



Australian Government

Department of Social Services

# Submission to the Joint Select Committee on Australia's Family Law System

Department of Social Services



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## Introduction

The Department of Social Services (the department) welcomes the opportunity to provide a submission to the Joint Select Committee on Australia's Family Law System.

The department has responsibility for services and initiatives that improve the wellbeing of individuals, families and communities in Australia. The department delivers Family and Relationship Services (FaRS) across Australia, including counselling services to families and individuals at critical family transition points such as family formation, extension or family separation, and education and skills to strengthen family relationships. The department also provides national policy leadership and specific activities for people experiencing domestic, family and sexual violence and child abuse and neglect through the implementation of the *National Plan to Reduce Violence against Women and their Children 2010-2022* (the National Plan) and the *National Framework for Protecting Australia's Children 2009-2020* (the National Framework).

In addition, the department is responsible for policy and legislation related to the child support system and Services Australia (formerly known as the Department of Human Services) delivers services under the system. Administration of the system is enabled by two key legislative acts, the *Child Support (Assessment) Act 1989* (Cth) and the *Child Support (Registration and Collection) Act 1988* (Cth).

The department's submission refers to the following national frameworks, initiatives and policies:

### ***National Plan to Reduce Violence against Women and their Children 2010-2022***

- The National Plan represents a commitment by the Australian Government and state and territory governments to reduce violence against women and their children. The National Plan was endorsed by the Council of Australian Governments (COAG) in February 2011 and is being implemented through four, three-year action plans from 2010 to 2022.

### ***Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022***

- On 9 August 2019, COAG endorsed the Fourth Action Plan of the *National Plan to Reduce Violence against Women and their Children 2010-2022*. The Australian Government has committed \$340 million to the Fourth Action Plan, to prevent violence before it happens and provide support to women and children. The Fourth Action Plan includes 20 actions under the following five priority areas:
  - Primary prevention is key
  - Support Aboriginal and Torres Strait Islander women and their children
  - Respect, listen and respond to the diverse lived experiences and knowledge of women and their children affected by violence
  - Respond to sexual violence and sexual harassment
  - Improve support and service system responses.

### ***National Framework for Protecting Australia's Children 2009-2020***

- The National Framework represents a commitment by the Australian Government and state and territory governments to ensure children and young people are safe and well. The National Framework was endorsed by COAG in April 2009 and is being implemented through four action plans from 2009 to 2020.

### ***Fourth Action Plan of the National Framework for Protecting Australia's Children 2009-2020***

- The Fourth Action Plan of the National Framework was launched on 30 January 2019 after endorsement by Community Services Ministers in late 2018. The four priorities of the plan are:
  - Improving outcomes for Aboriginal and Torres Strait Islander children at risk of entering, or in contact with, child protection systems
  - Improving prevention and early intervention through joint service planning and investment
  - Improving outcomes for children in out-of-home care by enhancing placement stability through reunification and other permanent care options
  - Improving organisations' and governments' ability to keep children and young people safe from abuse.

## Background and Evidence

Separating parties who access the family law system often report experiences of family violence. Among parents who use family law courts, 85 per cent have experienced emotional abuse and 54 per cent have experienced physical violence. For those accessing family dispute resolution, 74 per cent report emotional abuse and 27 per cent report physical violence.<sup>1</sup>

A 2015 report by the Australian Institute of Family Studies (AIFS) found more than a third of family court matters initiated after the 2012 family law amendments involved allegations of family violence.<sup>2</sup> Of those matters involving allegations of family violence, 58 per cent involved a child exposed to the violence and 40 per cent involved a child victim.<sup>3</sup>

## Department's response to relevant Family Law Inquiry Terms of Reference

### a. Ongoing issues and further improvements relating to the interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions

The department held consultations across Australia as part of the development of the Fourth Action Plan of the National Plan. Consultations called for better collaboration and information sharing across systems, such as policing and justice, child protection, family law, health and specialist services to help support women and keep them safe. Some called for a more accessible, victim-focused, consistent and accountable justice system across jurisdictions, particularly in regional and remote areas.

Priority Four of the Fourth Action Plan of the National Framework is to improve organisations' and governments' ability to keep children and young people safe from abuse. This priority includes responding to recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse to improve information sharing, record keeping and data collection related to child safety and wellbeing. The National Office for Child Safety in the Department of the Prime Minister and Cabinet is co-leading this priority with the Western Australian Department of Communities, in collaboration with state and territory governments. This work will complement related initiatives, including improvements to information sharing between the family courts, family violence and child protection systems being led by the Council of Attorneys-General.

To support this work, the Australian Government has invested \$3.9 million towards the start-up costs to develop a National Child Protection Information Sharing Solution (the Solution). The Solution will enable statutory child protection agencies to effectively identify and protect at risk children in a timely manner. The Solution uses a technology platform to search diverse data and information storage systems across state and territory governments. Statutory child protection agencies will be able to identify vulnerable children, who have links to child protection agencies in other jurisdictions. The department has been working closely with state and territory governments to ensure the Solution fits the requirements of child protection agencies in all jurisdictions. Jurisdictions will be on-boarding to the Solution in the coming months. This process is anticipated to be completed during 2020. The technology used for the Solution could potentially be used to improve information sharing.

### f. Impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings

The department funds a number of programs and services targeted to families experiencing vulnerability, including those involved with the family law system. This includes Family and Relationships Services (FaRS) that 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 of different forms and sizes. The department also funds Specialised Family Violence Services (SFVS) that provide support to children, individuals and couples impacted by domestic and family violence. FaRS and SFVS providers are often co-located with Family Law Services. Family Law Services, funded by the Attorney-General's Department, aim to provide alternatives to formal legal processes for separated or disputing families, by improving their relationships and supporting them to 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. Co-location of FaRS and SFVS services with Family Law Services supports wrap-around service provision, including referrals and collaboration.

Under the Fourth Action Plan of the National Plan the Government has invested \$7.8 million for dedicated men's support workers in all Family Advocacy Support Services (FASS). The support workers will assist both male victims and alleged perpetrators of domestic and family violence access appropriate support services, such as parenting and men's behavioural change programs.

#### **h. Any further avenues to improve the performance and monitoring of professionals involved in family law proceedings and the resolution of disputes**

Under the Fourth Action Plan of the National Plan, the Government has invested \$26.2 million to continue the DV-alert training program. DV-alert provides free, nationally accredited training to build the capacity of health, allied health and community frontline workers to recognise, respond to and appropriately refer domestic and family violence. Frontline workers include legal professionals and court services.

The Fourth Action Plan of the National Plan also provides funding to support university students to develop knowledge and skills in the prevention of violence against women, particularly those preparing for professional roles that have significant potential to influence social norms, practices and policy, such as health, law, education and training.

#### **i. Any improvements to the interaction between the family law system and the child support system**

The child support system exists to assess and collect child support payments for the benefit of children of separated parents. The system is designed to ensure that both parents take responsibility for the ongoing financial support of their children in line with their financial capacity to do so. The child support system is administered by Services Australia (formerly known as the Department of Human Services).

The *Child Support (Assessment) Act 1989* (Cth) (CSA Act) and the *Child Support (Registration and Collection) Act 1988* (Cth) (CSRC Act) establish the arrangements under which child support is administered. The objects of both Acts are provided in more detail in Appendix A.

Child support assessments are generally<sup>4</sup> calculated using an administrative formula, which is based on both parents' income and the level of care they provide for their children.

The level of care used in child support assessments is based on the actual care of children, in recognition of the direct costs parents incur when providing care. Calculating child support assessments based on the actual care helps to provide children with access to an adequate amount of ongoing financial support, regardless of who they reside with.

The main interaction between the family law system and the child support system happens where separated parents have formalised their care arrangements for their children through family law processes, such as in a court order or parenting plan.

In some cases, the actual care arrangements may differ from those determined in the parents' 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 certain circumstances where care is disputed, a person's care percentage for child support may be determined according to an existing care arrangement (e.g. court order) for an interim period, rather than being based on the actual care of the child.

These provisions were strengthened from 23 May 2018 through the *Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2018* (Cth). The Act implemented three priority recommendations, including one relating to care disputes, from the House of Representatives Standing Committee on Social Policy and Legal Affairs report, *From conflict to cooperation: Inquiry into the Child Support Program*.

The interim care provisions in child support legislation aim to deter parents from contravening court orders and care agreements by withholding care of a child and to encourage participation in family dispute resolution. These provisions will not apply if there are special circumstances in relation to the child, such as where there is evidence of family and domestic violence.

An interim care period can only apply where a care arrangement (i.e. a relevant court order, parenting plan or written agreement) exists. An interim determination can be made where a person is being prevented from having the child in their care in line with a care arrangement without their consent, and they take reasonable action to have the care arrangement complied with.

The length of the interim period that can apply depends on the type of care arrangement, when the care arrangement was made, when the disputed change in care occurred, and whether the person with increased care is taking reasonable action to participate in family dispute resolution. The maximum length of an interim care period is 52 weeks.

The interim care policy is aimed at balancing the day-to-day needs of the parent with actual care and the additional expenses they are incurring, with the right of the other parent to seek to enforce a parenting order or other written agreement.



However, the child support system recognises a parent's obligation to provide support for their child is not tied to the other parent's compliance with a court order or care agreement. Child support is intended for the ongoing day-to-day financial support of the child. Once the interim period ends, it is important that care is recorded in line with the actual arrangements, so the children are not denied the financial support they need.

Issues concerning care arrangements for children are best dealt with through mediation or dispute resolution, or pursued through the family law system.

For further context, a broad overview of the child support system, including detailed information about interim care determinations, is provided at **Appendix A**.

## Appendix A – Broad overview of the child support system

### Executive summary

Item (i) of the Terms of Reference asks the Joint Select Committee to consider any potential improvements to the interaction between the family law system and the child support system.

This appendix provides a high-level overview of the child support system.

The Department of Social Services is responsible for policy and legislation related to the system and Services Australia (formerly known as the Department of Human Services) administers the system. Administration of the system is enabled by two key legislative acts, the *Child Support (Assessment) Act 1989* (Cth) and the *Child Support (Registration and Collection) Act 1988* (Cth).

### Introduction to the child support system

#### Objectives of the system

Australia's child support system was introduced 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>5</sup>

The system introduced an administrative approach to assessing, collecting and transferring payments between separated parents. This approach addresses concerns about the adequacy of previous court-ordered assessments and some of the difficulties and expenses encountered by parents collecting child support privately or through the courts.

The child support system is designed to ensure that both parents take responsibility for the ongoing financial support of their children in line with their financial capacity to do so. The system does not make any distinction based on the gender or background of either a paying parent or a receiving parent.

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

- that children receive a proper level of financial support from their parents
- 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
- that the level of financial support to be provided by parents for their children should be determined in accordance with the costs of the children
- 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
- that children share in changes in the standard of living of both of their parents, whether or not they are living with both or either of them
- 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 (Registration and Collection) Act 1988* (Cth) (CSRC Act) are to ensure:

- that children receive from their parents the financial support that the parents are liable to provide
- that periodic amounts payable by parents towards the maintenance of their children are paid on a regular and timely basis
- 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.

### Who is in the child support system? <sup>6</sup>

The child support system involves around 1.25 million parents in more than 680,000 active cases. The system covers around 1.05 million children. Around 43 per cent of Australian families who receive Family Tax Benefit (FTB) Part A include a child support parent.

A significant proportion of child support parents re-partner, which means that other adults and children are indirectly impacted by the system. 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 (89 per cent) of payees are female and the majority (also 89 per cent) of payers are male.

The majority (65 per cent) of child support payees have above 86 per cent care of their children, and likewise, the majority (65 per cent) of payers have below 14 per cent care of their children.

The incomes of parents involved in the system are, on average, significantly lower than the incomes of parents in the general population who have not separated. The median adjusted taxable income of child support payees at June 2019 was \$23,953. The median adjusted taxable income of payers was \$47,985. Around 60 per cent of payees and around 25 per cent of payers are receiving an income support payment (typically Parenting Payment, Newstart Allowance, Carer Payment or Disability Support Pension).

The average annual liability for all cases with a liability greater than \$0 is around \$5,600. However, in over 30 per cent of all cases, the annual rate of child support is \$500 or less.

### What is collected under the child support system?

The majority of cases are administratively assessed under the standard child support formula. While this is the primary mechanism for determining child support assessments, the system also provides flexibility to depart from this process in special circumstances, through the change of assessment process.

Parents who wish to come to their own child support arrangements can negotiate a child support agreement that can be registered with Services Australia.

Some parents may not be able to apply for an administrative assessment but can apply for a child maintenance order directly from a court (for example, for a child who is aged 18 years or older who has a physical or mental disability). Court orders made under family law for child maintenance or spousal/de facto maintenance can be registered for collection by Services Australia under the child support system.

Overseas maintenance liabilities (such as overseas court orders or administrative assessments) from a reciprocating jurisdiction can be registered for collection, in the same way that Australian court orders and child support assessments are registered.

## **Administrative assessment of child support**

### **Applying for a child support assessment**

#### **Who can apply for a child support assessment?**

A parent can apply for a child support assessment if they are not living with the other parent of the child on a genuine domestic basis. Parents can apply for an assessment regardless of the amount of care they provide for their child although only a person who has at least 35 per cent care of a child can receive child support.

A non-parent carer (such as a grandparent) can apply for a child support assessment if they:

- have at least 35 per cent care (shared care) of the child
- are not living with either parent as their partner on a genuine domestic basis, and
- do not have care jointly with a parent of the child.

#### **Who can a child support assessment be made for?**

A parent or non-parent carer may apply for a child support assessment if the child meets all of the following requirements:

- under 18 years of age
- not a member of a couple
- not being cared for under a child welfare law of Western Australia or South Australia; and
- either a citizen or resident of Australian or a reciprocating jurisdiction at the time.

#### **Parentage**

When a parent or non-parent carer applies for a child support assessment, Services Australia must be satisfied that the persons to be assessed (in relation to the costs of the child/ren) are the parents of the child.



The term 'parent' includes:

- the biological mother and father of the child
- an adoptive parent
- if the child was born as the result of an artificial conception procedure, a person who is determined to be a parent of the child under section 60H of the *Family Law Act 1975* (Cth) (Family Law Act)
- if the child was born because of a surrogacy arrangement, a person who is determined to be a parent of the child under section 60HB of the Family Law Act.

There are a number of prescribed circumstances that invoke the presumption that a person is a parent of a child. Some of these relate to a person's marital or cohabitation status with the other parent of the child at the time the child was born. Other presumptions relate to documentary evidence, such as where the person is named as a parent of the child on a birth certificate, or they have acknowledged that they are the child's parent in a statutory declaration or affidavit.

The presumptions of parentage in child support legislation (CSA Act section 29) broadly mirror the presumptions of parentage in family law (Family Law Act division 12 subdivision D).

A person assessed in respect of the costs of a child can apply directly to a court for a declaration that they are not a parent of the child under section 107 of the CSA Act. A person whose application for a child support assessment has been refused due to a lack of evidence as to parentage, can apply to a court for a declaration under section 106A of the CSA Act that the application should have been accepted because the person named is a parent of the child.

### The child support formula

Child support payments are calculated according to an administrative formula, which 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.

#### The basic formula

1. *Work out each parent's child support income.*

Use the parent's adjusted taxable income and deduct the 'self-support amount', which is equivalent to one-third of the annual Male Total Average Weekly Earnings (MTAWE) figure (\$25,038 for child support periods beginning in 2019).

A 'relevant dependent child amount' is deducted if the parent has a relevant dependent child in their care. A 'multi-case allowance' is deducted if the parent has multiple child support cases (regardless of whether they are a payee or payer in any of the cases).



2. *Work out the parents' combined child support income.*

The combined child support income is the sum of both parent's child support incomes.

3. *Work out each parent's income percentage.*

The income percentage is each parent's proportion of the total combined income. This represents the share of the child's total costs for which each parent is responsible.

4. *Work out each parent's care percentage for the child.*

A person's care percentage for a child is generally based on the number of nights that the child is likely to be in their care over the care period (usually 12 months).

5. *Work out each parent's cost percentage for the child.*

A person's cost percentage represents the percentage of a child's costs that the person meets directly through care. This is determined using the person's care percentage and the *Care and Cost Percentages* table below.

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%

6. *Work out each parent's child support percentage for the child.*

Each parent's child support percentage is worked out by subtracting the parent's cost percentage from their income percentage. A parent's child support percentage represents the share of the costs of the child they are required to meet, based on their share of 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 liable to pay child support.

7. *Work out the costs of the child, using the Costs of the Children Table.*

The costs of each child are calculated based on the combined child support income of the parents, the number of children in the assessment, and the age of the children.

See the **Costs of children** section below for more information about the *Costs of the Children Table*.



8. *Work out the annual rate of child support payable for each child.*

The parent who has a positive child support percentage under step 6 will be the payer. The annual rate of child support payable is worked out by multiplying the payer's child support percentage from step 6 by the costs of the child from step 7.

A parent with more than 65 per cent care will not be assessed to pay child support to the other parent, even if the formula would otherwise have this result.

If there is an annual rate payable by each parent (because they each care for a different child), these rates are offset against each other to arrive at one overall rate of child support.

## Income

Child support assessments are generally based on a parent's adjusted taxable income from the last relevant financial year of income.

### Adjusted taxable income

Adjusted taxable income (ATI) is defined as a parent's taxable income, as assessed by the Australian Taxation Office (ATO), plus any supplementary amounts including:

- reportable fringe benefits
- foreign income
- reportable superannuation contributions
- net investment losses
- specified tax-free pensions and benefits.

### Deductions from child support income

When calculating a parent's child support income, certain deductions can be made from the parent's ATI in recognition of some of their other expenses.

The self-support amount is an amount that is deducted from each parent's ATI in recognition of their basic living expenses. The amount is the same for both parents and is indexed by Male Total Average Weekly Earnings (MTAWE) each year. The self-support amount is one third of the annualised MTAWE figure for the relevant June quarter.

The relevant dependent child amount is an amount that is deducted from a parent's ATI if they have a relevant dependent child (biological or adopted) in their care. This deduction recognises the parent's costs in supporting their other dependent children. It is based on the *Costs of the Children Table* and only includes the child support parent's share of the child's costs and not that of the child's other parent.

The multi-case allowance is an amount that is deducted from a parent's ATI if they have multiple child support cases (regardless of whether they are the payer or payee). This deduction recognises the parent's responsibility for supporting their children in other child support cases.



### Additional income

Additional income earned by parents, such as overtime income or income from a second job, is generally included in their child support assessment as it is part of their taxable income.

To recognise that parents may incur extra costs to re-establish themselves following separation, either parent may apply to have additional income excluded from their ATI for child support purposes.

This provision is available where the parent meets 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.

Parents may earn this additional income from a variety of sources, such as overtime, taking on a second job, investment income or a career change to a higher paying job. The parent must be able to show that the new pattern of earnings was established after separation and it would not have been reasonable to expect that income to have been earned, derived, or received by the parent in the ordinary course of events.

This provision is subject to a three-year time limit because parents will generally achieve greater stability in their arrangements the longer they have been separated.

### Care

A person's percentage of care is generally determined according to the actual care they have of the child. Calculating child support assessments based on the actual care helps to provide children with access to an adequate amount of ongoing financial support, regardless of with whom they reside.

There are five different terms used in the child support system to describe a person's level of care:

Level of care	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 85% to 100%	314 to 365



### **Interim care periods**

In some cases, the actual care arrangements for a child may differ from those determined in the parents' 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 certain circumstances where care is disputed, a person's care percentage for child support may be determined according to an existing care arrangement (e.g. court order) for an interim period, rather than being based on the actual care of the child.

The interim care provisions in child support legislation aim to deter parents from contravening court orders and care agreements by withholding care of a child and to encourage participation in family dispute resolution. These provisions will not apply if there are special circumstances in relation to the child, such as where there is evidence of family and domestic violence.

### **What counts as a care arrangement?**

For child support purposes, a care arrangement can be any of the following:

- a written agreement (see below) between the parents of the child, or between a parent of the child and another person that relates to the care of the child
- a parenting plan for the child
- any of the following orders relating to the child:
  - a family violence order within the meaning of section 4 of the *Family Law Act 1975* (Family Law Act)
  - a parenting order within the meaning of section 64B of the Family Law Act
  - a state child order registered in accordance with section 70D of the Family Law Act
  - an overseas child order registered in accordance with section 70G of the Family Law Act.

An agreement between the parents can be considered a 'written agreement' if it satisfies all of the following:

- there is a document in writing
- the document is signed and dated by both parties
- both parties agree on the care arrangements for the child, which are specified in the document.

A document that acknowledges that care is occurring in a particular way does not constitute a written agreement, even if it is signed by both parties. The written agreement must indicate that the care arrangement constitutes an agreed, ongoing care arrangement for the child.

### **When can an interim determination be made?**

An interim determination can be made where a person is being prevented from having the child in their care in line with a care arrangement without their consent.

One of the following situations must apply for an interim determination to be made:

1. *The parents were following an existing care arrangement, and then the care changed.*

If a care arrangement exists but the parents have not been following the arrangement prior to the disputed care change, an interim period will not apply.

2. *The disputed care change happens before the other party has a chance to exercise the care set out in the care arrangement.*

For example, where one parent withholds care from the other parent from the day that the care arrangement takes effect.

3. *There is no care arrangement at the time of the disputed care change, but a new care arrangement is made while either party still disputes the care that is occurring.*

For example, where one parent withholds care from the other parent, and the other parent successfully obtains a parenting order that provides them with a level of care, despite not actually being able to exercise that level of care.

In addition, the person with reduced care must take reasonable action to ensure compliance with the care arrangement during the interim period. If the person with reduced care stops taking reasonable action, the interim period will end on the day the reasonable action ceased.

Reasonable action could include:

- negotiating with the other party in a genuine attempt to ensure compliance with the care arrangement
- making and/or attending an appointment at a Family Relationship Centre or other dispute resolution service with the aim of ensuring that the parents adhere to the care arrangement
- seeking or obtaining legal advice regarding the making of a court order
- filing an application to a court to have an order made or enforced
- attending a hearing at court to seek an order to be made or enforced.

This list is not exhaustive and other forms of action may be considered reasonable by Services Australia, depending on the circumstances of both parents and the child.

### **What interim periods can be applied to a child support assessment?**

An interim period begins on the first day that the actual care of the child ceased to correspond with the care set out in the care arrangement. The length of the interim period depends on a number of factors, including the type of care arrangement, when the care arrangement was made, when the disputed change occurred, and whether the person with increased care is taking reasonable action to participate in family dispute resolution (FDR).

After the interim period ends, the care percentage will be determined according to actual care.

Court orders	
If the disputed care change occurs within the first year of the order:	<p>The maximum interim period that can apply is the <b>later</b> of:</p> <ul style="list-style-type: none"> <li>• 52 weeks from the date that the court order takes effect</li> <li>• 26 weeks from the change of care day.</li> </ul>
If the disputed care change occurs after the first year of the order:	<p>A shorter interim period applies.</p> <p>The interim period is up to 26 weeks from the change of care day, if the person with increased care does not take reasonable action to participate in FDR.</p> <p>If the person with increased care takes reasonable action to participate in FDR, the interim period is up to 14 weeks from the day they started taking reasonable action (if this is earlier than the interim period of 26 weeks).*</p>
Parenting plans and written agreements	
If the disputed care change occurs during the first 38 weeks of the agreement:	<p>The maximum interim period that can apply is 14 weeks from the change of care day.</p>
If the disputed care change occurs after 38 weeks from the agreement's start date:	<p>A shorter interim period applies.</p> <p>The interim period is up to 14 weeks from the change of care day, if the person with increased care does not take reasonable action to participate in FDR.</p> <p>If the person with increased care takes reasonable action to participate in FDR, the interim period is up to 4 weeks from the day they started taking reasonable action (if this is earlier than the interim period of 14 weeks).*</p>

\*But no earlier than 52 weeks from the day on which the care arrangement took effect.

The longer interim period that applies for court orders recognises the greater period of time required for relevant legal proceedings to be completed, for prior agreed arrangements to be enforced by a court, or for revised arrangements to be agreed upon.

### Later interim periods

If a shorter interim period has ended, and the person with increased care stops taking reasonable action to participate in FDR before the maximum interim period has ended, a later interim period may apply. The person with reduced care must still be taking reasonable action to ensure the care arrangement is complied with.

The later interim period will start on the day the person with increased care stopped taking reasonable action to participate in FDR. It will end according to the same rules that apply for shorter interim periods. If a later interim period applies, and the person with increased care begins taking reasonable action to participate in FDR again, the later interim period may end earlier, according to the same rules that apply for shorter interim periods.

### **Changes to interim care provisions in 2018**

The interim care provisions were strengthened from 23 May 2018, through the *Family Assistance and Child Support Legislation Amendment (Protecting Children) Act 2018* (Cth) (the Protecting Children Act). The Protecting Children Act implemented three recommendations from the House of Representatives Standing Committee on Social Policy and Legal Affairs report, *From conflict to cooperation: Inquiry into the Child Support Program*.

The Committee considered the impact of interim care provisions on parents in disputed care situations. The Committee concluded that enforcing care agreements should remain a matter for family law, and supported the sufficient resourcing of federal courts to ensure that such enforcement is timely.

However, the Committee considered that the previous 14-week period did not provide sufficient time for relevant legal proceedings to be completed, for prior agreed arrangements to be enforced by a court, or for revised arrangements to be agreed upon. In Recommendation 8 of its report, the Committee recommended that the Government amend legislation to enable a greater period of time before determining when to adjust the amount of child support payable in interim determinations.

The Government agreed with this recommendation and introduced changes through the Protecting Children Act. The changes increased the interim period for recently-made court orders and in situations where the person with increased care does not take reasonable action to participate in family dispute resolution.

### **Costs of children**

The child support formula uses the *Costs of the Children Table* to calculate the costs of each child in an assessment. The costs of a child are determined by the parents' combined incomes, the number of children and the age of the children.

The *Costs of the Children Table* is the result of extensive research into the amount that parents spend on children at different taxable income levels, commissioned by an independent Ministerial Taskforce on Child Support in 2004.

Members of the Taskforce had expertise in one or more areas, including social and economic policy, family law, family policy, and research on the costs of children. Membership of the Reference Group was drawn from advocacy groups representing both paying parents and receiving parents, and also included professionals who have experience in issues concerning parenting after separation, relationship mediation and counselling, and social policy.



The Taskforce used three different methodologies to reach the best and most up-to-date estimates possible of the costs of children in Australian families:

- Budget Standards approach by Dr Paul Hemnan
- Patterns of Household Expenditure approach by Richard Pervical and Dr Ann Harding
- Literature review of international and Australian research by Dr Matthew Gray.

The Taskforce averaged together the different sets of estimates developed by experts in costs of children research, to produce agreed gross costs of children figures based on:

- different age ranges (0-12 and 13+)
- different numbers of children
- different gross family income levels.

Given that the costs of children established by the research are linked to income, the income thresholds in the Costs of the Children Table are expressed as fractions of MTAW. These income thresholds are indexed every year by MTAW to ensure the table keeps pace with increases in the cost of living.

The *Costs of the 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). It is also net of the average levels of FTB that families at particular income levels are assumed to receive.

The impact of income tax is taken into account, as the *Costs of the Children Table* represents how much of the parents' disposable income is spent on children as a proportion of their gross income.

### Change of assessment

The CSA Act recognises that the amount of child support payable under the administrative formula may not be reasonable in situations where the parents or children have special circumstances. Accordingly, the change of assessment (COA) process provides a means for a child support assessment to be changed to reflect the special circumstances of a case. Either parent can seek a review under the COA process.

An assessment can be changed if one or more of the 10 listed reasons is established:

1		Costs of visiting or communicating with the child
2		Special needs of the child
3		Costs of education or training
4		Income of the child
5		Additional payments or transfers of money, goods or property
6		Costs of child care
7		Necessary commitments of self-support
8		Income, assets and earning capacity
9		Duty to maintain another child or person
10		Responsibility to maintain a resident child

If one of the reasons is established, the assessment can only be changed if the change would also be 'just and equitable' and 'otherwise proper'.

In most cases, COA decisions are considered at an administrative level by Services Australia. In some circumstances, a parent may apply directly to a court for a COA decision.<sup>1</sup>

In 2018-19, there were around 17,000 applications for COA. Forty six per cent of finalised applications resulted in a change to the rate of child support to better reflect the special circumstances of parents and their children. In 57 per cent of cases, the application related to a parent's income, property, financial resources or earning capacity.

### Interactions with family law

In certain circumstances when making a COA decision, Services Australia will be cognisant of family law decisions.

#### Reason 5 – Additional payments or transfers of money, goods or property

Under Reason 5, Services Australia can change an assessment in special circumstances where the child support assessment is unfair because the payer has given money, goods or property to the child, payee or a third party for the benefit of the child.

<sup>1</sup> This will be the relevant court having jurisdiction under these matters and can be the family court or another court such as the federal circuit court.

Property settlement orders made under family law may be relevant to a decision under Reason 5. Services Australia will avoid undermining a property settlement or any related agreement between the parents. If the payer can prove that the payee received a higher share of the property or a payment for the benefit of the children, Services Australia will consider whether the transfer or payment makes the child support assessment unjust and inequitable.

Where there has been a complex informal distribution of assets, the COA process is not a method for clarifying the terms of the agreement or the intentions of the parents. In these cases, Services Australia will refuse to make a COA decision due to the complexity of the issues, and in some circumstances, the parents can instead make the application through a court.

#### Reason 9 – Duty to maintain another child or person

A parent can apply for a COA under Reason 9 if their capacity to support the child is significantly reduced by their duty to maintain another person.

The parent may demonstrate that they have a duty to maintain another person if they have a legal duty under family law. This could include duties under:

- a spousal maintenance order – section 72 of the Family Law Act
- a de facto maintenance order – section 90SE of the Family Law Act
- a child maintenance order – sections 63G and 66G of the Family Law Act
- an adult child maintenance order – section 66L of the Family Law Act
- a step-child maintenance order – section 66M of the Family Law Act.

## Other types of liabilities

### 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 must meet different requirements to be accepted by Services Australia.

Agreements can specify the amount, frequency and method of payments. Child support payable under an agreement can be transferred privately between parents, or Services Australia 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. Parents are not required to obtain legal advice before entering into the agreement. An administrative assessment must be in place at the time that the parents submit their agreement to Services Australia. A limited agreement will only be accepted if the annual rate of child support payable under the agreement is at least equivalent to the rate 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 otherwise be entitled to under an administrative assessment. Each party to a binding agreement must receive independent legal advice about the agreement before signing it.

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

‘Transitional agreements’ are agreements that were accepted before 1 July 2008 but continued to have effect after 1 July 2008. These types of agreements did not require the parents to seek legal advice before entering into the agreement. These agreements are considered binding agreements, but have slightly different rules for termination.

## Court orders

An Australian court can make a child maintenance order under the Family Law Act. These orders can be made by consent between the parties or by a judgement of the court. The court can also register agreements about child maintenance.

The Family Law Act does not allow a court to make a child maintenance order if an administrative child support assessment could be made for the child. This means that most child support matters are dealt with under the CSA Act.

However, the court is able to deal with applications for maintenance where the child or parents are ineligible for an administrative child support assessment. For example, a court order would be required for a child who is aged 18 years or older who has a physical or mental disability, or where the other parent lives in a country that does not have reciprocal arrangements with Australia to accept administrative child support assessments.

A child maintenance order can be registered for collection by Services Australia if it requires the payer to make periodic payments to the payee, or is a recovery order. Orders or agreements that require the payer to make payments to a third party or to the child cannot be registered for collection.

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

- parentage overpayment orders
- orders for step-parents to pay child maintenance
- spousal and de facto maintenance orders
- court-registered agreements
- overseas maintenance liabilities.



## International liabilities

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.

Australia has a number of international maintenance arrangements with other countries, including bilateral agreements, multilateral conventions, and non-treaty arrangements. The jurisdictions with which Australia has some form of international maintenance arrangement are referred to as 'reciprocating jurisdictions' and are listed in schedule 2 of the *Child Support (Registration and Collection) Regulations 2018* (Cth). Australia has 97 reciprocating jurisdictions.

Under these arrangements, Services Australia can register and enforce overseas maintenance liabilities from reciprocating jurisdictions, including:

- an overseas child, step-child or spousal maintenance order
- an overseas court-registered child, step-child or spousal maintenance agreement
- an overseas child or spousal maintenance assessment
- an overseas agency reimbursement liability (i.e. an amount that an overseas authority has paid to the payee, which it seeks reimbursement from the payer)
- arrears that have accumulated under an overseas maintenance liability.

There are around 12,700 international cases where the payer lives in Australia, and 27,500 international cases where the payer lives outside Australia. The majority of international cases involve parents who live in New Zealand, the United Kingdom, the United States and Canada.<sup>7</sup>

Services Australia cannot vary an overseas maintenance liability. If there has been a change in circumstances and a parent wishes to have their overseas maintenance liability varied, they can apply to the judicial or administrative authority in the country in which the liability originated to vary the liability.

Alternatively, the parent can apply to an Australian court exercising family law jurisdiction for an order under regulation 36 of the *Family Law Regulations 1984* (Cth). Under regulation 36, an order can be made to vary, discharge, suspend or revive an overseas maintenance liability registered under the CSRC Act. The Australian variation order is provisional if the original order was made in one of the jurisdictions specified in regulation 38. A provisional order has no effect unless and until a court in the relevant reciprocating jurisdiction confirms it. If the overseas court confirms the provisional order (by making a final order) with or without modification, that final order has effect in Australia.

If eligible, a parent with an overseas maintenance liability registered in Australia could also apply for an Australian administrative assessment. A registered overseas maintenance liability will cease to have effect in Australia when a child support assessment made under the CSA Act is registered, though it may remain enforceable in the originating jurisdiction. To minimise repeated new liabilities, Services Australia can refuse to accept an application for a child support assessment that would override an overseas maintenance liability already registered

in relation to the same parties, where either party is a resident of a reciprocating jurisdiction.

## Support for separated families

Services Australia 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, which provides a systematic method to identify parents with a set of determined risk factors that indicate possible need for intensive support and/or referral.

Services Australia also has a proactive family and domestic violence risk identification process, which staff use during nominated customer interaction points such as the registration of a child support case. During this process, both payers and payees are asked a question designed to identify concerns a person may have about their safety. If the parent responds in the affirmative the Service Officer will offer an appropriate referral to either a departmental social worker or an external support service as well as recommend other payments and services.

Where a parent has raised issues relating to family and domestic violence, staff are able to offer them referrals to:

- a Services Australia social worker
- 1800RESPECT, the national family and domestic violence and sexual assault hotline
- MensLine Australia, a counselling, information and referral service for men

Staff also liaise with, and make referrals to, social workers within Services Australia. The social workers can identify appropriate support, and administrative options for people at risk of, or experiencing family and domestic violence. For example a person in this circumstance may be granted an exemption from the requirement to take reasonable maintenance action to receive their full Family Tax Benefit entitlement.

If a staff member identifies a person experiencing or at risk of family and domestic 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 support and referral options to the person. The indicator does not identify the perpetrator.

Other referral options for parents where risk factors have been identified include the Family Relationship Advice Line, Family Relationship Centres 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.

All Child Support staff are trained to provide referral options to customers who may be at risk of self-harm, and make real time referrals to departmental social workers, senior leaders, and emergency services where appropriate.

The Parent Support Team proactively identify and assist customers experiencing complex and sometimes escalated circumstances related to family breakdown, including customers at risk of self-harm.

This team proactively contacts customers to explain complex decisions, or circumstances impacting their assessment or case, and also assist customers who are struggling to navigate the Child Support system. The team make appropriate referrals to social workers and external organisations to support customers in need. This approach transformed Child Support service delivery from a 'react and respond' to a 'predict and prevent' model to identify and support customers at potential risk.

The Personalised Services team provide intensive case management for customers who have been identified as having complex or entrenched issues, vulnerabilities, and challenging or aggressive behaviour. Referrals to Personalised Services are received from departmental social workers, team leaders and escalated complaint teams.

The Personalised Services officer will be the customer's main point of contact for the department, and liaise with all relevant business and specialist areas to provide a holistic approach to the customer's issues. The Personalised Services officer/team will work with the customer to address their issues, provide appropriate referrals and to enable them to better self-manage their interactions with the department.

## References

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<sup>1</sup> Australian Institute of Family Studies (AIFS), *Evaluation of the 2012 Family Violence Amendments: Experiences of Separated Parents Study* (Australia: AIFS, 2015).

<sup>2</sup> AIFS, *Evaluation of the 2012 Family Violence Amendments: Court Outcomes Project* (Australia: AIFS, 2015).

<sup>3</sup> Ibid.

<sup>4</sup> The child support scheme provides flexibility to depart from the standard child support formula in special circumstances, through the change of assessment process. Child support can also be negotiated by parents through child support agreements, or determined by courts through adult child maintenance orders, which can be registered with Services Australia for collection.

<sup>5</sup> Cabinet Sub-Committee on Maintenance, *Child Support: A discussion paper on child maintenance* (1986) 14.

<sup>6</sup> All data as at 30 June 2019, sourced from Services Australia's Child Support Extract Data.

<sup>7</sup> Data is at 30 June 2019, sourced from Services Australia's International Business Area.