Although there is an existing penalty regime for non-lodgement, penalties are applied at the discretion of the ATO.
- 3.156 Having a distinct and non-discretionary penalty applied to all CSP clients who fail to lodge their tax return on time will serve as a deterrent to non-lodgement, and signal the Government's intention to stop individuals abusing the taxation process to avoid their child support responsibilities. The provision should allow for defences where the CSP client has a reasonable excuse for non-lodgement, such as circumstances outside their control. An ATO/DSS/DHS working group should be established to recommend the size of the civil penalty.

Recommendation 7

The Committee recommends the Australian Government amend current policy to ensure that the penalties applicable to the non-lodgement or late-lodgement of tax returns are enforced for all clients of the Child Support Program. The penalty should allow for defences where the individual has a reasonable excuse for non-lodgement, such as circumstances outside their control. Consideration should also be given to the annual indexation of the penalty. A working group comprising representatives of the Australian Taxation Office, the Department of Social Services and Department of Human Services should be established to recommend the size of the penalty.

Care

- 3.157 While many contributors to the inquiry criticised the inability of the CSP to enforce care arrangements, no expert evidence supported any changes in such a direction. Enforcing care agreements should remain a matter for Family Law, and the Committee supports the proper resourcing of Federal Courts to ensure that such enforcement is timely.
- 3.158 However, current arrangements for the assessment of care can fail to take account of the agreed care, and cause a parent to be assessed at a higher payment level despite a care agreement (and their desire to provide the agreed care). An interim determination may put a pause on any assessment changes whilst the care arrangements are resolved, enforced or modified in court. However, the fourteen week limit on interim determinations is not long enough in many cases, which may cause a parent's child support liability to increase just as they attempt to enforce parenting orders through the courts. As a result, this time period should be abolished.

Recommendation 8

The Committee recommends that the Australian Government amend legislation to enable a greater period of time before determining when to adjust the amount of child support payable in interim care determinations. The Committee considers that the current fourteen week period, after which Department of Human Services changes the child support payable to reflect the care taking place at that time, does not provide sufficient time for relevant legal proceedings to be completed or for prior agreed arrangements to be enforced by a court or for revised arrangements to be agreed upon. The best interests of the child must be paramount in any amendment made.

- 3.159 There are a number of international models that link the enforcement of contact orders with the child support payment system. In particular, Denmark provides a model which may have some application to Australia. The 2003 report of the House of Representatives Standing Committee on Family and Community Affairs, *Every picture tells a story: Inquiry into child custody arrangements in the event of family separation*, stated that:

The committee has noted an administrative approach to contact disputes which is operating in Denmark [footnote removed].
Contact disputes are dealt with separately from other parenting

issues but within the context of a 'normal package' of contact arrangements which is promoted by the Danish government. Courts resolve the major issue of custodial responsibility.

An aggrieved parent can initiate a complaint with the County Governor's office in writing. A lawyer in that office will contact the other parent for a response. A meeting will be held and the parties can be referred to mediation. If it cannot be resolved the lawyer will determine the issue by an order that is enforceable in court. There is a right of appeal to the Ministry of Justice. Enforcement is a very simple, non-adversarial but still court based process, with a meeting with a judge often resolving the matter. Penalties are available.

"The system has many advantages over the current court-based approach in Australia. ... there are no procedural hurdles ... [it] is not adversarial ... The role of the lawyer ... and ... of the judge in an enforcement process, is to work out what the dispute is all about and to reach a decision, if the parties cannot reach their own agreement after counselling. The environment of an office is much more conducive to non-adversarial processes than a courtroom" [footnote removed].

Other advantages appear to be that it is a quick and cheap process ... These models provide some valuable insight into how family dispute determination processes can be non-adversarial, and relatively simple, but still apply the requirements of procedural fairness.¹⁰⁶

Recommendation 9

The Committee recommends that the Australian Government consider international models for enforcing contact/parenting orders through the child support program and how these models may be applied to the Australian context. The Committee notes that where family violence is present, these models may not be appropriate.

106 House of Representatives Standing Committee on Family and Community Affairs (2003) Every picture tells a story: Inquiry into child custody arrangements in the event of family separation, 4.78 – 4.80.

Changes of Assessment

- 3.160 The COA reasons and process received considerable attention throughout the inquiry. However, as pointed out at the start of this report, the scheme produces satisfactory results for most parents most of the time. COAs have limited applicability, and are not a central experience for most CSP clients.
- 3.161 Nonetheless, there is considerable concern about reason eight, and the Committee believes that greater clarity around its use should be provided.

Recommendation 10

The Committee notes that the intent of the “capacity to earn” criteria is to prevent payers deliberately avoiding their financial responsibilities in respect to shared parenting. However there are also genuine instances where a person’s earning capacity may decrease due to decreased market demand for certain skills, the need to retrain, health issues or other life changes. A greater degree of flexibility is required. The Committee therefore recommends the Australian Government review “capacity to earn” as a rationale for initiating Changes of Assessment under Reason 8.

Payments

- 3.162 As noted above, school fees can be a common source of disagreement between separated parents. The Committee sought the advice of numerous contributors to the inquiry relating to school fees, and many contributors supported more clarity around their treatment. The Committee believes that school fees should be explicitly dealt with under the CSP, so that there is greater certainty around how school fees are treated.

Recommendation 11

The Committee recommends that the Australian Government seek to develop a clearer system for resolving disputes about the payment of school fees as Non-Agency Payments.

Technical amendments

- 3.163 Child Support Agreements provide a valuable element of flexibility for parents under the CSP. Given the Committee's earlier recommendation for an expansion of mediation services, it is to be hoped that more parents will be able to enter long-standing agreements about child support, both in limited and binding form.
- 3.164 However, contributors raised serious concern about the treatment of binding agreements entered into before 1 July 2008, and the very high bar for courts to set aside binding agreements.
- 3.165 The Committee is also concerned about the impact of the legislative rules around the Registrar's ability under section 56(2) of the Assessment Act to amend a child support assessment when there is an error in the tax assessment made by the ATO.
- 3.166 There was no clear agreement from the evidence about how these problems should be resolved, and so the Committee is not in a position to recommend specific legislative changes. Rather, the Committee believes that these issues should also be reconsidered by the Australian Government.

Recommendation 12

The Committee recommends that the Australian Government consider matters pertaining to:

- **the hurdle for courts to set aside Child Support Agreements made before 1 July 2008, and to set aside all Binding Child Support Agreements, and**
- **the amendment of section 56(2) of the *Child Support (Assessment) Act 1989* to allow the Registrar to take into account amended tax assessments.**

The agency

- 4.1 The Child Support Program (CSP – formerly the Child Support Agency) is today administered by the Department of Human Services (DHS), which also administers Centrelink and Medicare. However, the Child Support Agency was originally set up within the Australian Taxation Office. In 1998, the Agency was transferred to the Department of Family and Community Services (FaCS).¹ In 2004, the Agency was transferred again into the newly created DHS, where it has stayed since.²
- 4.2 Today, responsibility for the CSP is shared: when transferred to DHS, responsibility for policy development remained with FaCS (now Department of Social Services, DSS). A further change was made in late 2013, such that:
- the Minister for Social Services now has full responsibility for the child support legislation. This means that the Secretary of [the Department of Social Services] has general administration of the child support legislation and the Registrar (in DHS) has responsibility for decisions in individual cases.³
- 4.3 There are many public servants who contribute to the operation of the CSP. Most of these individuals are employed by DHS, and most work in the ‘Smart Centres’, in roles that involve both direct client service (primarily via telephone calls) and processing. On 31 July 2014, there were 2 612 employees in the Smart Centres Division, approximately 7.5 per cent of the total DHS workforce. Whilst this group ranged in seniority from junior staff (APS2) to Senior Executive Service officers, almost sixty-five per cent were at the APS4 level, with a salary range from \$62 493 to

1 Australian Taxation Office, *Annual Report 1998-1999*, 1999, p.1.

2 Department of Human Services, *Annual Report 2004-2005*, September 2005, p. 21.

3 Department of Social Services and Department of Human Services, *Submission 99*, p. 45.

\$69 239.⁴ This is in contrast to the wider public service, where APS4 staff make up only about twenty percent of the total workforce.⁵ Taking APS4, APS5 and APS6 staff in Smart Centres together, they represent 85 per cent of total Smart Centre staff. In addition to the Smart Centres staff, there are a limited number of public servants in other parts of DHS and in DSS that contribute directly or indirectly to the work of the CSP.

4.4 Before proceeding to the detail of this Chapter, the Committee reiterates the broad character of this inquiry: it has not chronicled individual cases or complaints against the CSP. Elements of an individual's personal experience can provide a useful illustration of common problems, and the Committee has used such personal experiences to make this report more comprehensive. However, each example included in this report is necessarily brief and focuses on one very narrow aspect of an individual's experience. By contrast, the work done by the Commonwealth Ombudsman is detailed, comprehensive, and responds to the particulars of each individual's experience. Individuals with a complaint about the administration of the CSP should always consider the option to contact the Ombudsman to assist in resolving such a complaint.⁶

4.5 This Chapter will focus on how the CSP carries out its responsibilities, as follows:

- making decisions,
- communicating with clients,
- enforcing payment,
- family violence,
- high-conflict families,
- guarantee, and
- Committee Comment

Making decisions

4.6 As discussed in Chapter 3, the core administrative process of the CSP is the formula assessment. As noted above, the bulk of work carried out in the Smart Centres is by staff in the APS4-6 range. Responding to questions about necessary qualifications for staff, the Registrar responded:

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

5 Australian Public Service Commission, *State of the Service 2013-2014*, December 2014, Appendix 1, table A1.1.

6 Commonwealth Ombudsman, *Making a Complaint*, <http://ombudsman.gov.au/pages/making-a-complaint/> viewed 2 June 2015.

There is no minimum requirement. We basically have run the employment processes in accordance with APS [Australian Public Service] general recruitment. The skills that we are looking for are obviously customer focused – attention to detail, strong adherence to the code of conduct and the Australian Public Service values. We have a strong training and induction program for all our staff which includes familiarisation with the legislation, the guiding principles to work with that legislation, sensitivity, cultural sensitivity, sensitivity to the situation that our customers will be in when they are contacting us, empathy and strong education in application of policies and procedures. But there is no minimum qualification.⁷

Questionnaire box 4.1 Telephone service from Child Support Program staff

When I have tried to learn more about the process I have encountered very rude staff that have been less than helpful. I don't really understand what I am entitled to and why, and have not found anyone who can explain it to me.

For the most part, the CSA staff have been helpful, empathetic and knowledgeable giving me the impression that staff mostly try to deliver equity even if the system works against that.

I have always been treated beautifully by the staff. They have always been supportive and helpful. Non-judgemental as well. Well done guys.

I had to change to CSA collection because of non-payment. The individuals I spoke to have always been nice and helpful.

They work reasonably well though staff could still improve empathy towards paying partners. Some are just downright rude.

I have another child recently and they were quite helpful with adjusting the payments for my other child.

When speaking to a representative on the phone - it is hit and miss whether you receive a helpful representative, a rude representative or one that just doesn't know what they are talking about!

I have had some very positive experiences when dealing with CSA, but on the whole I feel like it's a system focused on helping the mother and like most of the other systems dealing with children's issues...not especially supportive of a father just trying to do the right thing for his kids.

They are very rude and dismissive on the phone. They say they can't do much and it takes months for money to be followed up.

4.7 Commenting on the length of the 'induction' process for new staff, Mr Bruce Young, DHS's National Manager of Child Support New Customers & Mainstream Services, said that:

It has varied, but certainly from eight to 12 weeks. [New] staff throughout that time may start undertaking some work. It is a balance of doing some work and some ongoing training. Of course, we continue to provide training to staff regularly, on a

7 Ms Elizabeth Zealand, General Manager, Child Support Smart Centres, Department of Human Services, *Committee Hansard*, Canberra, 28 August 2014, p. 2.

monthly basis. We have a training program. Our staff have performance agreements that set out expectations. These are followed up with monthly meetings with their team leader on a one-to-one basis where they are provided with feedback and any coaching requirements are identified.⁸

- 4.8 As noted in Chapter 3, most assessments follow an eight-step process, with very little apparent role for officers to exercise discretion. Other processes and decisions – such as Changes of Assessment (COA) – involve greater discretion and judgment on the part of individual officers, but there are far fewer of such processes and decisions. The inquiry demonstrated, however, a very strong perception in the community that officers have considerable discretion in making decisions:

A Child Support Officer can effectively use the legislation to make their job easier on themselves. If a situation becomes too difficult for them, they have the ‘discretion’ to just do what they want and abuse the power they have, without question. Officer’s discretion exists in much of the legislation. This not only makes it impossible to plan ahead for any payer, especially those attempting to run a small business, but also makes it impossible to fight an officer who either has an agenda contrary to the purpose of child support payments, or has a personal dislike to a reaction from a client ... They [sic] has been no reason given for the discretion being used only the answer, “an officer has broad discretionary powers”. In other words, the law doesn’t exist, other than to say that the officer can determine how their power will be used against a client for whatever proof or lack of proof the officer deems relevant to produce the outcome they desire.⁹

it appears to me that child support staff have significant powers to make their own assessments and then make a determination based on that assessment and then implement that assessment. That means that, if there is an error in the initial assessment, it has very considerable impact on people. I am a psychological therapist. I see the negative impacts that errors make. I think they are preventable errors.¹⁰

8 Mr Bruce Young, National Manager, Child Support New Customers & Mainstream Services, Department of Human Services, *Committee Hansard*, Canberra, 28 August 2014, p. 2.

9 Name Withheld, *Submission 97*, p. 2.

10 Dr Don Tustin, Adelaide Psychological Services, *Committee Hansard*, Adelaide, 6 August 2014, p. 1.

I want to talk about the flexibility built into the system. I think it is compromised by several factors. The failure of administrative processes and the high level of discretion within the agency are problematic.¹¹

4.9 Some evidence to the inquiry – particularly from experts and advocacy groups – emphasised the apparent ‘inconsistency’ in advice and decision making:

Remove the discretion afforded CSA officers as it results in inconsistent outcomes.¹²

Approximately two-thirds of [Family Dispute Resolution practitioners responding to a survey] indicated that the child support system is not working effectively. Common reasons included inconsistent/variable advice...¹³

women find the system to be complex and difficult to navigate, that information is hard to find and often inconsistent... The lack of consistency of information from and between Child Support and Centrelink was a common problem for the women in the research, as was the ability to work through the details of their situation to provide them with reliable and accurate estimates of their income options.¹⁴

Information given to callers is not consistent and reliable, and some of it is incorrect information that has been given and received by the [CSP]. ... Staff need to be able to refer to senior management who know the answers. If they do not know the answer to a question, I do not want them to give me an answer that is not correct.¹⁵

4.10 DHS responded that inconsistent decision making between similar cases should not be widespread, as shown in the following exchange:

Dr STONE: I just mention that we did receive some evidence about the inconsistency of advice or information people received when they contacted the department.

11 Miranda, Community Statement Session, *Committee Hansard*, Hobart, 5 August 2014, p. 26.

12 National Council of Single Mothers and their Children Hobart Branch, *Submission 32*, p. 18.

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

14 WIRE Women’s Information, *Submission 35*, pp. 9-10.

15 Marco, Community Statement Session, *Committee Hansard*, Melbourne, 21 August 2014, p. 30.

Mr Young: Each of our teams has a technical support officer – a service support officer – that is available to provide assistance on legislation and on our policy and procedures. They also staff a phone service for our staff. If they are taking a call and maybe someone is not available, they can then check on that through that inquiry line.

CHAIR: What Dr Stone has just said is right. A consistent issue that has been raised is the inconsistency of some of the advice or information received over the phone...[clients] do not understand how they can get two different views from the same agency on the same issue. How is that happening? Would you acknowledge that it is happening? If it is happening, how is that happening?

Ms Zealand: Any instances of that would generally come through to us as a complaint which we would follow up. Sometimes people have different information at different times when they call as well, so they may have more information to support their question than perhaps they did. If there are instances of inconsistent advice or quality of advice concerns and complaints, we will follow that up. We will pull the core recordings of both of those instances. We will have a peer review of that. If there is some misinterpretation or error by an officer, that would be coached and corrected.¹⁶

- 4.11 In addition, the Ombudsman pointed out that there might be cases of inconsistent decision making that are nonetheless open to review in order to remedy any problems:

I think a lot of them go down fairly well travelled lines, yes, but there is a category of decisions that are highly discretionary and, in those ones, you will get a variety of outcomes depending on the individual circumstances of the case. Sometimes, you might not think it was perfect, but, again, this is something where there is a tribunal and an objection right and we do not inquire into those.¹⁷

- 4.12 It should be noted that, in the two preceding paragraphs, inconsistency was considered a limited problem which could be resolved through an objection or complaint process. This is a passive stance, and assumes that either inconsistency is always picked up by an aggrieved client, or that any inconsistency not picked up by a client does not matter. Neither of these assumptions is particularly realistic: many clients will not be aware of the inconsistency between decisions in their own case and the cases of

16 *Committee Hansard*, Canberra, 28 August 2014, pp. 2-3.

17 Ms Prem Aleema, Director, Commonwealth Ombudsman, *Committee Hansard*, Canberra, 4 September 2014, p. 8.

others; and many inconsistencies, though seemingly minor, could have an impact on the integrity of the CSP and public confidence in it. A more active approach to quality assurance would undoubtedly improve the consistency of CSP decision-making.

4.13 In April 2014, the Australian National Audit Office (ANAO) published a performance audit into the 'review of Child Support objections'. The ANAO made four recommendations, almost entirely supported by both DHS and DSS, addressing:

- the use of powers to compel clients to provide information,
- recording systems for certain decisions,
- feedback to original decision-makers, and
- reporting in the DHS annual report how many original decisions are overturned by review processes.¹⁸

4.14 The third recommendation is particularly relevant to the inconsistency of CSP decision making. As outlined in the ANAO's report, one of the ways to improve administrative decision-making is to learn from the objection review process. These 'feedback and reporting mechanisms' should help 'to improve the quality of [CSP's] decisions.' However, the ANAO found that these mechanisms 'are not consistently implemented or employed as intended.' In detail, the ANAO reported that:

examination of 100 objection case files, including 40 Part 6A objection reviews, indicated that under departmental procedures, feedback should have been provided to original decision-makers in 14 of the 40 Part 6A review cases. However, departmental records indicated that feedback had not been provided in any of the 14 cases.¹⁹

4.15 In addition, CSP has not fully taken up the opportunity to improve the quality of its officers' decisions by analysing and sharing the outcomes of the merits review process:

following-up departmental analysis of Social Security Appeals Tribunal outcomes has received insufficient priority, notwithstanding the potential insights it offers for improved departmental decision-making and practices – necessary steps in

18 Australian National Audit Office, *Review of Child Support Objections: Summary*, report 28 of 2013-14, pp. 21-22.

19 Australian National Audit Office, *Review of Child Support Objections: Summary*, report 28 of 2013-14, pp. 18-19.

reducing the proportion of overturned departmental decisions and realising efficiencies.²⁰

4.16 DSS and DHS commitment to implement these ANAO recommendations should go some way to improving the consistency of CSP decision-making over time.

4.17 However, more concerning than suggestions of inconsistency – which should be identified and corrected – were claims of bias. Many CSP clients believe that CSP officers have considerable discretion as well as personal or institutional biases that can be applied because of the discretion. This was a particularly strong and recurring theme, with comments alleging CSP bias peppered throughout evidence to the inquiry:

the CSA should hear from both parties and should not be biased to whoever turns up first, word-of-mouth or by agenda.²¹

The parent receiving the money has all the rights and the payer has no rights. It is an unfair system. It is very biased.²²

I have female friends who work in the Child Support Agency who have said that there is a misogynistic culture in that workplace.²³

some CSA officers hold unacceptable and obvious bias resulting in their own personal opinions being used as a basis of assessment decisions.²⁴

I have not heard my case, which is same-sex couples, raised today... The prejudice on either a personal or an institutional level in the system is that you are called a parent but you are a non-biological parent; you have no rights regarding schooling et cetera, but you have the right to pay child support.²⁵

4.18 Evidence from DHS suggests that this perception of bias is common. Among the top twelve categories of complaints about ‘quality of service’, at least three relate to the quality of the decision:

20 Australian National Audit Office, *Review of Child Support Objections: Summary*, report 28 of 2013-14, p. 19.

21 Clayton, Community Statement Session, *Committee Hansard*, Canberra, 29 August 2014, p. 20.

22 Craig, Community Statement Session, *Committee Hansard*, Canberra, 4 September 2014, p. 20.

23 Ms Petula Broad, Hobart Women’s Health Centre, *Committee Hansard*, Hobart, 5 August 2014, p. 6.

24 Joanne, Community Statement Session, *Committee Hansard*, Brisbane, 22 July 2014, p. 36.

25 Vicki, Community Statement Session, *Committee Hansard*, Brisbane, 22 July 2014, p. 35.

- lack of contact prior to a decision – a decision was made without contact with the customer, denying them the opportunity to provide additional information,
 - bias – customer believes that a decision or a service offered by the department is biased, favouring one parent over another, and
 - decision – a customer is unhappy with a decision or the process the department has used in making a decision.²⁶
- 4.19 Discretion is central to the COA process, as it is designed to ameliorate unfair original assessments. As noted by the Parkinson report:
- Change of assessment provides a discretionary means of addressing a parent’s individual special circumstances, where an existing formula assessment does not produce a result that a parent considers to be fair.²⁷
- 4.20 But, as noted by Dr Bruce Smyth and Dr Bryan Rodgers ‘[d]iscretion necessarily increases the likelihood that one party will feel the outcome is unfair.’²⁸ Chapter 3 considered particular concerns about reason eight for a COA, and made a recommendation to deal with those concerns.
- 4.21 However, there remain two major problems with decision making in the CSP: DHS has an unreasonably passive approach to inconsistency, and community perceptions of bias can be very strong.
- 4.22 In respect of inconsistency, a more active approach would go some way to improving decision making in the CSP. In addition to the measures suggested by the ANAO, DHS could undertake its own internal auditing of decision-making. This would address the troubling assumption raised above, and ensure that the CSP has its own measure of consistency, rather than simply waiting for individuals or the Ombudsman to review a particular decision. This will be considered further in Committee Comment, below.
- 4.23 As for the community perception of bias, DSS/DHS clearly believes that it has a professional and impartial workforce. However, social confidence in the CSP is profoundly undermined by perceptions of bias, whether they are correct or not. The CSP must seriously address these perceptions, through better communication with clients, as outlined in the following section.
- 4.24 Finally, before concluding this section, the inquiry heard some evidence suggesting that the information links between the CSP and other
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26 Department of Human Services, *Submission 99.1*, p. 5.

27 Department of Social Services, *In the Best Interests of Children: Report of the Ministerial Taskforce on Child Support*, June 2005, p. 193.

28 Dr Bruce Smyth and Dr Bryan Rodgers, *Submission 13*, p. 22.

- programs – and other agencies – suffer from incompatible IT systems, and passivity in information sharing.
- 4.25 Whilst the Ombudsman said that complaints about data sharing problems have declined since the year 2012,²⁹ passivity on the part of DHS can cause financial hardship to clients who are not well informed about DHS's procedures.
- 4.26 In respect of Family Tax Benefit (FTB), for example, Centrelink can calculate the regular FTB-A payment of a CSP client in two ways:
- entitlement method: Centrelink assumes that the full child support liability is paid to the CSP client, regardless of whether this is in fact the case, and
 - disbursement method: Centrelink uses the actual CSP payment data for the CSP client, and automatically calculates the FTB payment on the basis of the child support as paid.
- 4.27 In both cases, Centrelink performs an 'FTB balance' at the end of the financial year, where it compares:
- the amount of child support you were entitled to receive during the financial year to the actual amount of child support you were paid. If you were paid less child support than you were entitled to receive during the financial year, you may receive a top-up payment of FTB.³⁰
- 4.28 However, clients on the Entitlement method may receive FTB-A payments that are lower than their entitlement over the course of the year, and would only be compensated many months later.
- 4.29 Centrelink automatically uses the former method, and customers must ask for the latter method to be used. According to DHS, clients 'can swap between these methods at any time during the financial year.'³¹ However, if a client is unaware of these two different methods, they may receive substantially less financial assistance over a protracted period, despite being entitled to more FTB-A. As described by Dr Kay Cook, the Entitlement method:
- places the responsibility on recipients to report and manage the under-payments of their ex-partners. It also places the onus on

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

30 Department of Human Services, *Child support and your Family Tax Benefit Part A*, <humanservices.gov.au/customer/enablers/child-support-and-family-tax-benefit-part-a>, viewed 12 January 2015.

31 Department of Human Services, *Child support and your Family Tax Benefit Part A*, <humanservices.gov.au/customer/enablers/child-support-and-family-tax-benefit-part-a>, viewed 12 January 2015.

women to manage the Child Support/Centrelink bureaucracy. A lack of knowledge often prevents this occurring effectively.³²

- 4.30 It is appropriate that clients can choose which method they prefer, and hence manage how they are paid their FTB entitlement and their child support. However, Centrelink's automatic use of the Entitlement method has the potential to cause financial distress to clients who are not aware of their options. This will be considered further in Committee Comment, below.

Communicating with clients

- 4.31 The CSP has more than one million clients across Australia. In addition to communicating with individual clients, CSP also deals with employers, banks, lawyers and other third parties. Whilst there are many child support cases that might attract a relatively small amount of intercourse, many cases will involve a high level of regular, detailed and technical communication. This section will consider the CSP's reliance on phone calls, the quality of its letters, new technology, and its communication with vulnerable or Culturally and Linguistically Diverse (CALD) clients.
- 4.32 The primary point of contact for the CSP is through the 'Smart Centres', call centres that operate during business hours on weekdays, throughout the year. As explained by Mr Bruce Young (DHS), almost all direct contact with clients is over the phone:

To a large extent we have had very little face-to-face contact. Normally, less than one per cent of our contact with separated parents and third-party carers has been face to face. There were some unfortunate customer aggression incidents that did occur that prompted us to review these arrangements. It was not consistent across the country in the provision of that service. It might be in one location but not in the majority of others. It is still possible for there to be a face-to-face service. Where it would be required we could still make arrangements for that...I do emphasise though that there is nothing preventing us making arrangements at one of our locations for a face-to-face service where a customer has that need.³³

32 Dr Kay Cook, *Submission 38*, p. 5.

33 Mr Bruce Young, Department of Human Services, *Committee Hansard*, Canberra, 28 August 2014, p. 4.

- 4.33 Some participants in the inquiry raised concerns about the lack of face-to-face services, with a widespread perception that such services are never available:

I believe the key element missing from the Child Support Agency currently working efficiently is that it does not have a face, shopfront or physical presence in our communities.³⁴

- 4.34 Mr Mark Young, of the Lone Fathers Association Mackay, described the link between the lack of shopfronts and the frustration of CSP clients:

I used to take fathers to the Child Support Agency and now I cannot do that. It is all done by phone...When you have a father getting so frustrated with the system, you sit down with them and with the child-support case manager, who can show them what is going on with their case. This is not happening any more...When I used to take fathers down to the Child Support Agency, they would sit down with the case manager who would spin the computer around and then go through their case and what is going on... When you could show the father what was going on with their case, they would settle down and you could resolve the issue that they had. But most of the time over the phone they get nowhere. They cannot talk. It is just a voice on the phone giving them information and they get frustrated.³⁵

- 4.35 DHS explained that, whilst there are currently no videoconferencing facilities available, it is trialling options:

Child Support has not trialled Skype as such, but the department as a whole is certainly looking at videoconferencing through either Skype or another technical solution as a possibility for remote areas.

...

We are doing four or five trials. I do not believe the child support area is one of them, as it stands. But we are looking at those trials to see where videoconferencing might be an appropriate alternative as a face-to-face offering or a more personalised offering.³⁶

- 4.36 Most decisions and requests for documents are communicated in writing. Even simple child support cases involve regular correspondence. Under
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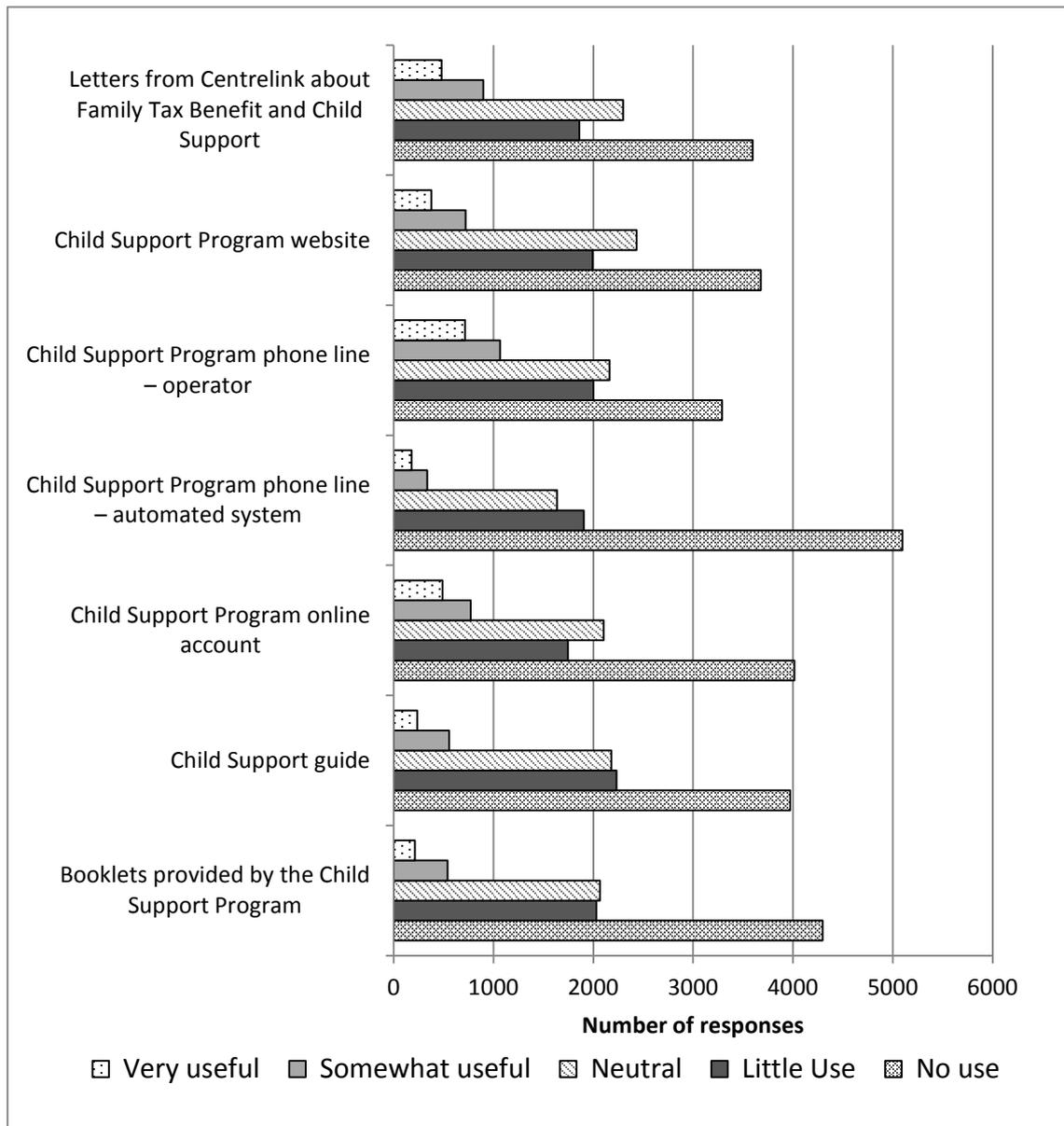
34 Stef, Community Statement Session, *Committee Hansard*, Melbourne, 21 August 2014, p. 25.

35 Mr Mark Young, Lone Fathers Association (Mackay), *Committee Hansard*, Brisbane, 22 July 2014, p. 58.

36 Ms Elizabeth Zealand and Ms Sheryl Lewin, Acting Deputy Secretary, Social Services, Department of Human Services, *Committee Hansard*, Canberra, 28 August 2014, p. 4.

an ordinary child support collect case, for example, CSP would issue an assessment in writing, and then issue monthly statements to the paying parent. If circumstances change, if a parent applies for a COA, or if a CSP decision is objected to, considerable additional documentation is created and forwarded to both parents. Some payees may also receive their child support payments by cheque. Correspondence from the CSP is either posted or delivered online (in rare circumstances, it might also be served on an individual).³⁷

Figure 4.1 Questionnaire respondents' views on the usefulness of CSP communication methods



37 Department of Social Services, *Child Support Guide*, section 6.7.1.

- 4.37 The frequency of letters, combined with their generally automated production, can cause significant confusion for clients:

[A letter] is not read by someone before they send it out, in many cases. It is just produced by the system when a transaction is completed on the case. The thing that people really get frustrated by is the volume of it, and how it turns up – you might get five or six letters in a fairly short space of time, or one letter with five or six assessment notices, or three or four notices. And you can't work out how they relate to each other: 'Why have I got this one and that one?', and 'Does that one replace this one, or does that it enhance that one? Or am I supposed to ignore the first one?' One of the things that we did explore with Child Support a few years ago was that their staff don't even look at the letters when they are talking to someone who says, 'I am confused by this letter'. The staff just go straight to the record and tell the person what really happened.³⁸

- 4.38 This can be a particular problem where CSP receives a backlog of information from one parent, leading to a rush of assessments covering a number of past years. The Ombudsman has suggested that a stream of letters might be generated, without any effort by the CSP to explain how the letters relate to each other, or why they are all being sent at once:

For example, if Child Support were to receive five or six updated incomes from the tax office for a particular client – that is, somebody has not lodged for a long time and they finally lodge – that information would be put into the system and then all of the assessments for all of those periods covered by those tax assessments would be varied and the person would receive a whole lot of letters saying, 'We have updated your former partner's income or your income. Here are all the assessment notices.' They also say what period they cover and what the child support percentage is and what the percentage of care is. There might have been care changes in the period and some of the children might have turned 18. It is really left up to the client to interpret what all of this information means. When it is not your information but the information of your partner – and maybe your former partner – and they are the ones who have initiated the change, you are thinking, 'I don't even know why I'm receiving this.' So you are not aware of the circumstances that led to the change. The letters on their own probably say what they need to

38 Ms Prem Aleema, Commonwealth Ombudsman, *Committee Hansard*, Canberra, 4 September 2014, p. 5.

say, and they certainly say the legal requirements in most cases. But what they lack is, 'We have done this, and that means X, and therefore we are sending you this and the net outcome is X.'³⁹

Questionnaire box 4.2 Letters from the CSP

CSA's communication is woeful. I am an educated professional who works in a complex, technical environment and even I have trouble understanding their assessments and formulas and especially their statements.

Nothing is communicated in way that is easily understandable. I got paperwork that was incomprehensible. They even charged me too much but as I could not follow the paperwork I could not tell.

They sent 5 letters to me. Seems like a waste of paper. It's taken me 7 years to understand how it all works. So complex.

For an educated person, I found the process quite confusing. The amount of letters I would receive all at the same time stating different rates for different periods, yet no explanation about why the rate changes were occurring... this frequently happened to me.

The letter system is a bit overwhelming and hard to understand properly.

I have received 17 letters in 3 days from CSA. Some saying I owe him money, some saying he owes me money.

I receive multiple statements with various dates making no sense at all. I cannot understand the content.

The letters! The letters! The letters! They are aggressive, confusing, unhelpful and very, very stressful to receive.

I believe I have only been a month late a few times over the 6 years of my payments, of these times, CSA might call once or twice with no voicemail message left. Then they immediately send a horrible, rude, embarrassing letter to your employer demanding money. Wow is it rude! This is hugely depressing and upsetting when HR contacts you and your child is your own private life that you don't like to share with work colleagues.

4.39 Many individuals who contributed to the inquiry complained about the complexity of letters from the CSP:

The majority of the letters I have received from CSA over 5 ½ years are inaccurate, repetitive, confusing, farcical and a huge waste of tax funded money.⁴⁰

I acknowledge the need for paper correspondence. English is my first language and yet I still struggle to link together the paper trail of CSA correspondence I have collected over the years. My suggestion is that CSA need to realign their approach away from discrete, legally robust documents towards a continuous time line

39 Ms Prem Aleema, Commonwealth Ombudsman, *Committee Hansard*, Canberra, 4 September 2014, pp. 5-6.

40 Stef, Community Statement Session, *Committee Hansard*, Melbourne, 21 August 2014, p. 26.

based summary. At times, it becomes a game of 'spot the reason why they have sent me this letter'.⁴¹

4.40 The Ombudsman has indicated that it has raised these issues with DHS:

We regularly receive complaints from customers who receive multiple letters, which are often confusing or contradictory and require the customer to ring Child Support for an explanation. Other letters, particularly notices of assessment relating to past periods, do not provide parents with sufficient information to understand the reason for the decision or how an associated debt has been calculated. We continue to raise the need to improve the quality of letters with Child Support and with DHS in general.⁴²

4.41 In addition to phone calls and letters, DHS uses a number of other systems to provide information and communicate with clients. The most recent of these is a smartphone application, which enables clients to access many website functions through their phone. The application will certainly assist many clients to better manage their interaction with the CSP. However, it is important that DHS not neglect consideration for low-income households without smartphones or regular access to the internet.

4.42 Apart from questions about the general effectiveness of CSP's communication methods, inquiry participants raised significant concerns about the appropriateness of CSP's communicating with CALD and vulnerable clients. At a basic level, clients may not be able to understand what CSP has sent to them:

Vulnerable customers need support to liaise with the Child Support Agency. They need advice regarding the statements, assessments and other documents they receive. These customers are often very confused about the information they have been given.⁴³

4.43 Vulnerable clients may be particularly susceptible to harm from persistent phone calls, for example:

A new process that DHS (Child Support) may also wish to consider providing to payer parents with mental health issues is the right to receive agency correspondence via mail only. This would reduce the number of phone calls, which a parent experiencing mental health issues linked to financial hardship, may find distressing and a contributing factor to their poor health.

41 Daniel, Community Statement Session, *Committee Hansard*, Brisbane, 22 July 2014, p. 32.

42 Commonwealth Ombudsman, *Submission 55*, p. 20.

43 Ms Carolyne Turner, Illawarra Legal Centre, *Committee Hansard*, Sydney, 27 June 2014, p. 37.

If a parent elects this option, it must be made clear to the client that if they change address, DHS (Child Support) must be notified.⁴⁴

- 4.44 As discussed above, the volume of communication from the CSP will vary greatly from one client to another. However, there are some clear opportunities for the CSP to improve the clarity of its communication methods, as well as providing better service to vulnerable and CALD clients. This will be considered further in Committee Comment, below.

Enforcing payment

- 4.45 Arguably the biggest test of any child support scheme is the level of liability payment – often referred to as the collection rate. This will always rely, in part, on the use of coercive methods of enforcement. Enforcement is not simply a matter of accounting: as discussed in ‘Relationships and finances after separation’ (Chapter 2), money has an important emotional role in people’s lives, and the payment or non-payment of a child support liability often represents substantially more than just finances.

- 4.46 According to the Ombudsman, the most common complaints about the CSP relate to collection activities – enforcing the payment of child support liabilities:

The most common category of complaint arises from Child Support's collection activities. Payers complain that Child Support is inflexible about taking into account lack of ability to repay debts when they have financial difficulties. Payees complain that Child Support does not actively collect their ongoing child support payments or take sufficient action to recover the payer's child support debt.⁴⁵

- 4.47 While the majority of child support liabilities are paid on time and in full, there are many clients who do not pay their liabilities as required. Indeed, as explained by the Child Support Registrar:

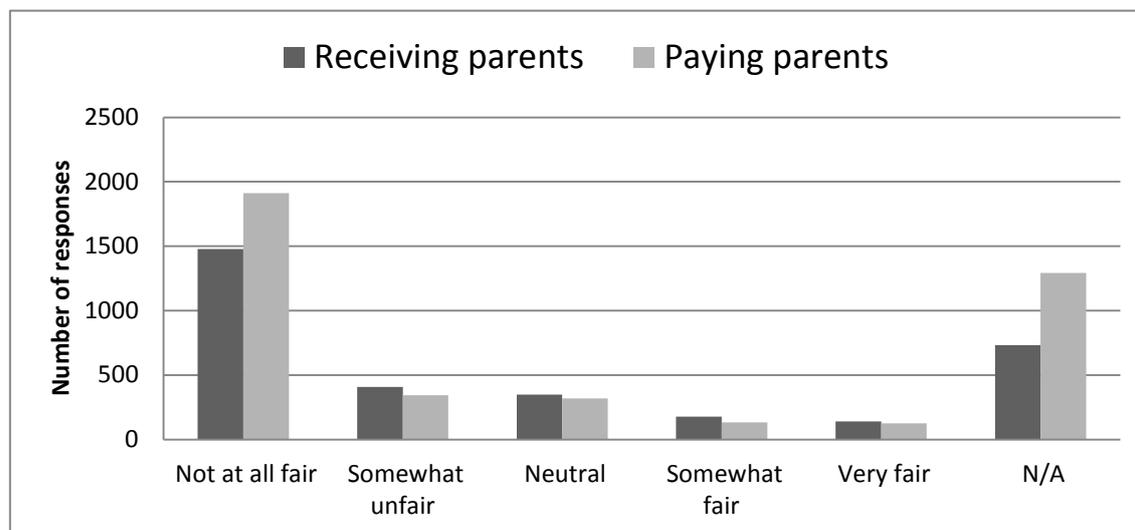
About 75.6 per cent of paying parents have no debt. As to the remainder of those, there will be a combination of some that have payment arrangements in place to get back that debt.⁴⁶

44 Victorian Legal Aid, *Submission 53*, p. 11.

45 Commonwealth Ombudsman, *Submission 55*, p. 6.

46 Ms Elizabeth Zealand, Department of Human Services, *Committee Hansard*, Canberra, 28 August 2014, p. 8.

Figure 4.2 Questionnaire respondents' views on the fairness of CSP methods to enforce payments



4.48 Almost 25 per cent of child support payees have a child support debt. On a basic level, this is very troubling: the CSP is supposed to make assessments that are within the capacity of clients to pay, and yet aggressive enforcement options are eschewed because individuals are assessed as unable to pay their debts.

4.49 DHS publishes a summary of its CSP enforcement actions every year, in its annual report, included below in Table 4.1.

Table 4.1 CSP compliance and enforcement actions

	Number of actions			Child support collected (million)		
	2011-12	2012-13	2013-14	2011-12	2012-13	2013-14
Tax-return enforcement	81,500	36,353	40,443	\$37.4	\$25.3	\$33.9
Tax-refund intercept	109,056	109,764	111,612	\$110.5	\$116.4	\$130.4
DPO	439	467	271	\$4.2	\$6.7	\$6.2
Litigation	290	162	186	\$7.4	\$4.1	\$4.4

Source DHS Annual Report 2013-14, p.157.

4.50 The total unpaid child support – total child support debt – was a major topic of the inquiry. According to DSS/DHS, on 31 March 2014, the total child support debt was \$1.35 billion.⁴⁷ This figure represents debt in the child-support collect system only, and comprises almost \$1 billion in

47 Department of Social Services and Department of Human Services, *Submission 99*, p. 25.

‘domestic’ debt (where both parents are residents of Australia) and over \$350 million in ‘international’ debt (where one parent is non-resident).⁴⁸

- 4.51 The Committee asked DSS/DHS about the amount of ‘private collect debt’ – that is, debt between parents who transfer child support without the assistance of the CSP. Because of the ‘private’ nature of the debt, the Departments could not provide a figure, nor an estimate. However, they were able to provide some information:

DHS does not keep records of what payments have been made for private arrangements, so obviously that means that a level of compliance in private arrangements may be measured through survey data. Data from internal DSS research prior to 2008 suggested that 21 to 38 per cent of payees in private collect cases report not receiving their payment in full or on time. So it is an indication.⁴⁹

- 4.52 The Committee sought evidence from other inquiry participants about the amount of ‘private collect debt’, but most information was very vague or completely speculative, reflecting great uncertainty about private debt:

Australia’s unpaid child support bill is over \$1 billion, yet even this figure does not capture child support that goes unpaid in private collection arrangements and debts waived by Child Support. Calculating unpaid child support from private collect and waived debts would more than likely triple this figure.⁵⁰

- 4.53 However, as noted by many submissions, private collect represents a large proportion of overall child support: in fact, it now accounts for 54 per cent of cases registered with the CSP.⁵¹ Whilst this could be considered a success, given the CSP’s preference for clients to use private collect where appropriate, there are two caveats to such a conclusion. First, it is important that ‘private collect’ not be used as an instrument of ongoing violence or conflict – an issue linked with the family violence and high-conflict sections, discussed below. Second, the ‘private’ nature of these cases should not preclude the production of data on the rate of compliance.

- 4.54 The under- or non-payment of child support liabilities severely affect a payer’s child, and the other parent, both financially and emotionally.

48 Department of Social Services and Department of Human Services, *Submission 99*, p. 25.

49 Ms Cath Halbert, Department of Human Services, *Committee Hansard*, Canberra, 28 August 2014, p. 1.

50 Council of Single Mothers and their Children (Victoria), *Submission 49*, p. 2.

51 Department of Social Services and Department of Human Services, *Submission 99*, p. 25.

Numerous individuals focussed on the insufficient enforcement of CSP decisions:

Firstly I, in my life, have been the wife of a paying parent; I have been a payee parent... I would like to make [a point that] relates to enforcement. Currently the agency has absolutely no teeth. There is not enough funding given to the agency to enforce, in any circumstances, funds that are due and payable by one parent to the other.⁵²

To prevent this continued waste of resources, fraud and emotional game playing, the following things are required... Agencies should have the power to defend, uphold and enforce their decisions.⁵³

I believe that non-payment by parents would be reduced if the Child Support Agency were given powers to enforce fines, recover property and enforce legal penalties on parents who do not provide financially for their children.⁵⁴

Questionnaire box 4.3 Enforcing payment

They [the CSP] have not been active in following up arrears even when I have been in significant hardship.

CSA give too many chances and too much time to give the paying parent the opportunity to pay. When the paying parent has been non cooperative, abusive and manipulative and shown they have a history of non payment CSA should be able to move quickly. 12 weeks to start garnishing wages when he already hasn't been paying for 12 weeks and children are starving, services being cut off, vehicles repossessed and foreclosure pending on the family home is simply unacceptable.

You can never catch up with arrears if you are already struggling with what is required. It then become completely blown out and untenable.

It took well over 12 months for them to realise and start deducting from his employer to catch up the arrears, and now that the arrears have been started to be caught up I am being penalized by Centrelink as an 'over payment'.

Constant daily harassing phone calls. I told them I wasn't working and gave proof that I'd lost my job, had no money for rent or even food and she still said "so, how will you be making up the arrears today" I couldn't believe it.

I have not been paid for two and a half years and during all this time I don't think CSA tried hard enough to recover the money ... There are no consequences for not paying.

The government should consider paying the primary carer the assessed Child Support amount through Centrelink and then raising an unpaid Child Support debt with the non primary care giver. This would be useful because despite the Child Support being assessed too many men don't pay it, or don't pay it on time or in full. Women raising kids on their own are already struggling.

52 Cath, Community Statement Session, *Committee Hansard*, Melbourne, 21 August 2014, p. 27.

53 Teresa, Community Statement Session, *Committee Hansard*, Brisbane, 22 July 2014, p. 30.

54 Lisa, Community Statement Session, *Committee Hansard*, Brisbane, 22 July 2014, p. 37.

- 4.55 Evidence from DSS/DHS outlined a number of ways that the CSP may retrieve funds from non-compliant payers:
- interception of tax refunds,
 - collection from third parties, such as banks, employers etc,
 - deduction from social security payments,
 - collection from Family Tax Benefit,
 - collection from Veteran's pensions/allowances,
 - collection from parental leave payments,
 - departure prohibition orders, and
 - court action.⁵⁵
- 4.56 Much evidence to the inquiry supported the use of these enforcement powers, but there were frequent calls for better use of existing powers, as well as additional powers.

Better use of existing powers

- 4.57 Although there are limited options for additional powers, there is clearly a capacity for existing powers to be used more effectively. Of course, this must always be balanced with the potential side-effects of enforcement action.
- 4.58 At a basic level, some contributors suggested that DSS/DHS should provide more clarity around when existing powers will be used:

More broadly, in terms of the arrears issue in Australia, perhaps an issue that needs to be explored is that there is no legislated amount. Once arrears reach a particular level, then Child Support will commence enforcement action at court, for example...Many of the clients that we advise and represent will often complain: 'Why should it be only if I have \$100 000 child support owing for the financial support of the children? Do I have to wait until the arrears reach that level before Child Support will do something about it?' Or: 'Is it because the payer has property listed in other people's names and therefore Child Support will not commence enforcement?' There is a sense of no clear pathway as to when Child Support will commence enforcement action in court. Perhaps we could get some clear understanding from them.⁵⁶

55 Department of Social Services and Department of Human Services, *Submission 99*, pp. 27-9.

56 Ms Alira Morey, Women's Legal Services NSW, *Committee Hansard*, Sydney, 27 June 2014, p. 30.

- 4.59 This section will consider two discrete powers that could be used more effectively: litigation and Departure Prohibition Orders.

Litigation

- 4.60 As explained by DSS/DHS, though individual payees can initiate legal action to recover unpaid child support liabilities, it is generally only the Registrar who litigates to secure the payment of debts, on behalf of payees:

Once a registrable maintenance liability is registered for collection by the Registrar, the debts arising under the liability are debts due by the payer to the Commonwealth, rather than to the payee.

Payment of these debts is generally only enforceable by the Registrar...DHS will only initiate litigation action where a capacity to pay exists. Identified capacity may be:

- a legal interest in real property with available equity,
- personal property such as motor vehicles or watercraft with available equity,
- assets (real and personal property) owned by a company or trust in which the payer holds an interest or holds ownership,
- personal/sole trader (business) income,
- income derived from a company, partnership, trust or business entity, and
- investment income such as shares, stocks, debentures, bonds, managed funds and term deposits.⁵⁷

- 4.61 The Committee frequently heard evidence about the relative rarity of litigation by the CSP to recover child support debts, as well as the lack of clear criteria for how cases are considered for litigation. Evidence from legal groups called for both greater clarity about CSP's litigation decisions, and greater use of litigation:

The number of cases DHS (Child Support) intended to enforce through the court decreased by thirty percent in 2012-13. When payment arrears cases are escalated to the internal DHS (Child Support) debt recovery team, the criteria used for assessing whether or not litigation is appropriate is unclear. Whilst voluntary repayment arrangements are the cheapest option to enforce a child support debt, it is clear that for some payer parents the only successful method of payment is via legal proceedings with the advantages of being able to subpoena financial records and secure assets with equitable charges and the like.⁵⁸

57 Department of Social Services and Department of Human Services, *Submission 99*, p. 30.

58 Victorian Legal Aid, *Submission 53*, p. 12.

Our observation of matters selected by Child Support for court enforcement, is that these matters are more likely to be cases where the payer has real property, including where that property is his or her home (an evident asset), and not those matters where the payee alleges that the payer is hiding or alienating income and/or assets and/or other financial resources.⁵⁹

From a practical perspective the [Family Issues Committee, Law Society NSW] has some concerns about the methodology of case selection in court enforcement matters. As litigation is expensive and difficult for payees to undertake on their own or at their own expense, the Committee's view is that it is important that the [CSP] plays a strong role in litigating the difficult and intractable cases (such as where there has been alienation of income, moving assets, complex business structures and trusts) rather than just the "easy wins", as is the case with payers with a property (even if that property is their home).⁶⁰

- 4.62 The Commonwealth Ombudsman told the Committee that it has expressed its concern to CSP about the ability of payers 'to deliberately and persistently evade Child Support's efforts to collect through fairly simple measures.'⁶¹ The Ombudsman acknowledged that CSP does not have the resources to pursue all debts through legal action, and that it therefore must 'carefully prioritise which cases it will take to court.'⁶² Nonetheless, the Ombudsman said that:

We recently requested that Child Support provide us with a briefing about the criteria that it applies when deciding which cases to take to court. We have indicated to Child Support our view that those criteria should not simply be about the size of the debt or the likely cost of litigation, but should also take into account factors such as deterrence, and the reputation of the scheme as a whole.⁶³

- 4.63 The Committee sought further clarity about the way CSP litigates to recover child support debts, as well as more detail about the extent of litigation in recent years. In response to the Committee's question about the CSP's budget for legal action, DHS stated that:

59 National Legal Aid, *Submission 57*, p. 3.

60 Family Issues Committee of the Law Society of NSW, *Submission 14*, p. 3.

61 Commonwealth Ombudsman, *Submission 55*, p. 16.

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

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

The department allocates funds each financial year for Child Support legal enforcement activity, with recent expenditure as follows:

- 2013-14 - \$1.6 million,
- 2012-13 - \$1.43 million,
- 2011-12 - \$2.12 million, and
- 2010-11 - \$2.14 million.

The decision to pursue litigation is based on the number of suitable cases for litigation and the budget is reviewed annually based on the number of cases the department expects to pursue.⁶⁴

4.64 Given the number of clients with a child support debt, and the size of the total child support collect debt – over \$1.3 billion – this is an extraordinarily small amount of money spent on litigation, barely one-tenth of one-percent of the total debt owed.

4.65 As noted above, the criteria for pursuing litigation currently restricts action to cases where ‘a capacity to pay exists’. However, this should be applied with careful attention to two additional considerations. First, there is a powerful demonstration effect when enforcement agencies tackle difficult, complex or egregious cases. Such action is crucial to public confidence in any government program or scheme. Second, individuals may appear to have no capacity to pay but, as pointed out during hearings:

The problem with only serving when there are realisable assets, of course, is that some people have their money in the cash economy. Some people, you will find, if you get a judgement against them, will find the money even though they do not have any obvious realisable assets. If people get the impression that by purporting to be broke they will not be sued then that does not really encourage compliance, does it?⁶⁵

4.66 The Committee readily acknowledges the gravity of commencing legal action against an individual to recover debts, and the limited resources available to DHS to fund such action. However, the inquiry heard near unanimous support for better public criteria for litigation and more litigation actions, particularly in the area of ‘example setting’. To provide a basis for such improvements, a performance audit of DHS’s litigation activity would be appropriate. This will be considered further in Committee Comment, below.

64 Department of Human Services, *Submission 99.1*, p. 10.

65 Ms Terry Butler MP, *Committee Hansard*, Canberra, 28 August 2014, p. 8.

Departure Prohibition Orders

4.67 Departure Prohibition Orders (DPOs) received ongoing attention during the course of the inquiry. As provided by DSS/DHS:

A DPO prevents a person who has persistently failed to pay their child support liability from leaving Australia without either discharging all debts or making satisfactory arrangements to do so. A DPO will be considered if there is no payment arrangement in place, there is a pattern of non-compliance, the payer regularly travels overseas and there is a reasonable belief the payer will travel. Once the DPO has been issued, the Australian Federal Police (AFP) is notified and an alert is placed on the Passport Issuing Control System. If a payer who is subject to a DPO attempts to depart Australia, and there is no Departure Authorisation Certificate in place...the AFP will prevent the payer from leaving.⁶⁶

4.68 According to DSS/DHS, 271 DPOs were issued in 2013-14. This is a significant drop from the previous two years: in 2011-12, 439 DPOs were issued, and in 2012-13, 467 DPOs were issued. However, according to the same information, this did not have a clear impact on the amount of child support debt recovered: across the three financial years since 2011, the amount recovered was (respectively) \$4.2 million, \$6.7 million and \$6.2 million.⁶⁷

4.69 DPOs received general support during the inquiry, especially where their use is restricted and careful:

[Legal Aid Commissions] are contacted from time to time for urgent advice by paying parents who have been prevented from returning to their country of residence. Conversely commissions have assisted and advised a significant number of payees who are receiving no financial support for their children because the other parent has relocated overseas. For these parents, a DPO (should the payer travel to Australia) may represent the only way of ever securing the child support which should appropriately be paid. Notwithstanding that this could be considered a drastic mechanism for collecting child support, it is nevertheless suggested that it may be a mechanism appropriately implemented in cases where a payer travelling to Australia is clearly aware of the child support liability and has consistently avoided or refused

66 Department of Social Services and Department of Human Services, *Submission 99*, p. 29.

67 Department of Human Services, *Annual Report 2013-2014*, September 2014, p. 157.

payment, and any family violence issues have been taken into account.⁶⁸

- 4.70 Despite their usefulness, one major concern was raised about the use of DPOs: their use against payees who do not usually live in Australia. As described by Professor Patrick Parkinson:

On the plus side, [DPOs] are an effective tool for collection of child support. There is no doubt about that and a lot of money has been collected on that basis from men – usually men – who ought to have been paying earlier. There is no question that there are positives, but there are also some negatives...

I have raised the issue particularly of foreign nationals because, if a DPO is issued against an Australian resident, they still have their home and their job. They are usually prevented from going on holiday overseas. The hardship is limited. But for a foreign national it is in a sense an imprisonment. It is a long time since the Australian continent was a jail, but a departure prohibition order against a foreign national is effectively imprisoning them within the continent of Australia.⁶⁹

- 4.71 Professor Parkinson recommended that:

My view is that, at the very least, a DPO should never be allowed to be issued against a foreign national and that an amendment to the section generally should provide that the department should have exhausted all other collection mechanisms before issuing a DPO.⁷⁰

- 4.72 However, this view was not widely shared:

The [Family Issues Committee, Law Society NSW] does not recommend that persons who are not ordinarily domiciled in Australia be exempted from the operation of the DPO provisions. Such an amendment would create an artificial category of payer parents that are exempt from the risk and rigour of DPOs and would carry the risk of abuse. The Committee questions how a payee or Child Support would be in a position to dispute a payer's claims as to foreign domicile.

Further, the notion of allowing an exemption for those claiming to not be domiciled in Australia would be inconsistent with the increased prevalence of reciprocal child support treaties between Australia and other countries. At the risk of oversimplification, the

68 National Legal Aid, *Submission 57*, p. 4.

69 Professor Patrick Parkinson, *Committee Hansard*, Sydney, 27 June 2014, pp. 1-2.

70 Professor Patrick Parkinson, *Committee Hansard*, Sydney, 27 June 2014, p. 3.

formulation of such reciprocal arrangements, and their increase in number in recent years, reflects a universal commitment to the policy that parents must provide for the financial support of their children even if they do not live in the same country as their child or children...⁷¹

- 4.73 The inquiry demonstrated that there is no clear consensus on the use of DPOs. In the context of such disagreement, greater clarity around the purpose of DPOs, and a review on their use would better guide their application by DHS. This will be considered further in Committee Comment, below.

Additional powers

- 4.74 As noted above, the CSP already has significant powers for enforcing the payment of child support liabilities. All the same, many contributions to the inquiry argued that CSP should have additional powers. These suggestions generally focussed on credit ratings and the suspension of drivers' licences:

Systems need to be put in place to avoid growing arrears. To avoid this circumstance Child Support needs the authority to garnishee the wages of self-employed persons. Current arrears should be listed on the person's credit rating, so if they apply for loans the lender is aware of the debt. Child Support should also have the power to ensure that arrears are paid prior to a person being able to borrow more funds for big purchases, such as a house, and the power to be alerted to and have access to financial information provided to gain the loan.⁷²

Enforcement Options... Suggested bad credit ratings if child support remains unpaid for extended periods. Suspension of drivers licence if child support remains unpaid for extended periods and if repetitive then a served sentence in community order programs and then if continued jail sentence.⁷³

- 4.75 However, as noted by other contributions, such additional enforcement options can have detrimental 'side-effects' when applied. If a parent's driver's licence is cancelled, for example, they might be unable to continue

71 Family Issues Committee of the Law Society of NSW, *Submission 14.1*, pp. 3-4.

72 Christine, Community Statement Session, *Committee Hansard*, Canberra, 4 September 2014, p. 19.

73 United Sole Parents of Australia, *Submission 47*, p. 4.

work.⁷⁴ Additionally, this may impede their ability to provide care for their children, to provide transportation to school and leisure activities, thereby putting extra pressure on the other parent. A poor credit rating might affect a business-owner's ability to raise necessary ongoing capital for their business, which could affect their ability to pay child support liabilities.

- 4.76 In addition, there are significant regulatory barriers to implementation of the suggested powers. Drivers' licences are issued and managed by state and territory governments. Credit ratings generally relate to consumer credit (such as credit cards and loans), and the Government currently has no role in mandating the inclusion of particular kinds of debt in credit ratings.⁷⁵
- 4.77 Despite many general calls for broader powers, there was no strong evidence that additional powers would greatly increase the scope of enforcement actions available to the CSP. The previous section, dealing with the use of existing powers, contains more promising avenues for better enforcement.
- 4.78 Finally, the Committee considered the possibility of selling debts for collection by third parties. This will be considered further in Committee Comment, below.

Family violence

- 4.79 Family violence has been a central concern of this inquiry from the outset. While it is not listed as a separate topic in the terms of reference, violence and abuse within families is clearly an important consideration for the design, administration and review of any child support system.
- 4.80 The Committee is sensitive to the important question of how to refer to violence and abuse that occurs within families. The relevant child support legislation makes only one reference to 'violence', without the use of 'family' or 'domestic' as adjective.⁷⁶ The other major piece of relevant Commonwealth legislation, the *Family Law Act 1975*, uses the term 'family violence'.⁷⁷

74 Ms Terese Edwards, National Council for Single Mothers and their Children, *Committee Hansard*, Canberra, 26 June 2014, p. 8.

75 For more information, see Office of the Information Commissioner, *What information can be included in your credit report*, Privacy fact sheet 28, May 2014.

76 Section 7B, *Child Support (Assessment) Act 1989*.

77 Section 4AB, *Family Law Act 1975*.

4.81 For the purpose of this report, the Committee has decided to use the term ‘family violence’, principally because it aligns with the terms used in the *Family Law Act 1975* and the Child Support Guide.

4.82 At the beginning of the inquiry, the Committee firmly stated that it considered family violence to be a distinct matter, and that families in which there is violence should never be euphemistically referred to as ‘high-conflict’:

I want to again make clear that this committee has drawn a very strong distinction between a high-conflict family and families that experience domestic or family violence. We are not for one moment suggesting that women in domestic or family violence are to be categorised as high-conflict for the purposes of this inquiry.⁷⁸

4.83 This approach was widely supported by many contributors to the inquiry:

“High conflict” families are different to families where domestic and family violence feature. It is important to specifically name domestic and family violence, as there are implications for safety when we do not. It is important not to mutualise domestic and family violence into a term such as “high conflict”. High conflict should be specifically defined and exclude matters involving domestic violence or abuse.⁷⁹

High-conflict cases are not to be confused with the domestic violence and family violence cases. The distinction is extremely important...⁸⁰

Our concern is for the potential for high-conflict families and families where domestic and family violence is present to be considered as the same type of case. We see that there are some very real differences. When family violence cases are categorised as high conflict, the effect can be that the violence is mutualised and responsibility for stopping the violence is shifted onto victims.⁸¹

4.84 As described by the Australian Law Reform Commission’s (ALRC) 2012 report into *Family Violence and Commonwealth Laws*, there are a number of

78 Ms Sharon Claydon MP (Deputy Chair), *Committee Hansard*, Canberra, 5 August 2014, p. 7.

79 Women’s Legal Services Australia, *Submission 36*, p. 6.

80 Mr Paul Lewis, Family Issues Committee of the Law Society of NSW, *Committee Hansard*, Sydney, 27 June 2014, p. 11.

81 Ms Janet Loughman, Women’s Legal Services NSW, *Committee Hansard*, Sydney, 27 June 2014, p. 28.

general ways in which family violence may affect the operation of the CSP for a family:

A parent who has experienced family violence may fear continued interaction with the other parent and avoid all occasions of contact or opportunity for continuing control. This may influence their participation in the child support scheme – prompting decisions to, for example, not seek child support, end child support, change collection methods, or accept insufficient child support. Further, CSA-initiated actions may endanger victims by inflaming conflicts and opening up possibilities for pressure and coercion.⁸²

4.85 Non-payment of child support can be used as a means of inflicting further family violence:

Avoiding child support obligations may be linked with family violence. It has been identified as ‘part of an ongoing attempt to maintain power and control’, and an extension of other forms of family violence. It may also, in itself, constitute economic abuse.⁸³

4.86 Many submissions to the inquiry called for DHS to be more active in identifying and supporting CSP clients and their families who may be (or who may have been) victims of family violence.

4.87 Women’s Legal Services Australia (WLSA) proposed that a special pathway be developed for child support cases involving family violence, including its development ‘following standards of international best practice and in consultation with specialists in domestic violence who have expertise working with victims of violence...and perpetrators of violence’.⁸⁴ The proposal included permanent case workers for clients who are victims of family violence, specialist mediation services, and other measures to protect victims against the use of child support processes to further inflict violence. WLSA also recommended a screening tool be developed, and that all CSP staff be trained in using the tool.⁸⁵

4.88 In its 2012 report, the ALRC made a number of recommendations about family violence and the CSP. At a general level, it recommended a new standard definition of family violence be adopted across numerous areas of Commonwealth laws. The report went on to make a number of detailed recommendations about how CSP provides support for and protects individuals and families who have suffered family violence.

82 Australian Law Reform Commission, *Family Violence and Commonwealth Laws*, ALRC 117, February 2012, p. 299.

83 Australian Law Reform Commission, *Family Violence and Commonwealth Laws*, ALRC 117, February 2012, p. 291.

84 Women’s Legal Services Australia, *Submission 36*, p. 3.

85 Women’s Legal Services Australia, *Submission 36*, p. 4.

4.89 In summary, the major recommendations were, by broad topic:

Issues management:

- identify family violence safety concerns when a payee requests or elects to end a child support assessment, or elects to end CSP collection of child support or arrears,
- refer payees who have disclosed family violence to social workers when such payees request or elect to end a child support assessment, elect to end CSP collection of child support, or request the CSP terminate or not commence enforcement action or DPOs,
- screen clients for potential family violence safety concerns prior to initiating 'significant actions' including changes of assessments, court actions or DPOs,
- consult with clients who have disclosed family violence about their safety concerns prior to initiating 'significant actions' including changes of assessments, court actions or DPOs, and
- identify family violence safety concerns prior to requiring a payee to use private collect.

Informal carers:

- consider repealing the provisions that limit the capacity for informal (or non-parent carers) to receive child support, and
- in any case, broaden the considerations to be included when making a decision about whether the carer is eligible for child support.

Reasonable maintenance action exemptions:

- include the reasonable maintenance action rules in the *A New Tax System (Family Assistance) Act 1999*, rather than just in the Child Support guide,
- explicitly include family violence as grounds for exemption from the 'reasonable maintenance action' in the Family Assistance guide, and
- include information about the exemption review process and the duration of exemptions in the Family Assistance guide.⁸⁶

4.90 Despite being presented to the Government over three years ago – on 30 November 2011 – the Government has still not formally responded to it. However, some elements of the recommendations have been implemented, including the development of a family violence strategy and screening tool, which were trialled by DHS in 2014:

86 Australian Law Reform Commission, *Family Violence and Commonwealth Laws*, ALRC 117, February 2012, pp. 19-20.

The department has developed a family and domestic violence strategy and we have been trialling that. So between April and June a risk identification and referral process was trialled to help officers both in the face-to-face network and in the smart centres on the phones to identify any risks early. That was trialled across 11 different business areas in 10 sites to basically make people more alert to things that might present as a concern and perhaps things that would be unlikely to be volunteered or overtly discussed. So it was a model which had trigger questions with the idea of identifying intervention points for people early in the process. Every person responded to that question in the affirmative. All those questions then staff were able to offer referrals. It could be an internal referral to allow social worker services; it could be a referral to some other external national service or a local specialist service. Listings of those various services were made available to our offices. There is an evaluation of that trial currently underway.⁸⁷

4.91 The evaluation of the trial was provided to the Committee, and the key findings are that:

The [trial] demonstrated that the model assisted with the identification of customers with FDV [family & domestic violence] concerns:

- customers reacted positively, in general, to being asked the question,
- the intervention points selected for the scoping study are points where customers experiencing FDV are likely to interact with the department,
- the question proved effective in helping customers to disclose that they had FDV concerns.⁸⁸

The evaluation goes on to recommend that the project 'progress to a phase two pilot.'⁸⁹

4.92 It is clear that DHS is working to improve protection for its clients against family violence. Nonetheless, there are two important considerations to be kept in mind as the above project progresses:

- the project should be coordinated with the Australian Government's *National Plan to Reduce Violence against Women and their Children 2010-2022*, and the *Second Action Plan 2013-2016* made under the National

87 Ms Sheryl Lewin, Department of Human Services, *Committee Hansard*, Canberra, 28 August 2014, p. 3.

88 Department of Human Services, *Submission 99.4*, pp. 6-7.

89 Department of Human Services, *Submission 99.4*, p. 7.

Plan, particularly around the need for integrated systems for victims of violence, and

- Family violence should be a primary consideration when DSS/DHS contemplates changes to any policy or processes, including those arising from this report.

- 4.93 There is already considerable work underway to improve the operation of CSP for victims of family violence. However, there are some elements that need urgent attention. One particular area of concern is the lack of any plan to appoint case managers for CSP cases involving family violence. This will be considered further in Committee Comment, below.
- 4.94 As noted in Chapter 2, any general referral of CSP clients to mediation must include screening and safeguards for victims of family violence, including the provision of legally-assisted mediation if necessary.
- 4.95 Finally, victims of family violence would benefit from inclusion in a guarantee system. Such a guarantee is discussed below, following the next section on high-conflict families.

High-conflict families

- 4.96 As noted above, in the section on family violence, the term ‘high-conflict family’ should never be used as a euphemism for families in which there is violence and abuse. Both kinds of families may share some characteristics – and some policy measures may be appropriate for both kinds of families – but they are not the same.
- 4.97 Relationships that exhibit high-conflict obviously make CSP processes difficult for parents and children, as well as making CSP processes more expensive to administer. However, a high-conflict relationship also creates further problems beyond the relationship itself. In short, it tends to make the parents worse at parenting. Dr Alina Morawska, from the University of Queensland, described how this can occur:

We also know that parents who are engaged in this sort of conflict tend to have inadequate and poor coping skills. They tend to be extremely reactive and blaming, often towards each other. They may tend to start to view the conflict and extreme conflict as normal, that this is just the way things are. They often have poor communication skills as well. Stress in the parent, poor communication and ongoing conflict impair the parent's capacity to separate their own needs from those of their children. They impact on the parent's capacity to establish effective co-parenting arrangements and to maintain good parent-child relationships.

One of the major things that has impacted in these situations is parenting. Parents are more likely to be ineffective and coercive in their use of discipline. They are less likely to monitor their child effectively. They use less positive attention and involvement, impacting on the parent-child relationship. We know that these sorts of maladaptive parenting practices or 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.⁹⁰

4.98 The terms of reference direct the Committee to consider ‘how the scheme could provide better outcomes for high conflict families’ and the Committee has expressed a particular interest in:

- the effectiveness of mediation and counselling arrangements as part of family assistance frameworks, and
- ensuring that children in high conflict families are best provided for under the child support scheme.

4.99 Both Chapter 3 and this chapter have detailed the general structure and operation of the CSP, and how each element of the program is supposed to work. Unfortunately, for families caught in a cycle of conflict, almost every part of the CSP can be abused to continue the conflict. This has been demonstrated by contributors to the inquiry, who have evidenced either their own or others’ lack of good faith and intent to pursue conflict through the CSP.

4.100 Even though the terms of reference ask the Committee to direct its energies towards ‘high-conflict’ families, the main submission from DSS/DHS does not provide a definition of the term, and the Child Support Guide makes no reference to high-conflict families at all.

4.101 Some submissions provided possible definitions for high-conflict, such as:

High-conflict parents are those who are unable to agree on a binding parenting plan, who continue to dispute matters for more than a year after their separation, and where there is concern that one or both parents use coercive methods.

I distinguish two types of high conflict ex-partners:

- one group wants to negotiate or bargain over the balance of access and payments, and is amenable to skilled therapy and mediation

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

- a second group wants to be controlling and coercive, become accusatory, adopt entrenched positions, and continue to try to change agreements.⁹¹

and

[couples] whose relationships are characterized by...[a] high degree of anger, hostility and distrust, incidents of verbal and/or physical abuse, high rate of custody litigation, and ongoing difficulty in communicating about and cooperating over the care of their children.⁹²

- 4.102 However, the inquiry demonstrates with clarity that there is no agreed definition of high-conflict within the CSP, and no agreed definition amongst service providers and experts. The two examples above, of very few presented to the Committee, both include an element of family violence.
- 4.103 In the absence of a definition, there is no way for CSP staff to identify high-conflict families according to common criteria. As pointed out by Dr Bruce Smyth and Dr Bryan Rodgers:
- the Child Support Program is in a strong position to identify and assist high conflict families. The Program is often the first point at which separated parents make contact with the family law system. This is because of the requirement for separating parents applying for government income support to take 'reasonable steps to obtain child support' (i.e., the Maintenance Action Test) – which typically involves lodgement of a case with the DHS-CSP. Unlike most other parts of the family law system, the Child Support Program generally has an ongoing relationship with parents until children turn 18 years.⁹³
- 4.104 This is a serious deficiency in the CSP, as any policy reform to provide better support and services to high-conflict families will rely on an official and shared understanding of what 'high-conflict' means. Once such families can be identified, many of the measures throughout this report can be better targeted to them. This will be considered further in Committee Comment, below.
- 4.105 Chapter 2 discussed the opportunities to provide better mediation services, in order to prepare separating parents better for the future apart. In addition, the Committee has considered the potential to use a limited

91 Adelaide Psychological Services, *Submission 18.1*, p. 3.

92 Dr Bruce Smyth and Dr Bryan Rodgers, *Submission 13*, p. 24.

93 Dr Bruce Smyth and Dr Bryan Rodgers, *Submission 13*, p. 27.

guarantee system, to protect the interests of children in some high-conflict families, below.

Guarantee

4.106 One of the most consistent and prominent suggestions for reform was for the Government to guarantee child support payments – that is, to transfer the assessed liability to payees regularly, regardless of whether the payer has transferred the money to the CSP. Any arrears or debts would be to the Government, and the Government would then pursue that money from the payer.

4.107 Many submissions advocated a broad guarantee, such that it would apply to any clients currently in child support collect arrangements:

The Child Support Agency should ensure that the enforceable child support liability is paid to the payee whilst they collect the payments from the payer. This payment should occur on time and in full irrespective of the payer's approach. This would immediately remove the financial impact of non-payment, late or sporadic payments upon the resident mother and their children.⁹⁴

[Consideration should be given] to the New Zealand approach where payment of child support is paid to a government and consistency of payment is assured because the government 'tops up' even when the payee fails to make payment. This ensures that a stable and reliable income source is provided to the family and that the children are not disadvantaged. Pursuing arrears clearly becomes the responsibility of the government agency.⁹⁵

Child support payments [should] be guaranteed by the State in cases of [child support collect] and that the State then take responsibility for collecting from payers. The expected amount of child support should be transferred by the DHS-CS to children regardless of its receipt by the DHS-CS.⁹⁶

4.108 For clarity, it should be noted that the frequent references to the 'New Zealand' approach throughout the inquiry appear to be erroneous. The New Zealand system is in fact very similar to the Australian system, without a guarantee operating. According to the New Zealand Inland

94 National Council of Single Mothers and their Children, *Submission 40*, p. 3.

95 Women's Legal Services Australia, *Submission 36*, p. 5.

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

Revenue's website, *Common questions and answers about child support for custodians*:

If the paying parent doesn't pay child support when it's due, then you won't receive any payments.

If a paying parent doesn't pay by the due date, we can order that all future payments must be made by the paying person's employer. The employer will be required to deduct child support from the paying person's salary or wages each payday.

We can make automatic deductions from accident compensation payments and bank accounts to recover any overdue amounts.⁹⁷

- 4.109 Some submissions suggested that a guarantee might be appropriate in more limited circumstances: 'For high conflict families, CSA should assume all responsibility for recovering any child support owed.'⁹⁸
- 4.110 The Committee has considered the admittedly limited experience of guarantee systems in other countries. Research commissioned by the Government of the United Kingdom in 2007 surveyed child support arrangements in fourteen Western countries and identified eight countries in which some or all of the receiving parents' child support entitlement was guaranteed by the government: Austria, Belgium, Denmark, Finland, France, Germany, Norway and Sweden. None of the surveyed Anglophone countries – Australia, New Zealand, the United Kingdom, and the United States – had government guarantees.⁹⁹
- 4.111 Guarantee schemes differ in their implementation. According to the research, countries provide varied amounts of guaranteed income, and some provide it under limited circumstances or for a limited time. Some guarantee schemes make payments to all receiving parents, others may be means tested or may only make payments available following default by the paying parent. Some schemes pay a flat amount, others have a number of payment tiers, and some determine payments according to the terms of the parents' child support agreement.¹⁰⁰
- 4.112 Child support guarantees help to ensure that receiving parents do not suffer undue financial hardship arising from unpaid child support, and serve as a buffer between parents at a time of potential conflict. According to the research, some schemes could be costly to administer and the rate of

97 New Zealand Inland Revenue, *Common questions and answers about Child Support for custodians*, www.ird.govt.nz/childsupport/custodians/questions/, viewed 19 January 2015.

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

99 UK Department for Work and Pensions, *Child Support Policy: an international perspective*, Research Report 405, 2007, pp. 91-92.

100 UK Department for Work and Pensions, *Child Support Policy: an international perspective*, Research Report 405, 2007, pp. 94-95.

recovery from paying parents was not necessarily any better in a guarantee system. Of the eight schemes surveyed, only Finland and Denmark recovered more than 50 per cent of the child support contributions paid by the government as part of the scheme, while some countries recovered as little as five per cent.¹⁰¹

- 4.113 Throughout the inquiry, participants advanced numerous predictions about the ‘depersonalising’ effect of a guarantee on payers’ likelihood to pay their liability. Some contributions suggested that it would decrease compliance, as payer parents would not view the payment of their child support liability as having a real impact on their children’s welfare. However, others suggested that it would increase compliance because the liability would be owed to the government, and the government would be likely to pursue debts to consolidated revenue with more vigour than debts to third parties (payees). Unfortunately, there was little evidence to substantiate these claims one way or the other.
- 4.114 The Committee asked DHS to provide information about CSP clients being dealt with by Intensive Collection Services (ICS) in order to understand the likely cost of a guarantee. ICS deals with non-compliant behaviour (CSP clients with debts or arrears) and manages DPOs, legal enforcement and lodgement enforcement.
- 4.115 DHS provided that:

As at 30 September 2014, there were 39 984 cases where the paying parent was being managed by [ICS]...This represents approximately \$500 million in child support debt. The total annual ongoing liability for cases currently being managed by the ICS Branch is \$144 million.

At 30 September 2014, there were 27 909 active cases (cases with an ongoing child support liability) managed in the ICS Branch. For these cases:

- The average annual liability was \$5 167.53.
- The average annual payee income was \$31 185.45 (compared with \$32 383.95 for payees in the wider child support population).
- 59 per cent of payees were in receipt of some form of income support (compared with 57 per cent of payees in the general child support population).

101 UK Department for Work and Pensions, *Child Support Policy: an international perspective*, Research Report 405, 2007, pp. 92-93.

- In 81 per cent of cases, payees were in receipt of Family Tax Benefit (FTB) (compared with 82 per cent of cases in the general child support population).¹⁰²
- 4.116 DHS was unable to provide any estimate of the cost of a guarantee system, stating that ‘The Department has not undertaken work to estimate the costs of a guaranteed maintenance system.’¹⁰³ For this reason, any guarantee would need to be given a limited trial to assess its costs and effectiveness.

Committee Comment

- 4.117 The CSP, through its quarter-century of operation, has served millions of Australians. While some individuals harbour strong feelings against the agency, most of its clients acknowledge the onerous nature of its task, and the impossibility of satisfying all parties all the time. Whilst the inquiry heard a limited expression of anger against the CSP by some participants, most contributors expressed confidence in the professionalism, dedication and integrity of its staff. The Committee supports this confidence.
- 4.118 The CSP assists people in very difficult periods of their lives, works to protect vulnerable people whose own family members may have been violent towards them, and tries to stand between individuals who are engaged in ongoing conflict. These roles are invidious, and the Committee’s recommendations in this Chapter will make the agency more effective, improve the quality of its decisions and communications, the perceptions of its fairness, and provide more assistance to vulnerable clients.

Making decisions

- 4.119 As discussed above, the CSP has a range of processes and decisions to make, each with varying levels of complexity and discretion. A major criticism of the CSP is that its advice and decisions are inconsistent. This was a recurring complaint of both experts and individual clients, and was addressed at length by witnesses during hearings.
- 4.120 The Committee is satisfied that the implementation of the recommendations of the ANAO’s recent performance audit will improve the quality of CSP’s decision making, particularly through better feedback and recording of decisions that are challenged or overturned.

102 Department of Human Services, *Submission 99.4*, p. 8.

103 Department of Human Services, *Submission 99.4*, p. 8.

- 4.121 However, DHS's reliance on its complaint mechanism to uncover inconsistency is not acceptable. As noted above, a passive reliance on clients to point out inconsistent decision-making relies on questionable assumptions, and cannot support systemic improvements in the quality of decision-making.
- 4.122 For this reason, the Committee believes that the CSP should have an ongoing internal audit process to assess the consistency of its advice and decision-making, particularly when matters are dealt with by junior officers. Such an ongoing audit process will have a dual benefit: it will enable the CSP to improve the quality of service to its clients, and its results will also enable it to disprove any unfounded claims about inconsistency.

Recommendation 13

The Committee recommends that the Australian Government institute an ongoing internal audit of the consistency of advice and decision-making by Child Support Program staff, with results published regularly and summaries provided in the Department of Human Services Annual Report.

- 4.123 More troubling than inconsistency is the pervasive belief that the CSP is biased: numerous claims of bias were made during the inquiry, discussed above. Such claims come from all directions – from both payers and payees, both mothers' and fathers' groups. This perception of bias is pernicious to public confidence in public administration, and mechanisms to aggressively refute these perceptions are required. The best way to do this is to ensure that individuals better understand the reasons for a decision, so that they are not left to make the uninformed conclusion that the decision turned on bias. The next section will outline the Committee's recommendations to improve communication by the CSP.
- 4.124 The Committee considered the strength of information-sharing systems within DHS and between it and other agencies. The Committee understands that the new CSP computer system will be made operational over the next three and half years.¹⁰⁴ The Committee also understands that a new Centrelink computer system is in the early stages of development. From an administration point of view, DHS must ensure that it carefully audits the interaction of these systems before allowing calculations and

¹⁰⁴ Department of Human Services, *Submission 99.5*, pp. 5-6.

decisions to be made in individual cases. As outlined by the Ombudsman, poor communication between IT systems can cause significant problems for individual clients.

- 4.125 Finally, on a substantive note, the Committee is concerned that passivity on the part of DHS's methods for calculating FTB-A could be disadvantaging clients. Most clients would probably not understand the intricacies of how Centrelink manages the interaction of child support payments and FTB, and would almost certainly not be aware of the consequences for their finances unless drawn to their attention. The Committee understands the desirability of having different methods of calculation, but automatically selecting the method that is most likely to cause financial hardship to clients is unreasonable. The Committee believes that, at a minimum, Centrelink should actively ask all CSP clients with an FTB entitlement which method they wish to use, at least every six months.

Recommendation 14

The Committee recommends that the Australian Government introduce a Centrelink policy to actively ask all CSP clients with an FTB entitlement which FTB calculation method they wish to use, at least every six months, thereby reducing unintentional financial hardship.

Communication

- 4.126 The inquiry heard numerous calls for the CSP to improve its communication. Prominent amongst the calls was for a return to face-to-face service. The Committee believes that, while it would be unreasonable to institute widespread services in person, the use of videoconferencing could assist with CSP's communication with clients. The Committee looks forward to the results of the trials being conducted by DHS. The Committee believes that once a suitable technical platform has been selected, videoconferencing should be made generally available to CSP clients, for non-routine or significant processes by the CSP.

Recommendation 15

The Committee recommends the Australian Government expedite the conclusion of the Department of Human Services videoconferencing trial, and prioritise the provision of videoconferencing services to all Child Support Program clients, for non-routine or significant Child Support Program processes.

- 4.127 A major feature of the CSP is its complexity, and it is therefore probable that letters from the CSP are complex. However, this should be no barrier to clear communication, and carefully coordinated delivery of letters.
- 4.128 The Committee understands that DHS is reviewing how it produces correspondence, and the Ombudsman has indicated that it has raised its concerns directly. However, the Committee believes that DHS should engage a consultant with the best applicable insights from the field of behavioural economics and the communication of financial information, to make its correspondence more intuitive and intelligible. DHS should also ensure that all documentation clearly describes child support payments as being for the benefit of the children involved.

Recommendation 16

The Committee recommends the Australian Government address the Child Support Program's issues of complexity and proliferation in communications by seeking advice on how to incorporate insights from behavioural economics and best-practice in the communication of financial information.

- 4.129 Despite the best efforts to communicate clearly, at times clients will need assistance in comprehending the advice and decisions of the CSP. CSP clients are currently able to seek the assistance of Smart Centre staff to explain advice or a decision, however this can sometimes become a venue for complaining about or challenging a decision.
- 4.130 In order to ensure that CSP can explain decisions clearly to clients, it should appoint information officers, who are expert in legislation, policy and procedures, whose responsibility is solely to clearly explain and interpret advice or a decision. These officers would not be able to change a decision, record information, modify a file or give advice about a particular situation. DHS already has such officers available for staff, in

the form of 'technical support officers', proof that the full technical detail of the CSP is beyond its front-line service officers. Such information officers would have a similar level of expertise, and they would provide clients with a dispassionate and accurate explanation, without entering into debate about the merits of the decision. Such officers should also be provided with comprehensive interpreting facilities.

Recommendation 17

The Committee recommends the Department of Human Services appoint dedicated and suitably trained 'information officers' in the Child Support Program to clearly explain how advice or a decision was arrived at in a particular case. Such officers:

- **should be senior APS-level officers (APS 5-6),**
- **should be experts in child support legislation, policy and procedures,**
- **should proactively contact clients with a history of disputed decision making when any decision is made,**
- **should consult with individual decision makers as necessary to fully comprehend a case before contacting a client,**
- **should be able to explain any documentation created by the Child Support Program,**
- **should be provided with comprehensive interpreting facilities for culturally and linguistically diverse clients, and**
- **should not be tasked with collecting any information from clients.**

- 4.131 Numerous contributors outlined their concerns about the potential for communication by the CSP to become perceived as harassing, particularly to vulnerable clients. The Committee believes that rigorous enforcement of CSP decisions is entirely compatible with compassionate and sensitive attention to the welfare and vulnerabilities of all CSP clients. DHS should create a mechanism whereby vulnerable individuals can nominate preferred communication methods, including exclusively written communication, to ensure that its method and manner of communication does not cause additional distress or harm to vulnerable clients.

Recommendation 18

The Committee recommends the Australian Government create a mechanism for Child Support Program clients to nominate preferred communication methods, including restriction to phone calls or letters, to ensure that communication by the Child Support Program does not cause harm.

- 4.132 DHS must always be alive to the potential for staff to perpetuate perceptions of bias through the language they use. As described in the Chapter, this can be very upsetting for clients, and can severely damage public esteem in the CSP. In particular, DHS should ensure that all communications, including over the phone, use inclusive language when discussing parentage and sexuality.
- 4.133 Finally, the Committee is also aware of the possibility for some work in ‘Smart Centres’ to be carried out by contracted staff, rather than through permanent DHS officers. The Committee expects that, if this is done, all contractors are given the same amount of training, support and feedback as all permanent DHS staff.

Enforcing payment

- 4.134 As discussed in this Chapter, public esteem in the CSP is profoundly affected by the ‘collection rate’. Many criticisms of the CSP relate to its enforcement of payments. Non-enforcement of liabilities was raised over and over as a major problem for the program.
- 4.135 In respect of private collect, the Committee believes that too little is known about the actual payment rate. While CSP does not have comprehensive data on private transactions, it should be doing much more to assess the effectiveness of private collect arrangements, to inform policies and procedures. This should be done through statistical surveys, with results published regularly and summaries provided in the DHS annual report.

Recommendation 19

The Committee recommends the Australian Government conduct ongoing statistical surveys of the rate of actual payment for Child Support Program clients using Private Collect, with results published regularly and summaries provided in the Department of Human Services annual report.

- 4.136 The Committee believes that the CSP has most of the necessary enforcement mechanisms available to it; however, it also believes that these existing mechanisms could be better used.
- 4.137 In respect of litigation, the Committee firmly believes that the CSP should engage in more ‘example setting’ litigation, to ensure that the effective hiding of assets and resources by clients does not protect those individuals from litigation. Such ‘examples’ should be those of deliberate and serious evasion of a child support liability, and litigation at all times should conform to the Model Litigant Rules.¹⁰⁵
- 4.138 The Committee also believes that the CSP should provide more public information about its criteria for pursuing litigation, without prejudicing the CSP’s capacity to effectively conduct litigation.
- 4.139 The Committee believes that the CSP’s approach to litigation should be examined externally, by way of performance audit by the ANAO. The ANAO has the skills and expertise to assess the performance of CSP’s litigation action, the way it uses its budget, and the way it makes decisions about what debts to pursue through the courts.
- 4.140 In making this recommendation, the Committee recognises the statutory independence of the ANAO, and the complete discretion of the Auditor-General in relation to whether or not a particular audit is to be conducted.¹⁰⁶

¹⁰⁵ The Model Litigant Rules state that ‘in essence, being a model litigant requires that the Commonwealth and its agencies, as parties to litigation, act with complete propriety, fairly and in accordance with the highest professional standards.’ They can be found in the *Legal Services Directions 2005* at Appendix B, <http://www.comlaw.gov.au/Details/F2012C00691>, viewed 3 June 2015.

¹⁰⁶ Section 8, *Auditor-General Act 1997*.

Recommendation 20

The Committee recommends the Australian National Audit Office conduct a performance audit of the Child Support Program's Legal Enforcement service, including the extent of the Child Support Program's public criteria for pursuing litigation.

- 4.141 The use of DPOs was a consistent question throughout the inquiry. Their use raises serious questions about fundamental liberties and procedural fairness. While they have a legitimate place in the array of powers needed to administer the CSP, some rebalancing of powers and protections is needed. Notwithstanding Professor Parkinson's recommendation that DPOs not be issued against foreign nationals, the Committee believes that the power to issue DPOs against foreign nationals should be retained, but balanced with a requirement for the authority issuing such orders to take into account circumstances such as the effect on the ability of the subject of a DPO to earn an income if prohibited from leaving Australia.
- 4.142 A DPO amounts to a ban on a person leaving Australia and is an effective tool to assist in the collection of child support from a reluctant payer. However, there needs to be a balance between the need to coerce payment and the presumptive right of freedom of movement. At present, the subject of a DPO is not necessarily given an opportunity to be heard prior to its making, contrary to the principles of procedural fairness, and the process to object to a DPO is lengthy and difficult. The Commonwealth Ombudsman has found that in many cases the Registrar has not strictly complied with the statutory requirements for making a DPO, which are intended to limit the circumstances in which they can be made.¹⁰⁷
- 4.143 To ensure that there are appropriate safeguards, the Committee believes that DPOs should only be issued by a tribunal or court, and only after a hearing in which the subject of the proposed DPO has had the opportunity to be heard. To deal with a situation in which a payer appears to be about to leave Australia, the Registrar should have a limited power to issue an interim DPO with a (non-renewable) maximum term of 30 days, with a court hearing as soon as possible after the issue of such an order to review it.

¹⁰⁷ See generally Commonwealth Ombudsman, *Child Support Agency: administration of departure prohibition orders powers*, report No 08/2009, June 2009, and especially Annex A of that report.

Recommendation 21

The Committee recommends the Australian Government seek to amend the legislation governing Departure Prohibition Orders (DPOs) such that DPOs are only issued by a tribunal or court on the application of the Registrar and after providing an opportunity for the subject of the DPO to be heard. In cases of urgency, the Registrar should have a limited power to issue an interim DPO, for a non-renewable period of no more than 30 days. Whenever a DPO or interim DPO is considered in relation to a person who resides outside of Australia, the tribunal, court or Registrar must give special consideration to those circumstances

- 4.144 The Committee is also concerned about statements made during the inquiry that suggested that child support debts by payers due to underpayments or non-payment were always followed up whereas child support debts by recipients due to overpayments being made were almost never followed up. The Committee recommends that the Australian Government ensure that the collection of debts relating to overpayments is given equivalent treatment to instances where underpayments are made.

Recommendation 22

The Committee recommends that the Australian Government ensure equity in the collection of child support debts and of overpayments, in particular that the same flexibility that applies to the collection of overpayments is applied to the collection of debts, especially where the debts were unintended. In implementing this recommendation the Government should at all times take into account the best interests of the child.

Family Violence

- 4.145 As discussed above, the CSP is a potent venue for individuals to inflict ongoing family violence against their children and former partners. The Committee firmly stated the difference between family violence and high-conflict families at the beginning of the inquiry, and has carefully reported on these two subjects separately. It is important that this careful distinction is maintained in all of the CSP's work.
- 4.146 DHS is clearly working to improve the way that the CSP supports and protects victims of family violence, however the Government's lack of

response to the ALRC's report into *Family Violence and Commonwealth Laws* is concerning. The Committee believes that the Government should make a comprehensive response to the report as soon as possible.

Recommendation 23

The Committee recommends that the Australian Government respond to Australian Law Reform Commission Report 117 *Family Violence and Commonwealth Laws - Improving Legal Frameworks* as a priority.

- 4.147 The Committee looks forward to seeing the next stage of DHS's family violence strategy. Fully supportive of the planned future for the strategy, the Committee reiterates that the strategy should be developed in compliance with the *National Plan to Reduce Violence against Women and their Children 2010-2022*, and the *Second Action Plan 2013-2016*, particularly around the use of integrated systems. Family violence should always be a primary consideration when DSS/DHS contemplates changes to any policy or processes, including those arising from this report.
- 4.148 In addition, the Committee is concerned at the lack of provision for case managers for CSP clients who are victims of family violence. The Committee believes that such clients should be offered case managers, in order to ensure that they have consistent and continued support from within the CSP. Case managers would provide an ongoing point of contact for victims of family violence, who are at risk of further harm if given inconsistent support.

Recommendation 24

The Committee recommends that the Australian Government recognise the importance of specialist response and support to separated families where family violence has been present. Accordingly, the Committee recommends the establishment of a dedicated family violence response unit within the Department of Human Services. This response unit should be responsible for ensuring that the safety and wellbeing of the child are paramount and should be tasked with:

- providing a one-stop point of contact for all enquiries and support services
- providing a means of intermediary communication between parties
- coordinating access to services across Australian Government Departments

Guarantee

- 4.149 As outlined in Chapter 3, the guarantee of child support payments by Government was advocated by many contributors throughout the inquiry. However, there is a distinct lack of good information about how such a guarantee should be designed, and confusion amongst contributors about what model it might follow.
- 4.150 Nonetheless, the Committee believes that a limited, targeted guarantee system could protect vulnerable families in the CSP.
- 4.151 The success of limited guarantee systems in other countries has been variable, with collection rates differing widely. This suggests that a limited guarantee alone need not have a determinative impact on the collection rate. However, it also makes it difficult to predict how a limited guarantee system would affect the Australian child support system if it were implemented here.
- 4.152 In light of that, and in the absence of detailed work by either DSS or DHS, the Committee can only recommend that the Government conduct preliminary research into the likely cost and best structure of a limited child support guarantee. Armed with the results of that research, the Committee believes the Government should then consider conducting a trial of a limited guarantee system. In designing and conducting the trial of the guarantee, the Government should remain aware of the need to

ensure that a limited guarantee system does not create a substantial drain on public finances.

Recommendation 25

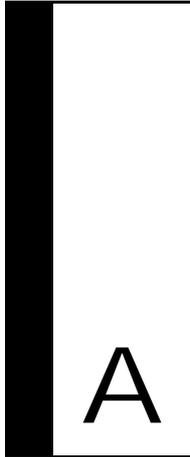
The Committee recommends that the Australian Government:

- **examine the social and economic impacts in other jurisdictions of a limited child support guarantee system,**
- **conduct modelling to assess if there is capacity to apply such a limited guarantee to the Australian context, and then**
- **consider the feasibility of conducting a trial of a limited guarantee for either vulnerable families or for a random sample of Child Support Program clients.**

George Christensen MP

Chair

25 June 2015



Appendix A – List of Submissions

Submissions

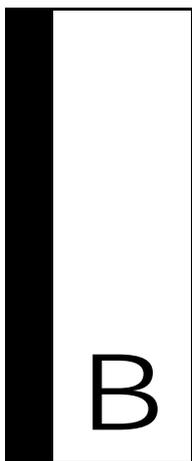
1. Name Withheld
2. Professor Patrick Parkinson
3. Name Withheld
4. Name Withheld
5. Name Withheld
6. Ms Suzanne Roszka
7. Non-Custodial Parents Party (Equal Parenting)
 - 7.1. Supplementary
8. Mr Peter Carroll
9. Mr Philip Thomson
10. Name Withheld
11. Name Withheld
12. Mr Trevor Koops
13. Bruce Smyth PhD & Bryan Rodgers PhD
14. The Family Issues Committee of the Law Society of NSW
 - 14.1. Supplementary
15. Name Withheld
 - 15.1. Supplementary
16. Mr David Rose
17. Name Withheld
18. Adelaide Psychological Services
 - 18.1. Supplementary
19. Name Withheld

20. Name Withheld
21. Name Withheld
22. Name Withheld
23. Name Withheld
24. Name Withheld
25. Mr Geoff Ogden
26. Hobart Women's Health Centre
27. Name Withheld
28. Mr Andrew Thompson
29. Name Withheld
30. National Council of Women of Tasmania
31. Name Withheld
32. Hobart Branch of the National Council of Single Mothers and their Children
 - 32.1. Supplementary
 - 32.2. Supplementary
33. Name Withheld
34. Name Withheld
35. WIRE Women's Information
36. Women's Legal Services Australia
37. Relationships Australia
38. Dr Kay Cook
39. Dr Kristin Natalier
40. National Council of Single Mothers & their Children
 - 40.1. Supplementary
41. Gosnells Community Legal Centre
42. Lone Fathers Association (Australia)
 - 42.1. Supplementary
43. Women's Legal Services NSW
44. Name Withheld
45. Dads in Distress Support Services
46. Ms Giovana Arrarte
47. United Sole Parents of Australia
48. Australian Men's Health Forum
49. Council of Single Mothers and their Children (Victoria)

-
50. Australian Institute of Family Studies
 51. Name Withheld
 52. Illawarra Legal Centre
 53. Victorian Legal Aid
 54. Name Withheld
 55. Commonwealth Ombudsman
 - 55.1. Supplementary
 - 55.2. Supplementary
 - 55.3. Supplementary
 56. Name Withheld
 57. National Legal Aid
 - 57.1. Supplementary
 58. Name Withheld
 59. Law Council of Australia
 - 59.1. Supplementary
 60. Name Withheld
 61. Family & Relationship Services Australia
 - 61.1. Supplementary
 62. Ms Leslie James
 63. Ms Lynn Cresswell
 64. Economic Security4Women
 65. Barwon Community Legal Service
 66. Name Withheld
 67. Name Withheld
 68. Name Withheld
 69. Family Law Council
 70. Mr Marcus Smith
 71. Support Help and Empowerment
 72. Mr Ali Noonan
 73. Mr Rodney Davies
 - 73.1. Supplementary
 74. Name Withheld
 75. Name Withheld
 76. Name Withheld

77. Name Withheld
78. Name Withheld
79. Name Withheld
80. Name Withheld
81. Dads on the Air
82. Name Withheld
83. Women's Legal Service Tasmania
84. Name Withheld
85. Name Withheld
86. Name Withheld
87. Name Withheld
88. NT Office Status of Family
89. Name Withheld
90. Fathers Australia
91. Name Withheld
92. Name Withheld
93. Dads 4 Kids
94. Social Security Appeals Tribunal
 - 94.1. Supplementary
95. Attorney-General's Department
 - 95.1. Supplementary
96. Name Withheld
97. Name Withheld
98. The Australian Family Association (Queensland Branch)
 - 98.1. Supplementary
99. Department of Social Services (DSS) and Department of Human Services (DHS)
 - 99.1. Supplementary – Department of Human Services
 - 99.2. Supplementary – Department of Social Services
 - 99.3. Supplementary – Department of Social Services
 - 99.4. Supplementary – Department of Human Services
 - 99.5. Supplementary – Department of Human Services
100. Queensland Law Society
101. Springvale Monash Legal Service

102. Mr Elisa Clark
103. Name Withheld
104. Ms Tanya Fisher
105. Name Withheld
106. Ms Alissa Brabin
107. Mr David Skeels
108. Name Withheld
109. Name Withheld
110. Professor Belinda Fehlberg
111. Mr Iain Rice
 - 111.1. Supplementary
 - 111.2. Supplementary
112. Name Withheld
113. Name Withheld
114. Name Withheld
115. Name Withheld
 - 115.1. Supplementary
116. Name Withheld
117. Mrs R Johnson
118. Name Withheld
119. Name Withheld
120. Name Withheld
121. Name Withheld
122. Name Withheld
123. Name Withheld
124. Ms Michelle Rowland MP
125. Name Withheld
126. Name Withheld
127. Boystown
128. Australian Taxation Office
129. Name Withheld
130. Mr Michael Loizou



Appendix B – List of Exhibits

Exhibits

1. House of Representatives Standing Committee on Social Policy and Legal Affairs
Snapshot 1 – Negotiation
2. Mr Andrew Thompson
Correspondence
3. Dads 4 Kids
Fathers in Families
4. Dads 4 Kids
Submission to other parliamentary inquiry
5. Dads 4 Kids
Submission to other parliamentary inquiry
6. Dads 4 Kids
Men's and fathers' family friendly policy forum
7. Dads 4 Kids
Submission to other parliamentary inquiry

8. Dads 4 Kids
Submission to other parliamentary inquiry
9. Dads 4 Kids
October 9 Declaration
10. Dads 4 Kids
Mortality over the twentieth century
11. Dads 4 Kids
Male deaths on CSA database
12. House of Representatives Standing Committee on Social Policy and Legal Affairs
Snapshot 2 – Responsiveness to change
13. House of Representatives Standing Committee on Social Policy and Legal Affairs
Snapshot 3 – Communication tools
14. Economic Security4Women
Counting on care work in Australia
15. Economic Security4Women
Equal opportunity in an age of insecurity
16. Economic Security4Women
Equal opportunity in an age of security
17. Australian Institute of Family Studies
Evaluation of a pilot of legally assisted and supported family dispute resolution in family violence cases

18. Australian Institute of Family Studies
Family relationship centres
19. Department of Social Services and Department of Human Services
Child support customer journey
20. Family and Relationship Services Australia
Queer families and the child support system
21. Family and Relationship Services Australia
How the child support system works for stepfamilies
22. Family and Relationship Services Australia
Young adult children and the child support system
23. Family and Relationship Services Australia
The CSA and vulnerable families
24. Family and Relationship Services Australia
Culturally and linguistically diverse families' experience of the child support system
25. Family and Relationship Services Australia
Response to FaHCSIA policy paper – change of assessment
26. Family and Relationship Services Australia
Response to FaHCSIA policy paper – late payment penalties
27. Family and Relationship Services Australia
Response to FaHCSIA policy paper – care arrangements
28. Family and Relationship Services Australia
Limited, binding and private agreements

29. Family and Relationship Services Australia

Private collect

30. Family and Relationship Services Australia

Parents' experiences of making arrangements between themselves to pay for children's additional expenses (outside of a Change of Assessment process)



Appendix C –Witnesses appearing at public and private hearings

Thursday, 26 June 2014 – Canberra, ACT (public hearing)

National Council of Single Mothers and their Children

Ms Terese Edwards, Chief Executive Officer

Friday, 27 June 2014 – Sydney, NSW (public hearing)

Illawarra Legal Centre

Mrs Carlyne Turner, Solicitor, Child Support Project
Mr Ian Turton, Solicitor

Individuals

Professor Patrick Parkinson

Law Society of New South Wales

Mr Paul Lewis, Member, Family Issues Committee
Ms Susana Staka, Member, Family Issues Committee

Non-Custodial Parents Party (Equal Parenting)

Mr John Flanagan, Deputy Registered Officer
Mr Glenn Daley, Member

Women's Legal Services New South Wales

Ms Janet Loughman, Principal Solicitor
Ms Alira Morey, Senior Solicitor

Thursday, 17 July 2014 – Canberra, ACT (public hearing)

Lone Fathers Association of Australia

Mr Barry Williams, National President

Tuesday, 22 July 2014 – Brisbane, QLD (public hearing)

Aqua Dreaming Ltd

Ms Colleen Wall, Managing Director

Mrs Lynette Johannessen, Director

Australian Family Association

Mr Michael Ord, Queensland President

Boystown

Ms Elisabeth Kobierski, National Community Services Manager

Ms Wendy Protheroe, General Manager, Counselling Services

Centacare Mackay

Ms Stacey Trevanion, Coordinator, Facilities and Administration

Ms Marlie Tudor, Family Dispute Resolution Practitioner

Dads in Distress

Mr Laurence Anderson, Victorian Services Coordinator

Mr Phillip York, New South Wales Services Coordinator

Hunter Women's Centre

Mrs Jo Walton, Executive Officer

Ms Kim Wilson, Coordinator

Ms Suzanne Baillie, Case Manager

Law Society of Queensland

Ms Alison Ross, Chair, Family Law Committee

Ms Louise Pennisi, Policy Solicitor

Lone Fathers Association Mackay

Mr Mark Young, Branch President

University of Queensland Parenting and Family Support Centre

Dr Alina Morawska, Deputy Director Research

Women's Legal Services Australia

Ms Erica Coulston, Lawyer

Ms Angela Lynch, Community Legal Education Lawyer

Tuesday, 5 August 2014 – Hobart, TAS (public hearing)**Hobart Women’s Health Centre**

Ms Petula Broad, Health Worker
Abby
Sasha

Individuals

Dr Kay Cook

National Council of Single Mothers and their Children

Ms Miranda Carver
Ms Lisbeth Eastoe

Support, Help and Empowerment

Ms Alina Thomas, Executive Officer

Women’s Legal Service Tasmania

Ms Katharine Layne, Lawyer

Wednesday, 6 August 2014 – Adelaide, SA (public hearing)**Adelaide Psychological Services**

Dr Don Tustin, Director

Gosnells Community Legal Centre

Mrs Linda Saverimutto, Principal Solicitor
Ms Funmi Adesina, Solicitor

Southern Domestic Violence Service

Ms Lynn Cresswell, Social Worker, Domestic Violence Support Worker

Thursday, 21 August 2014 – Melbourne, VIC (public hearing)**Australian Institute of Family Studies**

Professor Alan Hayes, Director
Ms Ruth Weston, Assistant Director (Research)
Dr Lawrie, Senior Research Fellow

Barwon Community Legal Service

Ms Geordie Konieczka, Solicitor

Council of Single Mothers and their Children

Miss Tenar Dwyer, Executive Officer
Miss Kerry Davies, Project Worker

Victoria Legal Aid

Ms Jayne Ford, Program Manager, Family Law Financial Support Services
Ms Nicole Rich, Director, Family, Youth and Children's Law Services

WIRE Women's Information

Ms Samiro Douglas, Chief Executive Officer
Ms Prue Cameron, Researcher

United Sole Parents of Australia

Miss Kerry Arch, Founder
Ms Barbara Williams, Member
Ms Kate Borland, Member

Thursday, 28 August 2014 – Canberra, ACT (public hearing)**Department of Human Services**

Ms Sheryl Lewin, Acting Deputy Secretary, Social Services
Mr Bruce Young, National Manager, Child Support New Customers & Mainstream Services
Ms Elizabeth Zealand, General Manager, Child Support Smart Centres
Mr Dennis Mahony, Acting General Manager, Families Division

Department of Social Services

Ms Cath Halbert, Group Manager

Friday, 29 August 2014 – Canberra, ACT (public hearing)**Australian Men's Health Forum**

Mr Gary Bryant, Executive Officer
Mr Simon Santosha, Board Member

Drummond Street Services

Ms Reima Pryor, Director, Research and Evaluation

Economic Security4Women

Ms Sally Jope, Executive Officer

Family & Relationship Services Australia

Ms Jackie Brady, Executive Director
Ms Rose Beynon, Policy Officer

Individuals

Associate Professor Bruce Smyth
Professor Bryan Rodgers

National Legal Aid

Ms Narelle Egan, Representative, National Legal Aid Child Support Network; Coordinator, Child Support Unit Legal Services Commission of South Australia
Ms Sally Cole, Representative, National Legal Aid Child Support Network; Solicitor in Charge, Child Support Service Legal Aid NSW

Thursday, 4 September 2014 – Canberra, ACT (public hearing)**Office of the Commonwealth Ombudsman**

Mr George Masri, Senior Assistant Ombudsman
Mr Prem Aleema, Director

Thursday, 25 September 2014 – Canberra, ACT (public hearing)**Attorney-General's Department**

Ms Tamsyn Harvey, Assistant Secretary, Family Law Branch
Ms Tracey Armstrong, Acting Director, Family Law Branch
Ms Jean Rollings, Acting Principal Legal Officer

Dads 4 Kids Fatherhood Foundation

Mr Warwick Marsh, Chief Executive Officer

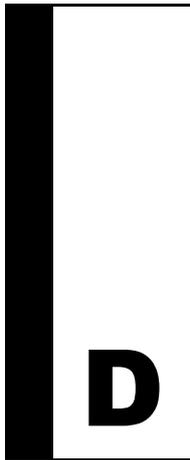
Individuals

Witness A
Witness B

2 October 2014 – Canberra, ACT (public hearing)

Australian Taxation Office

Mr David Diment, Deputy Commissioner, Client Account Services
Ms Erin Holland, Deputy Commissioner, Tax Practitioner, Lodgement
Strategy and Compliance Support



Appendix D – Community Statement Sessions

Friday, 27 June 2014 – Sydney, NSW

Anthony

Bill

Branislav

Chris

Gary

Hans

Jamie

Jeanette

Kachelle

Kathryn

Margarita

Michael

Nathan

Peter

Phillip

Tuesday, 22 July 2014 – Brisbane, QLD

Andrew

Daniel

Darren

Daryl

Geoffrey

Joanne

Leith

Lisa

Lucas

Peter

Peter

Sharon

Teresa

Theresa

Vicki

Tuesday, 5 August 2014 – Hobart, TAS

Adam

Chris

Debbie

Jeanette

Lisbeth

Michael

Miranda

Rob

Shane

Simon

Tanya

Wednesday, 6 August 2014 – Adelaide, SA

Derek

Ian

James

Karina

Kerrie

Lee

Lisa

Marcus
Raymond
Robert
Simon
Thea
Tim
Tobey
Victor

Thursday, 21 August 2014 – Melbourne, VIC

Cath
Danielle
Janet
Joe
Marco
Matthew
Philomena
Ruth
Sean
Steph

Thursday, 28 August 2014 – Canberra, ACT

Alan
Ariel
Bob
Gary
Geoff
John
Kathy
Les
Mark
Melinda
Michelle
Peter

Rebecca
Richard
Rosemary
Steven
Tim
Traci

Friday, 29 August 2014 – Canberra, ACT

Albert
Clayton
Darren
Jerry
John
Julie
Linda
Mandy
Michelle
Peter

Thursday, 4 September 2014 – Canberra, ACT

Albert
Anita
Bill
Christine
Craig
David
Iain
Kwaku
Lisa-Jane
Phil
Ray
Rebecca
Sandra
Tony



Appendix E

Data from the Questionnaire

Demographic data

Table Gender of survey respondents

Gender	Total
Female	6432
Male	4806
Unspecified	78
Total	11316

Table Age of questionnaire respondents

Age range	Responses	Percentage
18 – 25	296	2.62%
26 – 35	2307	20.39%
36 – 45	4976	43.97%
46 – 55	2965	26.20%
56 – 65	620	5.48%
66 – 75	136	1.20%
76 – 85	7	0.06%
86 or older	9	0.08%
Total	11316	100.00%

Table Relationship status of questionnaire respondents

Relationship Status	Responses	Percentage
In a relationship	5854	51.73%
Single	5462	48.27%
Grand Total	11316	100.00%

Table Aboriginal/Torres Strait Islander status

Are you of Aboriginal or Torres Strait Islander descent?	Total
Aboriginal	320
Torres Strait Islander	31
Neither	10883

Table Regional/remote status of questionnaire respondents

Kind of community lived in	Percentage
Regional	25.73%
Remote	1.96%
Suburban	61.81%
Urban	10.50%

Table Linguistic background of questionnaire respondents

Is English your first language?	Responses
Yes	10792
No	418
Total	11210

Table Employment Status of respondents

Do you do paid work?	Responses	Percentage
No	2376	21.25%
Yes	8807	78.75%
Total	11183	100.00%

Table Job status of employed questionnaire respondents

Are you employed:	Full time or part time	Percentage
Casual	Full time	3.37%
	Part time	12.61%
Company owner	Full time	1.43%
	Part time	0.19%
Permanent	Full time	57.88%
	Part time	15.62%
Self-employed	Full time	5.73%
	Part time	3.16%

Data on perceived quality of parental relationships

Table Quality of parental relationship

How would you describe your relationship with the other parent(s) of your children?	Responses	Percentage
High conflict	3496	33.59%
Difficult	3054	29.35%
Poor	1597	15.35%
Reasonable	1689	16.23%
Very good	571	5.49%
Total responses	10407	100.00%

Table Perceived risk from other parent

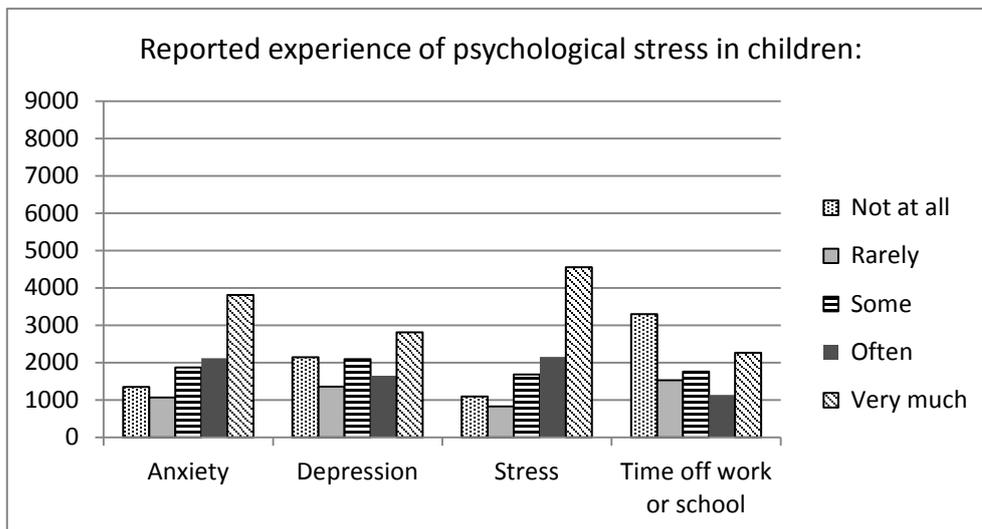
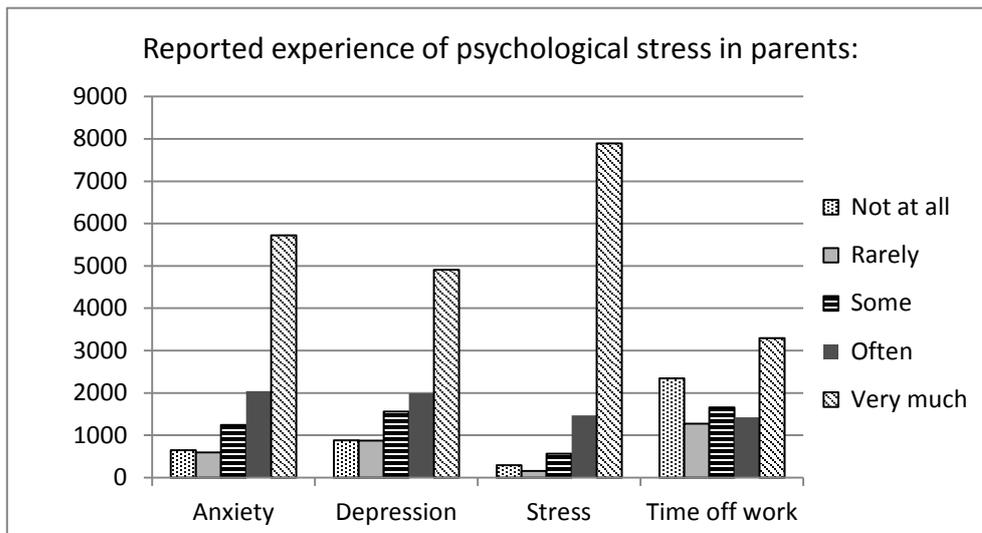
Have you ever felt that your children were at risk from their other parent?	Total
No	3824
Yes	5651
Total responses	9475

Table Past family violence orders

Have you had any court order relating to domestic or family violence?	Responses
No	7116
Yes	2065
Total responses	9181

Table Current legal matters before the courts

Do you have any family law, child support or domestic violence matters currently pending before a court?	totals
No	8382
Yes	799
Total responses	9181



Child support and income support data

Table Number of respondents who care for children with the assistance of child support payments

Do you care for children with the assistance of CS payments?	Responses	Percentage
No	5536	48.92%
Yes	5780	51.08%

Table Receipt of child support payments

Do you receive child support payments?	Responses	Percentage
No	6216	65.14%
Yes	3327	34.86%

Table Private vs child support collect - payees

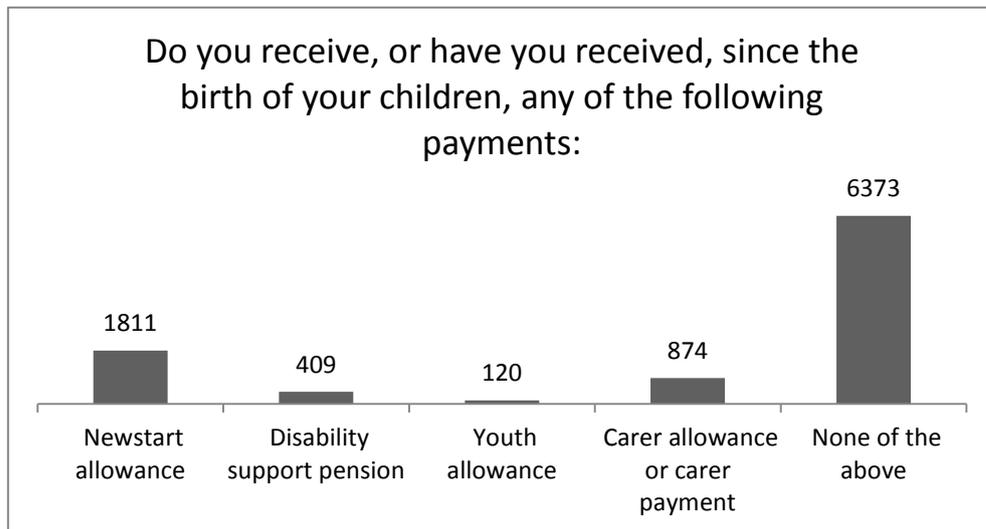
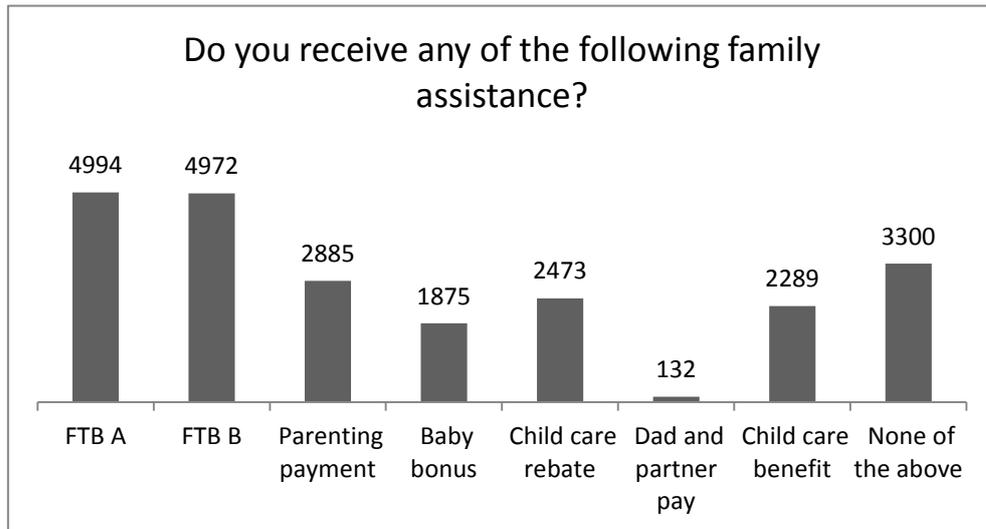
Are the child support payments you receive	Responses
CSA collect	2706
Private collect	580

Table Number of respondents who make child support payments

Do you make child support payments?	Responses	Percentage
No	5429	56.69%
Yes	4148	43.31%
Total	9577	100.00%

Table Private collect vs child support collect - payers

Are your payments:	Responses
CSA collect	3355
Private collect	774
Total	4129



Assessments

Table Assessments

Have you had a Child Support Assessment?	Responses
No	789
Yes	9157
Total	9946

Table Reason for Assessment

What was the primary reason for the Child Support Assessment?	Total
Dispute	2165
Eligibility for family tax benefit	1328
To formalize child support arrangements	5505
Total	8998

Table Understanding of the assessment process

Do you understand the basis on which the assessment was made?	Responses	Percentage
No	2273	26.30%
Yes	6371	73.70%
Total	8644	100%

Table Perceived fairness of assessments

Please rate the fairness of the Assessment	Responses	Percentage
Not at all fair	5197	57.76%
Somewhat unfair	1580	17.56%
Neutral	1181	13.13%
Somewhat fair	533	5.92%
Very fair	507	5.63%
Total	5704	100%

Objections/Change of Assessments

Table Objections to CSP decisions

Have you objected to any decisions of the Child Support Program?	Responses	Percentage
No	3874	41.69%
Yes	5419	58.31%
Total	9293	100.00%

Table Where the objection was heard

Where was the objection heard?	Responses
Internally at the CSP	4935
The AAT	241
The SSAT	710
At Court	370
Total	6256

Table Satisfaction with the objection process

Satisfaction with the objection process?	Responses	Percentage
Completely unsatisfied	3525	65.63%
Unsatisfied	889	16.55%
Neutral	596	11.10%
Satisfied	217	4.04%
Very satisfied	144	2.68%
Total	5371	100%

Mediation and Family Dispute Resolution

Table Family Dispute Resolution

Have you participated in Family Dispute Resolution?	Responses	Percentage
No	6344	68.48%
Yes	2920	31.52%
Total	9264	100%

Table FDR participation - voluntary or otherwise

Was it voluntary?	Responses	Percentage
No	655	22.39%
Yes	2270	77.61%
Total	2925	100%

Table Where Family Dispute Resolution occurred

Where did FDR take place?	Responses
Family relationship centre	2030
Private mediation	450
Other	445
Total	2925

Table Parenting orders

Have you ever had parenting orders or a parenting plan?	Responses	Percentage
Parenting plan	1780	18.23%
Consent parenting order	1803	18.47%
Imposed parenting order	994	10.18%
No	5185	53.11%
Total	9762	100%

Table Use of mediation in child support matters

Did you use mediation or counselling to assist in negotiating child support arrangements?	Responses	Percentage
No	7590	80.01%
Yes	1896	19.99%
Total	9486	100%

Table Perceived effectiveness of child support mediation

Please rate the effectiveness of this assistance:	Responses	Percentage
Not very useful	1291	67.98%
Of little use	236	12.43%
Neutral	225	11.85%
Somewhat useful	81	4.27%
Very useful	66	3.47%
Total	1899	100%