

Parliamentary Inquiry into the Child Support Program

Introduction

This Parliamentary Inquiry has commenced at an opportune time in the operation of the Child Support Program and the relationship between the various agencies responsible for implementing the government's family and parenting policies in the Australian community.

I have recent experience in the practical operation of the Program and look forward to this inquiry creating practical and effective solutions to some of the deficiencies in the system.

I have structured my submission around the terms of reference and hope that my comments will support the Committee in framing recommendations for the future operation of the Child Support Program.

There are five reportable matters in the terms of reference.
In my submission, each reportable matter has one or more numbered issues.
Each issue has one or more alphabetically labelled recommendations.

Hopefully you find this layout helpful.

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Methods used by Child Support to collect payments in arrears
and manage overpayments

1. The Child Support Agency issues “Your Child Support Assessment” statements for the parents of a supported child that describes the calculation of the relevant child support amount for a nominated period of time. Such statements do not show which year was used to derive the “Costs of the children”, that is the costs of raising a child of a specified age group.

I have received statements for successive assessment periods that show lower “child costs” in later periods for the same child. This did not appear correct but perhaps reflected an error in the system generating the statement.

During a subsequent phone call, the Child Support Agency advised me that the “Costs of the children” were those applying at the date the statement was issued. However, this is not an appropriate basis for earlier periods during which different child costs should be applied.

The Child Support Agency web site did not appear to disclose the “Costs of the children” for a previous year and I was unable to verify the correctness of the advice from the Child Support Agency

- a) I recommend that the “Your Child Support Assessment” statement issued by the Child Support Agency should disclose the year from which the “Costs of the children” were derived.
- b) I recommend that the “Your Child Support Assessment” statement issued by the Child Support Agency should make use of the correct year pertaining to the “Costs of the children” for the relevant time period and not those pertaining to the issue date of the statement.
- c) I recommend that the Child Support Agency web site should disclose the “Costs of the children” for previous year’s to ensure transparency in the payment calculations.

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2. The Child Support Agency issues monthly “Child Support Account Statement” showing payments, costs and account details. Debit and Credit Adjustments are shown and can arise from changes or amendments to prior assessments.

I have found it impossible to reconcile the amount of a Debit adjustment with the additional amount actually requested by the statements. In my case, a Debit adjustment exceeding \$1,000 became an “Amount you need to pay” of less than \$300. The following month it turned into an overdue amount of somewhat less than \$500. These differing amounts did not make sense.

I was unable to obtain a satisfactory answer in a subsequent phone call to the Child Support Agency. There appears to be a hidden calculation or undisclosed balance amount in the child support accounts that generate such divergent values.

- a) I recommend that the “Child Support Account Statement” discloses the reason for the difference between Debit and Credit Adjustments and the actual additional amount owed or overpaid.

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3. The Child Support Agency monthly “Child Support Account Statement” shows debit and credit transactions for that period and the opening and closing balances are correctly carried over from one month to the next. However, it is very difficult to understand the statement if the agreed payment cycle for the paying parent is fortnightly or weekly.

The various balances go up and down but don’t indicate whether the paying parent is ahead or behind in their payments. This creates an impression that the statements are not a reliable indicator of payment status.

In my case, I ignored the statements until I received a phone call about allegedly unpaid arrears. My payments were made by salary deduction and a debit adjustment created the extra amount owing.

It would be helpful something was changed in the monthly statements to better represent the debt owing (if any) in the same fortnightly or weekly cycle as the agreed payment arrangement.

- a) I recommend that the “Child Support Account Statement” is modified to better represent the fortnightly or weekly payment cycle for those paying parents with this agreed arrangement
- b) I recommend that the “Child Support Account Statement” show the true amount of outstanding debt or over-payment for those paying parents with a fortnightly or weekly payment cycle.
- c) I suggest that the accounting approach to child support payments be changed to a daily parenting debt liability that is off-set by actual periodic payments with a redline marker showing the date when a missed or insufficient payment becomes an arrears. Such an approach will provide greater visibility to the actual and future debt owed by the paying parent. It has the potential to increase the flexibility in payments, tracking debt, arrears and dealing with overpayments.

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4. The Child Support Agency does not repay overpayments until a paying parent's child support arrangement is terminated. This situation is likely to arise when all supported children of the paying parent have reached the terminal age for child support matters. The amount or duration of the overpayment is not considered. In a subsequent phone call, the Child Support Agency stated that a refund cheque would be issued to the paying parent in this situation.

In contrast, an underpayment or debt will be pursued using the enforcement options available to the Child Support Agency. In addition, there does not seem to be any process or procedure for informing any of the parents of an overpayment.

This situation is not fair. The Child Support Agency is failing to inform clients of the true extent of their child support commitments and it raises concerns about the application of these payments. For example, is the Child Support Agency keeping the money for itself? Any public agency that is unable to properly account for its clients assets and liabilities must be identified as a financial risk.

- a) I recommend that the "Child Support Agency" regularly disclose the amount of accumulated overpayments to both parents of a child support matter
- b) I recommend that the "Child Support Agency" refund overpayments or credit them in place of a due payment on a regular basis at least annually
- c) I recommend that any refunds not applied to a child support payment be returned to a paying parent by EFT or cheque as nominated by the paying parent
- d) I recommend that the "Child Support Agency" report annually on the number of accounts with overpayment amounts and the amount of such overpayments for those accounts where the current child support liability is being fully satisfied by the existing payment arrangements eg salary direct payments. The number of accounts with arrears together with the amount of arrears shall be reported for comparison purposes.

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5. The Child Support Agency “Your Child Support Assessment” statement shows the Daily Rate, Weekly Rate, Fortnightly Rate and Monthly Rate for the annual amount of child support payable by the paying parent.

The calculation of arrears for the commencement of a period of child support appears to use different rates that are hard for customers to understand.

In my case, an arrears amount for a period of 48 days calculated at the Daily Rate, gave a different answer to the amount shown in my Child Support Account Statement. In a subsequent phone call, the Child Support Agency advised that payment was calculated on the basis of 1 month at the Monthly Rate plus the remaining days at the Daily Rate.

This calculation methodology is not disclosed anywhere on the account statement, assessment notice or on the web site. I expected this information to be readily available to the parents.

- a) I recommend that the “Child Support Agency” disclose the methodology for the payment of arrears and provide new child support clients with reassurance about the basis for such calculations

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Whether the child support system is flexible enough to
accommodate the changing circumstances of families

6. A parent is entitled to submit a Change of Assessment application to the Child Support Agency if the child or parent circumstances change. There are ten reasons provided by the process that allows such an application to be considered by the Registrar of the Child Support Agency or their delegate.

The other party is entitled to provide a response to such an application but has only 7 days to do so. In contrast, the Child Support Agency has no time limits to make a decision and it is presumably left to the relevant senior officer in that organisation to allocate resources as they deem fit.

The process allows the Child Support Agency to seek an agreement between the parties and such an agreement can be made over the phone.

In contrast, I was advised over the phone by the Child Support Agency that mediation does not play any role in the process. This response did not correspond to other information I obtained about the process on the Child Support web site. Perhaps the relevant officer decided my case was too hard?

I was left with the impression that parents had three choices. Come to an agreement without the Child Support Agency, reach an agreement over a single short phone call to the relevant Child Support Officer or engage in a battle of paperwork and leave it to a Child Support Officer to make a decision in a couple of months.

- a) I recommend that the “Child Support Agency” consider a mediation approach, perhaps over an extended phone call, for those change applications where the matters of dispute are limited.

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The alignment of the child support and family assistance frameworks

7. A Decision by the Child Support Agency on the basis of a Change of Assessment application is required to consider “Is it otherwise proper to change the assessment”. This condition considers the impact of the decision on the community and particularly the impact on any pension or benefit entitlements received by the parents.

In my case, two separate decisions stated that any increase in payments by the paying parent would satisfy this condition. There was no attempt by the relevant Child Support Agency officers to justify such a statement. I utilised the financial disclosures of both parents and found no evidence of any impact on pension or benefit entitlements.

It is not fair for the Child Support Agency to make unjustified representations without seeking the necessary evidence. I have the impression that the Child Support Agency does not have a system or tool that allows an officer to calculate the real impact of their decision.

- a) I recommend that the “Child Support Agency” develop a system or tool that estimates the actual financial impact on pension and benefit entitlements using the financial disclosures of the parents.
- b) I recommend that the “Child Support Agency” provide evidence for their decisions and not rely on uninformed opinion.
- c) I recommend that the “Child Support Agency” indicate the relative significance of the different evidence for their decision. For example, a calculated pension payment would have a higher evidence value than an assumed outcome.

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Linkages between Family Court decisions and Child Support policies and processes

8. A Decision by the Child Support Agency on the basis of a Change of Assessment application is required to consider “Is it just and equitable to change the assessment”. This condition considers if it would be fair to the children and the parents to change the assessment.

In my case, a decision on this point was constrained by the opinion of the Child Support Agency officer that it was “tantamount to going behind the consent orders entered into by the parties” and that “no doubt this was taken into account in the parties’ final division of assets”.

This opinion disregarded the clear evidence provided by both parents about the outcome of Family Court proceedings and the necessity for any decision of the Child Support Agency to consider these matters. The Child Support Agency officer gave the impression they ignored the Family Court consent orders and made their own assessment of the evidence.

This is not fair. Any decision by the Child Support Agency must consider any order or direction from the Family Court. To do otherwise brings the entire Family Court and Child Support Program into disrepute.

- a) I recommend that the “Child Support Agency” be prevented from disregarding orders or directions issued by the Family Court pursuant to Change of Assessment applications
- b) I recommend that the “Child Support Agency” provide evidence justifying how their decision supports the orders and directions issued by the Family Court for individual cases.

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How the scheme could provide better outcomes for high conflict families

9. The process of managing Child Support applications in high conflict families deserves special attention because of domestic violence risk, predisposition to fraudulent applications and potential threats to Child Support Agency officers.

Such applications may need to be managed by specially trained officers to control the risks of such applications.

In my case, the conflict levels are so high that individual entries submitted in the applications to the Child Support Agency are being disputed between the respective party's legal representatives. It won't matter how the Child Support Agency responds to the application, they'll just become another party to the disputes.

- a) I recommend that the "Child Support Agency" develop a high conflict unit for dealing with such child support cases. It will help providing a single point of contact with a highly trained group rather than leaving it to chance with the random assignment of cases to different officers.
- b) I recommend that the "Child Support Agency" consider the operation of a special payments group to manage the distribution of child support payments as part of a "Proven Care Program". I propose that the parent's prove the period and payment of their children's expenses before they are given any child support payments. This program could be funded by interest earned on overpayments held by the Child Support Agency or perhaps penalty interest accrued on overdue child support debts.

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10.A Change of Assessment application to the Child Support Agency provides ten reasons for the application. The process permits the Registrar or delegate a wide range of discretion in selecting the evidence and making a decision.

This same level of discretion is provided to the Registrar or delegate when making a decision about an objection to an earlier decision.

In my case, the Child Support Agency stated that the objection will be decided on the presumption that it is a new decision. That is, the earlier decision will be ignored and the reviewing officer will make their own independent decision. The evidence provided in the objection is treated as being part of a new decision rather than a complaint about any particular element of the previous decision.

The form submitted as part of the objection specifically requests the applicant to describe the reasons for their objection.

It seems strange to me that the submitted material can be ignored by the reviewing officer in making the new decision. Furthermore, the reviewing officer could use their discretion in selecting different evidence and make a decision based on entirely different criteria.

In my case, the reviewing officer used a different principle in defining the payment amounts and the only option was which decision resulted in the bigger child support payment !

The only remaining option for the confused applicant and respondent is to appeal the objection – but why bother if this is merely going to create a third new decision.

In high conflict families, this type of random discretion by the Child Support Agency will inevitably lead to repeated applications and responses by the various parents.

- a) I recommend that the “Child Support Agency” discontinue asking for a reason for an objection. The reviewing officer will ignore those reasons so why should parents waste their time explaining their objection.

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- b) I recommend that the “Child Support Agency” be prevented from changing any part of a decision not objected to by a respondent. This will remove the discretion that allows a reviewer to amend any matter not in dispute between the parties. A decision that changes a matter not in dispute will make one or both parents dissatisfied with the decision.
- c) I recommend that the “Child Support Agency” provide an opinion to each reason provided in an objection and explain why that reason was or was not supported in the reviewed decision.
- d) I recommend that the “Child Support Agency” justify any new decision making principle introduced into the reviewed decision that was not used in the earlier decision.
- e) I recommend that the “Child Support Agency” justify any element of the earlier decision that changed in the reviewed decision yet was not objected to by any of the parents.

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11. A Change of Assessment application to the Child Support Agency permits the Registrar or delegate a wide range of discretion in selecting the evidence for the making of a decision.

There are unenforced consequences for a parent making misleading claims in an application. The Registrar or delegate has discretion to amend an application if they consider it will support the applicant's case. In my case, the Child Support Agency changed the selected reason for the application.

In addition, they can choose the degree or amount of evidence supporting the claim made by the applicant. In my case, by ignoring the lack of evidence about refunds from health benefit funds.

The responsibility for providing evidence falls to the parent seeking to disclaim the other parent's application or response. This is not fair as they are unlikely to have supporting documents proving the matters claimed.

The Child Support Agency ought to have an interest in seeking confirmation of the matters where they are disputed between the parties. It is not fair if the Child Support Agency ignores the lack of evidence for disputed matters that are at the centre of the application.

The absence provides no rational basis for the decision unless there are extenuating circumstances that are stated in the decision. In my case, the Child Support Agency agreed that there was insufficient evidence for the refunds from a health benefit fund but choose to make a decision because it wanted to quickly finalise the decision.

- a) I recommend that the "Child Support Agency" refuse to accept Change of Assessment applications unless they are provided with independent documentary evidence of matters claimed as the reason for the application eg receipts

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- b) I recommend that the “Child Support Agency” reject Change of Assessment applications where the parent is deliberately misleading and this is supported by evidence obtained by the Child Support Agency or the other parent.
- c) I recommend that the “Child Support Agency” be permitted to make minor amendments to an application but only if there is no evidence of misleading material in the application and the amendment is for the correction of an inadvertent error by the applicant.

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12.A Change of Assessment application to the Child Support Agency provides ten reasons for the application. The process permits the Registrar or delegate a wide range of decision making powers respecting an application.

The decision can affect any part of the child support payment calculation including the costs of the children, the shared payment of additional costs for the supported children, the adjusted income of the parents, the duration of payments and the method of payment.

An application for any single reason can affect any or all of these aspects of the child support payment calculation.

Unfortunately, a simple mistake in any single aspect of these payment calculations requires an objection to the entire decision. That new decision may correct the mistake but create additional areas of dispute.

In my case, a simple misreading of the allowable tax deductions lead to an objection where the reviewer made other decisions that were overall less favourable than the earlier decision. This doesn't make sense.

- a) I recommend that the "Child Support Agency" permit objections to correct obvious minor mistakes in a decision without affecting the remaining bulk of the decision.
- b) I recommend that the "Child Support Agency" should use the adjusted taxable income as notified by the Australian Taxation Office unless there is a large and obvious change in the current income. Any such change should be justified in the decision.
- c) I recommend that the "Child Support Agency" should not change the adjusted taxable income unless it is supported by the evidence required in Reason 8 "The assessment does not correctly reflect either parent's income, property, and/or financial resources".