



Australian Government  
Department of Social Services



Australian Government  
Department of Human Services

# **Department of Social Services and Department of Human Services**

**Joint submission to the  
House of Representatives  
Standing Committee on Social Policy  
and Legal Affairs**

## **Inquiry into the Child Support Program**

**July 2014**

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## **i. Executive summary**

The Child Support Scheme (the Scheme) is designed to ensure that both parents contribute to the cost of their children, according to their capacity. The administration of the Scheme is enabled by two key legislative acts, the *Child Support (Registration and Collection) Act 1988*, and the *Child Support (Assessment) Act 1989*. The Scheme has undergone a range of substantial changes since its original introduction in the late 1980s.

This joint submission by the Department of Social Services (DSS) and the Department of Human Services (DHS) provides a high level overview of the Scheme. The submission contains a short summary of key elements of the Scheme, including the objectives, key demographics and historical context. It gives an outline of the child support formula and how child support is collected; interactions with the family assistance system; services available for separated families; and how the Scheme is administered.

Within the submission, information about child support policy and legislation is provided by DSS, while operational information is provided by DHS.

## 1. Introduction to the Child Support Scheme

### 1a. Objectives of the Scheme

The Scheme was introduced in Australia in 1988 to “strike a fairer balance between public and private forms of support [for children] to alleviate the poverty of sole parent families.”<sup>1</sup> The (then) Government believed that all parents have an obligation to support their children financially and that the Scheme must ensure, as far as possible, that:

- a) parents share in the cost of supporting their children according to their capacity;
- b) adequate support is available to all children not living with both parents;
- c) Commonwealth involvement and expenditure is limited to the minimum necessary for ensuring children’s needs are met;
- d) work incentives for both parents to participate in the labour force are not impaired; and
- e) the overall arrangements are non-intrusive to personal privacy and are simple, flexible and efficient.<sup>2</sup>

Following the publication of *Child Support – A discussion paper on child maintenance* in 1986, and after extensive consultation, the Scheme was established “to achieve meaningful improvements in the living standards of children”<sup>3</sup> of separated parents. This included the introduction of a legislative child support formula from 1989 to replace judicial discretion as the method of assessing child support obligations.

#### *The objects of the Acts*

The objects of the *Child Support (Registration and Collection) Act 1988* (Registration and Collection Act) are to ensure:

- that children receive from their parents the financial support that the parents are liable to provide; and
- that periodic amounts payable by parents towards the maintenance of their children are paid on a regular and timely basis; and
- that Australia is in a position to give effect to its obligations under international agreements or arrangements relating to maintenance obligations arising from family relationship, parentage or marriage.

The objects of the *Child Support (Assessment) Act 1989* (Assessment Act) are to ensure:

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<sup>1</sup> Cabinet Sub-Committee on Maintenance (1986), *Child Support: A discussion paper on child maintenance*, p. 14.

<sup>2</sup> The objectives were originally listed in the Cabinet Sub-Committee paper referred to in footnote 1. Objective d) above was amended to include reference to “both parents”, following the then Government’s acceptance of Recommendation 5 of the report of the Joint Select Committee on Certain Family Law Issues in 1997. See *An examination of the operation and effectiveness of the Child Support Scheme: Government Response to the Report by the Joint Select Committee on Certain Family Law Issues*, November 1997, p. 3.

<sup>3</sup> Cabinet Sub-Committee on Maintenance, *ibid*.

- that children receive a proper level of financial support from their parents; and
- that the level of financial support to be provided by parents for their children is determined according to their capacity to provide financial support and, in particular, that parents with a like capacity to provide financial support for their children should provide like amounts of financial support; and
- that the level of financial support to be provided by parents for their children should be determined in accordance with the costs of children; and
- that persons who provide ongoing daily care for children should be able to have the level of financial support to be provided for the children readily determined without the need to resort to court proceedings; and
- that children share in changes in the standard of living of both their parents, whether or not they are living with both or either of them; and
- that Australia is in a position to give effect to its obligations under international agreements or arrangements relating to maintenance obligations arising from family relationship, parentage or marriage.

### **1b. Who is in the Scheme?<sup>4</sup>**

There were around 1.3 million parents involved in the Scheme in 2012-13, and more than 40 per cent of Australian families who receive Family Tax Benefit (FTB) include a child support parent<sup>5</sup>. The Scheme covers about 1.1 million children, with more younger children than older children (693,000 aged 0-12 years compared with 393,000 aged 13 or older).

A significant proportion of child support parents re-partner, which means other adults and children are indirectly impacted by the Scheme. It is not uncommon for parents who have more than one child support case to be a payer in one case and a payee in another, although the majority (90 per cent) of payees are female and the majority (also 90 per cent) of payers are male.

The incomes of parents involved in the Scheme are, on average, significantly lower than that of parents in the general population who have not separated. The average taxable income of child support payees at June 2013 was \$28,500<sup>6</sup>, and around 57.6 per cent of payees in active cases receive an income support payment, typically Parenting Payment, Newstart Allowance or Disability Support Pension. The average taxable income of payers was \$46,100<sup>7</sup>, and about 23.6 per cent of payers receive an income support payment (typically Newstart Allowance or Disability Support Pension). The average annual liability is around \$4,400<sup>8</sup>, however, in over 36 per cent of cases, the annual rate of child support is less than \$500.<sup>9</sup>

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<sup>4</sup> All data in this section is as at 30 April 2014 from DHS internal data, unless otherwise specified.

<sup>5</sup> DSS internal data.

<sup>6</sup> Ibid. This does not include non-taxable payments such as FTB and child support.

<sup>7</sup> Ibid. This figure is before child support payments are made.

<sup>8</sup> Ibid. This is a point in time figure from 31 December 2012 and includes nil liabilities.

<sup>9</sup> For a breakdown of annual rates payable by collection status see **Attachment A**.

## **2. Changes to the Scheme**

Changes to the Scheme since its introduction in 1988 have mainly arisen from the findings of a number of parliamentary inquiries and external reviews.

### **2a. The 1993-94 Joint Select Committee inquiry into the Scheme**

In the years following the introduction of the Scheme, there was growing criticism by child support payer and payee lobby groups about:

- the fairness of the child support formula and other mechanisms and provisions of the Scheme;
- the effectiveness of the Child Support Agency (CSA) in collecting child support payments; and
- aspects of administrative processes and customer responsiveness of the CSA.

In 1993-1994, a Parliamentary Joint Select Committee (the 93-94 Committee) undertook a major inquiry into the operation and effectiveness of the Scheme. The 93-94 Committee supported the continuation of the Scheme but found there were many significant problems with its design and operation. It made 163 recommendations for changes to the Scheme, the majority of which were fully or partly agreed to and implemented.

Key among these was:

- the introduction of a \$260 a year minimum child support liability;
- an increase to the payer 'self-support' exempt income amount;
- a reduction in the payee 'disregarded income' amount (the implemented reduction was much less than the 93-94 Committee's recommendation);
- crediting of up to 25 per cent of the child support liability through in-kind payment of certain prescribed items;
- giving the Registrar discretion to substitute private collection for agency collection where payers had a good payment record;
- the introduction of an internal objections process under the Assessment Act;
- assessment on the most current taxable income;
- taking account of child support paid when calculating the eligibility for family assistance for the payer's family;
- giving the Registrar power to initiate a departure from an assessment where the payer's taxable income does not represent their income or earning capacity; and
- requiring the government to commission new costs of children research to enable a more detailed future evaluation of the fairness and appropriateness of the formula.

## **2b. The 2003 Standing Committee inquiry into child custody arrangements**

By 2003, a growing number of separated fathers were voicing their desire to have more day-to-day care of their children, and there was a concern from some separated fathers and family law analysts that family law presumptions regarding shared care were unfair.

At the same time, there was still ongoing public concern about aspects of the Scheme. For example, some of the 93-94 Committee's recommendations regarding the formula had not been fully adopted or implemented. There were concerns that the CSA was not able to collect all the child support that some payees were owed, and was unable to stop some payers from avoiding their child support responsibilities. The new costs of children research recommended by the 93-94 Committee for evaluating the formula had been produced and published in the late 1990s but no public evaluation of the formula or major changes to it had occurred.

These concerns led to an inquiry into family law presumptions regarding shared care of children, and a further review of the Scheme.

The House of Representatives Standing Committee on Family and Community Affairs undertook an inquiry on child custody arrangements in the event of family breakdown in 2003. Its report (*Every Picture Tells a Story*, December 2003) recommended changes to the presumptions of family law regarding shared care, and among other things recommended that a new parenting payment be introduced for separated parents with minority levels of care to help them with the cost of their children. The 2003 Committee also recommended that a ministerial taskforce be established to examine the formula.

## **2c. The 2006–08 changes to the Scheme**

A review of the formula and some other aspects of the Scheme was undertaken by a Ministerial Taskforce headed by Professor Patrick Parkinson in 2005. Its report, *In the Best Interests of Children – Reforming the Child Support Scheme*, was released in May 2005.

The Ministerial Taskforce found that mechanisms and provisions of the Scheme needed to be updated in line with changed behaviour and attitudes in Australian society since the introduction of the Scheme (especially the increased labour force participation levels of mothers, and the increased incidence and expectations of many separated fathers that they should have significant levels of day-to-day care of their children).

The Taskforce made many recommendations for changes to the formula and other aspects of the Scheme, and also for changes to provisions of social security payments available to separated parents. The Taskforce believed that its recommendations better balanced the interests of both parents and would make the Scheme more focused on the needs and costs of children. The Coalition government accepted many of the Taskforce's recommendations. However, some of the recommendations were not taken up or introduced.



A series of major changes were made to the Scheme in three stages, commencing from 1 July 2006, 1 January 2007, and 1 July 2008. The key changes by stage were:

*Stage 1 from 1 July 2006*

- Ensuring uniform access to the ‘with child’ rate of allowance-type income support payments (Newstart Allowance, etc.). Separated parents with 14 per cent care or more were made eligible (if otherwise eligible for un-partnered rates of allowance).
- Introduction of fairer assessment of the capacity of parents to earn income.
- Reduction of the ‘cap’ on child support assessable income to ensure payments better reflected the costs of children. (This was a temporary measure until the introduction of the new child support formula in 2008.)
- Allowing payers to spend a greater percentage of their child support payments directly on their children, by increasing the amount of the liability able to be credited by prescribed payments from 25 per cent to 30 per cent.
- Increasing the minimum payment from \$5 a week to approximately \$6 a week to ensure child support payments keep pace with inflation.

*Stage 2 from 1 January 2007*

- Independent review of child support decisions by the Social Security Appeals Tribunal.
- Simplification of the relationship between the courts and the new Scheme.
- Providing separating parents more time (up to 13 weeks) to work out parenting arrangements before their FTB Part A is affected.
- Improved arrangements for parents who dispute a child’s paternity.

*Stage 3 from 1 July 2008*

- A new child support formula (discussed in more detail below).
- Changes to the eligibility and rates of FTB for separated parents (discussed in more detail below).
- In certain circumstances, allowing parents to have extra income that was earned after separation excluded from their child support assessment.
- Allowing parents to apply to have their responsibility for dependent step-children recognised in limited circumstances, through the Change of Assessment process.
- More flexible arrangements, with better legal protection for parents who want to make agreements between themselves about the payment of child support and for how lump sum payments are treated.

### *The new formula*

The new formula introduced in 2008 is markedly different to the old formula:

- 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. The estimates are set out in *Costs of Children* tables (see **Attachment B**) in the formula.
- The combined child support assessable income of both parents determines the overall costs of children figure that applies, and the proportion of that figure that has to be paid as child support is determined by each parent's respective level of income and level of care of the children.
- Both parents are provided with the same 'free area' level of income for self-support purposes.
- Both parents are allocated a 'cost percentage' (see **Attachment C**) that recognises that both parents will directly incur a proportion of the overall costs of children figure if they have significant levels of care. This is to ensure that child support amounts payable under the formula are restricted to being a contribution to the other parent's costs and do not require a payer to pay child support for their own costs of care.
- Children of first and second families are treated more equally in the formula by using the same *Costs of Children* table values.

The new formula, while more complex than the old, still uses parameters that are approximate estimates of parental costs and needs. This is inevitable, given that the interactions of parental income and child support within the broader tax-transfer system are very complex, and change over time.

### *FTB changes*

From 2008, changes to FTB were made to complement the design of the new formula:

- Parents with 10 to less than 14 per cent care were excluded from eligibility to receive a share of FTB.
- Parents with 14 to less than 35 per cent care ('regular care') were excluded from eligibility to receive a share of 'child component' amounts of FTB.
- Parents with 35 to less than 45 per cent care had their rates of FTB reduced.
- Parents with 46 to less than 55 per cent care had a range of small changes to their rates of FTB.
- Parents with 56 to 90 per cent care had their rates of FTB increased.

A 'maintenance income test ceiling' mechanism was introduced to the FTB 'maintenance income test'. In families that have children from more than one relationship, this stops the impact of child support paid by the parent of one or more of the children reducing the FTB assistance of other children that the child support payer is not the parent of.

### 3. The child support formula

Child support payments are calculated according to an administrative formula that uses an ‘income shares’ approach and is based on research into the cost of raising children in Australia. The formula takes into account both parents’ incomes, the level of care they provide for their children, and the associated estimated costs of the children.

#### 3a. Steps in the formula

There are 8 steps in the basic child support formula which commences with the adjusted taxable income of both parents:

1. *Deduct a self-support amount from each parent’s adjusted taxable income (ATI) to work out their child support income.*

The self-support amount is an amount set aside for a parent’s own support, before they are considered to have the capacity to support their children. It is the equivalent of one-third of the annual Male Total Average Weekly Earnings (MTAWE) figure (currently \$23,523).

2. *Work out the parents’ combined child support income.*
3. *Work out each parent’s income percentage.*

The income percentage is each parent’s proportion of the total combined income.

4. *Work out each parent’s percentage of care for each child.*

See Chapter 3c for information about how care percentages are determined.

5. *Work out each parent’s cost percentage according to the Cost Percentage table.*

The percentage of care determines what ‘cost percentage’ is assigned to a parent, representing the overall costs of care of a child that the formula assumes a person meets directly through care. The *Care and Cost Percentages* table is at **Attachment C**.

6. *Subtract each parent’s cost percentage from their income percentage to work out their child support percentage.*

The child support percentage represents the share of the costs of the child the parent is required to meet based on their share of the combined income, less their contribution to the costs of the child provided through direct care. If the parent’s child support percentage is positive, they are the payer.

7. *Determine the costs of each child according to the Costs of Children table at the level of the parent’s combined child support income.*

See Chapter 3d and **Attachment B** for information about the *Costs of Children* table.

8. *Work out the annual rate of child support payable for each child by the parent with the positive child support percentage.*

As part of the 2008 formula amendments, a provision was included in the Assessment Act which prevents a parent with more than 65 per cent care from paying child support to the other parent, even if the formula would otherwise have this result.

### *Other dependent children*

If either parent has a dependent biological or adopted child in their care who is not part of another child support case, a 'relevant dependent child amount' is deducted from their ATI at Step 1. The child must be under 18 years old (or 18 years old but still in secondary school), not be a member of a couple, and be in the parent's care for 35 per cent or more, to be considered a 'relevant dependent child'. The relevant dependent child amount is calculated using the same *Costs of Children* table that is used for children of the assessment, but uses only that parent's income.

### **3b. Income**

Child support assessments are generally based on parents' ATI which comprises the parent's taxable income (including any taxable pension and benefit amounts) as assessed by the Australian Taxation Office (ATO) and the following components:

- reportable fringe benefits;
- target foreign income;
- total net investment losses;
- certain tax-free pensions and benefits; and
- reportable superannuation contributions.

Assessments run for periods of time called 'child support periods'. A child support period is a flexible period starting on the first day of the child support case and lasting no more than 15 months. A new child support period usually starts when the next financial year's tax return is lodged.

The child support period determines which 'last relevant year of income' is used in any given child support assessment. 'Last relevant year of income' means the ATI from the last completed financial year before the child support period starts.

#### ***Example***

If a child support case starts on 16 May 2014, the first assessment will be based on both parents' ATIs from 2012-13, as that is the last completed financial year before the start of the child support period. A new child support period will start when the first parent lodges their 2013-14 tax return, or 15 months after the child support period started, whichever occurs earlier.

The year in which the child support period starts determines which 'basic values' should be used within a child support assessment. 'Basic values' refer to a set of figures used in the calculation of child support assessments, and include:

- MTAW (the percentages in the *Costs of Children* table<sup>10</sup> apply to 1/2 bands of MTAW, with the MTAW figure updated every calendar year);
- the self-support amount figure, which is 1/3 MTAW;
- the default income figure, which is 2/3 MTAW;
- the minimum annual rate and fixed annual rate figures;<sup>11</sup> and
- the child support inflation factor, which was used to index default incomes prior to 1 July 2011, and is sometimes used as the indexation value for agreements or court orders.

For example, if a child support period runs from 1 September 2012 to 1 October 2013, the assessment would use the 2012 basic values for the full period.

#### *When ATI is not available*

Some parents are not required to lodge a tax return, or fail to lodge their tax return on time or at all. There may also be a period where a new child support period has started and one or both of the parents have not yet lodged their tax return (but are within time to do so). In these circumstances, ‘provisional’ or ‘default’ incomes can be used.

If there is income information available, the Child Support Registrar can use that information to determine a parent’s ATI. The information may be available from within DHS (e.g. information about a parent’s income support payments), provided by the parent themselves, or made available by the ATO, employers or other sources.

If the parent lodged their tax return within the previous two years, the Registrar may use that income, inflated by an indexation factor, to determine the parent’s ATI. If it has been more than two years since the parent lodged a tax return, the Registrar may use the indexed income or 2/3 MTAW, whichever is higher.

#### *When new incomes take effect in an assessment*

If a provisional income is in place in a child support assessment, and the parent lodges their tax return or the Registrar determines a new (more accurate) provisional income, there are rules about when those new incomes can affect the assessment. These help minimise the impact on the other party of the case in situations where a parent fails to lodge their tax return on time or fails to provide information about their income to the Registrar in a timely manner.

Because assessments are generally based on ATIs from the last relevant year of income, there is no reconciliation process when the child support period ends. However, the annual rate payable under the assessment can be varied at any time to reflect changes in the parents’

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<sup>10</sup> Refer to Chapter 3d for information about how the *Costs of Children* table was determined. For the table, see **Attachment B**.

<sup>11</sup> Refer to Chapter 3f and 3g for information about the minimum annual rate and fixed annual rate figures respectively.



financial circumstances, the care arrangements, or other events (e.g. such as one of the parents having a baby with their new partner).

### 3c. Care

A parent or non-parent carer's percentage of care for a child is usually calculated based on the number of nights they are likely to provide care for the child in the relevant care period (usually 12 months). There are circumstances where care can be calculated in a form other than nights, for example, where a parent has a significant pattern of day time hours of care and using a care calculation based on a number of nights would result in an unfair assessment of their percentage of care. The percentage of care is used in a child support assessment process to determine the parents' cost percentage figures. The *Cost Percentage* table is at **Attachment C**.

The cost percentage is the proportion of the total relevant figure in the *Costs of Children* table that the formula assumes each parent is meeting directly through the care they are providing. The formula requires payers to make a child support contribution towards a proportion of the other parent's cost percentage. The cost percentage mechanism is designed to prevent parents from having to pay amounts for costs of care that they themselves provide.

The following table outlines the five different terms used to describe a parent or non-parent carer's level of care.

*Table of care levels*

Care type	Percentage of care	Number of nights
Below regular	0 to less than 14%	0 to 51
Regular	14% to less than 35%	52 to 127
Shared	35% to 65%	128 to 237
Primary	More than 65% to 86%	238 to 313
Above primary	More than 86% to 100%	314 to 365

In some circumstances, the percentage of care a parent has will influence other decisions, such as decisions about prescribed non agency payments. For example, a payer must have less than 14 per cent care of all of the children of the relevant child support assessment to have prescribed non agency payments credited (see Chapter 6b).

#### *Written agreements and court-ordered care*

Generally, the actual percentage of care provided for a child is reflected in a child support assessment via the cost percentage mechanism. In some cases, the actual care arrangements may differ from those determined in a court order, parenting plan or written agreement. This may happen for a range of reasons, including where parents agree to a different

arrangement; where one parent fails to provide their court-ordered level of care; or where one parent denies the other parent access to their court-ordered level of care.

In limited circumstances, the percentage of care specified in the written agreement or court order can be used in the child support assessment even if the actual care arrangements are different. If the parent with less care than set out in the written agreement or court order takes reasonable action to reinstate the care arrangement or seek a new arrangement, such as initiating mediation with the other parent, the previous care arrangement can then be reflected in the child support assessment for up to 14 weeks, or 26 weeks in special circumstances. This is referred to as an interim care arrangement.

This timeframe aims to balance the day-to-day needs of the parent with actual care, who is incurring additional expenses and the costs associated with that care, with that of the other parent who has a legitimate right to seek to reinstate the care arrangement previously agreed or ordered.

The current approach to care aims to provide a strong financial disincentive for a parent to contravene a parenting order and withhold the care of a child. A parent who contravenes an order in this way may forgo additional family assistance for a considerable period (14 weeks, up to 26 weeks), and they may also be required to continue to pay child support during that period (if they are a payer based on the percentage of care set by the order). At the same time, they would have to meet the additional costs of the higher level of care out of their own pocket.

DHS and DSS recognise that care and access to children is an emotive issue for some parents. However, the priority for family assistance and child support policy is to direct funds to the care of the child. Therefore, the current policy recognises that it is not appropriate to pay family assistance over an extended period to someone who does not have the care of the child, or to adjust child support payments for care that is not actually being provided.

### **3d. Costs of children**

Figures in the *Costs of Children* table that are used in child support assessments are based on estimates of the costs of children that were developed by the 2005 Ministerial Taskforce using three different methodologies:<sup>12</sup>

- Budget Standards Approach by Dr Paul Henman;
- Patterns of Household Expenditure Approach by Richard Percival and Dr Ann Harding; and
- Literature review of international and Australian research by Dr Matthew Gray.

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<sup>12</sup> P Henman, R Percival, A Harding and M Gray (2007), *Occasional Paper No 18, Costs of Children: research commissioned by the Ministerial Taskforce on Child Support*, Department of Families, Community Services and Indigenous Affairs. Available at <http://www.dss.gov.au/about-the-department/publications-articles/research-publications/occasional-paper-series/number-18-costs-of-children-research-commissioned-by-the-ministerial-taskforce-on-child-support>

### *The formula's Costs of Children table figures*

The Ministerial Taskforce produced consensus estimates of the gross costs of children by averaging together the different sets of estimates developed by experts in costs of children research. It then produced agreed gross costs of children figures as a percentage of gross family income for middle-income families across two broad age ranges (0–12 and 13+) and for different numbers of children. Children aged under five were given the same figures as those aged five to twelve to allow for costs of childcare and forgone parental earnings.

The Ministerial Taskforce then created agreed costs of children estimates for families with different income levels. They then modified these estimates to make them net of the average level FTB (subject to the maintenance income test) that they assumed families in the 2005 social security system would receive if the new child support formula was in place, “smoothing away” any remaining irregularities or inconsistencies.

These net costs of children estimates for 2005 were then transformed into percentages of five ascending bands of ATI. The first band started at an ATI level equivalent to one third MTAW in 2005. Each of the five bands of ATI is equivalent to half the MTAW figure (the total of the five bands was 2.5 x MTAW) and each band had a different set of costs of children percentages. Each year the *Costs of Children* table is reproduced using updated MTAW values, but remains based on 2005 costs of children research.

The *Costs of Children* table provides broad average costs at the level of the parents' combined child support income. It includes costs associated with care such as infrastructure costs (accommodation, bedding) and consumption costs (food, entertainment, transport) and is net of the average levels of FTB that families at particular income levels are assumed to receive. They 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.

### **3e. The other formulas**

There are specific variations to the basic formula for determining child support in the following situations:

- cases involving a non-parent carer;
- parents with more than one child support case;
- multiple cases that involve a non-parent carer;
- non-parent carer cases where one parent is not a resident of Australia or there are special circumstances that make it inappropriate for one parent to be assessed; and
- non-parent carer cases where one parent is deceased.



### **3f. Minimum assessments**

In most cases, a parent liable to pay child support in a case is required to pay at least a minimum rate of child support. Where the formula produces an annual rate below the relevant minimum annual rate, and the fixed annual rate of child support does not apply (see below), a minimum assessment will generally be payable. The minimum annual rate of child support for child support periods starting in 2014 is \$399. For parents involved in more than three cases, the total amount payable is capped at three times the minimum rate and is shared between all the cases using a formula.

If a payer has at least regular care (14 per cent) of at least one of the children in the child support case, they do not have to pay the minimum annual rate in recognition of the costs they incur in providing care.

A parent may apply to have the minimum assessment reduced to nil if their income is less than the minimum annual rate multiplied by the total number of the parent's child support cases.

### **3g. Fixed assessments**

Where a payer has a low income and did not receive income support payments during the last relevant year of income, their assessment will be based on the fixed annual rate of child support. This rate will apply where the parent's ATI is less than the Parenting Payment (single) maximum basic amount (currently \$18,197 per year) and they have less than shared care. The fixed annual rate for child support periods commencing in 2014 is \$1,322 per child. The rate is indexed to the consumer price index each calendar year.

The fixed annual rate addresses situations where parents minimise their taxable income in a way that does not represent their true income or capacity to pay child support.

Where a parent can demonstrate their income is genuinely low and that it would be unjust and inequitable for them to pay the fixed annual rate, the Registrar may accept an application for the fixed annual rate not to apply.

## 4. Variations to the formula

### 4a. Estimates of income

If a parent's income changes, they may be able to have their child support assessment based on an estimate of their ATI, instead of their ATI from the last relevant year. The estimate of income provisions ensure that where a parent's income has decreased (e.g. as a result of becoming unemployed), their child support assessment reflects their current financial circumstances.

#### *Rules for lodging an estimate*

In order for an estimate to be accepted, there cannot be an 'income amount order'<sup>13</sup> in force and the ATI from the last relevant year must be an income as assessed by the ATO or declared by the parent. This means if the parent has not lodged their tax return for the last relevant year of income and there is a provisional income in place, they cannot lodge an estimate.

If it is the first estimate lodged by the parent in the financial year, the estimate must be for an amount 85 per cent or less than the ATI for the last relevant year of income. The parent must provide the Registrar with an estimate of their financial year-to-date income, which is used in the process of reconciling the estimate (see below), unless the parent is estimating for the full financial year.

Once a parent has lodged an estimate, they have a legal obligation to notify the Registrar of any increases or decreases to their income and must lodge a new estimate if they wish to reflect their changed income in the assessment. The Registrar can amend an estimate at any time if the Registrar becomes aware of information or an event that affects the accuracy of the estimate.

#### *Reconciling an estimate*

After the financial year has ended, the Registrar will compare the parent's estimated income with their actual ATI for the financial year. If the parent under-estimated their income, the assessment is amended using their actual income. This may generate arrears payable by the parent if they are a payer, or create an overpayment of child support, if they are a payee.

If the parent over-estimated their income, the assessment is not amended. This prevents overpayments and arrears being generated that would financially benefit the parent who lodged the estimate, and encourages parents to keep their estimate accurate and up to date.

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<sup>13</sup> An 'income amount order' refers to any Change of Assessment or court-ordered decision or child support agreement that sets the ATI or child support income of a parent, or sets the annual rate.

If the parent under-estimated their income by 10 per cent or more, a penalty is applied. The penalty is 10 per cent of the difference between the assessment based on the estimated income, and the assessment based on the reconciled estimate.

A parent may contact DHS verbally, electronically or in writing to make an estimate election. Specialist estimate teams are responsible for discussing the estimate provisions with parents to ensure it is the most appropriate option for them. The specialist teams are also able to provide an integrated service for parents who may need to use the Change of Assessment process (Chapter 5a) as the more appropriate option to have their child support assessment changed.

#### **4b. Additional income earned after separation**

Parents may apply for additional income earned after separation to be excluded from their ATI for child support assessment purposes. This is to recognise that a parent may incur extra costs to re-establish themselves following separation. This provision is available to payers and payees, subject to them meeting a number of requirements:

- The parent must be able to show that they changed their pattern of earnings after separation from the other parent.
- The exclusion of additional income cannot reduce a parent's ATI by more than 30 per cent.
- Any exclusion of additional income is limited to the first three years after the most recent separation between the parents.
- Prior to the separation, the parents must have lived together in a genuine domestic relationship for at least six months.

#### **4c. Extending child support beyond a child's 18<sup>th</sup> birthday**

Child support is generally no longer payable when a child turns 18. However, a carer entitled to child support for a child who is turning 18 can apply to extend a child support assessment (including one based on an agreement) provided the child will be in full-time secondary education on their 18th birthday. The child support assessment or agreement can be extended until the last day of the secondary school year in which the child turns 18.

This option also applies to 'relevant dependent children' who are turning 18 in a year in which they are in full-time secondary education.

Failing to apply for the extension before the child's 18<sup>th</sup> birthday means that the parent will stop receiving child support, and they will not meet the Maintenance Action Test (MAT) for FTB, so their FTB payments will be limited to the base rate. There is currently no recourse for parents to reinstate child support or a higher rate of FTB after the child's 18<sup>th</sup> birthday if they have not applied to extend their child support assessment within the specified timeframe and they have not demonstrated 'exceptional circumstances' to explain their delay in making the application.

Three months before a child turns 18, DHS sends an automatic letter to parents (both private collect and child support collect) to advise them of their options in relation to their 18 year old child. The letter also advises parents that their FTB payments may be affected and that they should contact DHS to discuss.

An application for extension can be accepted if the Registrar is satisfied that the:

- child (or relevant dependent child) has turned 17 (if the child is not 17 at the time of application it is rejected);
- application was made before the child's (or relevant dependent child's) 18<sup>th</sup> birthday or there were exceptional circumstances justifying a later application;
- child (or relevant dependent child) is likely to be in full time secondary education on their 18<sup>th</sup> birthday; and
- administrative assessment or child support agreement in relation to the child is in force or is likely to be in force, on the day before the child's 18<sup>th</sup> birthday or, in the case of a relevant dependent child, an administrative assessment that takes the child into account is in force or likely to be in force, on the day before the relevant dependent child's 18<sup>th</sup> birthday.

## 5. Other types of assessments

The vast majority (95.6 per cent) of cases are assessed under the standard child support formula.<sup>14</sup> While the administrative formula functions as the primary mechanism for determining appropriate child support assessments, the Scheme also provides flexibility to depart from this process in special circumstances, through the Change of Assessment (COA) process.

Alternatively, parents who wish to come to their own child support arrangements can negotiate a child support agreement that can be registered with DHS. Some parents may not be able to apply for an administrative assessment but can apply for a child maintenance order directly from a court.

### 5a. Change of Assessment

The COA process provides a discretionary means of addressing the individual special circumstances of a parent or child, where the parent feels the existing formula assessment produces an unfair result. The COA process limits the circumstances in which the formula can be departed from to ten specified grounds or ‘reasons’ (see **Attachment D** for more detail). In most cases, COA decisions are considered at an administrative level by DHS. However, a parent may apply directly to a court for a COA decision in some circumstances.

In the 2012-13 year, there were around 19,800 applications for COA<sup>15</sup>. The primary reason for which people apply for a change of assessment is that the income, earning capacity, property or financial resources of the parents are not accurately reflected in the formula (Reason 8). The majority of COA decisions where a decision is made to change the assessment involve changes to the parents’ adjusted taxable incomes or to the annual rate of child support.

#### *Open Exchange of Information*

The Open Exchange of Information between parents or the parties involved in the COA process is a requirement under the child support legislation and satisfies the administrative law requirements of procedural fairness and natural justice. Information must be exchanged with all parties in a case to ensure a parent who may be adversely affected by the information has an opportunity to respond and comment on the information before the decision is made.

Where parents do not wish certain (sensitive) information to be exchanged with the other parent, for example information about a medical condition, DHS explains the legal requirement to exchange all information (except for information such as addresses or phone numbers) and provides the parent with the option of withdrawing the document and resubmitting it without the sensitive information.

<sup>14</sup> DHS internal data.

<sup>15</sup> DHS 2012-13 Annual Report, p. 75.

### *COA Reform*

The highly discretionary nature of COA can result in some variation in decision making across similar looking cases. This has led to a perception of bias amongst a number of parents and stakeholders. Additionally, some parents find the process intrusive and adversarial as they are required to disclose detailed financial and other personal information.

The 2005 Ministerial Taskforce report identified COA as an area for further improvement, suggesting simplification of the process and clarification of considerations for decision makers.

DHS undertook a trial of non-legislative improvements to the COA process in 2010. This trial involved introducing a simplified and shorter decision making process, including early and more frequent customer involvement in the process, reducing COA decision-making timeframes and improving the early identification of alternative service (or administrative) options. Following the evaluation of this trial, the revised COA service delivery approach was rolled out in full.

A significant shift was to have the decision maker involved at the start of the application process, as opposed to the previous process where the decision maker was not involved until day 35-45. Decision makers are now in contact with parents within days of the application being allocated. Other benefits realised have included:

- a more inclusive process for parents, with the opportunity for the decision maker and parents to discuss and identify the right evidence to support their application or response;
- more information can be exchanged verbally with the decision maker, rather than having to write down their evidence and send it in. This can shorten the timeframe needed to make a decision;
- parents have a better understanding of the decision made with a discussion with both parents to explain their written Notice of Decision; and
- a considerable drop in the numbers of objections made compared to the previous process used.

### **5b. Agreements**

Parents can choose to negotiate their own child support arrangements through a child support agreement. There are two broad categories of agreements: 'binding' and 'limited', which have different requirements in order to be accepted by the Registrar. Agreements can specify the amount, frequency and method of payments. Child support payable under an agreement can be transferred privately between parents or DHS can collect payments on the payee's behalf.

### *Limited agreements*

Limited child support agreements offer some flexibility in how parents determine their own child support arrangements. They do not require the parents to have received legal advice before entering into the agreement. However, at the time the parents submit their agreement to the Registrar for acceptance, an administrative assessment must be in place. In addition, for a limited agreement to be accepted, the rate payable under the agreement must be for at least the annual rate of child support that would otherwise be payable under an administrative assessment.

### *Binding agreements*

Binding child support agreements can be for any amount, regardless of what parents may be entitled to under an administrative assessment. Each party to a binding agreement must have received independent legal advice regarding the agreement before signing it.

Binding agreements offer a degree of certainty for parents as they cannot be varied unless the parents reach consensus, obtain legal advice, and register the terms as a new binding agreement.

Agreements that were accepted prior to 1 July 2008 but continued to have effect after 1 July 2008 are known as ‘transitional agreements’. These types of agreements did not require the parents to seek legal advice prior to entering into the agreement. The Registrar reviewed these agreements prior to this date to determine whether the agreement’s provisions could continue to operate under the new legislation. These agreements are considered binding agreements but have slightly different rules for termination than other binding agreements.

### *Notional assessments*

A ‘notional assessment’ is the child support amount that would have been payable under a formula assessment but for the agreement. The notional assessment amount is used to calculate the relevant amount of FTB Part A payable to either parent (if eligible), regardless of the child support liability payable under the agreement. Notional assessments can be varied to take into account changes to the care arrangements or either parent’s financial circumstances.

### *Terminating an agreement*

A binding agreement can be terminated by the parents entering into a new binding agreement. Parents can also negotiate a ‘termination agreement’ which ends their previous agreement from a specified date, but does not enter into new terms to continue paying child support under an agreement. Alternatively, either parent can apply to court to have the agreement ‘set aside’, although certain criteria regarding exceptional circumstances and hardship apply.

Because transitional binding agreements were entered into without legal advice, they can be terminated by an agreement in writing signed by both parents that terminates the other

agreement. Alternatively, parents can end a transitional agreement in the same way as other binding agreements.

Limited agreements can be terminated by another agreement, binding or limited, that ends the previous agreement and sets out new agreement terms. Parents can also negotiate a termination agreement or apply to court to set aside the agreement. If it has been more than three years since the agreement was made, either party can terminate the agreement by writing to notify the Registrar that they wish to do so. Limited agreements can also be terminated if the notional assessment differs by more than 15 per cent from the previous notional assessment issued in circumstances not contemplated by the agreement.

### **5c. Court orders**

For those parents or children who are not eligible for an administrative assessment, child maintenance can be determined by a court with family law jurisdiction. For example, where the other parent lives in a country that does not have reciprocal arrangements with Australia to accept administrative assessments for child support, or for a child over 18 who has a physical or mental disability.

In addition to child maintenance orders, the following liabilities can be registered and enforced by the Registrar once obtained from a court:

- parentage overpayment orders<sup>16</sup>;
- orders for step-parents to pay child maintenance;
- spousal and de facto maintenance orders;
- court-registered agreements; and
- some overseas maintenance liabilities<sup>17</sup>.

The Registration and Collection Act also makes provision for the making of ‘stay orders’. These orders are injunctive in nature and can order the Registrar to ‘stay’ an administrative assessment, a particular decision, or even a collection activity under the Act.

#### *Court-varied assessments*

A parent can apply directly to a court if they are dissatisfied with a limited number of decisions made by the Registrar under the Assessment Act. These include applications to court for a declaration of parentage where an application for a child support assessment has been refused, or where the Registrar has refused to change an assessment because the matters are too complex. A parent can also apply to a court if they believe the SSAT has made an error of law in reviewing a decision made by the Registrar. There are currently about 670 cases (or 0.1 per cent of all cases) varied by a court order.<sup>18</sup>

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<sup>16</sup> See Chapter 6c for information about payee overpayments.

<sup>17</sup> See Chapter 8 for information about overseas maintenance.

<sup>18</sup> DHS internal data.



## 6. Collection and enforcement

Since the Scheme started in 1988, as at 30 June 2013 parents have transferred \$41.9 billion or 97 per cent of all liabilities raised (2012-13 Annual Report, page 74).<sup>19</sup> As at 31 March 2014, there was \$1.35 billion in outstanding child support. This comprises approximately \$980 million of domestic and \$370 million of international child support debt.<sup>20</sup> This represents the total debt that remains outstanding since the Scheme commenced in June 1988.

### 6a. Private collect and Child Support collect

Payees can choose to collect their child support entitlement from the payer themselves. This method is known as 'private collect' and encourages parents to make their own arrangements for the transfer of child support. As at 30 June 2013, 54 per cent of cases were registered for private collect.<sup>21</sup> When a case is private collect, DHS will issue periodic assessment notices but does not keep records of what payments have been made or what debt is owing. The total value of assessments in private collect cases for 2012-13 was \$2 billion.<sup>22</sup>

Where appropriate, parents are encouraged to make private arrangements. Circumstances where it may not be appropriate to encourage private arrangements include:

- where there is a risk of family violence or ongoing disputes between the parents;
- where there is information to suggest that the payer will not comply with making private payments; or
- when the payee cannot collect payments (e.g. payer is in gaol) or the incomes are not accurate.

If a payee is having difficulty collecting their child support privately, they can request DHS take over collection on their behalf. An application for collection can be made orally or in writing (using the relevant form) by a payee. A payer cannot make an application for collection, unless the application is made jointly with the payee.

When a case is 'Child Support collect', the liability becomes a debt due to the Commonwealth. The payer must make payments to DHS, who then disburses the payments to the payee. DHS maintains records of all payments made and disbursed, and may take enforcement action to collect any outstanding debt. In 2012-13, DHS transferred \$1.4 billion between parents in 'Child Support collect' cases.<sup>23</sup>

When a payee asks for their private collect case to be made collectible for the first time, the application **must** be accepted. Subsequent applications for collection must be granted unless DHS is satisfied that the payer has complied with their obligations or has explained

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<sup>19</sup> DHS Annual Report 2012-13, p. 74.

<sup>20</sup> DHS internal data.

<sup>21</sup> DHS Annual Report 2012-13, p. 15.

<sup>22</sup> Ibid, p. 74.

<sup>23</sup> Ibid.

why their payments were untimely and is now making regular payments, or there are special circumstances which make it appropriate to refuse the application.

The payee can also ask DHS to collect unpaid amounts for up to three months (or nine months in exceptional circumstances) immediately before the payee makes the request to have the case collectible. The arrears amount, if any, together with the ongoing liability, becomes a debt due to the Commonwealth.

A payee, or the payee and payer jointly, may elect for the Registrar to end collection of the liability, with future payments to be made privately. They may also elect for the Registrar not to collect any arrears of child support, or they may choose to leave the arrears to be collected by the Registrar. Should the private collection arrangement not work out, the payee can again request collection by the Registrar by making a subsequent application for collection.

## **6b. Methods of payment, collection and enforcement**

### *Voluntary payments*

For cases where DHS collects and disburses child support on behalf of the parents, payers can make voluntary payments, for example through BPAY or credit card, or can choose to have deductions from their salary or Centrelink payments.

### *Employer withholding*

DHS is required to collect registered maintenance liabilities by deductions from the payer's wage or salary if it is practicable to do so. However, under the legislation, employers must not deduct the full amount if it would leave the employee with less than the 'protected earnings amount' (PEA). The PEA is prescribed as 75 per cent of the maximum fortnightly basic rate of Newstart Allowance for a person over 21, partnered with no children, and is currently \$339.23 per week. Employer withholding accounts for 37 per cent of all child support collected. It cannot be used for cases which have ended with arrears.

### *Non-agency payments (NAPs)*

Payers may make payments directly to the payee or to a third party or make non-cash transactions such as a transfer of property, in lieu of child support. Either parent may ask for that payment to be counted as child support. Before crediting, DHS must be satisfied that, at the time the payment was made, both parents intended for it to count as child support. To make an informed decision, DHS will attempt to contact both parents and may seek supporting evidence if the payment or its intention is disputed. However, if both parents agree that the payment was intended as child support, that is, the payment is not disputed, it can be credited towards the child support liability as a non-agency payment.

If the parents do not agree that the payment was intended to be for child support, certain prescribed NAPs (for example, for school fees, or for the payee's share of rent costs) may still be recognised for payers with less than 14 per cent care of the children. Prescribed NAPs

are credited at up to 30 per cent of the child support liability, provided the remaining 70 per cent is paid by the payer.

### *Debt offsets*

If the parents swap roles after a case is registered for collection, for example, due to a care change, any arrears owed at the time as 'Child Support collect' to the previous carer can be offset against the child support liability amount now payable by that parent as 'Child Support collect'. However, a debt owing from a private collect period cannot be used to offset amounts payable to the Commonwealth.

Once a debt is fully recovered under an offset arrangement, any future child support liability will be payable from the current payer to the payee.

### *Negotiating payments*

In negotiating repayment of child support debt, DHS officers use a debt repayment methodology. DHS aims to have the debt repaid in the shortest possible time. To achieve this, the debt repayment methodology uses a hierarchy which helps to maximise collection outcomes from parents with debt. The hierarchy is as follows:

Payment hierarchy	Method
Payment in full	Immediate recovery of debt through a one-off lump sum payment
Three instalments	Recovery of debt within a short timeframe through three instalments <b>or</b> a lump sum plus up to three instalments
Ongoing payment arrangement	Ongoing repayment amount, based on a standardised capacity formula
Hardship	Ongoing repayment amount, based on an individual assessment of financial hardship

A periodic payment arrangement does not prevent the Registrar from using other collection methods if they become available. This could include taking enforcement action if DHS receives information about a parent's financial circumstances that indicates the arrangement is no longer appropriate or there is now further capacity to repay the debt.

### **Enforcement methods**

If payments are not made as required, the Registrar can use a range of enforcement powers as described below.

*Tax refund intercepts (s72 of the Registration and Collection Act)*

The ATO notifies DHS when a tax refund is available and due to be paid to a taxpayer who is also a child support payer with debt. DHS will intercept the refund and apply it against the person's child support debt.

*Collection from third parties (s72A of the Registration and Collection Act)*

DHS can issue a notice to someone who owes money to a child support debtor, requiring that the money be paid to DHS in satisfaction of child support related debts. Such notices are often served on financial institutions, employers (when employer withholding is not possible or appropriate) and conveyancing companies. Notices can also be served on payers who are sole traders. Funds held in the name of a company or partnership, however, cannot be garnisheed, even where the payer is the sole director or shareholder.

The garnishee power is separate from the Registrar's power to intercept tax refunds or deduct amounts from pensions or benefits. Additionally, where a person within Australia is controlling money on a child support debtor's behalf while the child support debtor is overseas, a notice may be issued to that person requiring the money be paid to DHS, and requiring future payments as they become due.

*Deduction from social security payments (s72AA of the Registration and Collection Act)*

The Registrar can request amounts be deducted from a child support payer's social security pension or benefit in order to collect that person's child support debt. The most that can be deducted is three times the minimum annual rate (\$45.87 per fortnight).

Deductions can be made from social security benefits and pensions, such as Youth Allowance, Newstart Allowance, Parenting Payment, Age Pension, and Disability Support Pension.

*Collection from Family Tax Benefit (s72AB of the Registration and Collection Act)*

A payer who provides between 35 per cent to 65 per cent care for a child for whom they pay child support, can be paid FTB for that child. Deductions from a payer's FTB payment can be made if the child support debt relates to the same child for whom the parent receives FTB. This may reduce the payer's FTB payment to nil. Any amounts deducted are sent to the Registrar and applied to the payer's child support debt. Deductions cannot be made from a payer's FTB payment for other children.

*Collection from veterans' pensions and allowances (s72AC of the Registration and Collection Act)*

Child support can be deducted from certain veterans' pensions and allowances in order to collect a person's child support debt, including: age, invalidity and partner service pension; income support supplement and Defence Force Income Support Allowance. The most that can be deducted is three times the minimum annual rate.

### *Collection from parental leave payments (s72AD of the Registration and Collection Act)*

The Registrar can collect a payer's child support and spousal maintenance payments by making deductions from parental leave pay payable to that person by Centrelink.

### *Departure Prohibition Orders (DPOs)*

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 (see below), the AFP will prevent the payer from leaving.

In the 2012-13 financial year, 467 new DPOs were issued. A total of \$6.7 million was collected through DPOs during the 2012–13 year.<sup>24</sup>

### *Departure Authorisation Certificate (DAC)*

Where a DPO is in force, a payer can apply, verbally or in writing, for the issue of a DAC. A DAC allows a child support debtor to depart Australia despite a DPO being in place. A DAC does not revoke a DPO, however, it places strict limits on when a payer may depart Australia. The Registrar must issue a DAC in situations where:

- a debtor is likely to depart and return to Australia within a specified period, revocation of the DPO is likely, and security for the debtor's return to Australia is not necessary; or
- the debtor has provided appropriate security for their return to Australia by a specified date; or
- the debtor is unable to provide appropriate security for their return to Australia, however a DAC is to be issued on humanitarian grounds or in Australia's interests.

There is no discretion to issue a DAC in other situations.

Security can be given by a bond, deposit or other means. If the debtor does not return by the agreed date, the security will be forfeited to the Commonwealth. It cannot be applied against the outstanding child support debt. Where the debtor does return, the security deposit must be returned to the debtor and cannot be applied to the child support debt.

### *Court action*

The Registrar can bring proceedings in any court with family law jurisdiction, including the Federal Circuit Court and state, local and magistrates courts. The Family Law Act and Rules

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<sup>24</sup> DHS Annual Report 2012-13, p. 204.

(and related Federal Circuit Court Rules) apply to child support enforcement proceedings under the Registration and Collection Act as if the proceedings had been brought under the Family Law Act.

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. However, the payee of a registered maintenance liability can bring court proceedings to recover amounts owed by the payer to the Registrar. If a payee chooses to take court action they must give prior notice to 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.

#### *Late payment penalties*

DHS can impose penalties when payers fail to pay their child support obligations by the due date. Penalties are debts due to the Commonwealth and are paid into consolidated revenue, not paid to payees. Penalties are imposed at the general interest charge rate (currently 9.63%) on the maintenance amount outstanding on the account. The general interest charge is set by the *Taxation Administration Act 1953*.

DHS can remit a late payment penalty in part or in full and can decide to remit penalties whether or not they have been paid. The purpose of penalties is to encourage parents to comply promptly with their obligation to pay child support and to discourage late payment. Penalties are generally remitted when parents voluntarily pay their outstanding child support.

#### **6c. Payee overpayments**

Payee overpayments occur when an amount of child support collected and disbursed by the Registrar is subsequently found to be in excess of the payee's entitlement. For example, payee overpayments can arise where the Registrar makes a retrospective amendment to a child support assessment, or gives effect to a court order or declaration with retrospective effect, or money that is received from a third party in error is disbursed to the payee.

Under current administration, most payee overpayments are treated as debts to the Commonwealth under section 79 of the Registration and Collection Act and are recovered by DHS from the payee. Where overpayments do not fall within section 79, the payer may pursue recovery in court under section 143 of the Assessment Act.

*Methods for recovering payee overpayments*

Payee overpayments can be recovered from payees by withholding amounts from the payee's ongoing child support entitlement, negotiating a payment arrangement with the payee, or intercepting the payee's tax refund. When negotiating a payment arrangement, the Registrar will give consideration to the payee's financial resources in relation to their caring responsibilities.

## **7. Objections, appeals and the court system**

Many decisions made by the Registrar can be reviewed through the objections process, which is an internal process of administrative review. Objection decisions can be reviewed by the Social Security Appeals Tribunal (SSAT) and some decisions can be reviewed by the Administrative Appeals Tribunal (AAT). However, SSAT and AAT decisions can only be appealed to court on a question of law, not for merits review.

### **7a. Objections**

The objections process is a system of internal administrative review within DHS of decisions made by the Registrar. If parents disagree with a decision on their case, they can lodge an objection to have DHS reconsider the decision. In most cases, a copy of the objection and supporting information will be provided to the other parent for comment, as required by the legislation.

Decisions that are subject to the objections process are listed in the Registration and Collection Act. Some decisions, such as those relating to the issuing of Departure Prohibition Orders and parentage, can only be appealed directly to a court.

#### *DHS management of objections*

Objections, other than for care percentage decisions, must be lodged in writing. Parents wishing to object must state the grounds for their objection by identifying the decision and explaining why they believe the decision is wrong. If the grounds are unclear, the person wishing to object is contacted so that they are able to clarify their grounds, to assist the objection process.

Objections to care percentage decisions may be lodged verbally or in writing. Objections to care percentage decisions may also be reviewed under family assistance legislation. DHS will provide parents with an explanation of the child support objection and family assistance review processes where necessary. Generally, the decision will be reviewed in line with the legislation under which the original decision was made and the final decision from the objection or review will apply to both child support and FTB.

Once the likely outcome of the objection is known, both the applicant and the respondent will be contacted and provided with an opportunity to present further information and comment on submissions made by the other party prior to a decision being finalised. The Objections Officer will then provide their decision in writing, stating the reasons for the decision (Statement of Reasons) and notification of appeal rights.

### **7b. SSAT and AAT appeals**

#### *Appeals to the SSAT*

A parent who has objected to the Registrar's original decision, or the other party to the decision, may apply to the SSAT for a review of the objection decision. Decisions to refuse



an application for an extension of time to lodge an objection can also be appealed to the SSAT.

Parents are required to lodge an appeal with the SSAT within 28 days of the day that they received notice of the Registrar's decision, or 90 days if the parent is a resident of an overseas reciprocating jurisdiction (however, there is no time limit for appeals of care percentage objections). If the parent does not appeal in time, they may apply for an extension of time. Applications for review to the SSAT can be made by phone, in person or in writing.

During the 2012-13 year, the SSAT reviewed 1,900 child support decisions. Of those, about 780 were set aside or varied, 460 were affirmed and the remainder were withdrawn or dismissed. The SSAT reports a change rate of 41.2 per cent.<sup>25</sup>

#### *Appeals to the AAT*

The AAT has jurisdiction to review certain decisions of the Registrar, which include decisions relating to whether to revoke or vary a Departure Prohibition Order and whether to issue a Departure Authorisation Certificate.

The AAT can also review care percentage decisions made by the SSAT and decisions by the SSAT to refuse to grant an extension of time to apply to it for a review. During the 2012-13 year, there were 30 appeals to the AAT.<sup>26</sup>

Appeals to the AAT must be lodged in writing within 28 days after receiving notice of the Registrar's or SSAT's decision, although extensions of time can be sought.

### **7c. Court review of decisions**

#### *Appealing a decision by the SSAT or the AAT to a court*

Decisions made by the SSAT, which cannot be appealed to the AAT, can be appealed to court on a question of law and not for merits review. These appeals are generally made to the Federal Circuit Court but can be made to any court with appropriate jurisdiction. The court may make orders to set aside the decision of the SSAT; affirm the decision of the SSAT; or direct the case back to the SSAT for rehearing, with or without the hearing of further evidence.

Matters that can be heard by the AAT can be appealed to the Federal Court on a question of law.

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<sup>25</sup> SSAT Annual Report 2012-13, p. 44.

<sup>26</sup> SSAT Annual Report 2012-13, p. 17.

## 8. International maintenance

An international child support case exists where either parent resides outside Australia and a maintenance liability has been registered in Australia. The maintenance liability may arise from an Australian assessment or court order, or from an overseas liability registered for collection in Australia.

### 8a. Overview of Australia's international maintenance arrangements

Australia operates under a range of international arrangements for child support, which include a number of agreements and conventions about maintenance obligations to which Australia is a party. These are the bilateral agreements with New Zealand and the United States of America (US), as well as two multilateral conventions, the 1973 *Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations* and the 1956 *United Nations Convention on the Recovery Abroad of Maintenance*.

Australia also has cooperative arrangements with a number of Commonwealth and European jurisdictions that are not formalised into an agreement or treaty, otherwise known as 'non-treaty' arrangements. These arrangements were predominantly developed when Australian states and territories had responsibility for maintenance prior to enactment of the Family Law Act in 1975.

The jurisdictions with which Australia has some form of international maintenance arrangement are referred to as reciprocating jurisdictions, of which there are 97.

There is significant variation in the recognition and enforcement outcomes that are achieved across jurisdictions, which are influenced by factors such as the effectiveness of Australia's relationship with each jurisdiction; the jurisdiction's maintenance legislation; their legal system and whether it is judicial or administrative; and the nature of the government infrastructure in the reciprocating jurisdiction.

As at 31 March 2014, there were around 13,700 international cases where the payer is in Australia, and 28,100 international cases where the payer lives outside Australia.<sup>27</sup> The majority of international cases involve parents who live in New Zealand, the United Kingdom, the US and Canada.

### 8b. Management of international child support cases

DHS provides assistance to relevant overseas authorities, as required (e.g. customer location, service of notices, and collecting the liability). DHS directs customer enquiries about an overseas assessment, including the liability and debt values, to the overseas authority that issued the liability. DHS can also assist an Australian parent by transmitting any notifications or objections.

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<sup>27</sup> DHS internal data.

### *Summary of the arrangements*

The Registrar can:

- make and continue a child support assessment where the payer resides overseas in a reciprocating jurisdiction, provided that the other parent is a resident of Australia;
- accept an application for assessment from a payee or payer overseas when transmitted through the overseas Central Authority;
- accept an application for assessment from an overseas Central Authority applying on behalf of a payee in a reciprocating jurisdiction;
- accept an application for assessment made directly by the payer who is a resident of a reciprocating jurisdiction;
- register and enforce an overseas maintenance assessment; maintenance order; ‘agency reimbursement liability’; maintenance agreement; or arrears that have accumulated under an overseas maintenance liability;
- transmit an application for review or variation of a liability made in an overseas country; and
- assist overseas authorities with location and service requests for parents in Australia.

## 9. Interactions with family assistance<sup>28</sup>

Currently, of the 1.5 million FTB Part A instalment recipients, around 610,000 (or 40 per cent) are involved in the Scheme in the sense that they:

- were in receipt of child support payments;
- paid child support; or
- were partnered to a child support payee or payer.

### 9a. Maintenance action test (MAT)

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. If the parent (or their partner) does not meet this requirement, only the base rate of FTB Part A is payable in respect of the child and the child is not included for Rent Assistance purposes.

Parents have 13 weeks to take action to obtain maintenance for a child, beginning from when the parent first becomes entitled to apply for maintenance.

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.

#### *Exemptions from the MAT*

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).

#### *Impact of the MAT on FTB recipients*

As at 28 March 2014, FTB Part A recipients failed to take maintenance action in relation to 9.1 per cent of children for whom maintenance action was applicable, resulting in the FTB Part A recipients losing an average of \$3,463 in FTB Part A payments per year.

### 9b. Maintenance income test (MIT)

‘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, including Rent Assistance.

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<sup>28</sup> All data in this chapter is from DSS internal data.

The way the MIT works is to:

- assess whether maintenance income is greater than the maintenance income free area ('free area'), and
- reduce the rate of FTB Part A by 50 cents for every dollar of maintenance income over the free area until the base rate is reached.

#### *The maintenance income free area*

Only maintenance over a certain amount is subject to the MIT. In 2013-14, a parent with one child who is not a member of a couple can receive up to \$1,478.25 in maintenance per year, before their FTB is reduced (plus \$492.75 for each additional child).

#### *Maintenance income test ceiling*

The maintenance income test ceiling applies to FTB recipients who have FTB children from more than one relationship. It ensures that 'child component' amounts of FTB in respect of other children in the family are not affected by the maintenance received for child support children.

#### *The impact of the maintenance income test*

As at 28 March 2014, 58 per cent (or 301,000 of 520,000) of FTB Part A recipients who were entitled to receive child support had some reduction to their FTB Part A payment due to the MIT. The average amount of maintenance income received per parent who had an entitlement greater than \$0 was \$4,681 per year, and the average amount per child was \$2,868.

### **9c. Income**

#### *Definition of ATI*

'Adjusted taxable income' is used in both the child support and family assistance systems. The definition is generally aligned except that the 'grossed up' value of reportable fringe benefits is used in child support, i.e. the gross taxable income that would need to be earned in order to pay for the fringe benefit from after-tax income. For FTB purposes, only the net value of the fringe benefit is used (i.e. 'adjusted fringe benefits').

#### *Deductible child maintenance expenditure*

If a payer is also entitled to receive FTB Part A, they can have 100 per cent of their child support expenditure deducted from their income when calculating their ATI for FTB purposes for a particular year. There are currently around 68,000 FTB Part A recipients or their partners who have had deductible child maintenance expenditure taken into account in their ATI. This has resulted in an average reduction in ATI of \$4,540.

#### **9d. Care determinations**

In 2010, changes to the way care determinations are made for family assistance and child support were introduced. These changes aligned care determinations made under the family assistance and child support legislation.

Prior to these changes, the rules for making a determination of care differed between family assistance and child support. This often resulted in different percentages of care being determined for the purpose of assessing a parent's FTB entitlement and their child support assessment, causing confusion for families. Also, families did not receive their correct assessments of FTB and child support unless they separately notified Centrelink and Child Support of changes to their care arrangements.

## 10. Support for separated families

### 10a. Family relationship services<sup>29</sup>

The Commonwealth Government provides assistance to high conflict families through a suite of programmes and services. The Families and Children Activity, formerly the Family Support Program, under the Families and Communities Programme, provides a range of services, predominantly focused on early intervention, prevention and support, including assistance for relationship breakdown. Of those services, Family Law Services and Family and Relationship Services are particularly focused on providing assistance to high conflict families.

In addition, and as part of this, the Families and Children Programme funds the Family Relationship Advice Line and Family Relationships Online, to help families access information and resources to assist them in their individual circumstances.

The combined appropriation for the Family Support Program in 2013-14 was \$307.2 million.

From 1 July to 31 December 2013, Family Law Services and Family and Relationship Services (FaRS) were provided to around 242,000 clients by 226 organisations operating from 1,080 outlets.

#### **Family Law Services**

Family Law Services aim to provide alternatives to formal legal processes for families who are separated, separating or in dispute to improve their relationships and make arrangements in the best interests of their children. Family Law Services have a particular role to help families with complex needs, including those with family violence issues.

Family Law Services have a number of components, including (but not limited to) the below:

##### *Family Relationship Centres (FRCs)*

- FRCs are a highly visible entry point or gateway to the whole family support service system. Throughout Australia, 65 centres provide information, support and referral services to all families and provide family dispute resolution and access to some legal assistance for separating or separated families.

##### *Children's Contact Services*

- Children's Contact Services enable children of separated parents to have safe contact with the parent they do not live with in circumstances where parents are unable to manage their own contact arrangements. Children's Contact Services provide a safe, neutral venue for the transfer of children between separated parents. Where there is a

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<sup>29</sup> All data in this section is DSS internal data.

perceived or actual risk to the child, they provide supervised contact between a child and their parent or other family member.

### *Supporting Children after Separation*

- The Supporting Children after Separation Program aims to support the wellbeing of children under the age of 18 from separated or separating families who are experiencing issues with difficult family relationships. The services help children and young people deal with issues arising from the breakdown of their parents' relationship and the circumstances in which they find themselves, and provide opportunities for them to participate in decisions that impact on them.

### *Parenting Orders Program – Post Separation Cooperative Parenting Services*

- The Parenting Orders Program – Post Separation Cooperative Parenting services help separated or divorced families who are in high conflict to work out parenting arrangements in a manner which encourages consideration of what is in a child's best interests in establishing or maintaining relationships, while at the same time ensuring the safety of all parties. It helps parents manage their conflict and understand the effect their conflict is having on their children.

### *Family Dispute Resolution*

- Family Dispute Resolution services assist families to reach agreement and to resolve their disputes related to family law issues about child and property related matters, outside of the court system. Clients may include grandparents and other extended family members affected by family separation.

### *Family Law Counselling*

- Family Law Counselling services help people with relationship difficulties better manage their personal or interpersonal issues to do with children and family during marriage, separation and divorce.

## **Family and Relationship Services**

Family and Relationship Services aim to strengthen family relationships, prevent breakdown and ensure the wellbeing and safety of children through the provision of broad-based counselling and education to families. These services are primarily early intervention and prevention and are targeted to critical family transition points including formation, extension, and separation.

### **10b. Support for child support related matters**

Family Relationship Centres were designed to be a doorway to other services families need and to assist families to access those services. The 2005 Ministerial Taskforce recommended that "FRCs and other organisations providing counselling and mediation services to parents



who are negotiating parenting arrangements after separation should encourage parents to discuss child support issues including child care costs and the future education of their children.”<sup>30</sup>

In accepting the Taskforce’s recommendations in early 2006, the Howard Government provided additional funding of \$40 million over four years to increase capacity in the service sector to enable FRCs and other family relationship services to provide support to separating parents who were trying to reach agreement around child support arrangements. The two key target groups for this funding were parents seeking a change of assessment and parents whose existing parenting arrangements were unsettled by the child support changes.

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

### *The role of DHS*

DHS is proactive in identifying child support parents who are, or may be, at risk of experiencing external issues such as family and domestic violence, child abuse, severe distress, self-harm or financial difficulty. Staff have been trained in the use of the Child Support Risk Identification and Referral Model; this model provides a systematic way for identifying parents with a set of determined risk factors which indicate possible need for intensive support and/or referral.

DHS also has a proactive family violence risk identification process, which staff use during the registration of a child support case. During this process, both payers and payees are asked two questions designed to identify concerns a person may have about their safety. If the parent responds in the affirmative to at least one of the questions, they are asked a third question which introduces the referral options. Where a parent has raised issues relating to family violence, staff are able to offer them referrals to:

- 1800RESPECT – the national family violence and sexual assault hotline;
- MensLine Australia; or
- Parent Support Service – Priority Referral – an external professional counselling service specifically for child support parents who are experiencing various issues and distress.

If a staff member identifies a person at risk of, or experiencing family violence, they record a family violence sensitive issue indicator on their record. This indicator is an internal customer management tool that enables staff to identify and provide appropriate child support

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<sup>30</sup> Recommendation 19.3.

and referral options to the person (please note, however, that this is **not** an indication that the other parent is the person using violence).

Other referral options for parents where risk factors have been identified include the Family Relationship Advice Line, FRCs and Financial Counselling Australia. All organisations where a person may be referred have the ability to ‘on-refer’ to other organisations, should they identify other risk factors that the parent may be experiencing and would like to seek help with.

## 11. Ongoing evaluation of the Scheme

### 11a. Stakeholder engagement

DSS and DHS engage with community groups through funding agreements and via regular meetings of the Child Support National Stakeholder Engagement Group (CSNSEG). This forum provides an opportunity to bring together experts, academics and advocates from a range of fields to provide advice and input about child support policy and practice.

#### *Stakeholder funding*

DSS also provides direct funding to community organisations through different funding initiatives. Through these funding agreements, DSS is provided with community feedback about child support policies and research on the development and effect of child support policies.

A list of CSNSEG members and organisations funded by DSS is at **Attachment E**.

### 11b. Complaints

DHS systematically reviews complaints received and uses this information to develop staff training and business improvements. In 2012-13, DHS recorded around 23,000 complaints in regards to Child Support services from their customer feedback.<sup>31</sup>

Between December 2012 and June 2013, the top five complaints by volume were:

- Collection (32.8 per cent)
- Quality of service (28.1 per cent)
- Assessment (19.1 per cent)
- Service channel (4.0 per cent)
- Legislation and policy (3.2 per cent).<sup>32</sup>

### 11c. The Child Support Reform Study

The Child Support Reform Study is a longitudinal study undertaken by the Australian National University in partnership with DSS and DHS. Its aims are to determine whether the policy intentions of the 2006–2008 changes to the Scheme have been met, whether policy changes are linked to broader changes in family dynamics that are conducive to better long-term outcomes for children, and how the changes and broader family law policies may improve family wellbeing after separation.

Parents were interviewed before the changes in 2008, and eighteen months and three years post-implementation. Two groups of parents who separated after the changes were also

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<sup>31</sup> DHS Annual Report 2012-13, p. 55.

<sup>32</sup> Ibid.

interviewed. The multiple waves of the Child Support Reform Study provide a valuable source of data which can be used to explore a range of complex research questions. Findings of this study are being used to inform a range of policy issues such as child support, family dynamics and parent and child outcomes.

#### *Evaluating the reforms*

DSS's approach to evaluating changes to the Scheme was a combination of performance monitoring of immediate impacts, modelling expected financial outcomes of child support and FTB entitlements, and longer-term in-depth research into high level outcomes using the Child Support Reform Study and other data sources.

DSS and DHS also contributed to the Australian Institute of Family Studies' (AIFS) Longitudinal Study of Separated Families which examined the combined impact of the 2006 family law changes and the child support changes as part of the AIFS family law evaluation. Three waves of the Longitudinal Study of Separated Families and an adolescent survey have been completed.

#### **11d. Other sources of data**

Other research has been commissioned or conducted on a range of child support related issues such as compliance, private collect, circumstances of payers and payees, workforce participation, and understanding how indigenous families interact with the child support system.

DSS uses a number of existing population level surveys to explore child support issues, e.g. the Household, Income and Labour Dynamics in Australia Survey, the Longitudinal Study of Australian Children and the Longitudinal Study of Indigenous Children. DSS and DHS also draw on administrative data for evaluative purposes.

## **12. Administration of the Scheme**

### **12a. Administration of the Scheme**

When the Scheme was established in 1988, the Registrar was the Commissioner of Taxation and the CSA was a division within the ATO. The Registrar was responsible for the general administration of the child support legislation. The payment of child support to the payee was done by the (then) Department of Social Security.

In October 1998, administration of the Scheme, and the CSA, moved to the (then) Department of Family and Community Services (FaCS). FaCS was responsible for administering the legislation and the overall management of CSA.

In October 2004, CSA became part of the newly formed DHS. DHS had responsibility for the delivery of services, while FaCS retained responsibility for policy development. The Administrative Arrangement Orders indicated joint responsibilities for the child support legislation between the Minister for Family and Community Services and the Minister for Human Services.

The Administrative Arrangement Orders were changed in December 2013. As a result, the Minister for Social Services now has full responsibility for the child support legislation. This means that the Secretary of DSS has general administration of the child support legislation and the Registrar (in DHS) has responsibility for decisions in individual cases.

### **12b. Service delivery of the Scheme**

Child support services are delivered primarily by phone. DHS also delivers a range of services online and is developing further services online. DHS provides child support assessment, registration, collection and disbursement services to parents and non-parent carers. A range of referral services and products to help separated parents with their child support needs are also provided.

#### *Child Support Online*

Child support parents can complete many activities online. These include making a child support application, viewing and updating personal details, viewing and printing most letters, making a request to make a case private collect, advising a change in care, and sending and receiving documents.

#### *Solicitor's Hotline*

The Solicitor's Hotline is a service provided to legal practitioners who seek non-routine information about the operation of the Scheme, legislation and related policy. As part of this service, staff can be asked by legal practitioners to peruse draft child support agreements and court orders.

Legal practitioners are advised that DHS is not providing legal advice when it provides information regarding draft agreements or court orders through this process. Any information that may be provided to the solicitor does not constitute a formal decision that has formal review rights attached.

### **12c. Western Australia ex-nuptial cases**

Western Australia (WA) is the only Australian state that has not referred its power to make laws about children whose parents are not married to the Commonwealth. This means that the WA Parliament retains its powers to make laws, including child support laws, about WA children whose parents have never been married.

Since the start of the Scheme, the WA Parliament has periodically enacted laws adopting the Commonwealth child support legislation. When the Commonwealth amends its legislation, the WA Parliament amends the *Child Support (Adoption of Laws) Act 1990 (WA)* to adopt the child support legislation as it exists at a particular date. However, there are often differences between the date of commencement for Commonwealth amendments and the adoption of these amendments by the WA Parliament.

Where Commonwealth amendments have been made that have not yet been adopted by the WA Parliament, the Commonwealth child support laws apply for WA ex-nuptial children as if those amendments had not been made. Consequently, DHS has to administer different arrangements for child support cases that involve WA ex-nuptial children and cases that cover the rest of the Australian population (including children of marriage in WA), until the amendments are adopted.

There are currently about 50,000 cases involving a WA ex-nuptial child in the Scheme.<sup>33</sup>

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<sup>33</sup> DHS internal data.

## **13. Attachments**

- A. Annual rates by collection status of case
- B. Costs of Children table
- C. Care and cost percentages
- D. Change of Assessment reasons
- E. CSNSEG members and funded organisations
- F. Common acronyms and terms

## A. Annual rates by collection status of case<sup>34</sup>

Annual Rate	Child Support Collect	Collect %	Private Collect	Private %	Grand Total
\$0 - \$500	143,843	52%	134,107	48%	277,950
\$501 - \$1,000	10,251	48%	11,104	52%	21,355
\$1,001 - \$2,000	29,962	49%	30,859	51%	60,821
\$2,001 - \$3,000	25,665	47%	29,111	53%	54,776
\$3,001 - \$4,000	26,895	46%	31,432	54%	58,327
\$4,001 - \$5,000	18,650	45%	22,833	55%	41,483
\$5,001 - \$6,000	21,373	44%	26,893	56%	48,266
\$6,001 - \$7,000	14,767	42%	20,034	58%	34,801
\$7,001 - \$8,000	10,814	42%	14,841	58%	25,655
\$8,001 - \$9,000	8,868	41%	12,651	59%	21,519
\$9,001 - \$10,000	7,805	42%	10,748	58%	18,553
\$10,001 - \$20,000	31,236	38%	51,146	62%	82,382
\$20,001 - \$30,000	5,248	34%	10,294	66%	15,542
\$30,001 - \$40,000	961	30%	2,205	70%	3,166
\$40,001 - \$50,000	164	32%	354	68%	518
\$50,001 +	78	32%	164	68%	242
<b>Grand Total</b>	<b>356,580</b>	<b>47%</b>	<b>408,776</b>	<b>53%</b>	<b>765,356</b>

Over 36 per cent of all child support cases involve an annual rate of \$500 or less.

The majority of these are likely to be assessed on the minimum annual rate. This is the minimum amount payable where the paying parent has less than regular care (less than 52 nights a year) of the children. The minimum annual rate for child support periods starting in 2014 is \$399.

It is apparent from this table that the higher the annual rate of child support payable, the more likely it is that the parents will seek to transfer child support between themselves.

<sup>34</sup> DHS internal data as at 30 April 2014.



## B. Costs of Children table

### *Costs of children table 2014*

<i>Parents' combined child support income (above the self-support amounts)</i>						
No. of children	\$0 to \$35,285	\$35,286 to \$70,569	\$70,570 to \$105,854	\$105,855 to \$141,138	\$141,139 to \$176,423	Income over \$176,423
Costs of the children (to be apportioned between parents)						
Children aged 0—12 years						
1 child	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 children	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 children	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
Children aged 13+ years						
1 child	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 children	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 children	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
Children of mixed age						
2 children	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 children	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

### C. Care and cost percentages

Percentage of care	Cost percentage
0 to less than 14%	Nil
14% to less than 35%	24%
35% to less than 48%	25% plus 2% for each percentage point over 35%
48% to 52%	50%
More than 52% to 65%	51% plus 2% for each percentage point over 53%
More than 65% to 86%	76%
More than 86% to 100%	100%

## D. Change of Assessment reasons

Reason
1. The costs of maintaining a child are significantly affected by high costs of enabling a parent to spend time or communicate with the child.
2. The costs of maintaining a child are significantly affected by high costs associated with the child's special needs.
3. The costs of maintaining a child are significantly affected by high costs of caring for, educating or training the child in the way both parents intended.
4. The child support assessment is unfair because of the child's income, earning capacity, property or financial resources.
5. The child support assessment is unfair because 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 costs of maintaining a child are significantly affected by the high child care costs for the child (and the child is under 12 years).
7. The parent's necessary expenses significantly affect their capacity to support the child.
8. The child support assessment is unfair because of the income, earning capacity, property or financial resources of one or both parents.
9. The parent's capacity to support the child is significantly affected by their legal duty to maintain another child or person; their necessary expenses in supporting another child or person; or their high costs of enabling them to spend time with or communicate with another child or person they have a duty to maintain.
10. The parent's responsibility to maintain a resident child significantly reduces their capacity to support the child support child.

## **E. CSNSEG membership and funded organisations**

*Child Support National Stakeholder Engagement Group membership:*

- Dads in Distress Support Services
- Lone Fathers Association Australia
- National Council of Single Mothers and their Children
- Shared Parenting Council of Australia
- Drummond Street Services
- Anglicare WA
- Australian Council of Social Services
- Catholic Social Services Australia
- Family and Relationship Services Australia
- Kids Helpline/Boystown
- Relationships Australia
- Family Court of Australia
- Federal Circuit Court of Australia
- Law Council of Australia – Family Law Section
- National Legal Aid
- Australian Institute of Family Studies.

*Organisations currently funded by DSS for child support advocacy:*

- Dads in Distress Support Services
- Lone Fathers Association Australia
- National Council of Single Mothers and their Children
- Shared Parenting Council of Australia
- Drummond Street Services.

## F. Common acronyms and terms

AAT	Administrative Appeals Tribunal
AFP	Australian Federal Police
AIFS	Australian Institute of Family Studies
Assessment Act	<i>Child Support (Assessment) Act 1989</i>
ATI	Adjusted taxable income
ATO	Australian Taxation Office
COA	Change of Assessment
CSA	Child Support Agency
CSNSEG	Child Support National Stakeholder Engagement Group
DAC	Departure Authorisation Certificate
DHS	Department of Human Services
DPO	Departure Prohibition Order
DSS	Department of Social Services
FaCS	Department of Family and Community Services
FRCs	Family Relationship Centres
FTB	Family Tax Benefit
MAT	Maintenance action test
MIT	Maintenance income test
MTAWE	Male Total Average Weekly Earnings
NAPs	Non Agency Payments
Registration and Collection Act	<i>Child Support (Registration and Collection) Act 1988</i>
SSAT	Social Security Appeals Tribunal
WA	Western Australia