The Parliament of the Commonwealth of Australia

Child Support Scheme

An examination of the operation and effectiveness of the scheme*

Joint Select Committee on Certain Family Law Issues

NOTE: This is a reformatted copy of the original report. The electronic version of the original report is not compatible with current systems and applications. The text in this and the original versions is identical, however, the formatting (including pageination) is different. Further, this version does not contain all of the appendices.

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Membership of the Committee

Chair Hon Roger Price, MP

Deputy Chair Senator Margaret Reid

Members

Senator David Brownhill	Mr Kevin Andrews, MP
Senator Kim Carr	Ms Marjorie Henzell, MP
Senator Jim McKiernan (to 23 March 1994)	Mr Les Scott, MP
Senator Belinda Neal (to 23 March 1994)	Mr Daryl Williams, AM, QC, MP
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Terms of reference

That a Joint Select Committee, to be known as the Joint Select Committee on Certain Family Law Issues, be appointed to inquire into:

(i) the administration of the Family Court of Australia with particular reference to:

  (a) the base level of funding required to enable the Court to undertake its statutory functions; and

  (b) the effectiveness of present expenditure by the Court towards undertaking those functions.

(ii) the operation and effectiveness of the Child Support Scheme.

(iii) the Auditor-General's audit report No. 39 of 1993-94 - Efficiency audit - Australian Taxation Office: Management of the Child Support Agency.

List of recommendations

3 The child support scheme legislation

Recommendation 1

the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* be:

(a) redrafted in a more simplified and understandable form; and

(b) combined into one piece of legislation.

4 The performance of the child support scheme

Recommendation 2

a survey be undertaken to determine why a significant proportion of custodial parents are receiving no child support and/or have no child support arrangements.

Recommendation 3

the Government adopts the following order of priorities in respect of the objectives of the Child Support Scheme:

Priority 1. adequate support is available to all children not living with both parents

Priority 2. non custodial parents share in the cost of child support according to their capacity to pay

Priority 3. Commonwealth expenditure is limited to the minimum necessary to ensure the adequacy of child support to all children not living with both parents.

Recommendation 4

the objective of the Child Support Scheme that non custodial parents share in the cost of supporting their children according to their capacity to pay be redrafted so that it reads as follows:

- parents share in the cost of supporting their children according to their respective capacities to pay.

Recommendation 5

the objective of the Child Support Scheme that work incentives to participate in the labour force are not impaired, be redrafted so that it reads as follows:

- work incentives for both parents to participate in the labour force are not impaired.

5 How the Child Support Scheme works

Recommendation 6

the *Child Support (Assessment) Act 1989* be amended so that the definition of the basic child support formula includes the custodial parent disregarded income level.

6 Origin and growth of the Child Support Agency

7 Management of the Child Support Agency

Recommendation 7

the Child Support Agency establishes, as a matter of priority, national policies and develops the necessary guidelines and manuals to ensure uniform practices are observed in all areas of Child Support Agency administration and in accordance with the child support legislation.

Recommendation 8

child support debts due under default assessments be included in the calculation of the Child Support Agency's collection rate.

Recommendation 9

child support debts paid pursuant to private collection cases registered with the Child Support Agency be excluded from the calculation of the Child Support Agency's collection rate.

Recommendation 10

the Child Support Agency establishes a nationally co-ordinated approach to identify, assess and introduce as revised national practice, administrative improvements from local branch office initiatives and from best practice in the public and private sector.

Recommendation 11

the Child Support Agency:

(a) ensures that training has an appropriate focus on client service;

(b) evaluates the effectiveness of the training provided by measuring the transference of skills learnt by staff into the workplace;

(c) introduces a national program for validating and accrediting all training material and training received by staff of the Agency;

(d) adopts progressive and innovative approaches to training and abandons the Child Support Agency's reliance upon ‘in house’ and ‘on the job’ training; and

(e) recruits more staff with experience and qualifications in client service oriented disciplines to assist in changing the current predominantly tax and finance oriented staff culture.

Recommendation 12

the Government establishes a review of the location of the Child Support Agency to be conducted at the end of the 1996-97 financial year to test the benefits of the Agency's continued location within the Australian Taxation Office.

Recommendation 13

the Child Support Agency introduces dedicated case officers, with assigned responsibility and accountability for individual clients.

Recommendation 14

the Child Support Agency introduces a reference number system to ensure accountability for the advice given to clients and to enable follow up on commitments and the provision of feedback to clients.

Recommendation 15

the Child Support Agency introduces administrative measures to ensure it is advised of clients who are subject to, or at risk of, abuse.

Recommendation 16

the Child Support Agency, as a matter of urgency, develops national guidelines for the identification and administration of cases where there is a history or risk of domestic violence and/or child abuse.

Recommendation 17

the *Child Support (Registration and Collection) Act 1988* be amended to provide the Child Support Registrar with the discretion to suspend enforcement action where the continuance of this action would result in the likely abuse of a child or parent.

Recommendation 18

within 6 months of the tabling of the Joint Committee's report, the Child Support Agency conducts a study of the information needs of its clients and identifies shortfalls in current representation.

Recommendation 19

within 12 months of the tabling of the Joint Committee's report, the Child Support Agency reports to the Assistant Treasurer on the costs and benefits, including savings to community organisations, of introducing an advisory function to meet the information needs of its clients. This is to include:

(a) a nationally co-ordinated 'outreach' program targeted to the information needs of Child Support Agency clients, especially those clients in remote locations;

(b) making greater use of the Australian Taxation Office's regional office network by establishing full time Child Support Agency advisory staff in these offices; and

(c) making advisory staff available on a short term, permanent or rostered basis in remote locations in community legal aid, the Department of Social Security or other offices.

Recommendation 20

the Child Support Agency develops in consultation with its clients, a code of conduct and service standards for Child Support Agency staff and ensures all Child Support Agency clients are aware of the standards of conduct and service which have been set.

Recommendation 21

the Child Support Agency introduces administrative procedures to ensure that clients not receiving the set standard of service have redress to higher levels of management and informs all clients of the process and procedures required to pursue complaints about conduct and service delivery.

Recommendation 22

the Child Support Agency develops administrative mechanisms to monitor client complaints and solve the deficiencies in conduct and service delivery.

Recommendation 23

the Child Support Agency develops communication strategies, targeted at the various groups of Child Support Agency clients, to inform them of their rights and obligations under child support legislation and Child Support Agency administrative practices which may materially affect each group of clients.

Recommendation 24

the Child Support Agency in consultation with the Australian Association for Marriage Education and the Catholic Society for Marriage Education develop a resource package on child support and other legal responsibilities to be used by the Child Support Agency, marriage education bodies and other relationship programs.

Recommendation 25

the Child Support Agency's public education strategy be aimed to make the population aware of the Child Support Scheme and its impact on families.

Recommendation 26

an independent consultant be engaged to work with the Child Support Agency to realign management and service to the needs of clients and develop strategies aimed at achieving best practice.

Recommendation 27

that the Auditor-General conducts a supplementary audit of the Child Support Agency to evaluate the effectiveness of the implementation of the recommendations of:

(a) the Auditor-General in the report entitled, Management of the Child Support Agency; and

(b) this report of the Joint Select Committee on Certain Family Law Issues.

8 Communication with the Child Support Agency

Recommendation 28

the Child Support Agency examines the management practices and operational standards applied to telephone communications in leading commercial operations in order to improve the management of the Child Support Agency's telephone enquiry service to clients.

Recommendation 29

the Child Support Agency sets up a separate general inquiry number so that simple and routine telephone enquiries can be handled promptly and effectively.

Recommendation 30

the Child Support Agency introduces on a national basis the voice messaging telephone service.

Recommendation 31

the Child Support Agency requires staff to identify themselves to clients unless staff believe their safety to be at risk.

Recommendation 32

the Child Support Agency re-writes computer generated correspondence to provide clients with the information they require in a clear, concise and user friendly fashion.

Recommendation 33

where clients raise specific issues the Child Support Agency responds on an individual basis and avoids the use of a computer generated response.

Recommendation 34

the Australian Taxation Office advertises in Tax Pack and on individual income tax return forms that information provided in tax returns may be used by the Child Support Agency to assess liability for child support.

Recommendation 35

the Child Support Agency reviews and amends procedures for contacting clients and responding to client enquiries to prevent the unauthorised disclosure of personal information.

Recommendation 36

Child Support Agency staff be trained in the requirements of the *Privacy Act 1988*.

Recommendation 37

the Child Support Agency and the Department of Social Security jointly examine ways of training their staff in the roles of each organisation and the interaction of child support and social security legislation.

Recommendation 38

staff of the Department of Social Security and the Child Support Agency be encouraged to undertake an exchange between the offices of the Department of Social Security and the Child Support Agency to improve working co-operation between the two organisations and the results be reported in the respective Annual Reports.

9 Application, registration and collection of child support

Recommendation 39

the Child Support Agency reviews its registration procedures to ensure that it registers court orders and court registered agreements correctly and does not register applications for court orders.

Recommendation 40

the Child Support Agency revises its training programs in order to improve the ability of staff to interpret correctly court orders.

Recommendation 41

the Family Court of Australia issues a practice direction containing precedents for the wording of court orders to provide guidance to magistrates exercising family law jurisdiction.

Recommendation 42

the Child Support Agency complies with the statutory requirements of the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989* and allows prospective liable parents the statutory time to exercise their rights under the Acts.

Recommendation 43

section 31 of the *Child Support (Assessment) Act 1989* be amended so that the liability to pay child support under Stage 2 of the Child Support Scheme arises on the day after the day upon which the appeal period under section 107 of the *Child Support (Assessment) Act 1989* expires.

Recommendation 44

the Department of Social Security immediately forwards all applications for child support to the Child Support Agency.

Recommendation 45

the *Child Support (Assessment) Act 1989* be amended to require the Child Support Registrar to accept automatically applications for child support.

Recommendation 46

section 107 of the *Child Support (Assessment) Act 1989* be amended to require a prospective liable parent to notify the Child Support Registrar when he or she intends to appeal to a court under this section.

Recommendation 47

the *Child Support (Registration and Collection) Act 1988* be amended to require the Child Support Registrar to hold in trust monies collected from a prospective liable parent when notified that an appeal is to be made to a court under section 107 of the *Child Support (Assessment) Act 1989.*

Recommendation 48

the *Child Support (Registration and Collection) Act 1988* be amended to allow the Child Support Registrar the discretion to disburse these monies to the custodial if the Child Support Registrar is satisfied that no such appeal has been made.

Recommendation 49

the Family Court of Australia and other relevant courts hear disputed parentage cases as a matter of priority.

Recommendation 50

the Family Court of Australia considers delegating to Family Court Registrars powers to resolve child support related paternity disputes.

Recommendation 51

section 140 of the *Child Support (Assessment) Act 1989*, allowing a prospective liable parent to apply to a court for a stay of a child support formula assessment, be repealed.

Recommendation 52

the Child Support Agency includes the following information in the notice issued under section 34 of the *Child Support (Assessment) Act 1989*.

(a) advice on what further correspondence parties will receive; and

(b) advice on making acceptable private child support collection arrangements.

Recommendation 53

notices of formula assessment issued under section 76 of the *Child Support (Assessment) Act 1989* must clearly advise both parents that the Child Support Registrar has powers under section 75 of the Act to correct factual errors and false or misleading statements in a formula assessment.

Recommendation 54

the Child Support Agency develops a national guideline on the use of the Child Support Registrar's power under section 75 of the *Child Support (Assessment) Act 1989*.

Recommendation 55

section 43 of the *Child Support (Registration and Collection) Act 1988* be amended to require the Child Support Agency to give non custodial parents the option of voluntarily paying their child support liabilities, rather than being automatically placed on autowithholding.

Recommendation 56

the Child Support Registrar be given the power to remove non custodial parents from the automatic withholding provisions and allow them to elect to pay direct to the Child Support Agency where the Child Support Registrar is satisfied that the child support liabilities will continue to be paid by the due date.

Recommendation 57

where a non custodial parent defaults on direct payment to the Child Support Agency, the Child Support Registrar can request the non custodial parent's employer to commence automatic withholding of child support from that non custodial parent's wages.

Recommendation 58

the *Child Support (Registration and Collection) Act 1988* be amended so that, in the first month of liability, the following payment dates apply to new child support applications registered under the Child Support Scheme:

(a) where the child support liability starting date falls after the seventh day of a month but on or before the twenty-first day of a month, the child support debt is due for payment on or before the twenty-first day of that month; and

(b) where the child support liability starting date falls after the twenty-first day of a month, the child support debt is due for payment on or before the seventh day of the next month.

Recommendation 59

section 66 of the *Child Support (Registration and Collection) Act 1988* be amended so that, after the first month of liability, an amount that becomes a child support debt in any month is due and payable on the seventh day of that month.

10 Child support payment issues

Recommendation 60

section 76 of the *Child Support (Registration and Collection) Act 1988* be amended to give statutory force to Child Support Agency practice.

Recommendation 61

the Child Support Agency develops its own payment system and no longer relies on the Department of Social Security.

Recommendation 62

the Child Support Agency gives custodial parents the option to obtain child support payments as soon as practicable after collection by the Child Support Agency or to receive the payments on a fixed day of the month following collection.

Recommendation 63

the Child Support Agency makes arrangements for child support payments to be credited directly into the bank accounts of custodial parents with:

(a) the Child Support Agency to advise custodial parents when funds for child support have been electronically credited to their accounts; and

(b) the Child Support Agency to advise the Department of Social Security of the amount of child support which has been transferred to a custodial parent's account when the custodial parent is a Department of Social Security client.

Recommendation 64

the Child Support Agency:

(a) develops national guidelines on the recovery of overpayments from custodial parents and repayment to non custodial parents;

(b) gives effect to its commitment to the Ombudsman that, prior to seeking to recover overpayments from custodial parents, the Child Support Agency informs both parties of the overpayment and provides the opportunity to negotiate the period over which an amount should be repaid; and

(c) informs parents of the content of the national guidelines and the potential collection problems created by not advising the Child Support Agency promptly of any change in circumstances.

Recommendation 65

the Child Support Agency introduces procedures to ensure that:

(a) amounts remitted by employers are promptly and accurately recorded against the correct non custodial parent's account and that amounts are credited for the correct contribution period; and

(b) amounts credited to non custodial parents' accounts which represent direct payments to custodial parents, accurately reflect the timing and amount of each transaction to assist clients and staff to understand the account with the Child Support Agency.

Recommendation 66

the *Child Support (Registration and Collection) Act 1988* be amended to allow the Child Support Registrar to make a payment from Consolidated Revenue where the Child Support Registrar is satisfied that a payment from a non custodial parent has been received by the Child Support Agency but has not been credited against the child support liability.

Recommendation 67

the child support legislation be amended to allow the Child Support Registrar the discretion to credit certain non agency payments as child support when, in the Child Support Registrar's opinion, these payments are in the interests of the child, subject to the following circumstances:

(a) limit the Child Support Registrar's discretion to accept non agency payments as child support to 25 per cent of the liable parent's child support payment for any given month without requiring the consent of the custodial parent;

(b) allow the Child Support Registrar the discretion to accept a further 35 per cent of the child support payment as non agency payments but only where the custodial parent's consent is forthcoming;

(c) allow the Child Support Registrar the discretion to accept 100 per cent of the child support payment as non agency payments where the non agency payment is made in an emergency with the consent of the custodial parent; and

(d) allow the Child Support Registrar the discretion to remove a liable parent's option to select the form in which he or she will provide child support when, in the opinion of the Child Support Registrar, continued provision of non cash support will result in intractable disputes between the parents.

Recommendation 68

the Child Support Agency takes immediate steps to inform parents in Child Support Agency correspondence of its policy on the crediting of non agency payments.

11 Private collection of child support

Recommendation 69

the child support legislation be amended to give the Child Support Registrar the discretion to substitute private collection for Child Support Agency collection where a liable parent has established a reliable voluntary payment record of 6 months.

Recommendation 70

the Child Support Registrar's discretion to substitute private collection for Child Support Agency collection be ordinarily exercised in favour of private collection except where the special circumstances of the case require otherwise.

Recommendation 71

the Child Support Agency establishes a national guideline on acceptable private child support collection arrangements.

Recommendation 72

the *Family Law Act 1975* and the *Child Support (Assessment) Act 1989* have compatible provisions to ensure that parenting plans, which include child support liability, and child support agreements are capable of acceptance by the Child Support Registrar pursuant to section 88 of the *Child Support (Assessment) Act 1989*.

Recommendation 73

the Child Support Registrar be given the power to vary future child support agreements on application from either parent where, in the Child Support Registrar's opinion, the actions of either party render the child support agreement, or clauses in the child support agreement, inequitable.

Recommendation 74

the Child Support Registrar be given the power to vary future child support agreements on application from either parent where, in the Child Support Registrar's opinion, the circumstances of either party have changed sufficiently to make the child support agreement, or clauses in the child support agreement, inequitable.

12 Review of child support agency decisions

Recommendation 75

the Child Support Agency provides information in multi-lingual pamphlets explaining the review avenues available and how to apply for a review.

Recommendation 76

the child support legislation be amended to establish an internal objection procedure for all administrative decisions and applications for a departure from formula assessment.

Recommendation 77

the child support legislation be amended to establish an external review office, called the Child Support Appeals Office, to determine appeals by custodial parents or non custodial parents.

Recommendation 78

the appeal officers of the Child Support Appeals Office be appointed by the Minister responsible for the Child Support Agency.

Recommendation 79

all review decisions of the Child Support Appeals Office be made by an appeals officer sitting alone.

Recommendation 80

all review decisions made by the Child Support Agency and the Child Support Appeals Office be published without naming the parties.

Recommendation 81

the relevant legislation be amended to establish a Child Support Claims Tribunal within the registry of the Administrative Appeals Tribunal.

Recommendation 82

the relevant legislation be amended to enable an application for a review of a Child Support Appeals Office decision to be made to the Administrative Appeals Tribunal and an appeal from the Child Support Appeals Office to be made to the Family Court of Australia on a point of law.

Recommendation 83

no filing fee be charged by the Administrative Appeals Tribunal.

Recommendation 84

the Child Support Appeals Office be able to refer a matter to the Administrative Appeals Tribunal or the Family Court of Australia for determination.

13 Child support debt and enforcement

Recommendation 85

the Child Support Agency establishes uniform national procedures for determining when enforcement action should commence and the types of enforcement action which are appropriate based upon the following criteria:

(a) sources of income and assets available to the non custodial parent;

(b) the age of the debt; and

(c) the size of the debt.

Recommendation 86

the Child Support Agency develops debt management and enforcement procedures consistent with the philosophy espoused in the Child Support Agency compliance policy.

Recommendation 87

the Child Support Agency develops an internal reporting system that:

(a) structures debts by appropriate age intervals and size;

(b) provides accurate and timely information on debtors arrears; and

(c) identifies and classifies non custodial parents who have recently defaulted.

Recommendation 88

the Child Support Agency develops a risk profile of its non custodial parent client base which enables it to assess accurately:

(a) the costs and benefits of each enforcement practice against categories of its non custodial parent population; and

(b) the short falls of existing enforcement approaches and develops alternative approaches to increase the Child Support Agency's enforcement effectiveness.

Recommendation 89

the Child Support Agency analyses outstanding debt and classifies it into various categories to enable the Agency to understand the nature of outstanding debt.

Recommendation 90

Child Support Agency enforcement staff be trained, as a matter of priority, in the appropriate use of existing enforcement powers.

Recommendation 91

the *Child Support (Registration and Collection) Act 1988* be amended to allow the Child Support Registrar to report defaulting non custodial parents to credit reference bureaus in cases where there are substantial arrears and other collection measures have not been successful.

Recommendation 92

the Child Support Agency reports to the Assistant Treasurer within 6 months of the tabling of the Joint Committee's report on the costs and benefits of introducing private process servers.

Recommendation 93

the Child Support Agency:

(a) reports to the Assistant Treasurer within 12 months of the tabling of the Joint Committee's report on any difficulties in enforcement which might be remedied by the granting of further powers; and

(b) reviews its enforcement strategies on a 12 monthly basis to counter changes in client behaviour which leads them to avoid liability.

Recommendation 94

section 121 of the *Family Law Act 1975* be amended to allow the identity of parties to a child support enforcement proceeding to be published where a court has made an order in respect of those proceedings.

Recommendation 95

the Child Support Agency makes enforcement a high priority activity and urgently provides dedicated staff to enforcement to remedy the five years of neglect in this area.

Recommendation 96

the Department of Finance calculates baseline and additional staffing for enforcement activity on the costs and benefits to total Child Support Agency collections, rather than on the amount of Department of Social Security benefits saved (clawback).

Recommendation 97

the Child Support Agency prepares a submission for additional staffing which needs to be treated sympathetically by the Department of Finance if improvements in this area are to be made.

Recommendation 98

the Child Support Registrar exercises the power under section 120 of the *Child Support (Registration and Collection) Act 1988* to require non custodial parents with more than 3 months of arrears to attend before him to enable the Child Support Agency to reassess these debts and / or to negotiate payment of these debts.

Recommendation 99

the maintenance income test be amended so that any child support debts paid by non custodial parents are notionally applied against each Additional Family Payment paid to the custodial parent over the applicable child support arrears period.

Recommendation 100

the *Child Support (Registration and Collection) Act 1988* be amended to allow the Child Support Registrar the discretion to remit a late payment penalty.

Recommendation 101

the late payment penalty be determined by reference to the prevailing medium term Treasury bond rate, compounded from the date on which a payment falls due.

Recommendation 102

the late payment penalty, when received by the Child Support Agency, be disbursed to the custodial parent.

Recommendation 103

the Child Support Registrar informs custodial parents about the reasons why particular enforcement activities have been unsuccessful or why a decision has been made not to proceed further with enforcement action in accordance with section 113(2) of the *Child Support (Registration and Collection) Act 1988*.

Recommendation 104

the Child Support Agency as a matter of practice, regularly notifies each custodial parent with arrears of child support owing to them, of current and recent Child Support Agency enforcement activity and the results of the activity.

Recommendation 105

the Child Support Agency advises custodial parents immediately a decision is made not to proceed with enforcement of child support debts and makes them aware of their objection and appeal rights as defined in the *Child Support (Registration and Collection) Act 1988*.

Recommendation 106

the Child Support Agency introduces national compensation guidelines which are independent of the Australian Taxation Office guidelines.

Recommendation 107

the Child Support Agency amends its compensation guidelines to require it to advise clients where its action, or lack of action, has caused financial loss and to include instructions in this advice to clients on how to apply for compensation.

Recommendation 108

the Child Support Agency informs its clients of the existence of the compensation guidelines, clients' rights to claim for compensation and the situations in which claims can be made.

Recommendation 109

the Child Support Agency pilot the use of private collection agencies to collect child support debts. This pilot should test:

(a) methods of maximising the benefits obtained from the use of private collection agencies while maintaining the Child Support Agency's initial focus on voluntary compliance;

(b) the most appropriate fee structures and the cost effectiveness of private collection agencies;

(c) allowing custodial parents to apply to the Child Support Registrar for private enforcement of child support debts if the Child Support Agency has been unable to collect these debts; and

(d) the conditions and charges which might apply to custodial parents for the collection of child support debts by these agencies.

Recommendation 110

the costs of collecting child support debts during this pilot be borne by the Child Support Agency.

14 International enforcement of child support liability

Recommendation 111

Australia, through the Attorney-General's Department, increases the number of arrangements in the international arena for the reciprocal enforcement of child support responsibilities.

Recommendation 112

reciprocal enforcement arrangements be made in preference to the United Nations Convention on the Recovery Abroad of Maintenance multi-lateral approach.

Recommendation 113

the Child Support Agency assumes the functions of the Attorney-General's Department in the enforcement of overseas maintenance.

Recommendation 114

section 12(3) of the *Child Support (Assessment) Act 1989* be amended so that a liable parent moving overseas is not a child support terminating event, thereby allowing child support to continue to be collected from that parent.

Recommendation 115

the Child Support Registrar be given the power to apply for a court order prohibiting the departure of a liable parent where satisfactory arrangements for the payment of child support have not been made

15 Formula percentages

Recommendation 116

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

16 Formula related issues—part I

Recommendation 117

the child support legislation be amended to substitute the term, 'excluded income' for 'self support component' wherever it appears.

Recommendation 118

the custodial parent's disregarded income level be reduced to the applicable pension cut off point (the current Department of Social Security cut off point is $19,723.60 which increases by $624 per annum for each additional child).

Recommendation 119

the current withdrawal rate of child support from custodial parents who earn more than the applicable pension cut off point be reduced to 50 cents in the dollar.

Recommendation 120

the child care component of the custodial parent's disregarded income level be abolished.

Recommendation 121

the maximum cap on non custodial parent income be reduced to twice average weekly earnings.

Recommendation 122

the child support legislation be amended to:

(a) introduce a minimum child support payment of $260 per annum where the formula results in an assessment less than this amount; and

(b) allow the Child Support Registrar to waive the minimum payment of $260 in special circumstances.

Recommendation 123

the non custodial parent's basic formula self support component be increased by 20 per cent, that is from $8,221.00 to $9,865.20 per annum.

17 Formula related issues

Recommendation 124

the child support legislation be amended so that a reassessment of child support on the basis of a person's estimated reduction in income under section 60 of the *Child Support (Assessment) Act 1989* takes effect from the month following the person's application for reassessment.

Recommendation 125

the existing estimates system be abolished and replaced by an internal administrative variation of assessment within the Child Support Agency triggered by the receipt of appropriate evidence of current monthly taxable income from either parent which shows a reduction in monthly taxable income of 15 per cent or more from that recorded in that parent's child support assessment.

Recommendation 126

in cases where a child support assessment is nil, or a parent has applied to the Child Support Agency for a revised assessment on the basis of current monthly taxable income, and the parent's monthly taxable income has subsequently increased by at least 15 per cent in the current year, that parent be required to notify the Child Support Agency of the increase.

Recommendation 127

the Child Support Agency issues a revised assessment for the remainder of the child support year when notified of a variation in monthly taxable income of at least 15 per cent.

Recommendation 128

a financial penalty be introduced for persons who recklessly or inadvertently provide false or misleading information in respect of their current monthly taxable income to the Child Support Agency.

Recommendation 129

a financial penalty be introduced for persons who knowingly, recklessly or inadvertently fail to notify the Child Support Agency of an increase in their monthly taxable income of 15 per cent or more when required to do so.

Recommendation 130

the impact of the indexation factor be continually monitored and regularly compared to other measures of wage fluctuations.

Recommendation 131

the Department of Social Security and the Child Support Agency report annually on the suitability of the indexation factor as a measure of wage fluctuations.

Recommendation 132

the *Child Support (Assessment) Act 1989* be amended so that:

(a) the full time employment of a child less than 18 years of age is a child support terminating event; and

(b) the receipt of Job Search Allowance, Newstart Allowance or Austudy by a child at the 'at home' or 'dependent' rate reduces the liable parent's child support liability by 50 per cent.

Recommendation 133

the provisions of section 66H of the *Family Law Act 1975*, allowing the court to make an order for maintenance when a child has attained 18 years of age, be incorporated into the *Child Support (Assessment) Act 1989*.

Recommendation 134

the Child Support Registrar be given the power to decide when the continued provision of maintenance is necessary.

Recommendation 135

the *Child Support (Assessment) Act 1989* and the regulations of the *Child Support (Registration and Collection) Act 1988* be amended so that the protected earnings rate is set at the non custodial parents' applicable self support component.

Recommendation 136

in order to overcome the unnecessary complications and difficulties in obtaining a departure order, the child support legislation be amended to repeal section 98F(b) and section 117(1)(b)(ii) of the *Child Support (Assessment) Act 1989*.

18 Subsequent family issues

Recommendation 137

the child support legislation be amended to allow a liable parent who has a de facto spouse the same right of departure from the formula assessment as presently exists for married spouses.

Recommendation 138

the child support legislation be amended to require the Child Support Registrar to adopt the social security legislation concept of 'marriage like relationships' when determining the standing of a de facto parent in a departure application.

Recommendation 139

the non custodial parents' subsequent family formula self support component be increased so that the relativity between the single and married rate of pension is reflected in the basic and subsequent family self support component.

Recommendation 140

the self support component for each parent with shared custody be increased to the subsequent family formula self support component.

Recommendation 141

the social security legislation be amended so that the child support paid by a family is deducted from the income amount used to determine that family's eligibility for Additional Family Payment.

19 Repairing the child support income base

Recommendation 142

the Child Support Agency undertakes research to identify the number of parents under the Child Support Scheme who receive business or investment income and the extent to which these parents minimise their child support liabilities.

Recommendation 143

fringe benefits be added to the existing child support income base for both parents.

Recommendation 144

both parents be required, within a set period, to provide the Child Support Agency with full details of all fringe benefits received from an employer.

Recommendation 145

employer financed superannuation contributions in excess of 9 per cent of a parent's taxable income be added back to that parent's child support income base in any review of that parent's child support liability by the Child Support Registrar.

Recommendation 146

any superannuation contributions by a parent, who is either an employee without any employer superannuation support, substantially self employed or self employed, which exceed 9 per cent of that parent's taxable income be added back to that parent's child support income base in any review of that parent's child support liability by the Child Support Registrar.

Recommendation 147

the Child Support Registrar be given the power to make a determination varying a formula assessment for child support upon request of either parent, or of the Child Support Registrar's own initiative, where the Child Support Registrar considers that either parent:

(a) obtains financial benefits from his or her employment, business and investment, or other activities which are not reflected in that parent's taxable income; or

(b) organises his or her employment, business and investment, or personal affairs to minimise taxable income, in order to minimise their child support liability.

Recommendation 148

the child support legislation be amended to:

(a) allow the Child Support Registrar to issue a determination varying the child support assessment to reflect the capacity to pay of a parent in receipt of business or investment income upon the application of that parent;

(b) allow the Child Support Registrar to issue a determination varying previous child support assessments for a period of up to 4 years prior to the current assessment, or up to the date on which the assessment first became enforceable, whichever is the most recent, to reflect the capacity to pay of a parent in receipt of business or investment income;

(c) allow the Child Support Registrar to issue a determination varying previous child support assessments for a period of up to 7 years prior to the current assessment, or the date on which the assessment first became enforceable, whichever is the most recent, in circumstances where a parent fails to disclose accurately all income, expenditure and assets in which he or she has an interest;

(d) to avoid retrospectivity, limit the backdating of any determination by the Child Support Registrar to the date of effect of the proposed amendments to the child support legislation;

(e) allow the Child Support Registrar to charge interest on the difference between the original, or last amended, child support assessment and the assessment varied pursuant to a determination of the Child Support Registrar for each year, or part year, at a rate equal to the prevailing medium term rate for Treasury bonds; and

(f) require the Child Support Registrar to pay any interest charged under (e) above to the other parent

Recommendation 149

the Child Support Agency implements:

(a) a targeted audit program in respect of parents who receive business or investment income;

(b) a random system of auditing parents who receive business or investment income; and

(c) a system of public rulings and other appropriate measures to inform parents and their advisers of the Child Support Registrar's practice in the assessment of a parent's capacity to pay.

Recommendation 150

the Child Support Registrar, when making an initial formula assessment or a determination to vary an existing formula assessment for child support shall:

(a) disregard the value of non income producing assets of each parent where the value of these assets is equal to or less than a threshold amount;

(b) where the non income producing assets of the parent exceed a threshold amount, deem the income on the excess at a rate equivalent to the prevailing medium term Treasury bond rate; and

(c) add back the deemed income to that parent's child support income base.

Recommendation 151

the Child Support Registrar be given the power to deem an asset assessable for child support purposes where the transfer of ownership or control of that asset has the effect of avoiding or minimising a parent's child support liability.

20 Stage 2 extension considerations

Recommendation 152

the *Family Law Act 1975* be amended to allow a maintenance order to be amended by an agreement of the parties which is in writing and registered in a court.

21 Child support liability and property settlements

Recommendation 153

where a court makes an allowance for child support liability by capitalising child support in a property order it must clearly specify the effect the order may have on future liability for child support consistent with the decision of *Borg v Borg*.

Recommendation 154

where a court makes a property order and no allowance is made for liability for future child support the court must specify no allowance has been made.

Recommendation 155

where a court specifies in a property order that there is an allowance for future child support liability, the Child Support Agency calculates on a pro rata basis the amount by which child support is to be reduced until the child turns 18 years of age.

Recommendation 156

the non custodial parent be given the right to apply to the Child Support Agency for an assessment.

Recommendation 157

the Attorney-General consults with the Law Council of Australia to examine the issue of accreditation of legal practitioners practising in family law to ensure the best and most accurate advice is available to the public.

22 Future evaluations of the child support scheme

Recommendation 158

the Government, as a matter of priority, commissions the next evaluation of the Child Support Scheme to be carried out by an independent research organisation under the guidance of a three person supervisory committee.

Recommendation 159

the next evaluation of the Child Support Scheme comprehensively examines the Child Support Scheme's financial impact on its clients including an analysis of relative household income, debt and asset levels.

Recommendation 160

the next evaluation of the Child Support Scheme incorporates a comprehensive analytical study and empirical evaluation of the combined effect of the social security, child support, family law and taxation legislation on:

(a) work disincentives for both custodial and non custodial parents;

(b) incentives for the separation of existing families; and

(c) disincentives for the formation of subsequent families.

Recommendation 161

impact of the Child Support Scheme be regularly evaluated over time.

Recommendation 162

any future modelling of the impact of the Child Support Scheme on the relative disposable incomes of custodial and non custodial parents includes an estimate of the value of fringe benefits provided by all levels of Government to those parents who are social security recipients.

Recommendation 163

all future modelling of the impact of the Child Support Scheme be conducted by an independent party.

1

The inquiry

Background to the Inquiry

1.1 The inquiry into the operation and effectiveness of the Child Support Scheme was announced on 13 May 1993, with the establishment of the Joint Select Committee on Certain Family Law Issues. The inquiry into the Child Support Scheme arose out of the number of complaints to the Ombudsman, to the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act and to Members of Parliament and Senators.

1.2 The Joint Committee considers that the concern perceived through those channels has been confirmed by the enormous number of submissions to this inquiry and the overwhelming response to the telephone hotline run by the Joint Committee in July 1993. This hotline, conducted via an 008 number, enabled those people who might not have been inclined or felt comfortable putting in a written submission to put a verbal submission to the Joint Committee. The Joint Committee reported to Parliament on the issues raised by callers to the hotline in its report, **Thanks for Listening**, in August 1993. Despite departmental assertions to the contrary, particularly from the Department of Social Security, it was clear to the Joint Committee that there were significant problems both with the Scheme itself and the operations of the Child Support Agency.

1.3 On 23 August 1994 **Audit Report No 39, 1993-94**,[1] an efficiency audit conducted by the Australian National Audit Office which examined the Australian Taxation Office's management of the Child Support Agency, was referred to the Joint Committee as part of its inquiry. This report also constitutes the Joint Committee's report on this additional term of reference. The Joint Committee's terms of reference also include a further reference into the administration and funding of the Family Court of Australia. The Joint Committee expects to report to Parliament on this final term of reference in mid 1995.

The Child Support Scheme

1.4 The Child Support Scheme was introduced in two stages. Stage 1, commencing in June 1988, enabled the Child Support Agency to collect maintenance set under existing court orders or court registered agreements. The Agency had wide powers of enforcement if payments were not made. Stage 2, commencing on 1 October 1989, enabled the Agency to assess and collect child support payments based on an assessment taken on the non custodial parent's taxable income except where the custodial parent's[2] taxable income was in excess of average weekly earnings plus a childcare component. Stage 1 parents must go back to court to have their maintenance amount amended, while Stage 2 parents can apply to the Child Support Review Office for a no-cost review.

1.5 The Child Support Scheme involves the co-ordination of three departments in its management. These departments and their responsibilities are:

- the Department of Social Security, which has the principal role of developing policy and evaluating its social impact as well as a major role in client contact with the sole parent pension population and as the disburser of child support payments;
- the Child Support Agency, which as part of the Australian Taxation Office, has the role of processing applications and

1 Australian National Audit Office, **Audit Report No 39, 1993-94**, Efficiency Audit, Australian Taxation Office, Management of the Child Support Agency

2 The terms 'custodian parent' and 'custodian' are used interchangeably by the Joint Committee throughout this report in the interests of clarity to the reader

collecting child support together with client service and enforcement; and

- the Attorney-General's Department, which also has a policy role and has the additional role of acting for the Child Support Agency as the Australian Government Solicitor in enforcement action. The Department also provides funding through the Office of Legal Aid and Family Services to selected legal aid agencies to assist them in providing legal support and advice to parents under the Child Support Scheme.[3]

1.6 The Family Court of Australia, together with other courts with jurisdiction under the *Family Law Act 1975*, is also an integral part of the Scheme. These courts set orders for maintenance under Stage 1, provide a right of appeal beyond the Child Support Review Office, enforce child support liabilities and provide the interpretative framework which enables the Child Support Review Office to determine applications for review of the formula assessments.

Evidence to the Joint Committee

Submissions

1.7 1The inquiry was advertised on 5 June 1993 in all major daily newspapers and regional daily newspapers. Submissions continued to be received until May 1994. The Joint Committee received a total of 6197 submissions, including 332 confidential submissions. This represents the largest number of submissions ever received by any parliamentary committee. As well, the Joint Committee has continued to receive a considerable number of letters relating to the inquiry. The list of submissions is shown at Appendix 1.

1.8 The Joint Committee set up a child support inquiry database to record, sort and analyse the information contained in each submission to the inquiry. Each submission was read and categorised according to the issues it raised. The child support inquiry database records the origin of each submission, the number of times each issue was raised and the percentage this represents of the total number of submission received by the Joint Committee for over eighty different issues. It provides a succinct summary of how the Child Support Scheme and

3 Submission No 5083, Vol 2, p 15

the Child Support Agency have impacted upon those who are clients of the Scheme or who have otherwise come into contact with the Scheme. The Joint Committee has referred to the information provided by the child support inquiry database throughout its report. The Inquiry Database Report is at Appendix 3.

1.9 Submissions were received from a large number of individuals - custodial and non custodial parents who had been directly involved in the Child Support Scheme, as well as people indirectly affected by the Scheme, and from lawyers, academics, government departments and authorities, and community groups. A submission was also received from the Family Court of Australia. The Joint Committee authorised submissions for publication wherever possible, although in some cases it was necessary to edit submissions to protect the privacy of individuals. Many of the submissions that have been deemed to be confidential have been accorded that status by the Joint Committee at the request of the individual who made the submission.

1.10 Many people made submissions to the Joint Committee in the hope that the Joint Committee could pursue their case and redress any grievance they may have had. However, this appellate role is not one for which this Joint Committee in particular, and parliamentary committees in general, have been established, nor is it an appropriate one. What was undertaken was an investigation into the operation and effectiveness of the Child Support Scheme, not a system of redress for personal grievances. To the extent that personal experience was indicative of the operation of the Scheme the Joint Committee considered those cases and has referred to them throughout its report. However, any further action required by persons who have made submissions to the Joint Committee must be undertaken by the individuals concerned through the appropriate appeal mechanisms.

1.11 The Joint Committee is also conscious of the concern expressed in some submissions that the submissions received may not be representative of the broader community, that is, that only those people who are aggrieved by the Scheme's operation and have had an unsatisfactory outcome will have made submissions. The Joint Committee is aware that the majority of those people making submissions to the Joint Committee have been people who have not had a satisfactory experience with the Scheme's operation and it is in that context that they will have made their submission. However, the Joint Committee has also listened to a very wide range of people, beyond those disaffected by the Scheme's operation, including

academics, legal organisations such as the Law Council of Australia, the Australian Institute of Family Studies, and the Family Law Council, to name but a few. The Joint Committee aimed to take account of all comments made to it, to weigh up the evidence and to come to reasoned conclusions on the weight of the evidence.

Public Hearings and Inspections

1.12 During the course of the inquiry the Joint Committee took evidence in all capital cities, as well as two regional centres (Launceston and Rockhampton). A list of public hearings and witnesses is contained in Appendix 2. The Joint Committee was privately briefed by the Department of Social Security in respect of issues concerning the Scheme and by the Australian National Audit Office in respect of **Audit Report No 39, 1993-94,** an efficiency audit into the management of the Child Support Agency. The Joint Committee also visited several regional offices of the Child Support Agency and the Springvale Community Legal Centre. Statistics on the work of the Joint Committee are set out in Table 1.1.

Table 1.1 Joint Committee Statistics

Type of Meeting	Total Number
Private	18
Public Hearings	15
008 Hotline	2 days
Private briefings	2

1.13 The Joint Committee was unable to take evidence at public hearings from all those who had made submissions to the inquiry. Given the very large number of submissions, the Joint Committee attempted to speak to as many individuals as possible, as well as the many organisations, both government and non-government, as it could, in order to have a representative spread of witnesses giving oral evidence.

1.14 An analysis of witnesses appearing before the Joint Committee is set out in Table 1.2 below. The following comments should be borne in mind in relation to the data contained in that table:

- the number of individuals, in particular non custodial parents (see Table 1.3), appearing before the Joint Committee is high because of

the Joint Committee's decision to invite individuals present at the public hearings to make a short statement;

- the appearance of an organisation was counted only once despite the number of members appearing as witnesses on each occasion. Members of organisations were only counted as individuals if they appeared before the Joint Committee in a private capacity; and
- the number of government organisations which have appeared totals 16, although the Australian Institute of Family Studies and the Child Support Agency appeared twice while the Department of Social Security appeared three times. The number of private and community organisations which have appeared totals 18.

Table 1.2 Appearance before the Joint Committee

Date of Hearing	Government Organisations	Private and Community	Individuals
12 August 1993	1	1	10
21 September 1993	1	4	5
22 September 1993	2	-	-
1 October 1993	2	1	5
13 October 1993	1	1	9
14 October 1003	-	-	18
29 October 1993	1	1	-
10 November 1993	1	3	14
11 November 1993	1	1	21
1 December 1993	-	4	13
20 January 1994	2	-	-
21 January 1994	2	-	-
28 March 1994	1	1	9
29 March 1994	-	1	7
30 March 1994	-	-	9
24 June 1994	1	-	-
TOTALS	16	18	120

1.15 Table 1.3 below provides a breakdown of the individuals who appeared before the Joint Committee:

Table 1.3 Individual Appearances before the Joint Committee

Non Custodial Parent	75
Custodial Parent	31
Spouse of Non Custodial Parent	8
Grandparent	3
Solicitor	1
Consultant	1
Aunt of Non Custodial Parent	1
TOTAL	**120**

Appearance of Chief Justice before the Joint Committee

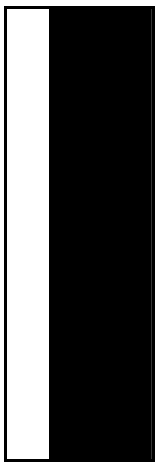
1.16 Members of the judiciary are not required to appear before parliamentary committees. It is usual for the Chief Executive Officer to appear when requested. The Joint Committee is therefore grateful to the Hon Alistair Nicholson and his judicial colleagues for appearing before the Joint Committee on 20 January 1994 and for agreeing to have their evidence made publicly available.

Earlier Reports into and Evaluations of the Child Support Scheme

1.17 Whilst this inquiry is the first Parliamentary inquiry into the operation and effectiveness of the Child Support Scheme, there have been a number of earlier reports and evaluations of the Scheme. These include reports and evaluations from the Child Support Consultative Group (Consultative Group), the Child Support Evaluation Advisory Group (CSEAG) and the Australian Institute of Family Studies (AIFS). The Joint Committee has referred to many of these reports and evaluations throughout its report.

The Structure of the Report

1.18 The report is divided into four main parts. Part I, Chapters 2 to 5, sets out the background to the Child Support Scheme, its legislative framework, its performance and its day to day operation. Part II, Chapters 6 to 14, deals with the management and administration of the Scheme by the Child Support Agency, while Part III, Chapters 15 to 21, deals with child support assessment considerations. Finally, Part IV, Chapter 22, deals with the Joint Committee's views in respect of future evaluations of the Scheme.



PART I—Background to the Child Support Scheme

2

The development and evaluation of the child support scheme

Introduction

2.1 The Child Support Scheme in Australia has had a long gestation. The introduction of such a Scheme was generally seen as a major and controversial social reform which could take up to a decade to become accepted and to achieve change in social attitudes to the financial responsibilities of parents.[1] At the same time it was generally acknowledged that a Child Support Scheme would involve government intervention at one of the most sensitive and traumatic points of the life cycle for some families, that is, immediately following family breakdown. Given the acrimony and bitterness which can surround family breakdown and associated family law issues, the Scheme would inevitably become a 'lightning rod' for the dissatisfaction, grief and/or anger of individuals in relation to their separation and loss of family life and children.

2.2 For the above reasons the Government decided to proceed on a cautious and extended process of policy development coupled with wide community consultation. This process was staged and involved the tabling of key reports in Parliament to sound out support for strategic directions in the evolution of a Child Support Scheme in Australia, including the move away from court based maintenance to an administratively based system incorporating a formula for determining adequate amounts of maintenance.

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1 Submission No 5085, Vol 1, p 7

2.3 This consultative process also included an evaluation strategy to assess the impact of each stage of the Scheme. This has seen five major evaluation reports over the 6½ year life of the Child Support Scheme. Appendix 4 sets out a chronology which details the major steps to, evaluations of and changes since the introduction of the Australian Child Support Scheme.

Family Law Developments

2.4 Over the past twenty years the laws that regulate marriage breakdown and the patterns of marriage and divorce in Australia have undergone considerable change. In January 1976 the *Family Law Act 1975* came into operation repealing the *Matrimonial Causes Act 1961* which was largely based on fault. Under the old system divorce applicants had to prove a specific ground to obtain a marriage dissolution.

2.5 The *Family Law Act 1975* established the Family Court of Australia and, through agreement with the Western Australian Government, the Family Court of Western Australia. The provisions of this Act covered the whole question of maintenance for children of a marriage and to that extent the legislation of the States ceased to apply. The *Family Law Act 1975* applied to children of a marriage whether or not their parents were involved in divorce proceedings, but did not apply to ex-nuptial children. This was because the Commonwealth did not have the constitutional power to legislate about ex-nuptial children, a limitation which was removed only by the later reference of that power by the States (other than Western Australia where the matter is still covered by State legislation).

2.6 Claims under the *Family Law Act 1975* for the maintenance of a child could be brought in either the Family Court or in a State Magistrates' Court, those courts having concurrent jurisdiction. But whichever court was chosen the features of the previously existing State legislation continued to apply, namely, to obtain a maintenance order it was necessary to apply to the court and the court by order set the amount of maintenance according to the circumstances of the individual case. Furthermore, although the Family Law Rules provided methods of enforcement of family law orders including maintenance orders, for practical purposes the orders had still to be enforced through the previously existing State system. That is, the *Family Law Act 1975*, although it enabled a Federal Court to make a maintenance order for the support of a child, did not establish adequate machinery for the collection or enforcement of that order.

2.7 However, by the late 1970s the following concerns were being raised:

- the high cost of, and delays in, applying to court for a child maintenance order or to register an agreement;
- the low success rate and unsatisfactory nature of enforcement of child support orders.[2]
- inadequate levels of court and privately agreed maintenance (payments averaged $10-$30 per child per week);[3]
- little or no indexation of court orders to maintain their value;
- the difficulties in enforcing maintenance orders and agreements (only 30 per cent of non custodial parents with court orders were making regular payments and only 26 per cent of Sole Parent Pensioners were receiving maintenance);[4] and
- the lack of integration of the social security and child maintenance systems.

Major Steps Towards the Child Support Scheme

2.8 The first detailed review of maintenance enforcement after the introduction of the *Family Law Act 1975* was conducted by the Family Law Council in its paper **Maintenance Enforcement under the Family Law Act** of December 1979. It examined the various methods of enforcement in the States and such statistical information as was then available. The Council suggested a number of possible reforms including:

- that the *Family Law Act 1975* provide a single code for the recovery of maintenance;
- automatic deduction of maintenance through the PAYE taxation system from the time when the original maintenance order was made; and
- that a 'separate maintenance enforcement bureau be established' and attached to either the Family Court, the Department of Social Security

2 Exceptions to this general enforcement regime existed in South Australia and Western Australia where collection and enforcement mechanisms had been established

3 These low levels of maintenance were largely due to the practice of setting maintenance at a level which did not affect the custodian's entitlement to the sole parent pension

4 Submission No 5085, Vol 1, p 18

or a State Department and be modelled upon the South Australian and Western Australian systems.

2.9 In August 1978 a Parliamentary Joint Select Committee was appointed to inquire into and report upon the provisions and operation of the *Family Law Act 1975*. That Committee made its report to Parliament in July 1980. That inquiry and report dealt with a wide range of matters relating to family law in Australia including the questions of maintenance and maintenance enforcement. It concluded, among other things, that where possible, families should be supported by private means not public ones.

2.10 In 1983 the Attorney-General appointed the Family Law Branch in his Department to begin an inquiry into maintenance systems. This inquiry was to look into the systems operating in South Australia and Western Australia and those in New Zealand, the United Kingdom, the United States of America and Canada. This national maintenance inquiry recommended the establishment of a single national maintenance agency modelled broadly on the South Australian system. Their report, **A Maintenance Agency for Australia**, was published in February 1984.

2.11 In August 1984 the Australian Institute of Family Studies (AIFS) published a working paper entitled **Cost of Children in Australia**[5] which had a noticeable impact on subsequent court orders. Around the same time the Victorian Social Security Consultative Committee provided a report to the then federal Minister for Social Security which canvassed options for a more equitable child support system. It concluded that a system utilising the capacities of the Australian Taxation Office and the Department of Social Security (DSS) was the only effective way to establish a fairer and more efficient child support system in Australia.

2.12 The Family Law Council continued to consider the issue and in December 1985 published a report on maintenance enforcement. It proposed that child support should be based on a formula applied administratively but subject to judicial review and that collection should be done through the taxation system.

2.13 In October 1985 a Cabinet Sub-Committee was established under the chairmanship of the Minister for Social Security to examine the options for reforming the current child support arrangements. The Cabinet Sub-Committee published a paper entitled **Child Support : A discussion paper on child maintenance** in October 1986. This paper outlined the Government's broad proposals for reform of Australia's existing child

5 Written by Kerry Lovering

maintenance system including a new approach to the collection and distribution of child support via the taxation and social security systems and outlined the broad structure of a formula and an administrative, rather than a court based, assessment.

2.14 The purpose of the discussion paper was to identify issues for community discussion. Throughout October and November 1986 the Sub-Committee held consultations with over 40 organisations and considered over 500 letters received in response to the paper. There was also wide consultation with State Governments, peak employer and welfare groups, the judiciary and the legal profession.

2.15 Up to this point the Government had planned to introduce legislation into Parliament to enact the proposed new scheme. Following the community consultations the Government amended its timetable to consider further the child support formula and to provide a two staged approach to the introduction of the Scheme. The Department of Social Security informed the Joint Committee that:

> The Government's concerns were to reduce the risk of producing unforeseen consequences and to ensure that the circumstances of non-custodial parents and their new partners were fully considered in the development of the formula.[6]

2.16 In March 1986 the AIFS published **Settling Up** which examined the economic consequences of divorce. It pointed to the inadequacies of the existing court based maintenance system and the general inequities in the post-divorce financial circumstances of non custodial parents and custodians. In particular, the amounts in maintenance orders were generally low and rarely reflected the non custodial parent's capacity to pay. As a consequence many sole parents and their children lived in poverty. It went on to conclude that a major new direction was required including the establishment of an agency for collection and enforcement and a formula as the basis for determining the levels of maintenance to be paid.

2.17 In March 1987 the Minister for Social Security announced the implementation of a Child Support Scheme in two stages. The main themes of his announcement were:

- the community consultations had shown overwhelming support for the need to reform the currently inadequate child maintenance arrangements;

6 Submission No 5085, Vol 1, p 19

- there was wide support for the objectives of the child support proposals set out in the discussion paper that:
  - ⇒ non custodial parents should share the cost of supporting their children according to their capacity to pay;
  - ⇒ adequate support be available for all children of separated parents;
  - ⇒ Commonwealth expenditure be limited to what is necessary to ensure that those needs be met;
  - ⇒ the incentive to work be encouraged; and
  - ⇒ the overall arrangements should be simple, flexible, efficient and respect personal privacy.
- sensitive handling of the complexities of child support reform required a two staged approach;
- the *Family Law Act 1975* would be amended to assert the priority of child maintenance and to make it clear that child support should not be treated as a 'top-up' to social security pension and benefits;
- the introduction of a Child Support Agency;
- the setting up of a Consultative Group to refine the formula and monitor the impact of Stage 1 of the Scheme;
- the opportunity be given to all interested parties to help shape the new system which would affect so many families at a very sensitive time in their lives; and
- the proven overseas experience was that the introduction of a legislative formula and an administrative assessment could be a successful and effective reform but that people needed time to adjust to the changeover from a discretionary court based system.[7]

2.18 Stage 1 of the Child Support Scheme came into effect on 1 June 1988. This involved setting up the Child Support Agency (CSA) to collect and enforce court orders and the amendment of the *Family Law Act 1975* to ensure that more adequate orders for maintenance were made by the courts. The latter included insertion of a provision requiring the court to have regard to research on the costs of children in determining maintenance amounts.

7 Submission No 5805, Vol 1, p 20

2.19 In May 1987 the Government appointed the Child Support Consultative Group (Consultative Group). The Consultative Group's members comprised representatives of the judiciary, legal profession, employers, welfare groups, custodial and non custodial parent groups.[8] The functions of the Consultative Group were to:

- act as a mechanism for consultation with major interest groups and to advise the Government on a legislative formula and the administrative assessment of child support;
- monitor the introduction of the new maintenance collection mechanism and advise the Government on its operation;
- study and advise the Government on the role of counselling in maintenance assessment; and
- examine the problem of maintenance payments not being used to benefit the children and to report on any appropriate action which could be taken to address the problem.

2.20 The Consultative Group held nine meetings in Canberra and Melbourne and considered a range of submissions. It also obtained further data on overseas child support schemes and experiences. The Consultative Group's report, **Child Support: Formula for Australia**, was tabled in Parliament in May 1988. The Government considered this report and announced in the 1988 Budget that legislation would be introduced to enact Stage 2 of the Child Support Scheme which would operate on a prospective basis from 1 October 1989. The impact of the Government's

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8 The Consultative Group's members were:
- Justice Fogarty – a Judge of the Family Law court of Australia (Chairperson), former Chairperson of the Family Law Council, now Presiding Member, Board of Management, Australian Institute of Family Studies;
- Ms Diana Bryant – former President of the Family Law Practitioners Association of Western Australia, member of the Family Law Section of the Law Council of Australia, practising family lawyer;
- Ms Marie Meggitt – former President of the National Council for the Single Mother and her Child (1982-86);
- Ms Merle Mitchell – Deputy President, Australian Council of Social Service and Director of the Springvale Community Aid and Advice Bureau in Victoria;
- Miss Wendy Purcell – Master of the Family Court Adelaide Registry, former Director of Australian Legal Aid Office in South Australia;
- Mr Des Black – a former Second Commissioner of Taxation;
- Mr John Sullivan – Industrial Relations Manager, BHP; and
- Mr Barry Williams, BEM – National President and Founder of Lone Fathers of Australia, President of Parents without Partners ACT (Inc)

decision to introduce the Child Support Scheme in two distinct stages is discussed in Chapter 20.

Evaluations of the Scheme

Introduction

2.21 The introduction of the Child Support Scheme was accompanied by an evaluation strategy to assess the impact of each stage of the Scheme. Stage 1 of the Scheme introduced major changes to the methods by which maintenance was collected and distributed. It was expected to have a substantial impact on the number of orders made and the level of enforcement. The Government recognised that while each department involved in the Scheme would monitor its own performance, it was important to have an overall evaluation conducted by a body which would be widely regarded as having an independent view.

2.22 The Child Support Consultative Group was responsible for the evaluation of Stage 1 and oversaw the major study undertaken by the Australian Institute of Family Studies. It also drew extensively from data provided by the Department of Social Security and the Child Support Agency. Three reports were produced in relation to Stage 1:

- **The Child Support Scheme: Progress of Stage One**, Child Support Consultative Group, August 1989;
- **Who Pays for the Children?**, Australian Institute of Family Studies, 1990; and
- **Paying for the Children**, Australian Institute of Family Studies, 1991.

2.23 The framework for the evaluation of Stage 2 was shaped in part by concerns as to whether the prospectivity of Stage 2 would lead to major inequity between people covered by Stage 1 and Stage 2 respectively. This was a particular concern of the Opposition as reflected in the debate on the Second Reading of the Child Support (Assessment) Bill in the Senate on 6 September 1989. The Child Support Evaluation Advisory Group (CSEAG) was given the task of evaluating Stage 2 of the Scheme.

2.24 The overall task of the CSEAG under its terms of reference was to monitor the implementation and evaluation of the Scheme. Following the Government's undertakings to the Senate, the Group was required to monitor the orders made by the courts vis-a-vis the levels of support

obtainable under the formula, and the procedures to maximise coverage of the sole parent pensioner population.

2.25 CSEAG reported to Government in two phases. Its first report, **The Child Support Scheme: Adequacy of Child Support and Coverage of the Sole Parent Pensioner Population** was published in August 1990 and subsequently tabled in Parliament. Its second report, in two volumes, **Child Support in Australia, Final Report of the Evaluation of the Child Support Scheme**, was tabled in Parliament in 1992.

2.26 The Joint Committee notes that the membership of CSEAG was drawn from the Consultative Group.[9] Consequently, the Consultative Group, whose 1988 report **Child Support: Formula for Australia** was critical of the establishment of Stage 2 of the Scheme, were also responsible for the evaluation of each stage of the Scheme.

2.27 The President of the Lone Fathers' Association of Australia, Mr Barry Williams, who was a member of the Consultative Group but not a member of CSEAG, cast doubt on the independence of CSEAG:

> The members of this Advisory Group were drawn entirely from the Consultative Group which had recommended the establishment of the scheme in the first place. The Advisory Group reported in September 1991. The Advisory Group, not unexpectedly, given its membership, claimed on the basis of its evaluation that "Australia appears to lead the way in child support reforms".[10]

2.28 The Joint Committee considers that the findings from CSEAG's evaluation of each stage of the Scheme may be open to question on the basis that they were reviewing the implementation of their own recommendations. Furthermore, the research and administrative support for both the Consultative Group and CSEAG was provided by the Department of Social Security who had a significant role in the Scheme's development and who were far from disinterested in the outcome.

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9 CSEAG's members were the Hon Justice F Fogarty; Ms Diana Bryant; Ms Merle Mitchell; and Mr Des Black

10 Submission No 1202, Vol 4, p 6

The Child Support Consultative Group's Evaluation of Stage 1

2.29 The report of the Child Support Consultative Group, **The Child Support Scheme: Progress of Stage One**, was released by the Minister for Social Security in January 1990. The report concluded that:

- the Government's objectives for Stage 1 had largely been met;
- there has been a substantial increase in the number of custodial parents receiving maintenance payments; and
- before the Scheme, only 30 per cent of custodial parents received maintenance payments while between 60 per cent and 70 per cent of the custodial parents registered with the CSA regularly received maintenance.

2.30 The national enforcement mechanism was considered effective by the Consultative Group. After 14 months of operation approximately 91.9 per cent had been notified of the child support liability by the CSA, 7.08 per cent were being traced and just over one per cent were regarded as untraceable.

2.31 The Consultative Group also found that court maintenance orders increased in value by about 20-25 per cent under Stage 1. Sole parent pensioners granted a pension since the Scheme commenced were receiving a 15-25 per cent higher level of maintenance than would have been expected before the Scheme.[11] The Consultative Group noted that whilst the savings from the Scheme to the Government were not as high as expected, they were still more than enough to offset the administrative costs of the Scheme. The Consultative Group also believed that future savings to the Government would be substantial.

2.32 The Consultative Group was critical of the lengthy delays between the making of a court order and the registration of the liability with the CSA. An average of 86 days elapsed between the date of the court order and the registration of a liability with the CSA and an additional 64 days (on average) elapsed between the registration of a liability at the CSA and the receipt of the first child support payment. The Consultative Group also reported concern that the arrears method of collection, which generated the eight week delay before first payment, diminished the public perception of the effectiveness of the Scheme and caused hardship in some cases.

11 Child Support Consultative Group. **The Child Support Scheme: Progress of Stage One**, p 52

Australian Institute of Family Studies Evaluation of Stage 1

2.33 The Australian Institute of Family Studies conducted a preliminary longitudinal study[12] of the impact of Stage 1 based on a pre-Scheme sample of parents and the first six thousand registered CSA cases. The study entitled **Who Pays for the Children?** was launched in August 1990. This study confirmed the inadequacies of the pre-Scheme maintenance arrangements and concluded that the early stages of the Scheme showed a movement in the right direction. Only 34 per cent of the pre-Scheme sample of custodial parents reported receiving maintenance and the average amount received was less than $24 a week per child. Improvements included an increase in maintenance of about $5-$7 per week per child, more than would have been projected on the basis of CPI changes. In the first eighteen months, 30,000 child support cases were registered.

2.34 As with the Consultative Group's report, criticism was levelled at the start-up delay between registration with the CSA and the receipt of maintenance faced by the custodial parent. The report also found that both groups of parents showed a high level of uncertainty as to how the Scheme actually operated.

2.35 The AIFS concluded its study of Stage 1 with the publication of the report **Paying for the Children** in 1991. This report set out the results of the second phase of the AIFS longitudinal study. Based on the results of both Stage 1 and Stage 2, this report provided a positive overall assessment of the Scheme. A 25 per cent increase in maintenance for registered custodial parents who were not receiving maintenance prior to registering was noted as well as a substantial saving of $19.1 million to social security from Stage 1 alone.[13]

2.36 The report also considered the start-up delay faced by custodial parents in receiving maintenance payments following registration with the CSA as a major issue. In addition, the Stage 1 custodial parents resented the fact that they could not be included in Stage 2 assessment and non custodial parents generally held a negative view of the Scheme. A commonly identified problem was access difficulties.

12 That is, a study conducted over time through a comparison of outcomes at one point in time with later outcomes

13 AIFS, **Paying for the Children**, 1991, p 20

2.37 The AIFS recommended that Stage 2 be widened to include all Stage 1 children. The report recommended that this was necessary to improve public awareness of Stage 2 and the general understanding of the Scheme by non custodial parents. Recommendations were also made to centralise the maintenance collection in the CSA and increase its staff.

Child Support Evaluation Advisory Group's Evaluation of Stage 1 and Stage 2

2.38 The Child Support Evaluation Advisory Group's initial report, entitled **The Child Support Scheme: Adequacy of Child Support and Coverage of the Sole Parent Pensioner Population**, was tabled in Parliament in October 1990. As highlighted in Chapter 20, CSEAG's terms of reference were based on an agreement between the Government and the Opposition concerning possible inequities arising from the exclusion of Stage 1 parents from formula assessment under Stage 2 of the Scheme.

2.39 The report concluded that the reforms had largely been successful. CSEAG found that the introduction of the Scheme resulted in an increase in the average dollar level of court orders and the proportion of sole parent pensioners receiving maintenance. The proportion of sole parent pensioners receiving maintenance rose from 25.6 per cent before the Scheme to 36.5 per cent. Some 48 per cent of sole parent pensioners who had been granted a pension since the commencement of Stage 2 were either receiving maintenance or had applied to the CSA. Much of this increase was attributed to the requirement that sole parent pensioners take action to obtain maintenance where it is reasonable to do so.

2.40 CSEAG recognised that administrative assessments under Stage 2 resulted in about $5.50 more per child per week than court orders or court registered agreements made at the same time. To overcome this inequity, the report recommended that Stage 2 be widened to cover all children of separated parents, at the option of the custodial parent, with the non custodial parent having the opportunity to appeal on the grounds of unfairness because of prior financial arrangements, present obligations or other relevant matters.

2.41 After consulting with a wide range of organisations and individuals and considering submissions, CSEAG's Final Report (Volumes 1 and 2) to the Government on the performance of both stages of the Child Support Scheme and the effectiveness of the overall administration of the Scheme was tabled in Parliament on 5 March 1992. This report concluded that the Scheme had resulted in a significant increase in child support payments, placing Australia well ahead of the position of overseas countries. On the

basis of available research, the formula provided amounts that successfully reflected the real cost of children. In particular, CSEAG concluded that coverage of the sole parent pensioner population was about as high as could be expected under the circumstances.

2.42 CSEAG made 34 recommendations in its Final Report. Eighteen of these related to the CSA while the remaining 16 related to policy and administrative matters relating to the Scheme as a whole and DSS respectively. DSS informed the Joint Committee that following receipt of CSEAG's Final Report in March 1992, the then Minister for Family Support wrote to all interested parties who had made submissions to CSEAG seeking responses to the recommendations. The public was also invited to provide comments. Eighteen submissions were received from organisations and 28 submissions from individuals.[14]

2.43 The Government responded to a number of CSEAG's recommendations in the 1993 Budget. These included earlier distribution of maintenance payments received by the CSA, provision for Stage 1 clients claiming social security payments to collect privately and the disregarding for income testing purposes of special maintenance received by a disabled child. Non custodial parents were assisted through the funding of information forums on the operation of the Scheme, availability of concessional pharmaceuticals for children of pensioners during access visits and the modification of the child support formula to take account of costs incurred by the non custodial parent where he or she has substantial access. The method of calculating penalties on outstanding child support liabilities was also improved and simplified.

2.44 A major component of CSEAG's Final Report was a survey report tabled in Parliament as Volume 2 of the report. The stated aim of the survey report was to provide information to assist in evaluating the Child Support Scheme through a comprehensive survey of both Stage 1 and Stage 2 custodial and non custodial parents. It was undertaken by the Roy Morgan Research Centre in response to the written brief from DSS.

2.45 The survey report was based on a nationwide sample of 1,546 custodial parents and 617 non custodial parents who were interviewed personally in their homes. This sample was composed of:

- Stage 1: 1,205 custodial parents

  384 non custodial parents

14 Submission No 5085, Vol 1, pp 104-5

- Stage 2: 341 custodial parents

  233 non custodial parents

2.46 The survey undertook a detailed analysis of the income, asset and debt position of custodial parents[15] but omitted to do the same for non custodial parents. The Joint Committee agrees that the analysis of income, asset and debt levels for custodial parents was important but considers CSEAG's failure to treat non custodial parents in the same way to be a major oversight. The Scheme's impact on the financial position of non custodial parents is as critical a factor as its impact on custodial parents in any evaluation of the Scheme's fairness. The serious nature of this oversight is highlighted by the following results of the survey:

- only 18 per cent of Stage 2 non-custodial parents thought the amount payable for child support was fair while 80 per cent thought it was too much. In comparison, 41 per cent of Stage 2 custodial parents thought the amount payable was fair while only 8 per cent though it was too much;[16]
- Stage 2 non-custodial parents rated their standard of living as 2.45 on a scale of 1 to 7 (with 1 for 'very dissatisfied' to 7 for 'very satisfied') while their 'life as a whole' rated 3.45. In contrast, Stage 2 custodial parents rated their standard of living as 3.64 and their 'life as a whole' as 4.36.[17]

2.47 The survey also primarily focused on custodial parents in the area of work disincentives thereby failing to adequately consider the possibility of non custodial parent work disincentives created by high combined effective marginal rates of taxation and child support. Non custodial parents were not even asked why they were not working or if they had considered resigning from work due to the burden of their child support obligations. The Joint Committee received 466 submissions (7.5 per cent of total submissions received) from non custodial parents claiming that the Scheme acts as a serious work disincentive with some suggesting that they would be better off unemployed. The Joint Committee also received 60 submissions which stated that the non custodial parent had left employment as a result of the impact of the Scheme.

15 CSEAG, **Child Support in Australia**, Vol 2, pp 50-54

16 ibid. p 31

17 ibid. p 46

2.48 The section of the survey dealing with subsequent families was restricted to asking whether or not there was a subsequent family. In particular, there were no questions in the DSS brief which were designed to assess the impact of the Scheme on the standard of living of the subsequent family, the level of maintenance paid by non custodial parents with a subsequent family and the level of household income and assets of both custodial and non custodial parents with subsequent families.

2.49 The Joint Committee considers these questions to be fundamental to a proper assessment of the impact of the Scheme and believes that they should have been included in the DSS brief. Consequently, it appears that the financial position of non custodial parents and subsequent families was of little concern in the CSEAG evaluation, a situation which the Joint Committee considers unsatisfactory. Given that this survey represented the key study into the impact of the Scheme, this apparent failure to adequately recognise the position of non custodial parents and subsequent families in the original research brief by DSS seriously undermines the results of this survey.

2.50 The AIFS commented to the Joint Committee that there was a need to conduct further research into the actual impact of the Scheme on all the affected parties.[18] In hearings before the Joint Committee the AIFS agreed that the only way the impact of the Scheme can be properly tested is to actually look at the custodial and non custodial parents in the household in which they live and the disposable incomes which are available in those households.[19]

2.51 The Joint Committee invited the AIFS to submit a research proposal for properly assessing the impact of the Scheme on both custodial and non custodial parents. This research proposal is contained in Appendix 5. The Joint Committee considers this research strategy to be largely inadequate and sets out its views in respect of the ongoing monitoring and evaluation of the Scheme in Chapter 22.

18 Transcript of Evidence, 20 January 1994, pp 1193-4

19 ibid.

3

The child support scheme legislation

Constitutional Basis[1]

3.1 The legislation which established Stage 1 and Stage 2 of the Child Support Scheme is in four separate statutes - the *Child Support (Registration and Collection) Act 1988*, the *Child Support (Assessment) Act 1989*, the *Social Security Act 1991* and the *Family Law Act 1975*. The constitutional basis for this legislation was the Commonwealth's power with respect to marriage[2], divorce and matrimonial causes[3] laws with respect to matters referred by the States[4], the appropriations power[5] and the Territories power[6]. In addition, the legislation in its amendments to the social security legislation is based on the Commonwealth's power with respect to family allowances and other social security benefits.[7]

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1 Based largely on Chapter 5 of CSEAG, **Child Support in Australia**, Vol 1
2 s. 51(xxi)
3 s. 51(xxii)
4 s. 51(xxxvii)
5 s. 81
6 s. 122
7 s. 51(xxiiiA)

3.2 Although the Child Support Agency (CSA) is established within the Australian Taxation Office, the Joint Committee notes that the legislation establishing the Child Support Registrar or otherwise establishing the Scheme is not based on the Commonwealth's taxation power[8] as neither child support Act imposes taxation.

3.3 Under the Constitution the Commonwealth does not have power to legislate with respect to ex-nuptial children. This limitation has been overcome in all of the States but Western Australia by reference of that power by the States to the Commonwealth and the acceptance of that reference as a result of the provisions of the *Family Law (Amendment) Act 1987*. New South Wales, Victoria and South Australia made the reference in 1986, Tasmania in 1987 and Queensland in 1990. Western Australia has made no general reference of power but it adopted Stage 1 by legislation in 1988 and adopted Stage 2 by legislation which came into effect in January 1991. Every subsequent amendment has to be adopted by Western Australia if it is to have effect in that State.

Design Principles of the Scheme

3.4 The Department of Social Security (DSS) advised the Joint Committee of the following design principles which provided the framework for the child support legislation:

- that there should be a shift from public provision to private provision. This would entail a major change in the attitudes and behaviours of separated parents to assuming financial responsibility for their children. This means both NCPs [non custodial parents] paying child support and custodians taking action to obtain child support;
- that there should be no disincentives to parents participating in employment;
- that there should be a means for parents to agree on collection between themselves provided that adequacy and revenue are protected where the custodian is in receipt of certain social security payments;

8 s. 51(ii)

- that the Scheme should have regard to both cash and non cash forms of maintenance;
- that child support amounts should reflect the capacity of the non custodial parent to pay; and
- that there should be new mechanisms to set, collect and enforce child support liabilities.[9]

3.5 These principles not only required the introduction of specific child support legislation but also required the amendment of the *Family Law Act 1975*, social security legislation and veterans affairs legislation.

Amendments to Social Security and Veterans' Affairs Legislation

3.6 The two major changes to the *Social Security Act 1991* were the strengthening of the requirement to take reasonable action for maintenance (child support) and the introduction of a separate maintenance income test. These changes apply to both Stage 1 and Stage 2 of the Scheme.

Requirement to take Maintenance Action

3.7 This provision is central to the integration of the social security and child support systems as it makes taking maintenance action a threshold and ongoing eligibility criterion for entitlement to certain payments, most notably sole parent pension and, from 1 January 1993, Additional Family Payment.

3.8 The Joint Committee notes that a requirement to take reasonable action for maintenance was first introduced more than 50 years ago. Under the terms of the *Widows' Pensions Act 1942* a deserted wife or divorcee could not be granted a Widow's Pension unless she had taken reasonable action to obtain maintenance. From 1 July 1973, such action also became a requirement for granting of Supporting Mother's Benefit.

9 Submission No 5085, Vol 1, p 34

3.9 The requirement to take reasonable action for maintenance under the Child Support Scheme was introduced by the *Social Security and Veterans' Entitlements (Maintenance Income Test) Amendment Act 1988.* This Act made taking such action a condition of qualification (as opposed to a grant) for Widow's Pension and Supporting Parent's Benefit. In subsequent years the requirement to take reasonable action became a condition of qualification for the sole parent's pension (the amalgamation of Class A Widow's Pension and Supporting Parent's Benefit. The current provision in relation to a sole parent pension recipient is contained in section 252 of the *Social Security Act 1991*.

3.10 The 1991 Budget announced that from 1 July 1992 the *Child Support (Assessment) Act 1989* would be amended to enable custodians to seek and register an administrative assessment by formula but elect to collect privately from the non custodial parent. Amended provisions were subsequently included in the child support legislation. The effect of these provisions on the level of private collection under the Scheme is discussed in Chapter 11.

3.11 Prior to this amendment, registration of a formula assessment automatically required collection by the CSA. A transitional arrangement known as 'pseudo-assessment' enabled custodians who wanted to collect child support privately to apply to the CSA for an estimate of the amount that would be payable under the formula. 'Pseudo-assessments' met the requirement to take reasonable action for maintenance. This arrangement was, however, unsatisfactory as such 'assessments' did not constitute a legally enforceable liability and were not indexed.

3.12 The integration of child-related payments from 1 January 1993 resulted in an extension of the maintenance action requirement. The *Social Security (Family Payment) Amendment Act 1992* introduced a new integrated Family Payment consisting of a number of components. Family Allowance was replaced with Basic Family Payment. Family Allowance Supplement and additional pension and additional benefit were replaced with Additional Family Payment (AFP). Rent assistance and guardian allowance also became part of AFP. In addition to sole parent pensioners, the reasonable action requirement now also applies to recipients of AFP, rent assistance and guardian allowance.

3.13 From 1 January 1993 all sole parent pensioners granted a pension prior to 1 July 1992 are to be progressively required to substitute a formal assessment for 'pseudo-assessments', as part of the requirement to take maintenance action.

3.14 The Joint Committee notes that the child support legislation does not define what constitutes reasonable maintenance action. This is set out in DSS administrative guidelines which are discussed in Chapter 5.

Maintenance Income Test

3.15 The maintenance income test is applied against maintenance/child support received by a custodian to determine whether their entitlement to the AFP component of Family Payment paid by DSS is reduced. Consequently, it is the mechanism through which the Government achieves savings from child support payments by non custodial parents.

3.16 The maintenance income test operates in the following way:

- an annual free area applies as follows:

(a)	sole parents or one of a couple receiving maintenance for one child	$ 850.20
(b)	both parents receiving maintenance for one child	$1,700.40
(c)	for each additional child	$ 283.40 [10]

- any maintenance income above this annual free area reduces the level of Additional Family Payment (including rent assistance and guardian allowance where applicable) at the rate of 50 cents in the dollar.

3.17 The maintenance income test applies to child support, child maintenance and spousal maintenance. Spousal maintenance is therefore assessed under the maintenance income test where Additional Family Payment is received. For couples, the amount of maintenance assessed is the couple's combined maintenance income.

3.18 Periodic non-cash maintenance and capitalised maintenance (whether cash or non-cash) are treated in the same way as periodic cash maintenance. Capitalised maintenance is spread over the whole of the period for which it is received to calculate a yearly rate.

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10 DSS rates for the period 20 March 1994 to 30 June 1994

3.19 The introduction of the maintenance income test serves a number of purposes:

- it provides a mechanism to ensure that financial assistance from child support does not compete with earnings in the ordinary income test. This ensures that disincentives to work for custodians are minimised;
- it provides a capacity to take account of non-cash as well as cash maintenance;
- it enables private collection combined with protection of fiscal savings by allowing non custodial parents to pay direct to custodians who are then obligated to declare the child support income to DSS; and
- the structure of the maintenance income test makes visible the transfer of child support to custodians and their children by having all the child support paid directly to custodians and subsequently declared to DSS and the maintenance income test applied.

3.20 The Department of Social Security advised the Joint Committee that:

> The last point cannot be understated in relation to the original design concepts surrounding the introduction of the Scheme. It was generally considered that the Scheme would only work in Australia if there was a partnership between the community and Government to changing the attitudes of both NCPs [non custodial parents] and custodians in relation to their financial responsibilities. The general consensus was, and remains, that this would only happen if the Scheme were clearly seen to be about children and their rights to financial support from both parents.
>
> The free area and taper in the MIT [maintenance income test] play an important part in lifting voluntary compliance among custodians who receive the payments and among NCPs who see that the money is going to their children. This aspect has been brought home by the experience of the UK and New Zealand which have recently introduced Child Support Schemes without this mechanism. In both countries there appears to be some public perception that the Schemes are about revenue rather than children.[11]

11 Submission No 5085, Vol 1, p 37

3.21 The *Social Security and Veterans' Entitlement (Maintenance Income Test) Amendment Act 1988* made provision for a separate maintenance income test and free area to help increase the incentive to take up employment. The *Social Security Legislation Amendment Act (No 2) 1991* introduced indexation for the maintenance income free areas from 1 July each year. This ensured that the allowable level of child support would not be eroded over time by inflation.

3.22 The approach taken to maintenance income testing was changed by the integration of Family Payments. Previously the maintenance income test and free area applied to all basic income support payments. The *Social Security (Family Payment) Amendment Act 1992* rationalised this and since 1 January 1993 maintenance has only been taken into account in assessing the amount of AFP, rent assistance and guardian allowance, that is, the maintenance income test no longer applies to base payments such as sole parent pension.

Disclosure of Information

3.23 The *Child Support (Assessment) Act 1989* amended the *Social Security Act 1947* so that information concerning a person obtained under or for the purposes of the *Social Security Act 1991* could be communicated to another person for the purposes of the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989*. This arrangement is currently set out in subsection 1312(2) of the *Social Security Act 1991*.

Amendments to the Family Law Act

3.24 The *Family Law (Amendment) Act 1987* was an essential legislative element in the establishment of Stage 1 of the Child Support Scheme. The Act gave effect to the earlier reference to the Commonwealth, by all States except Western Australia, of the power to legislate with respect to ex-nuptial children. Together with the reciprocating State legislation, this Act established a constitutional basis for the Scheme.

3.25 The Act also introduced extensive amendments to the *Family Law Act 1975* in relation to the principles and criteria to be applied by the Courts in ordering child maintenance. The Act inserted Division 6 into Part VII of the Family Law Act which codified the principles laid down by the Full Court of the Family Court in **Mee v Ferguson** (1986) FLC 91-716 in the following manner:

Division 6 - Maintenance of children

SECTION 66A Objects of Division

66A(1) [Principal object of Division] The principal object of this Division is to ensure that children receive a proper level of financial support from their parents.

66A(2) [Particular objects] Particular objects of this Division include ensuring:

(a) that children have their proper needs met from reasonable and adequate shares in the income, earning capacity, property and financial resources of both of their parents; and

(b) that parents share equitably in the support of their children.

SECTION 66B Duty of Parents to Maintain Their Children

66B(1) [Primary duty] The parents of a child have, subject to this Division, the primary duty to maintain the child.

66B(2) [Priority of duties] Without limiting the generality of subsection (1), the duty of a parent to maintain a child:

(a) is not of lower priority than the duty of the parent to maintain any other child or another person;

(b) has priority over all commitments of the parent other than commitments necessary to enable the parent to support;

(i) himself or herself; and

(ii) any other child or another person that the parent has a duty to maintain; and

(c) is not affected by:

(i) the duty of any other person to maintain the child; or

(ii) any entitlement of the child or another person to an income tested pension allowance or benefit.

3.26 The Joint Committee notes that prior to the introduction of the Child Support Scheme, the *Family Law Act 1975* contained strict criteria to be applied by courts in ordering child support. Courts assessing maintenance were directed to take into account the eligibility of either party to a Commonwealth or State pension, allowance or benefit. This requirement had the effect of perpetuating lower cash maintenance payments as maintenance was set by the Courts or the parties, at such a level as to minimise its effect on the custodian's entitlement to the sole parent pension.

3.27 The *Family Law (Amendment) Act 1987* made it clear that the entitlement of the child or the child's custodian to an income tested pension, benefit or allowance was no longer to be regarded in determining maintenance. This gave effect to the Government's policy that maintenance is to be primarily a private rather than public obligation. Once maintenance was no longer regarded as a 'top-up' to social security payments more substantial awards of maintenance could be made. This improved the level of financial support for the children while protecting taxpayers' interests through the maintenance income test.

3.28 The nexus between the family law and social security system was further strengthened by provisions that require a court awarding maintenance by way of a lump sum or transfer of assets to specify how much of the amount was in satisfaction of maintenance obligations (whether for the child or spouse). It also became a requirement that parties to consent orders or registered or approved agreements, or to consent variations of an existing order or to variations of a registered or approved agreement, had to specify the amount of any lump sum or property provision that was attributable to child or spousal maintenance obligation. The success of these provisions is discussed in Chapter 21.

Stage 1 Legislation

3.29 The final legislative component in the creation of Stage 1 of the Child Support Scheme was the *Child Support (Registration and Collection) Act 1988* which came into operation on 1 June 1988. It established the position of Child Support Registrar, a position held by the Commissioner of Taxation, who has responsibility for the general administration of the Act.[12] The legislation enables maintenance orders and registered maintenance agreements to which the Act or its regulations apply to be registered with the Child Support Registrar. Upon registration the amount of liability becomes a debt due to the Commonwealth and the Child Support Registrar has the obligation to collect those amounts by automatic withholding from salary or wages, or otherwise as provided in the legislation.

3.30 The child support collected by the Child Support Registrar is paid to the custodian through DSS. The Act also contains detailed provisions relating to enforcement through the courts, penalties for non-compliance, appeals against decisions of the Child Support Registrar and rights to opt out of the Scheme in certain circumstances.

Stage 2 Legislation

3.31 Stage 2 of the Child Support Scheme was established by the *Child Support (Assessment) Act 1989* which came into operation on 1 October 1989. The legislation is confined to children who were born on or after 1 October 1989 (or siblings of such children) or whose parents separated on or after that date. In addition, the *Child Support (Assessment) Act 1989* does not cover children over 18 years old or claims by children. These matters are still dealt with under the *Family Law Act 1975*. Only a parent (including an adoptive parent) can incur a child support liability under the *Child Support (Assessment) Act 1989*.

12 The Child Support Agency, part of the Australian Taxation Office, carries out the major functions of the Act

3.32 The *Child Support (Assessment) Act 1989* sets out in detail the legislative structure for the administrative assessment by the CSA of child support by the application in each case of a formula. The details of that formula are set out in Chapter 5.

3.33 A major amendment to Stage 2 was the introduction of an administrative review of child support formula assessments by the Child Support Registrar, in the form of the Child Support Review Office, from July 1992. This allows an aggrieved party to apply to the Child Support Review Office for a departure from the formula at no cost rather than applying to the court. Stage 1 parties do not have the benefit of this change so must incur the cost of applying to the court for a review. The Stage 2 review process is discussed in Chapter 12.

Complexity of Legislation

3.34 The fact that the foundations of the Child Support Scheme are found in four separate statutes - the *Child Support (Assessment) Act 1989*, the *Child Support (Registration and Collection) Act 1988*, the *Social Security Act 1991* and the *Family Law Act 1975* makes interpretation and understanding difficult. Moreover, the style of legislative drafting differs between these Acts. The Joint Committee has received evidence stating that this has caused confusion which is exacerbated by the complexity of the provisions and by the convoluted drafting. The Joint Committee heard the following evidence from the Chief Justice of the Family Court of Australia in Melbourne:

> Ms Henzell, MP - You talk about in your submission that there are four statutes that relate to this scheme and you feel that there needs to be some redrafting.
>
> Justice Nicholson - Yes
>
> Ms Henzell, MP - Would you like to comment on that issue?
>
> Justice Nicholson - I would simply like to say that the act is drafted like a tax act and it is perhaps not surprising, given its -
>
> Chairman - I take it that is not a compliment?
>
> Justice Nicholson - No, it is not. It is a very difficult act to interpret. It seems to me that if it is difficult for us it must be extremely difficult for any member of the public to try to interpret it. When there is relevant legislation spread over a

> number of acts that adds even further difficulty and complication. I just do not understand why, by applying reasonable principles of drafting and plain English principles, it would not be possible to convert the act into something that would be intelligible.[13]

3.35 The Family Court went on to suggest that the two Child Support Acts could be redrafted so that the material is far more readily understandable and expressed in plain language. However, the Family Court submitted that the *Family Law Act 1975* and the Social Security legislation should not be included in this redrafting process as they primarily deal with other areas.[14]

3.36 The Attorney-General's Department passed on the following general comments from the Office of Parliamentary Counsel on the criticisms of the child support legislation made by the Family Court:

> ... the child support legislation was produced in stages, and no doubt this also limited the scope for integration of the drafting scheme. ... The 1988 Act [*The Child Support (Registration and Collection) Act 1988*] was drafted at a very early stage of this Office's attempts to improve and simplify its drafting style. It may well be that some of the language of that Act, and of the 1989 Act [*The Child Support (Assessment) Act 1989*], could be simplified now.[15]

3.37 In its submission to the inquiry the Family Court added:

> A high level of confusion about the Scheme was illustrated in the recent phone-in conducted by the Joint Select Committee. Many of the queries and complaints of non custodial parents related to aspects of the Scheme which are covered by the legislation. The Court submits that a complex policy is being made even more difficult to understand by the drafting of its provisions. Several Judges have remarked on the difficulties they have experienced in interpreting various sections of the relevant legislation.[16]

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13 Transcript of Evidence, 20 January 1994, pp 1243–4

14 ibid.

15 Attorney-General's Department letter dated 29 June 1994

16 Submission No 5328, Vol 7, p 180

3.38 The submission from the Family Law Council stated:

> The Child Support Acts are extremely complex and the language used is often almost impossible to understand unless the reader is constantly exposed to the operation of the scheme. Experienced judges have commented that even a short break between dealing with child support cases often means a re-education process.
>
> To the extent that it is possible to convey the complex nature of the legislation in simple language, Council repeats its conclusions in its preliminary submission that possible means of simplifying the present legislation and of producing a consolidated Act need to be explored.[17]

3.39 The Law Council of Australia stated in its submission:

> Many, including Family Court Judges, have commented on the complexity of the legislation. If the legislation could be simplified, this obviously would be welcomed by all concerned. FLS [Family Law Section] would be happy to be involved were this process to be undertaken.[18]

3.40 These comments about the complexity of the legislation are indeed severe criticism from three key organisations. Such complicated legislation leads to confusion, misunderstanding and people being unaware of their rights and responsibilities, which was confirmed during the course of the Joint Committee's inquiry.

3.41 A specific example of the difficulty with the interpretation of the legislation is evidenced by section 50(3) of the *Child Support (Registration and Collection) Act 1989* which states:

> Where a trustee, being a trustee of an estate or a bankrupt or a liquidator of a company that is being wound up, is liable to pay an amount to the Registrar under subsection (1), subsection (2) does not have the effect that the amount is payable in priority to any costs, charges or expenses of the administration of the estate or of the winding up of the company, (including costs of a creditor or other person on whose petition the sequestration order or the winding up order (if any) was made and the remuneration of the trustee) that are lawfully payable out of the assets of the estate or of

17 Submission No 5096, Vol 2, pp 248–9

18 Submission No 5086, Vol 2, p 281

> the company except where, in the case of the winding up of a company, the Crown in right of a State or of the Northern Territory of Norfolk Island or any other creditor is entitled to payment of a debt by the liquidator, in priority to all or any of those costs, charges and expenses and has not waived that priority.

3.42 If the Chief Justice of the Family Court is critical of the legislation as being difficult to interpret the average person would have great difficulty being aware of their rights and responsibilities as well as their entitlements under the legislation. This difficulty also applies to the Child Support Agency in its operation of the Scheme. Consequently, there is an urgent need for the legislation to be redrafted to ensure it is consistent and can be understood by the legal profession, administrators and clients.

3.43 The Joint Committee recommends that:

Recommendation 1

the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* be:

(a) redrafted in a more simplified and understandable form; and

(b) combined into one piece of legislation.

4

The performance of the child support scheme

Introduction

4.1 The Child Support Scheme was established in response to concerns about the adequacy of court ordered child maintenance and difficulties which existed in the enforcement and collection of maintenance in Australia. Initially,[1] the Child Support Agency (CSA) was established as a maintenance collection agency until administrative assessment of child support by a formula was introduced from 1 October 1989. The objectives of the Scheme were stated to be that:

- non custodial parents share in the cost of supporting their children according to their capacity to pay;
- adequate support is available to all children not living with both parents;
- Commonwealth expenditure is limited to the minimum necessary for ensuring those needs are met;
- work incentives to participate in the labour force are not impaired; and

---

1 From June 1998

- the overall arrangements are non intrusive to personal privacy and are simple, flexible and efficient.[2]

4.2 The Joint Committee considers that these objectives are the benchmark against which the operation and effectiveness of the Child Support Scheme must be measured.

The Success of the Child Support Scheme

4.3 The Program Performance Statements 1993-94 for the social security portfolio state that the key performance indicators for the Child Support Scheme are:

- for **Financial Support** considerations: the number and proportion of social security recipients declaring maintenance and the amounts of maintenance received;
- for **Take-up and Compliance** considerations: the number of sole parent pensioners and other recipients of additional Family Payment with a child from a previous relationship taking reasonable maintenance action; and
- for **Reductions in Outlays** considerations: the amounts of savings in social security payments achieved through increased levels of maintenance income of clients.[3]

4.4 The Department of Social Security (DSS) submitted to the Joint Committee that these performance indicators can be summarised under the categories of coverage, adequacy, collection and savings.[4]

Coverage

4.5 As highlighted in Chapters 5 and 11 the types of child support arrangements can vary from informal agreements, court orders or court registered agreements under Stage 1 to informal agreements, child support agreements or child support formula assessments under Stage 2 of the Scheme. The CSA advised the Joint Committee that

2 Cabinet Sub-Committee on Maintenance, **Child Support. A discussion paper on child maintenance**, October 1986

3 **Program Performance Statements 1993–94, Social Security Portfolio**, p 264–5

4 Submission No 5085, Vol 1, pp 103–105

only about one third of separated parents are clients of the CSA[5] which means that many custodians must collect child support privately pursuant to informal agreements. However, little research has been done to verify the proportion of parents using each type of child support arrangement.

4.6 In 1991, the Child Support Evaluation Advisory Group commissioned research by the Roy Morgan Centre Pty Ltd which collected some data on the types of child support arrangements that people had at that time. In 1993, the CSA commissioned research by AGB McNair Pty Ltd which collected similar data. The results of each study are as follows:

Table 4.1 Results of Research into Types of Child Support Arrangements

Arrangement Type	Morgan (1991)	AGB (1993)
CSA clients	15%	25%
Private arrangement	27%	34%
Court Order	30%	18%
No arrangement	28%	22%
Not stated	-	1%

4.7 The CSA advised the Joint Committee that AGB McNair advocated caution in interpreting these results as respondents were sometimes inconsistent, definitional concepts varied and multiple arrangements applied in some cases.[6] Consequently these results are at best only indicative of the types of arrangements entered into by parents.

4.8 The Joint Committee notes that these studies indicate that approximately 55 per cent of parents are outside the Scheme with either a private arrangement for the collection of child support or no arrangement at all. The Joint Committee is concerned about the large proportion of parents without any child support arrangement (22-28 per cent) and notes that these results are similar to those obtained from research conducted by the Australian Institute of Family Studies (AIFS). An AIFS study entitled **Non-resident parents: contact and financial support**, based on interviews conducted with parents from four Victorian, four New South Wales, one South Australian and one Northern Territory Local Government Areas provided information in respect of 7,654 children ranging in age from babies to 19 year olds.

5 Submission No 5083, Vol 2, p 9

6 CSA letter dated 6 July 1994

Of these children, 1,247 (16.5 per cent) had one parent living outside of their household. In these cases the parent with whom the children normally reside was asked for information about what weekly maintenance was paid for that child by the non-resident parent. The results are summarised by Table 4.2:

Table 4.2 Weekly Maintenance Received by Custodians, Non-resident Parents Contact and Financial Support Study, AIFS

Age Group	Weekly Amount of Periodic Maintenance (%)		
	None	$30 or less	More than $30
Pre-School	61	19	20
Primary School	61	21	18
Secondary School	64	21	15
Left School	90	3	7

4.9 If the results for children who have left school are disregarded, Table 4.2 shows that approximately 60 per cent of the sample receive no child support whatsoever. The AIFS **Australian Living Standards Study** (conducted in 1991 and 1992) also indicated that the majority of custodians receive no child support from the non custodial parent. This study examined the circumstances of about 5,090 households in 14 diverse localities around Australia. Table 4.3 summarises the results in respect of the weekly maintenance received by custodians:

Table 4.3 Weekly Maintenance Received by Custodians, Australian Living Standards Study, AIFS (1991/92)

Weekly Amount of Periodic Maintenance	Percentage
None	66
$30 or less	18
More than $30	16
Median for those receiving = $28 p.w	

4.10 Each of these studies by AIFS reinforce the indicative research commissioned by the CSA that a large percentage of custodians receive no child support whatsoever. This may be the result of a lack of any child support arrangement or simply the failure of the non custodial parent to pay the agreed child support. The latter may arise under an informal agreement or other collection arrangement outside the CSA or as a result of ineffective CSA collection.

4.11 The Joint Committee is concerned that such a high proportion of custodians are not receiving child support and the lack of reliable detailed information in respect of how this has come about. In particular, there is little reliable information on the proportion of custodians, both inside and outside the Scheme, who receive little or no child support under each type of collection arrangement. The Joint Committee considers that the Government should commission a study to determine why these custodians are receiving no child support and/or have no child support arrangements.

4.12 The Joint Committee recommends that:

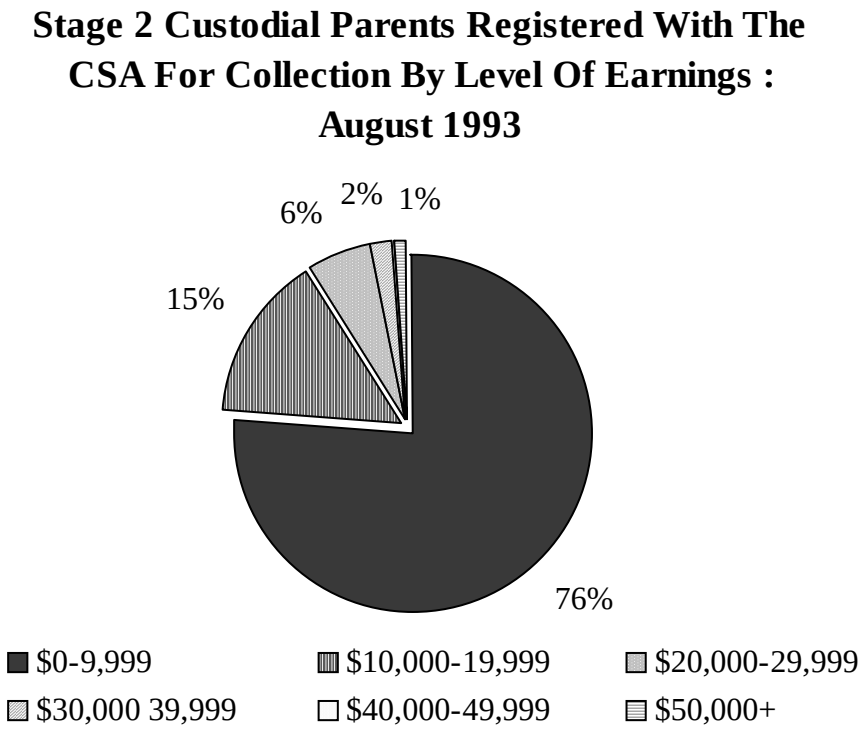
Recommendation 2

a survey be undertaken to determine why a significant proportion of custodial parents are receiving no child support and/or have no child support arrangements.

4.13 The CSA also advised the Joint Committee that its records show that 90 per cent of custodial parents have an income low enough to indicate that they are sole parent pensioners.[7] This is illustrated by Figure 4.1 and Figure 4.2 which show the income ranges of custodial and non custodial parents registered with the CSA under Stage 2 of the Scheme.

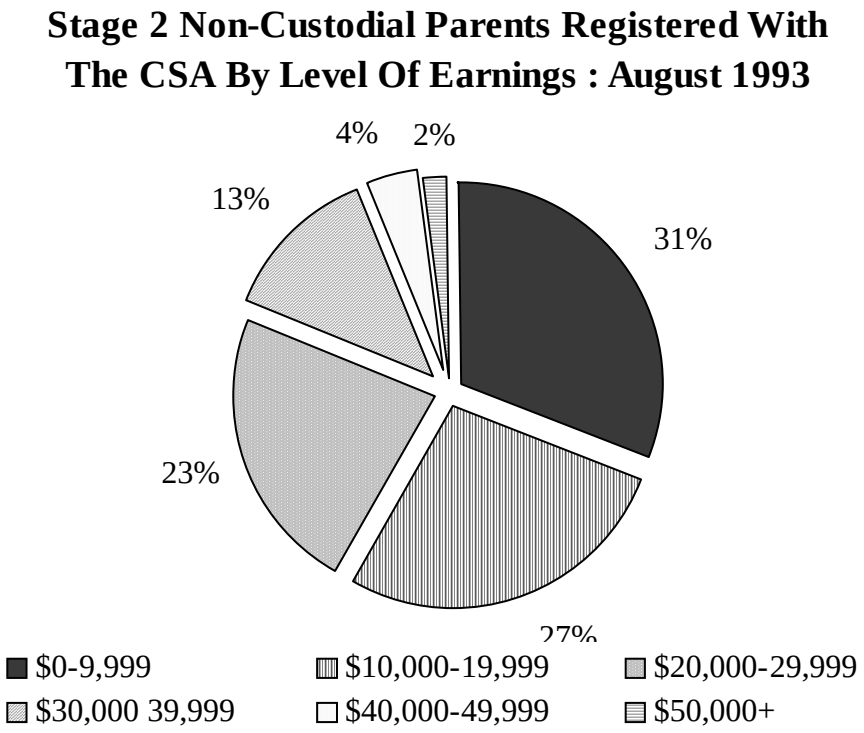
7 Submission No 5083, Vol 2, p 9 and p 44

Figure 4.1 Stage 2 Custodial Parents Registered with the CSA for Collection by Level of Earnings: August 1993[8]



8 Submission No 5085, Vol 1, p 72

Figure 4.2 Stage 2 Non Custodial Parents Registered with the CSA for Collection by Level of Earnings: August 1993[9]



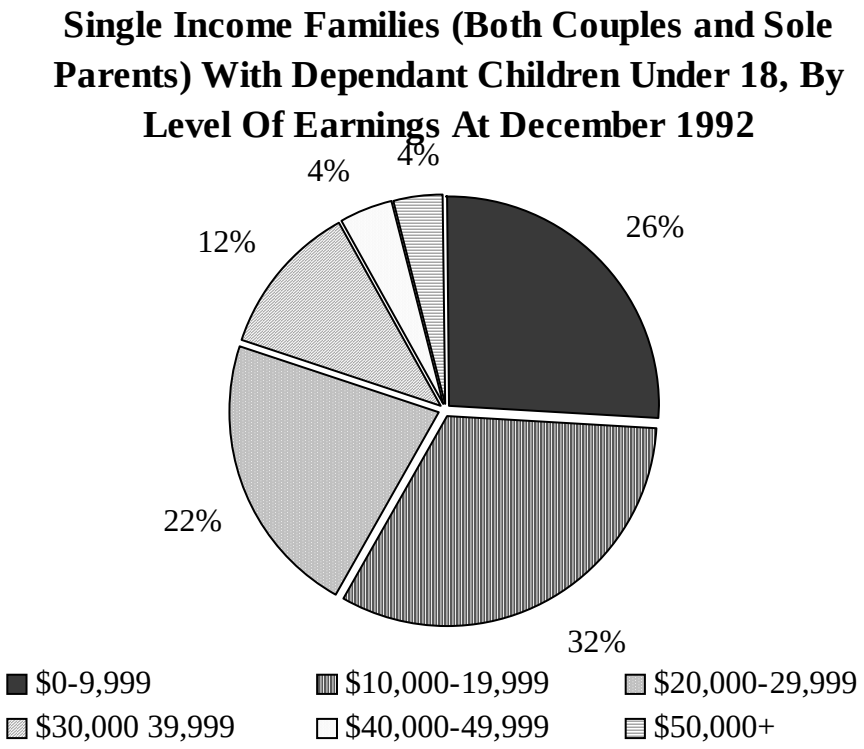
4.14 Given that the sole parent pension cut off point is approximately $20,000[10] Figure 4.1 shows that about 91 per cent (76 + 15 per cent) of Stage 2 custodial parents are receiving either full or part payment of the sole parent pension. However, the CSA could not provide the Joint Committee with precise information on the number of DSS clients who are also CSA clients. Figure 4.1 also indicates that custodial parents and their children are more likely to be living on lower income levels than non custodial parents.

4.15 Figure 4.2 shows that about 81 per cent of Stage 2 non custodial parents earn less than average weekly earnings ($33,259 in the 1994-95 child support year). Figure 4.3 shows that this is consistent with the income distribution of single earner families in Australia.

9 Submission No 5085, Vol 1, p 70

10 $19,723.60 per DSS rates for the period 20 March 1994 to 30 June 1994

Figure 4.3 Single Income Families (both Couples and Sole Parents) with Dependent Children under 18, by Level of Earnings as at December 1992[11]



4.16 The CSA submitted that 80 per cent of non custodial parents have an income less than average weekly earnings compared to a national average of 70 per cent.[12] Consequently, low income non custodial parents appear to be over represented in the Scheme.

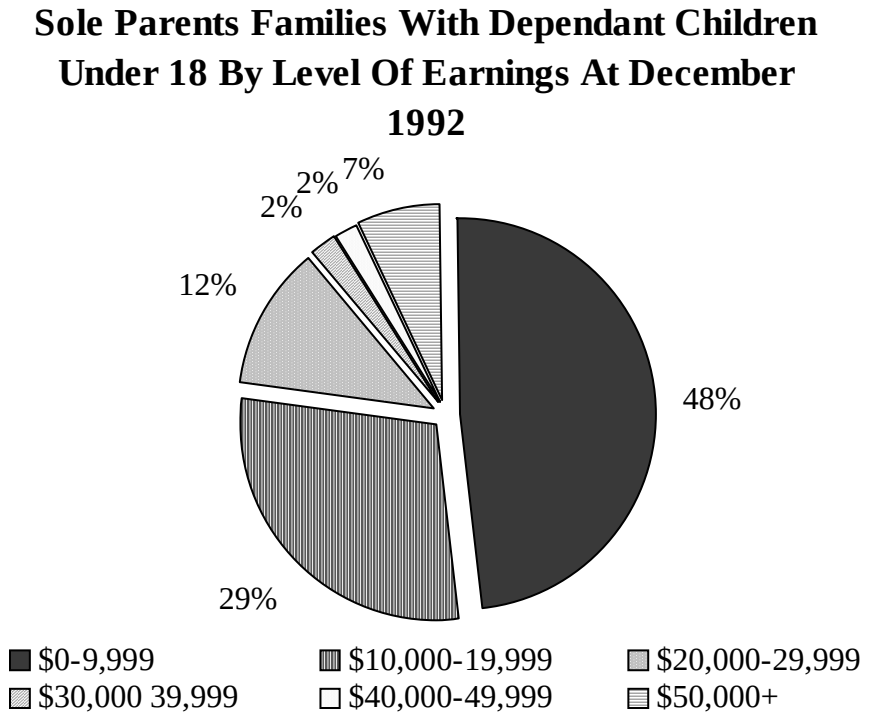
4.17 The Joint Committee notes that about 91 per cent of Stage 2 custodial parents are receiving either full or part payment of the sole parent pension. Figure 4.4 also shows that 77 per cent of sole parent families with dependant children are receiving either full or part payment of the sole parent pension.[13] Therefore, sole parent pensioners are also over represented under Stage 2 of the Scheme.

11 Submission No 5085, Vol 1, p 71

12 Submission No 5083, Vol 2, p 44

13 The Department of Social Security advised the Committee that a more accurate figure was approximately 71 per cent

Figure 4.4 Sole Parent Families with Dependent Children under 18 by Level of Earnings as at December 1992[14]



4.18 The Joint Committee notes that the number of sole parent families has increased by 136 per cent between 1974 and 1993.[15] In real terms, the number of sole parent families has risen from 269,000 in June 1980 to 350,000 in June 1990.[16]

The Impact of the Scheme on Sole Parent Pensioners

4.19 At June 1993 there were 298,444 sole parent pensioners. Of these 94 per cent were female and 6 per cent were male. The average age of sole parent pensioners in December 1992 was 33 years for women and 38 years for men. Teenage sole parent pensioners comprised only 3 per cent of all sole parent pensioners in December 1993, while 74 per cent were aged 25 to 45 years old. Consequently, the vast majority of CSA client custodians are female sole parent pensioners aged between 25 and 45 years.

14 Submission No 5085, Vol 1, p 73

15 **Sole Parent Fact Sheet**, February 1993, p 1

16 CSEAG, **Child Support in Australia**, Vol 1, p 118

4.20 In December 1992 the average duration on the pension for sole parent pensioners was 3.3 years (3.4 years for females and 2.0 years for males). At February 1993, the labour force participation rate and unemployment rate of single mothers was 47 per cent and 21 per cent respectively compared with 57 per cent and 10 per cent respectively for married mothers. Therefore, a large number of sole parent pensioners under the Scheme are combining work with part payment of the pension.

4.21 Prior to the introduction of the Child Support Scheme in June 1988, less than 26 per cent of sole parent pensioners were declaring maintenance and by December 1992 the proportion had risen to above 40 per cent. In real terms, the number of sole parent pensioners declaring maintenance has almost doubled, from 61,129 in January 1988 to 119,575 in December 1992.[17] In June 1993, 40.5 per cent or 120,900 sole parent pensioners were declaring maintenance.[18] Figures 4.5 and 4.6 illustrate this increase in the number and percentage of sole parent pensioners declaring maintenance.

17 Submission No 5085, Vol 1, p 62

18 **Program Performance Statements 1993–94, Social Security Portfolio**, p 266

Figure 4.5 Number of Sole Parent Pensioners Declaring Maintenance, June 1998 – December 1992[19]

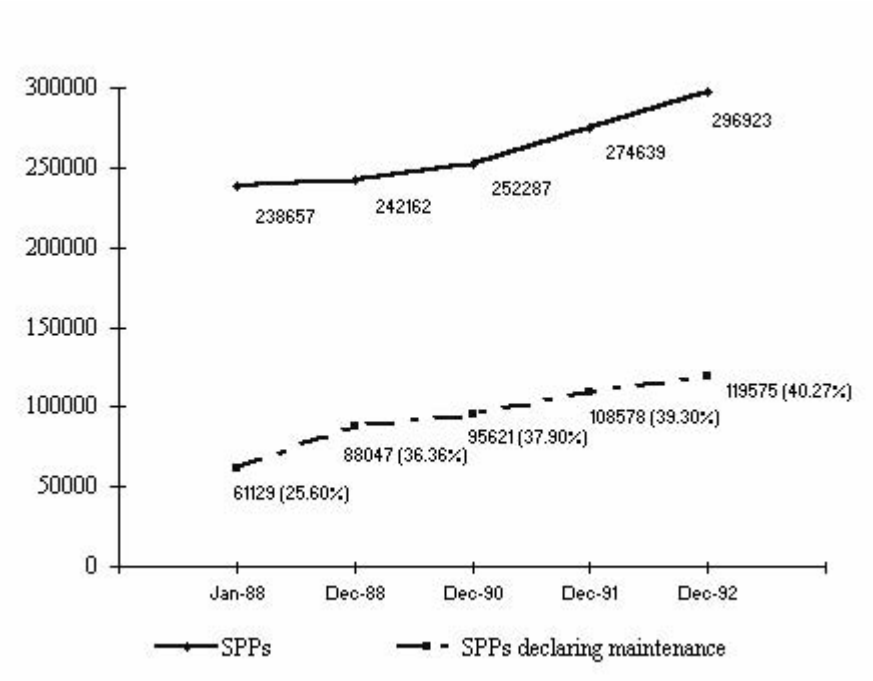
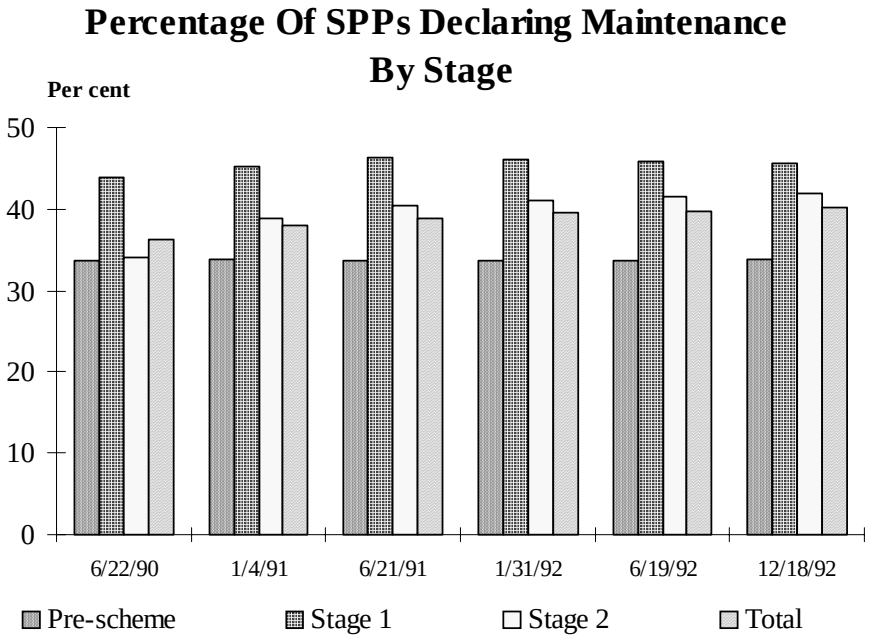


Figure 4.6 Percentage of Sole Parent Pensioners Declaring Maintenance under each Stage of the Scheme[20]



19 Submission No 5085, Vol 1, p 162

20 Submission No 5085, Vol 1, p 162. The Committee notes that the percentage of sole parent pensioners declaring maintenance under Stage 1 is higher than under Stage 2. However, the difference between the two stages has been decreasing over time.

4.22 The Joint Committee considers that this increase in the Scheme's coverage of sole parent pensioners is largely attributable to the introduction of the Scheme and in particular the requirement that sole parent pensioners must take reasonable action to receive child support or risk the suspension of their entitlement to the sole parent pension. The remainder of the sole parent pensioner population, that is, those who are not declaring maintenance (approximately 60 per cent) fall into the following categories:

- 17 per cent are pre-Scheme and are not required to take action;
- 3 per cent have completed action for child support or cannot take action;
- 8 per cent are exempted from taking action; and
- 32 per cent have action in progress (awaiting private collection, non-custodial parent income too low, paternity is disputed, or enforcement action is necessary).[21]

4.23 Therefore, over time more and more sole parent pensioners can be expected to declare maintenance to DSS. The Joint Committee notes that DSS estimate that the number of Sole Parent Pensioners declaring maintenance will rise by approximately 1000 per month. This high coverage of the sole parent pensioner population under the Scheme not only improves the adequacy of child support for this group of custodians but also translates into savings in Government outlays through the maintenance income test.

Collection

4.24 The CSA submitted to the Joint Committee that:

> Prior to the establishment of the CSA less than 30% of maintenance was paid. The amounts were low and irregular. Less than half was paid on time and in full. Since 1 July 1988 $590.1 million has been paid through CSA for the benefit of children. In the month of July 1993 $20.2 million was paid through CSA and a further $14.8 million was to have been paid through private arrangements between parents registered with the Agency. Approximately 320,000 children benefit from the work of the CSA and many more benefit

21 Submission No 5085, Vol 1, p 63

> from private arrangements outside the Child Support Scheme.[22]

4.25 This collection record translates into a collection rate of approximately 73 per cent for the CSA as at June 1993.[23] The CSA recently advised the Joint Committee that the amount of child support which has been paid through the CSA since 1 July 1988 has increased from $590.1 million in 1993 to $825.7m in May 1994, an increase of about 40 per cent. The CSA's collection rate has also improved to 75 per cent in May 1994, with about 55 per cent of this being paid on time.[24] Whilst this increase in the collection rate from less than 30 per cent to 75 per cent appears to be a tremendous result at face value, the Joint Committee notes that this high collection rate may be misleading as it only refers to CSA collection and does not include the majority of parents who collect child support privately outside the Scheme.

4.26 The CSA submitted to the Joint Committee that in July 1993 its active caseload was 205,962 with new applications being received at the rate of 2,700 a week.[25] The CSA recently advised the Joint Committee that its:

> ... active caseload has increased from 205,962 in July 1993 to 275,218 in May 1994 - up 69,256 or 33.6 per cent over a ten month period. New applications continue to come in at around 7,000 per month. Within this new total there are 60,675 active Stage 1 cases - a minimal increase over the period while Stage 2 active cases have increased by 68,967, or 47.4 per cent over the ten months.[26]

4.27 While these figures represent high increases in the active caseload of the CSA, a major component of this caseload is those clients who privately collect child support. For instance, in the month of July 1993, $20.2m was paid through the CSA while $14.8m was to have been paid through private arrangements of parents registered with the CSA.[27] Private payments in that month represented 73 per cent of total payments. The importance of private collection under the Scheme is discussed in Chapter 11.

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22 Submission No 5083, Vol 2, p 9
23 ibid. p 1
24 Submission No 6194, Vol 12, p 354
25 Submission No 5083, Vol 2, p 8
26 Submission No 6194, Vol 1, p 354
27 Submission No 5083, Vol 2, p 9

4.28 The CSA also advised the Joint Committee that the amount of uncollected debt (excluding default assessments) stood at $215 million in June 1993 and has risen to $279 million in May 1994, a 30 per cent increase over eleven months.[28] In June 1993 there were 70,000 cases with outstanding payments while in May 1994 this figure had increased to 97,500.[29] The CSA's efforts to address this high level of arrears are discussed in Chapter 13.

4.29 The Joint Committee notes the recommendation in the Australian National Audit Office, **Audit Report No 39, 1993-94**, that:

> ... reporting on the CSA collection rate be based on financial year periods, include the number and proportion of payers with outstanding debts as well as the total outstanding debt and include a realistic assessment of the default assessment component of outstanding debts. Internal management reporting should provide similar financial year information on a branch-specific basis.[30]

4.30 Whilst the Joint Committee endorses this recommendation, the Joint Committee considers that the Minister responsible for the CSA, the Assistant Treasurer, should, in advance of the child support year, announce the projected collection rate of the CSA for that year.

Adequacy

4.31 DSS advised the Joint Committee that the average child support declared by sole parent pensioners is $58 per week while the average declared according to each stage is as follows:

- pre-Scheme $44 per week;
- Stage 1 $48 per week; and
- Stage 2 $64 per week.[31]

28 Submission No 6194, Vol 12, p 354

29 ibid.

30 Australian National Audit Office, **Audit Report No 39, 1993–94**, Efficiency Audit, Australian Taxation Office, Management of the Child Agency, p 15

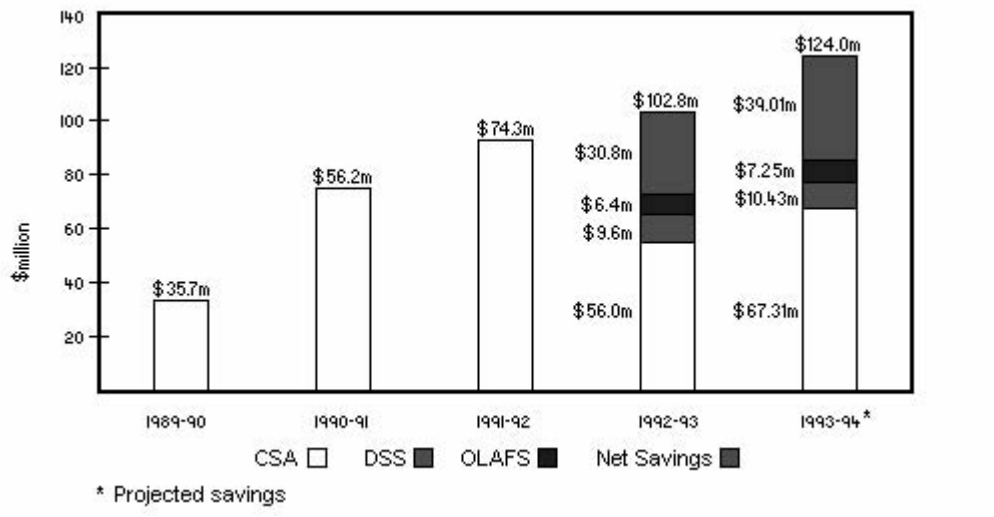
31 Submission No 5085, Vol 1, p 108

4.32 In 1992-93 the average formula assessment was $48.34 per week per child. The Joint Committee notes that a formula assessment may range from nil to in excess of $200 per week per child depending upon the number of children and the non custodial parent's taxable income. In 1992-93 the average court order made was $42 per week per child with court orders rising to this level from $26 per week per child in 1988. DSS estimate that without the implementation of the Scheme, court orders would currently be approximately $31 per week per child.[32] Therefore, the introduction of the Scheme has been successful in improving the level of child support for both Stage 1 and Stage 2 custodians.

Savings

4.33 The savings in social security outlays are based on the reduction in social security payments due to the maintenance income test.[33] Figure 4.7 depicts the administration costs of the Child Support Scheme to the CSA, DSS and the Office of Legal Aid and Family Services (OLAFS) in the Commonwealth's Attorney-General's Department as well as the net savings achieved as a result of the introduction of the Scheme.

Figure 4.7 Savings from the Child Support Scheme broken into Costs and Net Savings: 1989–90 to 1993-94[34]



32 ibid.

33 Explained in Chapter 3

34 Submission No 5085, Vol 1, p 161, DSS letter dated 19 May 1994 and **Child Support Scheme Facts Sheet**, August 1994

4.34 The OLAFS in the Commonwealth's Attorney-General's Department advised the Joint Committee that it provides funding to Legal Aid Commissions in each State and Territory and twelve Community Legal Centres nationwide to enable them to provide appropriate and independent legal services to custodial and non custodial parents seeking assistance under the Scheme. Of the $6.4 million funding provided by the OLAFS in 1992-93, $5.7 million was paid to State/Territory Legal Aid Commissions and $0.7 million to Community Legal Centres.[35]

4.35 Figure 4.7 shows that the Scheme's gross savings have risen from $35.5m in 1989-90 to a projected $124m in 1993-94. However, the costs of administration of the Scheme have also risen significantly over this time. In 1989-90 costs were $23.4m[36] compared to the 1992-93 costs of $72m and the projected costs for 1993-94 of $84.3m.

4.36 In December 1987, the Minister for Social Security predicted the Scheme would achieve a net saving of $192.8m in 1989-90.[37] These expected savings have not been realised. The net savings of the Scheme in 1989-90 were $12.0m[38] while in 1992-93 net savings were $30.8m and the projected net savings for 1993-94 were $39.7m. Nonetheless, these savings are significant.

4.37 The Department of Social Security submitted to the Joint Committee that:

> At the current rates of growth in:
>
> - the eligible population;
> - the shift to Stage 2 coverage of the population; and
> - the amount of child support flowing into the social security system or to custodians,
>
> the Scheme is estimated to see around $700m of child support being paid annually by the turn of the century.
>
> This represents a major shift in attitudes and a major re-balancing between pubic (taxpayer) provision of child support and private (parental) provision.[39]

35 Submission No 6082, Vol 11, p 140

36 Submission No 5085, Vol 1, p 110

37 **House of Representatives Hansard**, 9 December 1987, p 3137

38 Submission No 5085, Vol 1, p 110

39 Submission No 5085, Vol 1, p 12

Analysis of Submissions

4.38 The Joint Committee received 451 submissions which stated that the Child Support Scheme is an effective mechanism for obtaining child support from non custodial parents. These submissions represent 11.7 per cent of the total number of submissions received by the Joint Committee. Furthermore, 433 of the 1,976 submissions received from custodial parents endorsed the Scheme in this manner, making this the second most common comment amongst custodial parents. A typical submission stated:

> I am a mother with three children ages 13, 10 and 7 years old. I have been married once and am now separated. ... I spent a lot of time and energy over seven years patiently trying to resolve matters with my husband. It has been a traumatic experience and I wish to avoid ongoing stress as I need to keep the rest of the family unit functioning and advancing productively with life. Therefore, I am very grateful for the existence of the Child Support Agency which provides the neutral mediator that I need, enabling me to receive money without undue stress.[40]

4.39 Another custodial parent expressed the following support for the Scheme:

> ... since the middle of 1991, the girls have had extra financial support which has enabled them to pursue those interests that hopefully will get them into University, if it is not too late. This amount is consistent, fair, and regular. I can't begin to tell you the dynamics of receiving this child support. ... it is a brilliant scheme, I just wish it had been around years ago.[41]

4.40 Similarly, another custodial parent submitted:

> As a divorcee and mother, I feel very strongly about the responsibility of child maintenance being shared by both parents. Before child support was paid to me through the Child Support Agency, I was only receiving occasional payments from my ex-husband.
>
> Since child support has been collected through the Child Support Agency, not only have I received regular payments, but it has also relieved me of the embarrassment and

40 Submission No 4986

41 Submission No 5333

> humiliation of having to "beg" my ex-husband for money for clothes or schooling when I have been desperate![42]

4.41 The Joint Committee also received many submissions from custodial parents which were critical of the administration of the Scheme by the CSA:

> I had overlooked the fact that the Public Servants [sic] within the CSA deal only with paper and not people. In doing so, I am convinced that the CSA have denied my children the financial support to which they are not entitled to but which I know the father can well afford. The system does not work. ... It is my considered opinion that the CSA fail to meet their established tasks in the enforcement and collection procedures ... .[43]

4.42 Similarly another custodial parent submitted that:

> The Child Support Agency has completely □ailed to enforce□child maintenance payments when a liability has been assessed and has at times incorrectly assessed no liability, due to my ex-husband's arrangement of his financial affairs, despite his ever increasing assets base.
>
> The hard fact still remains, that after nearly four years of separation our four young children have not received one cent of maintenance.
>
> In my case the Child Support Agency has been totally ineffective.[44]

4.43 The submissions received by the Joint Committee from non custodial parents generally expressed dissatisfaction with one or more elements of the Scheme. The most common complaints from non custodial parents was that the formula used for the calculation of the child support liability is too harsh with 1,209 or 36.7 per cent of the total submissions received from non custodial parents (3,292) raising this issue. This issue was also the most common overall with 1,505 or 24.3 per cent of the total submissions received registering this complaint. The following submission summed up the general feeling of submissions received from non custodial parents:

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42 Submission No 3030

43 Submission No 4050

44 Submission No 706, Vol 3, p 101

> I do not regret the decision I made in providing for her and my daughters and I stand by it being more than fair.
>
> I just regret that between ... [former wife], the Family Law Court, the Child Support Agency you have misinterpreted, misunderstood and mismanaged the entire situation to the point that it has cost me most importantly my marriage to a woman I truly love, financially burdened me until age 55 if not bankrupting me, placed me in a position of not ever being able to buy another home unless of course I win it, dulled my competitive spirit and drive in the workplace, and leaving me with limited chances of a relationship again.[45]

4.44 Many submissions from non custodial parents raised criticisms of the administration of the Scheme by the CSA which were similar to those raised in submissions received by the Joint Committee from custodial parents:

> ... In my opinion this department is a 'charade' as they are not competent in the management of the funds sent to the department. ... I do not wish to make my children suffer, however, I do not want to be 'stuffed' around by a Government Department which appears to be incompetent.[46]

4.45 The Joint Committee also received 363 submissions from non custodial parents which acknowledged that the Scheme recognised that it is the parents' responsibility to provide for their children. This was the tenth most common comment from non custodial parents, representing 11 per cent of the total submissions received from them. The general thrust of these submissions is summed up by the following statement by the Lone Fathers Association of Australia:

> The Lone Fathers' Association is (and always has been) strongly of the view that both parents in a separated situation should contribute fairly to the support of their children.
>
> The Association agrees that the previous solely court-based system of child support failed in many cases to deliver fair outcomes to custodial parents, and that changes were required to that system. However, the Association is also strongly of the view that the administratively-based Child Support Scheme introduced in 1989 is heavily biased against

45 Submission No 3857

46 Submission No 4781

> non-custodial parents, and that radical changes will need to be made to that scheme to restore equity between non-custodial parents and custodial parents.[47]

4.46 These submissions illustrate the strength and diversity of opinion between custodial and non custodial parents in respect of the Child Support Scheme. The Joint Committee notes that this is hardly surprising given that the Scheme impacts upon them at one of the most sensitive and traumatic points in their lives.

4.47 DSS acknowledged to the Joint Committee that there were problems with the Child Support Scheme:

> We do not think the scheme is perfect by any means. Indeed, there have been a number of changes which have been suggested and which are going through. Nor would I want us to be seen as blindly defensive of the scheme, because if there are ways of improving the scheme we would obviously be very seriously interested in pursuing those.[48]

Conclusion

4.48 The Joint Committee considers that according to each of the existing performance indicators of the Scheme, the Scheme has been a qualified success. The Joint Committee also considers that one of the most successful aspects of the Scheme has been the shift in community attitude it has engineered through enforcing the collection of child support, thereby ensuring parents take responsibility for the support of their children. However, the Scheme is by no means perfect and the Joint Committee considers that it can be improved in the manner which it recommends in this report.

47 Submission No 1202, Vol 4, p 1

48 Transcript of Evidence, 24 June 1994, p 1553

Bias Under the Child Support Scheme

4.49 The Joint Committee is concerned about the allegations of bias against non custodial parents which have been levelled at aspects of the Child Support Scheme. The Joint Committee received 495 submissions which stated that the CSA is biased against non custodial parents and 198 submissions which stated that the CSA treats the non custodial parent like a criminal. These submissions collectively represented 11.2 per cent of the total number of submissions received by the Joint Committee. Of these submissions, 555 were received from non custodial parents. This represented approximately 17 per cent of the total number of non custodial parent submissions received by the Joint Committee. Consequently, the allegation that the Scheme is biased against non custodial parents rates as one of the highest sources of complaint received by the Joint Committee.

4.50 The following submission from a non custodial parent is representative of the submissions received by the Joint Committee in this area:

> The Scheme is definitely biased against the male. It takes whatever the female has to say as being the dire truth and acts upon that information straight away, without reserve and implements a payment structure immediately. The only recourse left to the male to have his position considered is to take the matter to the courts, at his own cost, regardless of whether his financial situation can afford this or not.[49]

4.51 Similarly, another non custodial submitted:

> The father is always:
>
> - the "guilty" party;
> - deserted his wife and children;
> - is a bastard;
> - is so driven by hedonism that he will do anything to deprive his dependents of a suitable lifestyle.
>
> I don't disagree that in most circumstances, some, or maybe even all of the above apply. However they do not apply in all circumstances. It is incorrect, and discriminatory to approach

49 Submission No 4478

> all separations on the above pretences. It is particularly unfair and discriminatory to assume that the separation is only the fathers fault, and that he is in reality, no better than a criminal. ...
>
> I do not use the word criminal lightly. It is an attitude problem within the CSA that this is the case. When attempting to deal with the CSA, your every statement is treated with suspicion. I don't believe that the CSA should blandly accept all statements that are made by their clients, however there is no need to openly challenge everything that is put forward. There is certainly no need for accusations of "you're lying" as you attempt to explain a situation.
>
> This aspect needs to be looked at from both sides. The custodial parent (or better described "the aggrieved person") is taken as the only person capable of telling the truth. In reality, it is this person that has more to gain from misleading statements, than the delinquent payer. In reality, it is the aggrieved person who sees the CSA as a first means of revenge against the person who has left. And unfortunately the CSA seems quite happy to play a role in this personal aspect of the separation.[50]

4.52 A number of custodial parents were also concerned about the burden which the Scheme places on some non custodial parents:

> Even though I am on the other side of the fence there are decent non- custodial parents who are suffering and hurting because of outrageous payments that have to be made.[51]

4.53 One particular example of bias is the CSA's administrative practice in respect of default assessments. The CSA may issue a default assessment where the CSA is unable to readily ascertain a person's taxable income for the relevant tax year (for 1994-95 assessments this is the 1992-93 tax year and that person has, in response to the CSA's or Australian Taxation Office's request, refused or failed to furnish a return, give information or produce a document for the purpose of ascertaining that taxable income). A default assessment may be issued on the basis that the person's taxable income for that year is such amount as the CSA considers appropriate as long as this amount

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50 Submission No 4447

51 Submission No 1409

does not exceed 2.5 times the yearly equivalent of average weekly earnings.[52]

4.54 In the case of a custodial parent the CSA's general practice is to issue a child support assessment on the basis that the custodial parent's income is too low to affect the assessment. This practice stems from the fact that the vast majority of custodial parents under the Scheme are sole parent pensioners who by definition earn less than the custodial parent disregarded income level. Therefore the income earned by these custodial parents would not affect the amount of the non custodial parent's child support liability.

4.55 However, in the case of a non custodial parent the CSA's general administrative practice varies between issuing a default assessment on the basis of average weekly earnings or 2.5 times average weekly earnings. This is due to the fact that the CSA issued an interim guideline in March 1993 which prescribed 2.5 times average weekly earnings as the default income base and a draft guideline in October 1994 which recommended the use of average weekly earnings. As a result, CSA branch practice varies, although the average weekly earnings default income base is expected to become CSA national policy shortly. This aspect is discussed further in Chapter 13.

4.56 The use of 2.5 times the yearly equivalent of average weekly earnings produces a child support liability equal to the highest possible amount payable for the number of children involved. This practice runs contrary to the evidence available in respect of the income earned by non custodial parents under the Scheme. As highlighted by Figure 4.2 above, about 81 per cent of Stage 2 non custodial parents earn less than average weekly earnings. Therefore, the CSA's practice of setting the non custodial parent's default child support income base at 2.5 times average weekly earnings appears to be inequitable. Furthermore, when the default child support income base of non custodial parents and custodial parents is compared, it is difficult to avoid reaching the conclusion that the CSA's practice in this area is biased against non custodial parents.

4.57 Another example of bias under the Scheme is the exclusion of the custodial parent disregarded income level from the definition of the basic child support formula under section 36 of the *Child Support (Assessment) Act 1989*. Instead this integral part of the child support formula appears as a modification to the basic formula. This

52 s. 58 *Child Support (Assessment) Act 1989*

treatment of the custodial parent disregarded income level is symptomatic of the almost blinkered focus on the capacity to pay of non custodial parents in the original conception of the Child Support Scheme. The Joint Committee considers this treatment of the custodial parent disregarded income level to be inconsistent with the principal object of the *Child Support (Assessment) Act 1989* that children receive a proper level of financial support from both their parents. This aspect is discussed further in Chapter 5.

4.58 There are a number of other areas under the Scheme where non custodial parents and custodial parents are treated differently. In each of these areas the Joint Committee considers that equality of treatment should be the starting point. There will, of course, be circumstances where it will be necessary to treat non custodial parents and custodial parents in different ways. However, where this occurs the Joint Committee considers that there should be an understandable explanation of why this is the case. In this way any perception that the Scheme is biased should be ameliorated and public confidence in the Scheme should be enhanced as a result.

Conflict between Objectives of the Child Support Scheme

4.59 The Joint Committee considers that a conflict arises under Stage 2 of the Scheme because the Government legislatively determines the non custodial parent's capacity to pay through the child support formula and at the same time benefits from higher levels of child support through reductions in social security payments. This means that the higher the level of child support determined by the formula the greater the Government savings in social security payments. This conflict is reflected in the objectives of the Scheme through the tension between the objective of making non custodial parents contribute to the cost of supporting their children according to their capacity to pay and the objective of limiting Commonwealth expenditure to the minimum necessary to ensure that adequate support is provided to all children not living with both parents.

4.60 The beneficiary within Government of these savings in social security payments is the DSS who, as outlined in Chapter 2, was the driving force behind both the watershed report, **Child Support: Formula for**

Australia,[53] which led to the establishment of formula assessment under the Scheme and each subsequent evaluation of the success of the Scheme. Consequently, the Department of Social Security has been the dominant influence in both the establishment and evaluation of a Scheme which provides substantial financial savings to the Department. Whilst this is not unusual in public administration, the fact is that this Department effectively acts as the prosecutor, judge, and jury between two parties with strongly competing interests and, at the same time, has a financial interest in the outcome. The Joint Committee considers that this makes a truly independent examination of the balance points of this Scheme absolutely essential to its acceptance by the public. This is the Joint Committee's onerous and challenging duty in this inquiry.

4.61 The Joint Committee questioned DSS about whether there may be a conflict between any of the objectives of the Scheme and whether there was any order of priority amongst these objectives. DSS advised the Joint Committee that it saw no conflict between the objectives of the Scheme and made the following comments in respect of the priorities between objectives:

> ... children are the ultimate priority ... they [the Scheme's objectives] are not weighted comparatively ... they all go to the fundamentals of the scheme, but we do not actually apply a weighting of one, two, three, four, or five. They are not scaled in that sense. They are all things that we take into account.[54]

4.62 The Joint Committee considers this approach to be of little assistance when the objectives of the Scheme are in conflict and a judgement has to be made as to which objective(s) are paramount in particular circumstances. Rather, this approach simply allows a judgement about the Scheme to be justified by putting forward whatever objective has the effect of delivering the desired result. Consequently, this not only avoids public accountability for these judgements but also unnecessarily adds to the complexity and confusion surrounding the Scheme. The Joint Committee considers that a more transparent approach to resolving conflicts between the objectives of the Scheme is necessary in order to make these judgements both understandable and accountable as well as to improve public confidence in the

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53 Child Support Consultative Group (CSCGR), **Child Support: Formula for Australia**, May 1998

54 Transcript of Evidence, 24 June 1994, p 1599 & 1604

Scheme. This can be achieved by attributing a clear priority to each of the Scheme's objectives so that when conflict arises between them it can be dealt with in a consistent and transparent manner.

4.63 The Joint Committee considers that the first three objectives set out at the beginning of Chapter 4 are closely interconnected as the relationship between them determines the Scheme's fundamental balance points which exist in the Scheme between:

- custodial and non custodial parents;
- children of first and subsequent families; and
- parents and taxpayers generally.

4.64 The Joint Committee considers that the first objective, namely that adequate support is available to all children not living with both parents, is the objective with the highest priority under the Scheme. This interpretation is supported by the principal object of both the *Family Law Act 1975* and the *Child Support (Assessment) Act 1989* which is to ensure that children receive a proper level of financial support from both their parents.

4.65 The first objective is achieved by ensuring that non custodial parents share in the cost of supporting their children according to their capacity to pay and by supplementing this with Commonwealth expenditure in the form of social security payments, primarily sole parent pension payments. Whilst the third objective states that Commonwealth payments are to be limited to the minimum necessary to ensure adequate overall support, the Joint Committee considers that this objective does not override the second objective that non custodial parents contribute child support according to their capacity to pay. In other words if the non custodial parent does not have the capacity to pay then Commonwealth expenditure will increase, where appropriate, to ensure that the overall adequacy of child support is maintained.

4.66 To summarise, the Joint Committee's interpretation of the priority of the first three objectives of the Scheme is:

Priority 1.	adequate support is available to all children not living with both parents
Priority 2.	non custodial parents share in the cost of child support according to their capacity to pay

Priority 3. Commonwealth expenditure is limited to the minimum necessary to ensure the adequacy of child support to all children not living with both parents

4.67 The remaining two objectives of the Scheme, that work incentives to participate in the labour force are not impaired and that the overall arrangements are non intrusive to personal privacy and are simple, flexible and efficient, represent factors which relate primarily to the impact of the Scheme on parents, rather than to any determination of the Scheme's balance points. The Joint Committee notes that these two objectives are not mutually exclusive and do interact to some degree with the first three objectives of the Scheme in any judgement of the Scheme's balance points. However, the Joint Committee considers that whilst these objectives are important in their own right, they are of less significance than the first three objectives in reaching this judgement. The precise manner in which these two objectives impact upon the Joint Committee's judgement of the appropriate balance points of the Scheme will vary depending upon the circumstances.

4.68 The Joint Committee notes that where conflict arises between one or more of the Scheme's objectives, the Joint Committee has reached conclusions based on its judgement of what is considered to be the overriding objective(s) in the particular circumstances. The prioritising of the first three objectives by the Joint Committee and the Joint Committee's recognition of the generally subsidiary nature of the remaining two objectives is critical to the formation of conclusions and recommendations which will benefit clients of the CSA and improve the Scheme's administration.

4.69 The Joint Committee recommends that:

Recommendation 3

the Government adopts the following order of priorities in respect of the objectives of the Child Support Scheme:

Priority 1. adequate support is available to all children not living with both parents

Priority 2. non custodial parents share in the cost of child support according to their capacity to pay

Priority 3. Commonwealth expenditure is limited to the minimum necessary to ensure the adequacy of child support to all children not living with both parents.

Amendment of the Child Support Scheme's Objectives

4.70 The Joint Committee is concerned that the objective that non custodial parents share in the cost of supporting their children according to their capacity to pay may, as presently expressed, encourage the perception that the Scheme is biased against non custodial parents as it focuses solely on the contribution and capacity to pay of the non custodial parent without mentioning the custodial parent's role in the support of the children. This perception is contrary to the principal object of both the *Child Support (Assessment) Act 1989* and Division 6 of Part VII of the *Family Law Act 1975* which is to ensure that children receive a proper level of financial support from both their parents. In addition, the particular objects of Division 6 of Part VII of the *Family Law Act 1975* include ensuring:

(a) that children have their proper needs met from reasonable and adequate shares in the income, earning capacity, property and financial resources of both their parents; and

(b) that parents share equitably in the support of their children.[55]

4.71 This perception of bias is also contrary to the components included in the child support formula which acknowledge the contribution and capacity to pay of the custodial parent by taking into account any income of the custodial parent above the disregarded income level. The Joint Committee heard the following evidence from the Department of Social Security on this point:

> Mr Andrews, MP - Going back to the first objective which was what I was questioning about, should not that objective, in order to reflect the reality of the practice or the application of the policy, talk about the contribution of both custodial and non-custodial parents and their respective capacities to pay or to contribute?
>
> Mr Blunn [Secretary, Department of Social Security] - My answer to that would be yes.
>
> Mr Andrews, MP - Right. In a sense, that would also mean that the Scheme is more likely to coincide with at least one of the objectives of the Family Law Act, that both parents have an ongoing responsibility for their children.
>
> Mr Blunn - I agree with you that it would be appropriate to state that. In fact it happens, and it happens now, so I think it is consistent with the Family Law Act. I do not believe we would have to make major changes to what we do as a result of that, but I think it could well be helpful in that perceptual context.[56]

4.72 The Joint Committee considers that this perception of bias could be overcome by simply amending the objective of the Scheme that non custodial parents share in the cost of supporting their children according to their capacity to pay so that it refers to the contribution and respective capacity to pay of both parents.

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55 s. 66A(2) *Family Law Act 1975*

56 Transcript of Evidence, 24 June 1994, p 1598

4.73 The Joint Committee recommends that:

Recommendation 4

the objective of the Child Support Scheme that non custodial parents share in the cost of supporting their children according to their capacity to pay be redrafted so that it reads as follows:

- **parents share in the cost of supporting their children according to their respective capacities to pay.**

4.74 The Joint Committee is also concerned that there is a perception that the Scheme is biased against non custodial parents on the grounds that it does not adequately consider the Scheme's impact on non custodial parent work incentives. The Joint Committee received 466 submissions from non custodial parents complaining that the Scheme impacted severely on their incentive to work. This represents 14.2 per cent of the total number of non custodial parent submissions received by the Joint Committee. One non custodial parent submitted:

> We no longer have the incentive to work. A number of us have already either lost or resigned from our jobs as we could no longer afford to keep them. We are financially better off by being on unemployment benefits. We do not want to get up every day and go to a job when there is no financial satisfaction at the end of the week.[57]

4.75 Similarly, another non custodial parent submitted:

> Please do not force me to give my job away and que [sic] up for dole cheques.
>
> I do not understand I do not know how this system can go ahead as is but I know one thing that there will be more robbers and heaps more people on the dole. Please can any one from your government department tell me if is there alternative way to survive. I am only 35 years of age and wont [sic] to work and pay tax's [sic] to this country to keep dream live [sic].[58]

57 Submission No 1078

58 Submission No 2739

4.76 The Joint Committee considers that the perception of bias concerning the Scheme's impact on non custodial parent work incentives could be ameliorated by amending the objective of the Scheme that work incentives to participate in the labour force are not impaired so that it specifically refers to both parents. This would put it beyond any doubt that the workforce incentives of both parents are of equal importance under the Scheme.

4.77 The Joint Committee recommends that:

Recommendation 5

the objective of the Child Support Scheme that work incentives to participate in the labour force are not impaired, be redrafted so that it reads as follows:

- **work incentives for both parents to participate in the labour force are not impaired.**

5

How the Child Support Scheme works

Introduction

5.1 As Chapter 2 explains, the child support reforms were implemented in two stages. The *Child Support (Registration and Collection) Act 1988* established the Child Support Registrar to register and collect periodic maintenance payments. From 1 June 1988 liabilities set in court orders or court registered agreements (including orders and agreements already in force) could be registered and collected by the Child Support Registrar.[1] These are 'Stage 1' cases. The amounts of these liabilities may be varied from time to time either through a court or by a mechanism such as a consumer price index adjustment set out in the order or agreement.

5.2 The *Child Support (Assessment) Act 1989*, which commenced on 1 October 1989, introduced an administrative assessment of child support liabilities by the Child Support Agency (CSA) using a formula set out in the Act. These administrative assessments can be collected by the CSA under the *Child Support (Registration and Collection) Act 1988*. The CSA can also collect child support pursuant to a child support agreement lodged with them. Alternatively parents can elect to collect child support privately. These are 'Stage 2' cases. The amounts set by the formula assessment are updated by the CSA each year in accordance with the parents' taxable incomes and may be

1 Administratively, this work is carried out by the Child Support Agency, which is part of the Australian Tax Office

varied from time to time through a no-cost review by the Child Support Review Office.

The Scheme's Coverage

5.3 Eligibility under the *Child Support (Registration and Collection) Act 1988* is primarily concerned with the categories of liabilities that can be registered and collected. This Act applies to the collection of both Stage 1 and Stage 2 liabilities. It defines registrable maintenance liabilities as:

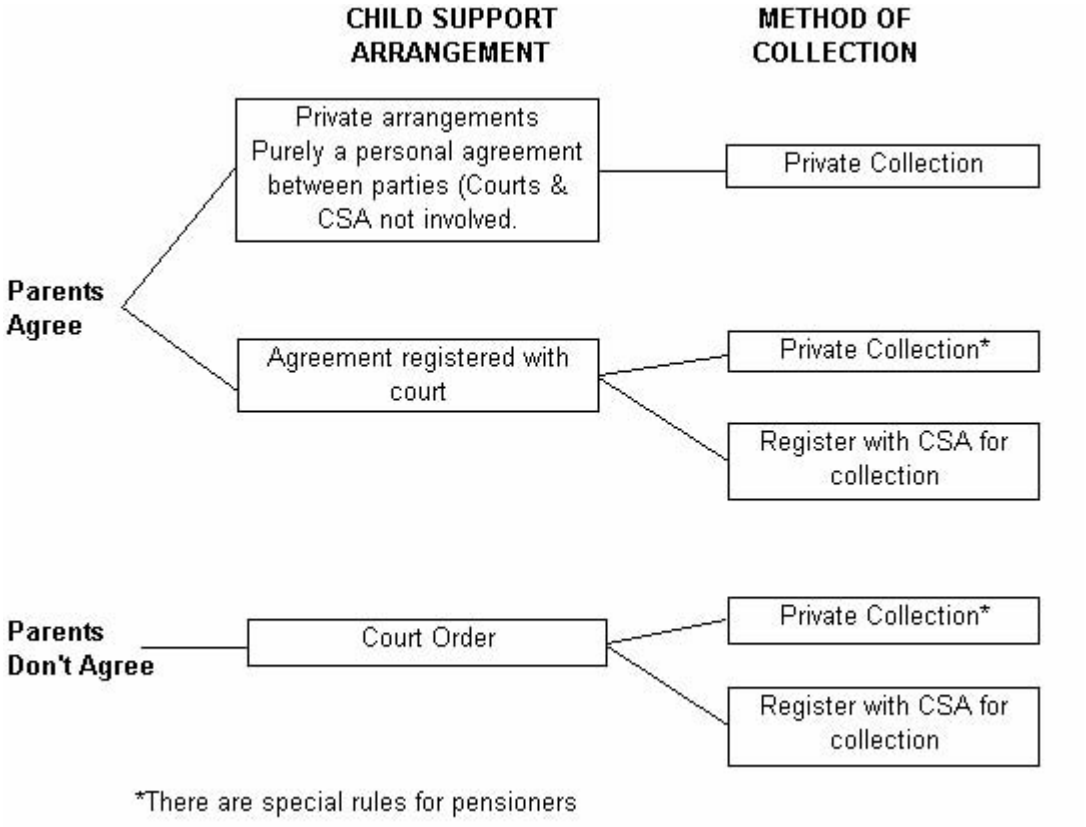
- liabilities of the parent or step parent of a child to pay a periodic amount of maintenance for a child which:
  - ⇒ arises under a court order or court registered maintenance agreement; or
  - ⇒ are lodged for collection with a State or Territory maintenance collection agency;
- liabilities for spousal maintenance:
  - ⇒ arising under a court order or court registered maintenance agreement; or
  - ⇒ lodged for collection with a State or Territory maintenance collection agency; and
- liabilities arising under a child support assessment or under a child support agreement for the payment of child support (that is, Stage 2 liabilities).

5.4 The *Child Support (Assessment) Act 1989* prescribes the children who are covered by Stage 2 of the Scheme. The Act's application is restricted to those children whose parents separated on or after 1 October 1989, or who were born on or after that day or have a sibling born on or after that day. The children must be under the age of 18 and unmarried. They must also be in Australia, Australian citizens or ordinarily resident in Australia for the Act to apply.

5.5 A person who may apply for an administrative assessment under Stage 2 is one who is the sole or principal provider of ongoing daily care for the child, or who shares that care substantially equally with another person. Administrative assessment of a child support liability cannot be applied for by children on their own behalf, nor if the person from whom the child support is sought is a step parent, nor for a child who is over 18. In these circumstances, a court order or court registered agreement would have to be obtained and registered with the CSA if CSA collection was required.

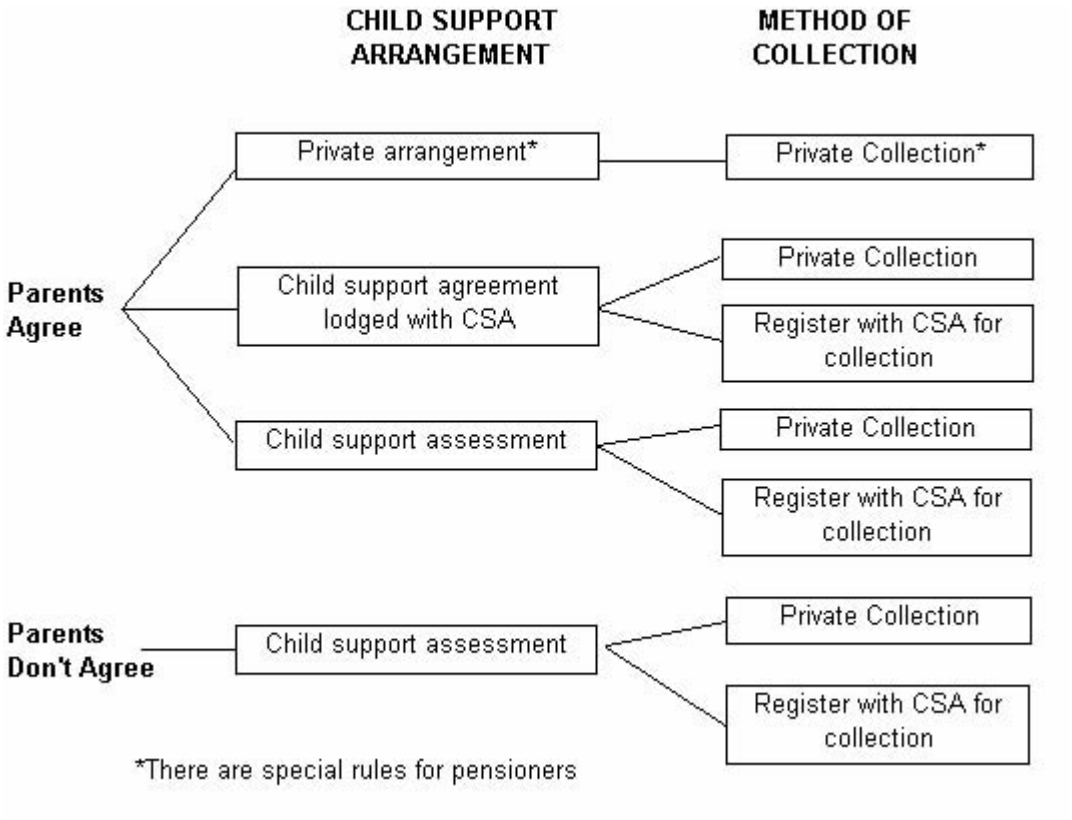
5.6 The different collection options available under each Stage are summarised by Figures 5.1 and 5.2:

Figure 5.1 Stage 1 Child Support Arrangements 2[2]



2 Submission No 5083, Vol 2, p 20

Figure 5.2 Stage 2 Child Support Arrangements[3]



Sole Parent Pensioners and Child Support

Introduction

5.7 The first contact that most custodial parents have with the Scheme is when they seek a sole parent pension from the Department of Social Security (DSS). Sole parents applying for a pension are advised at the initial interview that, unless child support action is not applicable or an exemption is granted, they will be required to take reasonable action to obtain child support. This requirement also applies to eligibility for Additional Family Payment. The action required is specified in Department of Social Security Administrative Guidelines[4] and will vary depending upon whether the children fall under Stage 1 or Stage 2 of the Scheme.

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3 Submission No 5083, Vol 2, p 21

4 DSS, **Guide to the Administration of the Social Security Act**, Chapter 38

When is Child Support Action not Applicable?

5.8 Reasonable action for child support is not applicable for a child if:

- the non custodial parent is deceased;
- the custodian has been continuously in receipt of an income support payment or additional family payment (including transfers between these payments) since before 1 June 1988, unless:
  - ⇒ they have an unpaid court order or registered agreement obtained since 1 June 1985 for an amount greater than the free area (the custodian must register this with the CSA for collection); or
  - ⇒ the custodian's family circumstances change after 1 June 1988, eg child born, child into care, separation (the custodian then has to take action under Stages 1 or 2 as applicable or seek an exemption). Action must also be taken for any full brothers or sisters of the child.
- the child is not from a previous relationship - non sole parent pensioner custodians only;
- the child is not a sole parent pensioner child and is not from a previous relationship - sole parent pensioner custodians only;

  (that is, action is applicable to qualify for additional family payment for a child from a previous relationship who has turned 16 years and is therefore not a sole parent pensioner child)
- the custodian is in receipt of a blind age or disability support pension and is not receiving child support;
- the child has turned 18 years and child support is not being paid; or
- the custodian is liable to pay child support, eg, custodian has 30 per cent care and receives additional family payment.[5]

5 ibid

Exemptions from Reasonable Action for Child Support

5.9 A custodian may be granted an exemption from the requirement to take reasonable action to obtain child support:

- if he or she fears that if he or she takes action for child support the non custodial parent will react violently towards the custodian or his or her family;
- where it would be unreasonable to expect him or her to seek child support because of the harmful or disruptive effect it would have on him or her or on the non custodial parent (eg, where for some reason the social worker thinks it would be very emotionally traumatic for the custodian to pursue child support, this would include rape or incest cases);
- where there are other exceptional circumstances;
- if she does not know the identity of the father;
- if she has had legal advice that she could not prove paternity through a court or has unsuccessfully tried to prove paternity (eg, the court has said the man is not the father, or where Legal Aid will not fund the paternity case, or the man's whereabouts remain unknown).[6]

Reasonable Maintenance Action under Stage 1 of the Scheme

5.10 Under Stage 1 a person required to take reasonable maintenance action must do so within three months of being advised of his or her obligations (usually at the pre-grant interview) to continue to qualify for sole parent pension and/or additional family payment for the child. Reasonable maintenance action means either:

- receiving child support under an informal agreement;
- applying to the CSA for collection of child support under a court order or court registered agreement;
- privately collecting 100 per cent of a court order or court registered agreement; or
- having court proceedings in progress.[7]

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6 ibid

7 ibid

Informal Agreements

5.11 An informal agreement under Stage 1 is an agreement (written or unwritten) that has not been registered in a court. This includes cash, non-cash or capitalised maintenance. There is no minimum amount required for informal agreements under Stage 1 because it is not possible to compare the amount received against what a court might order.

Court Orders or Registered Agreements

5.12 Custodians who obtained a court order or court registered agreement between 1 June 1988 and 31 December 1992 were required to have the order / agreement collected by the CSA. A person who was not a social security custodian could choose private collection when notifying the CSA of the order / agreement. From 1 January 1993, claimants for sole parent pension or additional family payment who obtain a court order or court registered agreement for maintenance may also choose private collection or collection by the CSA when notifying the CSA of the order / agreement.

5.13 Custodians in receipt of social security benefits who choose CSA collection cannot change to private collection at a later stage. Section 38 of the *Child Support (Registration and Collection) Act 1988* prevents custodians on social security benefits from ending collection by the CSA. On 6 April 1994 the Assistant Treasurer announced that this section will be amended to allow custodians on social security benefits who already receive regular child support payments the option of having their child support paid privately.

Private Collection

5.14 Custodians in receipt of social security benefits who choose private collection of a court order or court registered agreement for maintenance must privately collect 100 per cent of the amount payable under the order / agreement, otherwise CSA collection will be required (unless granted an exemption). Failure to do either may result in the suspension of sole parent pension and / or additional family payment for the child.

5.15 Payments collected privately can include any combination of cash, non-cash and capitalised maintenance provided the total equals at least as much as the order / agreement. Where a sole parent pension applicant already has an order / agreement lodged with, but not collected by, the CSA (eg, they were working and have claimed sole parent pension after becoming unemployed), DSS will contact the CSA to determine the amount of the order / agreement. If the custodian is privately collecting less than the order / agreement and does not take the necessary action to increase the amount privately collected to 100 per cent of the order / agreement then the sole parent pension and Additional Family Payment entitlement may be suspended until the full amount of the order / agreement is collected.

Custodians Without Court Orders or Registered Agreements

5.16 Stage 1 custodians in receipt of social security benefits who are not exempt, not receiving child support under an informal agreement, and do not have a court order or registered agreement are referred by DSS to a legal aid agency or solicitor for help to seek child support. The Office of Legal Aid and Family Services in the Attorney-General's Department provides funding to State and Territory Legal Aid Commissions and to a number of community centres to assist pensioners to obtain child support.

Reasonable Action for Child Support under Stage 2 of the Scheme

5.17 Under Stage 2, a person receiving sole parent pension and / or additional family payment, who is required to seek child support, must take action within 28 days of being told of the requirement. Under Stage 2, reasonable action for child support means completing and lodging an 'Application for a Child Support Assessment' with the CSA and either:

- having payments collected by the CSA; or
- privately collecting 100 per cent of the assessment.[8]

8 ibid

5.18 Where an applicant for a social security payment already has a child support assessment or registered agreement which is being privately collected, DSS will check that the amount of child support being received is at least as much as the CSA assessment amount. If this is not the case and the applicant does not take the necessary action to increase the amount privately collected to 100 per cent of the formula assessment then the sole parent pension and Additional Family Payment may be suspended by DSS.

5.19 A custodian is also taking reasonable action if:

- DSS has advised the custodian of the amount he or she should collect privately and the custodian is negotiating with the non custodial parent (limit of 14 days from being notified);
- he or she is taking legal action to prove parentage; or
- the custodian is obtaining evidence of parentage or DSS is obtaining details of parentage.[9]

Pseudo Assessments

5.20 Before 1 July 1992, social security Stage 2 custodians who wanted to collect child support privately were required to obtain an estimate of the amount that would be payable under the formula. These were known as 'pseudo assessments', and custodians were required to collect 90 per cent of the amount privately.

5.21 Stage 2 social security custodians granted before 1 July 1992 who had obtained a pseudo assessment could continue after 1 July 1992 to collect 90 per cent of the estimated formula amount to satisfy the maintenance action requirement. However, from June 1993, these custodians were required to apply to the CSA for a child support assessment and collect 100 per cent of the formula amount if they choose private collection. The requirement to apply for an assessment for these custodians was progressively introduced by DSS during June to August 1993.[10]

9 ibid

10 ibid

Maintenance Income Test

5.22 One of the Government's objectives for the Scheme is that Commonwealth expenditure be limited to what is necessary to ensure that adequate support is provided for children of separated parents. This is achieved by income-testing maintenance payments received by pensioners and beneficiaries through the application of the maintenance income test. This applies a free area with any maintenance income above this reducing the level of Additional Family Payment at the rate of 50 cents in the dollar. The maintenance income test is discussed in detail in Chapter 3.

Applying for Child Support

Stage 1

5.23 For children not eligible under Stage 2 of the Scheme and where the parents are unable to agree, court action is necessary to set the amount of maintenance. Under the *Family Law Act 1975*, court orders for maintenance of a child may be sought for any child for whom administrative assessment of child support cannot be sought under the *Child Support (Assessment) Act 1989*. Orders may be made by the Family Court, a court of summary jurisdiction or the Supreme Court of the Northern Territory. Legal aid is available in maintenance matters for parents who satisfy the eligibility and merit criteria.

5.24 Maintenance orders under the *Family Law Act 1975* usually specify a periodic amount of maintenance to be paid, that is, an amount payable each week, fortnight or month. But in some cases a lump sum order may be made which may or may not be part of an order dealing with the division of property. If a lump sum payment is ordered, the court is required to specify the child or children for whom maintenance provision is made and the portion of the payment, or the value of the portion of the property, that is by way of maintenance for children.

5.25 Court orders for periodic maintenance may specify a means of updating the amount payable without the need to obtain a variation through the courts. However, an existing order may not be varied unless the court is satisfied that since the order was made or last varied:

- the circumstances of the child have changed;
- the circumstances of the person liable to make payments under the order have changed; or
- the cost of living has changed to such an extent as to justify a variation;

or the court is satisfied that:

- in the case of orders made by consent, the amount ordered to be paid is not proper or adequate; or
- material facts were withheld from the court that made the order or material evidence previously given to that court was false.[11]

5.26 An agreement regarding the maintenance of children may also be registered with a court. No formal approval of such an agreement by the court is required. The agreement simply has to be lodged at a court and registered. Court registered agreements for child maintenance are not enforceable if one of the parties to the agreement could, at the time the agreement was made, have applied for administrative assessment for the child or children under the *Child Support (Assessment) Act 1989*. Agreements registered with a court may be varied as if they were an order by consent.

5.27 After 1 June 1988, newly made court orders and court registered agreements for child maintenance (including those varying earlier orders / agreements) may be registered by the custodial parent with the CSA for collection. Following registration of a liability for collection the CSA notifies the liable parent of the liability and requirements for payment and, if necessary, takes action to enforce compliance with the order or agreement.

11 s. 66N(2) *Family Law Act 1975*

Stage 2

5.28 Administrative assessment of child support under Stage 2 of the Scheme is sought by completing an application form and lodging it with the CSA. The CSA uses a formula set out in the *Child Support (Assessment) Act 1989* to assess the child support liability. Following assessment of the liability, the CSA registers it and notifies the liable parent of the payment requirements and procedures and, if necessary, takes action to enforce payment.

5.29 Child support agreements may also be made under the *Child Support (Assessment) Act 1989* for the payment of child support where an assessment could otherwise be made under the Act. Child support agreements are discussed in detail in Chapter 11.

The Child Support Formula

5.30 Where a child is eligible for administrative assessment of child support and a valid application for assessment is made, the CSA assesses the amount payable according to a formula set out in the *Child Support (Assessment) Act 1989*. Under administrative assessment, the liable parent is expected to pay a percentage of income, depending on the number of children involved and after deducting an amount for personal living expenses and the upkeep of his or her children. Whilst there are several variations to the formula to take account of different circumstances, there are two versions which cater for the majority of cases. These are the 'basic formula' which applies when the custodian has sole custody of all the children and the liable parent has no relevant subsequent family children, and the 'subsequent family formula' which applies where the liable parent has new natural or adopted subsequent family children.

The Basic Formula

5.31 The basic formula is defined by section 36 of the *Child Support Assessment Act 1989* to be:

> **36(1) [Formula for annual rate of support]** The annual rate of the child support payable, in relation to a day in a child support year, by a liable parent for the child, or all of the children, for whom child support is payable by the liable parent is the amount calculated, in relation to the liable parent in relation to that day, using the formula:
>
> **child support percentage x adjusted income amount.**
>
> **36(2) [Formula for adjusted income amount]** The adjusted income amount is the amount (being an amount not below 0) calculated, in relation to the liable parent in relation to that day, using the formula:
>
> **child support income amount - exempted income amount.**

5.32 In simpler terms, the basic formula is:

> [non custodial parent's child support income base X indexation factor
>
> - self support component)
>
> MULTIPLIED BY
>
> child support percentage

5.33 The terms used in the basic formula are defined as follows:

- Non custodial parent's child support income base - this is the taxable income (before the deduction of tax and the Medicare levy) of the liable parent for the year before last. That is, for an assessment for the 1994-95 year, the taxable income for 1992-93 (as stated in the taxation notice of assessment) is used;
- Indexation factor - this is used to update the taxable income to a present day value;
- Self support component - this is an amount allowed the liable parent for self support and is equal to the basic maximum single rate of pension payable by the Department of Social Security on 1 January before the assessment year. In the 1994-95 child support year the self support component was $8,221.00; and

- Child support percentage - this is the proportion of income above the liable parent's self support component which is payable as child support. It varies according to the number of children for whom child support is payable. The percentages are:

One child	18 per cent
Two children	27 per cent
Three children	32 per cent
Four children	34 per cent
Five or more children	36 per cent

5.34 A custodial parent's income is only taken into account in the child support formula if it exceeds the custodial parent disregarded income level. This level is equal to:

Average Weekly Earnings (AWE) + Child Care Costs

where: (a) Child care costs - are calculated as 11.5 per cent of AWE for one child under six plus 2.5 per cent of AWE for each other child under six, plus five per cent for each child aged over six and under 12; and

(b) Average Weekly Earnings - is an estimate of the yearly equivalent full-time adult average weekly earnings as published by the Australian Statistician

5.35 Each dollar earned by the custodial parent above the custodial parent disregarded income level reduces the non custodial parents child support income base by a dollar until the resulting child support liability is reduced to 25 per cent of the amount that would have applied had the custodial parent earned no income above the custodial parent disregarded income level. This effectively creates a minimum child support liability which can only be varied by agreement between the parties, by a court ordering otherwise or if the amount assessed on the basis of the custodian's income being nil is still less than $260 a year, in which case nothing is payable.

5.36 If the liability is equal to or greater than $260 a year, the liable parent is notified of the liability, when the first payment is due and any arrears payable. The annual assessment is divided by 12 to arrive at the monthly liability payable. There is also a maximum figure above which the liability cannot go. This is the amount that would be payable, for the number of children involved, by a person whose income multiplied by the indexation factor was two-and-a-half times average weekly earnings.

5.37 The Joint Committee notes that the custodial parent disregarded income level appears in the *Child Support (Assessment) Act* as a modification to the basic formula rather than as an integral component of the basic formula. As highlighted in Chapter 4, this treatment of the custodial parent disregarded income level is symptomatic of the bias of the Scheme against non custodial parents. It is also inconsistent with the principal object of the *Child Support (Assessment) Act 1989* that children receive a proper level of financial support from both their parents and the amended objective of the Scheme that parents share in the cost of supporting their children according to their respective capacities to pay. Consequently, the Joint Committee considers that the custodial parent disregarded income level should be included in the definition of the basic formula.

5.38 The Joint Committee recommends that:

Recommendation 6

the *Child Support (Assessment) Act 1989* be amended so that the definition of the basic child support formula includes the custodial parent disregarded income level.

Subsequent Family Formula

5.39 Where the liable parent supports children who are his/her natural or adopted children in a subsequent family, the basic formula applies except for an increase in the self support component to allow for the responsibility to support these children. The self support component increases in these cases to the married rate of pension, plus an amount for each child. However, it does not recognise any step or de facto children which may be present in the liable parent's subsequent family. The subsequent family formula is discussed in Chapter 18.[12]

Other Formula Variations

Split and Shared Custody

5.40 Some parents who are separated share custody of their children, either by each having sole care for at least one child (this is called split custody or divided custody) or by sharing the care of a child or children (this is called shared custody). In split and shared custody cases, the formula is used somewhat differently in that it is used to calculate a notional liability for each parent. The parent who has the larger liability then is required to pay an amount equal to the difference between the two liabilities. These variations are discussed in Chapter 18.

12 The Joint Committee notes that the *Child Support (Assessment) Act* does not refer to a 'subsequent family formula'. However, the Joint Committee has adopted this terminology in the interests of simplicity.

Custodians Who Are Not Parents

5.41 Sometimes one or both parents can be liable to pay child support to another person who has custody of their child. A custodian with full time daily care of the child may choose to claim child support from one parent or both. If the custodian chooses to claim from one parent only, only that parent's income is taken into account and the basic formula is used or another formula if applicable (for example, if the liable parent has other relevant dependent children). In no case is the custodian's income taken into account.

Parents Liable to Pay More than One Custodian

5.42 Where a parent has a liability to pay child support to more than one custodian, the liability to each custodian is calculated separately. The basis of the calculation is as it would be if each custodian was the only one to whom a liability to pay existed, except that the child support percentage is calculated differently. The child support percentage in these cases is:

$$\frac{\text{No of children in custodian's custody}}{\text{total number of children}} \times \text{child support percentage for total number of children}$$

where 'total number of children' means the total number for which a liability is being assessed.

Substantial Access

5.43 This variation of the formula deals with the situation where a liable parent has access to a child for at least 30 per cent of the nights of the child support year and allows a specific reduction in these circumstances. This variation is discussed in Chapter 17.

5.44 The Joint Committee notes that it is possible for a number of these scenarios to occur at the same time thereby introducing further complexity into the calculation of the child support liability. An example is where the non custodial parent may have shared custody of, or substantial access to, one or more of the children from previous relationships. This scenario is illustrated by the numeric example

contained in section 54 of the *Child Support (Assessment) Act 1989* which is reproduced in Appendix 6.

Where Income is Unknown

5.45 Where the Child Support Registrar is unable to readily ascertain a person's taxable income for the relevant tax year (for 1994-95 assessments this is the 1992-93 tax return) and that person has, in response to the CSA's or Australian Taxation Office's request, refused or failed to furnish a return, give information or produce a document for the purpose of ascertaining that taxable income, the Child Support Registrar may issue a default assessment on the basis that the person's taxable income for that year is such amount as the Child Support Registrar considers appropriate as long as this amount does not exceed 2.5 times the yearly equivalent of average weekly earnings.[13] If the Child Support Registrar makes a default assessment but then ascertains the person's relevant taxable income, the Child Support Registrar must immediately amend the formula assessment so that it is based on the subsequently ascertained taxable income.

Changes in Income

5.46 Liabilities under administrative assessments are reassessed by the CSA each year (generally in about March or April) based on the taxable income for the financial year before last. For example, child support liabilities for the 1994-95 child support year are based on the parents' 1992-93 taxable income. This mechanism ensures that the child support liability varies in line with variations in both parents' income.

5.47 If a parent whose income affects the level of child support payable experiences a drop in income of at least 15 per cent (for example, as a result of unemployment) he or she can elect, under section 60 of the *Child Support (Assessment) Act 1989*, to have the child support liability reassessed using an estimate of income for the current financial year. This is done by submitting an estimate of taxable income together with supporting details to the CSA on a form provided for this purpose. At the end of the year, following lodgement of the parent's tax return and issuing of a taxation assessment, the child support

13 S. 58 *Child Support (Assessment) Act 1989*

liability for the year in question is recalculated and any necessary adjustments are made.

Collection and Payment of Child Support

5.48 Child support payments are collected by the CSA either by automatic withholding by employers of amounts due from salary or wages, in a manner similar to pay-as-you-earn (PAYE) tax instalments or by direct payments by the liable parent to the CSA. Payments are due monthly, in arrears, and should be made by the seventh day of the month following that for which the payment is made.

5.49 Following receipt of payments by the CSA and their reconciliation against CSA records of liabilities, the amounts received are paid by the CSA into a trust account. A warrant is issued to DSS to draw out the amount paid into the trust account and details of the payments received is given to DSS by CSA. The amounts received are then credited to custodial parents' bank accounts. If custodial parents are also social security beneficiaries, then the amount paid is taken into account in assessing their benefit entitlement. The mechanism used for this purpose is the maintenance income test.

5.50 Formula assessments of child support are limited in their date of effect to 28 days prior to lodgement of the application for administrative assessment or date of separation, whichever is the later except where the liable parent has been providing child support voluntarily. In this case the date of effect of the formula assessment is the date of application. In each of these situations substantial 'start-up' liabilities can result. These are generally referred to as child support arrears and are discussed in Chapter 9.

5.51 Court ordered liabilities generally commence from the date set by the court or from the date stated in the court order. If the order has remained uncollected for some time before being registered for CSA collection, this can result in significant initial arrears payments being due and collectable by the CSA.

5.52 The fundamental and desired method of collection is through the withholding of payments by employers from salary or wages, in a manner similar to PAYE tax instalments. Section 43 of the *Child Support (Registration and Collection) Act 1988* requires that, as far as practicable, autowithholding (as it is called) be used where the payer is an employee. Child support payments withheld by employers are

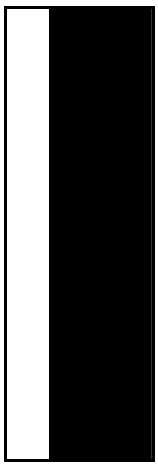
forwarded by them to the Australian Taxation Office together with PAYE deductions, usually on a monthly basis. Employers are required to separately identify child support deductions. This method is practicable only where the employer uses the PAYE system (some employers use tax stamps instead) and is not, of course, applicable to liable parents who are self employed.

5.53 Where a liable parent does not pay amounts due, a number of avenues are available to the CSA to enforce payment. These include the interception of any taxation refund due to the liable parent and the pursuit of payment through the courts. The CSA's compliance policy is discussed in Chapter 13.

5.54 The Joint Committee notes that where payment of a child support debt for any month is not made in full by the due date, the CSA may impose on the liable parent a financial penalty. The penalties received are paid into Consolidated Revenue. The CSA may remit penalties if reasonable action has been taken to mitigate the effects of the failure to pay, or if the Registrar is satisfied that there are special circumstances making it fair and reasonable to remit the penalty.

Review Process

5.55 Under Stage 2 of the Scheme, an aggrieved party may, without incurring any cost, apply to the Child Support Registrar for a departure from the formula assessment. The grounds for departure from formula assessment are set out in section 117 of the *Child Support (Assessment) Act 1989*. This stipulates that an application for departure is only available in a limited range of special circumstances and where it would be just and equitable, and otherwise proper, to grant the requested departure. The grounds of departure from formula assessment are discussed in Chapter 17.



PART II—Management and administration of the child support agency

6

Origin and growth of the Child Support Agency

Origin of the Child Support Agency

6.1 The initial impetus for the development of the Child Support Scheme arose from concern that children from separated families should be supported by private rather than public means. The idea of a national maintenance collection agency came from a 1979 review conducted by the Family Law Council. This review identified the need for a separate national maintenance enforcement bureau, established along the lines of similar bodies operating in South Australia and Western Australia. The idea received endorsement by a Parliamentary Joint Select Committee inquiring into the provisions and operation of the *Family Law Act 1975*. The July 1980 report of this Committee recommended that:

> ... the Government review the arrangements for the collection and enforcement of maintenance with a view to establishing a consistent administrative approach. An agency should be created modelled on the systems developed by the Department of Community Services in South Australia and the Collector of Maintenance in Western Australia. ... it is considered that this agency should be established in and administered by the Department of Social Security in close liaison with the Family Court and courts of summary jurisdiction under the Family Law Act. [1]

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1 Recommendation 30 in Report of the Joint Select Committee on the Family Law Act, **Family Law in Australia**, Vol 1, 1980, p 87

6.2 In March 1983 the Attorney-General initiated a departmental review into maintenance systems. The report entitled **A Maintenance Agency for Australia** recommended that a national maintenance agency, modelled broadly on the South Australian system be established. The concept of locating a maintenance collection agency within the Australian Taxation Office (ATO) was first mooted in a report on child maintenance by the Victorian Social Security Consultative Committee in early 1984. This report recommended using the taxation system for assessment, location, collection and enforcement of child maintenance and the Department of Social Security (DSS) for making payments to custodial parents.

6.3 In October 1985 a Cabinet Sub-Committee, chaired by the then Minister for Social Security, the Hon. Brian Howe MP, was established to examine the existing child maintenance arrangements. The Cabinet Sub Committee in October 1986 published **Child Support, A Discussion Paper on Child Maintenance** which outlined the Government's intention to reform child maintenance arrangements to introduce a legislative based formula to assess maintenance obligations. It was proposed that the legislative based formula would replace judicial discretion as the method of assessing maintenance. The intention was that the Scheme would be administered by a 'Child Support Agency under the control of the Commissioner of Taxation'.[2]

6.4 The Cabinet discussion paper cited the following reasons for locating the Child Support Agency (CSA) within the ATO:

- the ability of the CSA to access tax records;
- the ability to improve the effectiveness of the collection of payments by withholding automatically from a non custodial parent's income; and
- the CSA would have access to ATO debt recovery methods.

6.5 The DSS informed the Joint Committee that the following considerations were taken into account in the decision to locate the CSA within the ATO:

- the location of the agency for collection in the ATO should enhance compliance with payment and facilitate enforcement;
- there was no history in Australia of child support payments being collected in the social security system as there was in some overseas countries;

2 Cabinet Sub-Committee on Maintenance, **Child Support, A Discussion Paper on Child Maintenance**, 1986, p 14

- the overseas experience suggested that collection arrangements located in income security administrations did not have a high success rate in collection; and
- the majority of non custodial parents with a child support liability are in employment and would not usually have any direct connection or contact with the social security system.[3]

6.6 From late 1986 until the implementation of the Scheme in 1988, a Maintenance Secretariat was established by Cabinet to develop the policy detail for the proposed scheme. Inter-departmental representatives working on the policy development were drawn from the ATO, DSS, the Attorney-General's Department and the Department of Finance. It was not unnatural that the Government, through the Maintenance Secretariat, placed a great deal of effort into refining the policy details and the legislation. In hindsight, it appears that the concentration on refining policy details may have resulted in insufficient attention being paid to the administrative details.

The Child Support Agency as Part of the Australian Taxation Office

6.7 The CSA was established on 1 June 1988 as a division within the ATO. The CSA is one of nine divisions within the ATO and therefore does not have a separate corporate identity. Currently, the CSA is located in 23 of the ATO's 25 branch offices, 20 of which are located in capital cities or the metropolitan areas surrounding these cities. Only five CSA branch offices exist outside of these areas - Albury, Geelong, Newcastle, Townsville and Wollongong. Nine CSA branch offices, plus the Darwin regional office, contain Child Support Review Offices. These are Canberra, Cannington, Chermside, Hobart, Moonee Ponds, Penrith, Townsville, Waymouth and Newcastle.

3 Submission No 5805, Vol 1, p 53

6.8 In addition to 25 branch offices throughout Australia, the ATO also maintains 17 regional offices to assist and advise people in remote locations. With the exception of the Alice Springs and Darwin offices which have staff specifically trained in CSA client enquiries, ATO regional offices do not have specific child support functions. Therefore, child support enquiries are generally directed to branch offices.

6.9 Although CSA offices are co-located within most ATO branch offices, CSA offices often cover different geographic areas to other ATO functions in the same branch. For example, the Penrith ATO office covers north-eastern New South Wales for CSA purposes whereas this area is covered by the Brisbane office for individual income tax purposes. Clearly the location of CSA offices within the ATO office network does not facilitate client access to the CSA.

6.10 Furthermore, rural and provincial coverage by CSA offices is poor. There is no opportunity for face to face contact with the CSA for people not residing in major population centres and there is no nationally co-ordinated pro-active 'outreach' campaign to serve the needs of these people. CSA branch offices do conduct some 'outreach' activities, where senior staff in the branch office travel to various regional centres within their area and present seminars and answer questions from family law practitioners, CSA clients,[4] and groups representing clients of the CSA. This outreach activity can only provide general information. For detailed assistance a client still needs to contact their local branch of the CSA, if they are able to do so.

6.11 The majority of staff within the CSA transferred from other sections of the ATO as Administrative Service Officer (ASO) grades 2 or 3. The recruitment of staff at these levels reflects the ATO's belief that the CSA was primarily a data processing and collections operation, much along the lines of the processing and collection activities required for income tax.

4 Clients of the CSA include both custodial and non custodial parents

The Child Support Agency - The Early Days

6.12 The original role of the CSA was to register and collect court ordered maintenance under the *Child Support (Registration and Collection) Act 1988*. Following the introduction of the *Child Support (Assessment) Act 1989*, the CSA also became responsible for the registration, assessment and / or collection of formula assessments and child support agreements. The policy role for the Scheme rested with DSS.

6.13 Beyond the assessment and collection functions, there was confusion about the extent to which it was intended the CSA would be responsible for other administrative tasks. This confusion is best illustrated in the following statements by the CSA and DSS. The CSA described its original focus as being:

> ... a collection agency within the ... ATO. Our intended role in 1988 was one of collection with a small amount of client contact with non-custodial parents and employers only. Our colleagues in the ... DSS were seen as having to deal with the custodial parent and continue their social welfare role.[5]

6.14 DSS however, advised the Australian National Audit Office (ANAO) that:

> It is not correct to say that the CSA would deal with payer inquiries and DSS would deal with payee inquiries. The clear intention in dealing with client inquiries is that those that relate to Social Security payments, including the effect that child support payments may have on rates of payment, should be dealt with by DSS. Other inquiries in relation to payments or account information in relation to child support liabilities, or any detailed inquiries about the Scheme, should be handled by the CSA.[6]

6.15 This confusion was recognised by the Child Support Evaluation Advisory Group (CSEAG), in its 1991 review of the Scheme. CSEAG noted that it was 'not aware of any expectations regarding the Scheme's administration, other than the implicit assumption that resources allocated to the various agencies involved were what was required for its administration and that it would operate efficiently'. CSEAG also noted that 'it must have been expected that administration of the Scheme would be a more straightforward matter than it has in fact proved to be'. CSEAG quoted the then Child Support Registrar, Mr Boucher as stating, 'We were naive

5 Submission No 5803, Vol 2, p 7

6 Australian National Audit Office, **Audit Report No 39, 1993–94**, Efficiency Audit, Australian Taxation Office, Management of the Child Support Agency, p 69

enough at the beginning of the Child Support Scheme to believe that the ATO's involvement would be simple'.[7]

6.16 The CSA was not seen by the ATO as having any role in the personal problems faced by its clients. In fact, the ATO staffed the CSA on the basis that it would have minimal contact with its clients. The assumption was that child support was just another collection function, similar to income tax, with minimal client contact. The introduction of Stage 2 of the Scheme was also seen to be similar to the income tax assessment practices of the wider ATO. In practice, the CSA was found to have, and always will be required to have, extensive client contact. For example, the CSA now receives up to 38,000 attempted calls per week in the Victorian region alone, about 50 per cent of these calls being from custodial parents. Approximately 26 per cent of CSA resources are required to answer client telephone calls and correspondence.[8]

6.17 The ATO had no experience in administering a program similar to the Child Support Scheme with its demand for frequent, and often emotive, client contact. In hindsight, the ATO needed assistance in establishing the infrastructure and estimating the resource requirements for handling a large number of enquiries about child support payments as well as child support collections. Whatever assistance was provided was clearly ineffective meaning that the establishment of the CSA was flawed from the very beginning.

6.18 In spite of the administrative problems caused by the high levels of client enquiry, the first review of the CSA was largely favourable. This review, conducted by the Child Support Consultative Group (Consultative Group) during 1988-89, concluded that the CSA represented 'an effective national mechanism for enforcement of maintenance orders'.[9] The improved rate at which non custodial parents were providing for their children may have masked the underlying problem. The Consultative Group's major concern with the operation of the CSA was the delay between the registration of the child support liability and the custodial parent's receipt of first payment. This still remains a major problem with the Scheme today.

7 CSEAG, **Child Support in Australia**, Vol 1, p 392

8 Submission No 5083, Vol 2, pp 38–43

9 Child Support Consultative Group, **The Child Support Scheme: Progress o Stage 1**, p 5

6.19 The 1988-89 Annual Report of the Commonwealth Ombudsman noted some complaints about the CSA, but considered the majority of these to be teething problems. The major issues highlighted in the annual report were the delays in the custodial parent's receipt of first payment, the operation of the secrecy provisions of the child support legislation and the imposition of penalties for late payment.[10]

An Emerging Pattern of Complaint

6.20 The implementation of Stage 2 of the Scheme in October 1989 had a marked impact on the ability of the CSA to efficiently handle its workload. CSEAG noted that:

> ... it became apparent that the Agency was not able to handle the workload that the new stage had generated. Although it had no apparent similar difficulty up to that point with stage one cases, the additional work brought by stage two had an impact on all processing. Major delays developed for processing applications under both stages ... . Of course, delays in assessment and registration caused consequential delays in collection and hence, receipt of child support by custodial parents.[11]

6.21 The Commonwealth Ombudsman was far more critical of the operations of the CSA in his 1989-90 Annual Report. Issues of concern included:

- lost documents;
- delays in registering agreements and court orders;
- delays in all stages of the process of recovery of arrears;
- delays in arranging for autowithholding of wages;
- delays in recording and acknowledging payments;
- inadequate telephone service;
- failure to answer correspondence and return phone calls;
- inability to provide full and accurate information;
- miscalculation of arrears;
- inaccurate advice concerning arrears;

10 Commonwealth and Defence Force Ombudsman, **Annual Report 1988–89**, pp 42–4

11 CSEAG, op.cit. p 282

- inappropriate recovery action; and
- failure to take remedial action after proper notification of mistakes.[12]

6.22 The CSA admitted the difficulties it was facing in the 1989-90 ATO Annual Report:

> There has been a much higher level of work generally than we had thought with telephone enquiries alone, mostly from custodial parents, totalling over 2 000 per day. ...[13]
>
> The position with inadequate staffing levels to handle the work on hand deteriorated throughout the year with applications on hand and not processed peaking at 2158 for registration and 6554 for assessment. Approval has been given to more than double staffing levels in 1990-91. ...
>
> This high level of enquiries, combined with the highly emotional reactions of both custodial and non-custodial parents, has meant that client service has been a much more time-consuming area than anticipated.[14]

6.23 On the basis of the difficulties being faced by the CSA with the introduction of Stage 2 of the Scheme, the Government announced on 31 May 1990 that 'substantial additional resources would be made available to the Agency for the 1990-91 financial year'.[15]

6.24 The Commonwealth Ombudsman noted that by 'early 1990, it was apparent that there were significant administrative problems within the CSA'.[16] The Ombudsman observed that a number of administrative difficulties remained despite the large increase in staff allocated to the CSA during the past year.[17] The problems included all of the issues raised in the Ombudsman's 1989-90 Annual Report, plus:

- inability to ensure it could keep up with the recovery of arrears;
- inability to provide information about collection or possible recovery action due to the perception this would breach privacy provisions;

12 Commonwealth and Defence Force Ombudsman, **Annual Report 1989–90**, pp 29
13 Commissioner of Taxation, **Annual Report 1989–90**, p 86
14 ibid. p 91
15 CSEAG, op.cit. p 283
16 Commonwealth and Defence Force Ombudsman, **Annual Report 1990–91**, pp 30
17 ibid. p 31

- lack of confidentiality of correspondence; and
- refusal to credit payments made direct by the payer to the payee.

6.25 The following year, in the 1991-92 Annual Report, the Ombudsman expressed concern that the CSA, which ranked third in terms of absolute numbers of complaints after DSS and Telecom, had a higher complaint level than any other agency as a proportion of its client population - a rate of complaint more than 10 times higher than DSS. The Ombudsman commented that:

> The CSA may well have been the greatest single source of difficulty for my office during the year. It was not just the complaint numbers. Its administrative system seems complex, its staff appear at times not to have grasped how the law operates, and it is not as responsive to complaints, whether from me or from the public, as ought to be expected. ... But the number of complaints remains a prime source of concern because the client group is so much smaller than that of the other agencies with high complaint levels.[18]

6.26 The Ombudsman reported in 1992-93 that complaints rose 40 per cent over the previous financial year. She also highlighted a new area of complaint - the administrative review process for departure from a Stage 2 assessment.[19]

6.27 The 1993-94 Annual Report of the Ombudsman stated that the complaints from clients do not seem to vary much from year to year.[20] The failure to recover arrears continued to be the main subject of payee's complaints. The Ombudsman also observed that while the CSA's national office continued to address administrative problems, difficulties persist at the operational levels within branch offices.[21]

6.28 It is clear from the Ombudsman's Annual Reports that the CSA has not been effective in addressing its operational problems. The same pattern of complaint has emerged year after year. The Joint Committee's inquiry has again brought the same complaints about the CSA to the surface. Furthermore, the Joint Committee's hotline response clearly illustrated the

18 Commonwealth and Defence Force Ombudsman, **Annual Report 1991–92**, pp 6

19 Commonwealth and Defence Force Ombudsman, **Annual Report 1992–93**, pp 33

20 Commonwealth and Defence Force Ombudsman, **Annual Report 1993–94**, pp 55

21 ibid. p 55

considerable dissatisfaction, distress and hardship caused by the operations of the CSA.[22]

Growth of the Child Support Agency

6.29 The CSA has experienced continuous rapid growth in its caseload since its establishment. From the time the CSA first opened its doors on 1 July 1988 the staffing level of the CSA has grown from 17 to 1,260 at the end of the 1992-93 financial year. By the end of the current financial year, the CSA estimates it will have 1,600 staff. Over this same period of time the CSA caseload has grown from 23,380 in 1988-89 to 275,218 by May 1994, with a custodial and non custodial parent for each case. The client base is growing at the rate of 7,000 per month.[23]

6.30 Two issues which were brought to light soon after the creation of the CSA also contributed to the early problems faced by the CSA and still remain unresolved. The first was the incorrect assumption that the CSA would only have minimal contact with its clients. The second issue was that the CSA was unable to handle the increased workload generated by the introduction of Stage 2 of the Scheme. While the Government has approved substantial additional resources being made available to the CSA, these additional resources have failed to solve the CSA's chronic administrative problems. The major reason for this is the consistent failure of the CSA's management to identify and rectify its own poor administrative and management practices.

6.31 The consistency of the types of complaints documented in the Ombudsman's Annual Reports from 1989-90 through to 1993-94 demonstrate that the CSA's management did not recognise and failed to accept responsibility for delivering an efficient and effective service to its clients. The consistency of the problems identified by the Ombudsman over these years, supported by growing numbers of constituent complaints to Members of the House of Representatives and Senators, indicates that the Government should also have been more aware of the urgent need for change within the CSA.

22 see **'Thanks for listening, A report on the Child Support Inquiry Hotline**, August 1993

23 Commissioner of Taxation, **Annual Report 1992–93**, p 53

7

Management of the Child Support Agency

Introduction

7.1 The administration of the Child Support Agency (CSA) is capable of major improvements in efficiency, effectiveness and service delivery. The problems faced by the CSA have been caused by the ambiguity of its operational focus, inadequate numbers of staff (particularly during the introduction of Stage 2 of the Scheme) and ineffective leadership. It is CSA clients and staff alike who have borne the consequences of these problems. The Joint Committee notes that the Auditor-General has undertaken an efficiency audit of the CSA and presented a report to the Parliament in June 1994 called **Management of the Child Support Agency**.[1] The Joint Committee's comments on the management of the CSA are made in conjunction with the Auditor-General's comments. The Joint Committee notes that the Assistant Treasurer, the Minister responsible for the Child Support Agency, in response to a question without notice in Parliament advised:

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1 Australian National Audit Office, **Audit Report No 39, 1993-94**, Efficiency Audit, Australian Taxation Office, Management of the Child Support Scheme

> The report is one year old. It took the Auditor-General's Department a year from the time it made those findings to submit its report. A lot has happened in that time. In fact, 26 of the 36 recommendations have already been implemented. There are another nine in the pipeline. That leaves only one of those recommendations, which refers not to the Child Support Agency but to the Department of Social Security.[2]

7.2 Furthermore, the CSA has already admitted the need to improve its management performance:

> ... we openly acknowledge there is a need to improve our performance and that there is much more to be done. We are aware of this from our own sources and from external bodies, including of course the work of the Joint Select Committee on Certain Family Law Issues, which have done valuable work in highlighting and defining those areas where the Agency needs to improve. The Assistant Treasurer, Mr George Gear, told the assembled CSA national management in March this year [1994] that the Agency can do it better and must do it better.[3]

7.3 A major theme which was evident throughout the Joint Committee's inquiry was the poor management performance of the CSA. The Joint Committee's findings on the CSA's management can best be grouped under three headings:

1. **National policy, support and direction.** There is little national control and co-ordination of CSA branch activities. The CSA has few national policies and what policies exist have not necessarily been followed. In the absence of national policies local branch offices have had to establish strategies to respond to client requests for advice and information and to manage the day to day branch operations.

2 Hansard, 9 June 1994, p 1847

3 Submission No 6194, Vol 12, p 9

2. **Client Service.** The CSA has been unable to meet the information and service needs of its clients. The Joint Committee found the following problems with client service.
    - the CSA has been reluctant to talk to clients on a one-to-one basis;
    - the CSA has not been able to provide precise and consistent advice;
    - staff telephone behaviour is sometimes rude and judgemental;
    - the CSA has not acted promptly on information received; and
    - letters and telephone calls have been ignored and there is little accountability when contact officers fail to follow up on promised action.
3. **Public Education.** The CSA's program of public and client education should be more focused towards maximising community and client awareness of the Scheme and its impact on families.

National Policy

Introduction

7.4 Three areas of CSA management direction require urgent attention. These are:

- senior CSA management needs to establish firm national policies and ensure these policies are uniformly understood and observed in all branch offices;
- the CSA needs to adopt meaningful measures of its performance; and
- senior CSA management needs to provide national support to branch offices, monitor local branch performance against corporate performance targets and ensure the implementation of best practice.

National Policy

7.5 The Joint Committee found that there was a general lack of national direction and co-ordination of CSA activities. Evidence before the Joint Committee indicates that the CSA has not issued rulings or guidelines on a number of issues fundamental to the administration of the child support legislation. Examples of this lack of formal direction are:

- non-Agency payments - no CSA ruling exists to guide staff and clients on the CSA's interpretation of sections 71 and 71A of the *Child Support (Registration and Collection) Act 1988*;
- no CSA ruling exists to guide staff and clients on the CSA's ability, under section 75 of *Child Support (Assessment) Act 1989* to amend an administrative assessment; and
- no ruling exists on the recovery and refunding of overpayments.

7.6 The deficiency of national policy and guidelines and the failure by CSA management to enforce consistent national practice has been a cause of the provision of inconsistent and incorrect advice and poor administrative practices at the local branch level. It has also caused considerable confusion, anger and financial expense to clients of the CSA. The CSA management has been seriously remiss in not ensuring that those national policies which do exist are followed consistently by branches.

7.7 There have been many complaints about the CSA and communication problems,[4] slow amendments to assessments, inconsistent advice, administrative errors and refusal to verify data or amend assessments when requested. These are just some of the complaints made to the Joint Committee. The inaction or lack of service is inexcusable and in many instances is attributable to the CSA in not giving full effect to people's rights and entitlements under the legislation. In these instances it is not a fault of the legislation but is the fault of the Child Support Agency in not fully implementing the legislation. In part this is due to a lack of explanation of clients' rights by the CSA or people being unaware of their rights. The end result is an often appalling client service delivery by the Child Support Registrar and the CSA which often appears to reflect an expectation that the problems clients have, and the clients, will go away if their rights are not explained.

4 see Chapter 8

7.8 There are also a number of internal management failures behind the growth in client dissatisfaction with the CSA which have not been fully addressed by the CSA. One reason has been this lack of national management direction to CSA branch offices. The Australian National Audit Office (ANAO) in its efficiency audit noted a 'lack of national direction in developing and implementing consistent policies for use in branches'.[5] The ANAO concluded that:

> Devolution of management responsibility to CSA branches has not been accompanied by appropriate assignment of accountability for achieving program objectives. One reason for this is that there has not been a coherently articulated statement of national program objectives.[6]

7.9 The CSA branch offices have therefore operated as individual collection agencies under limited national direction and not necessarily followed existing guidelines. The ANAO recommended on the basis of its efficiency audit that the 'CSA requires a more directive involvement at National Office level to ensure that sound, consistent and effective procedures are adopted across all CSA branches, with a greater emphasis on client needs and client service'.[7] The Joint Committee fully supports this recommendation.

7.10 The Joint Committee recommends that:

Recommendation 7

the Child Support Agency establishes, as a matter of priority, national policies and develops the necessary guidelines and manuals to ensure uniform practices are observed in all areas of Child Support Agency administration and in accordance with the child support legislation.

5 Australian National Audit Office, op.cit. p 67

6 ibid.

7 ibid. p ix

Measures of the Child Support Agency's Performance

7.11 The CSA constantly claims that it has achieved the best collection rate of any similar agency in the world. The frequently quoted collection rate of '73 per cent of amounts registered with us' [8] is used as the key indicator of the CSA's success. However, the Joint Committee is concerned that this collection rate is a poor measure of the CSA's actual performance due to the manner in which it is calculated. This concern was shared by the ANAO who pointed out that:

> An important feature of CSA's collection rate reporting is that the rate reported is an accumulation since the commencement of the program in 1988. ... This collection rate refers to the percentage of collections made against (ostensibly) all debt incurred since the commencement of the scheme. The figures do not refer to the percentage of annual debt collected for each financial year, nor to the number of non custodial parents making payments to the scheme. The 'total' debt figure for purposes of collection rate calculation does not include default assessments. ...
>
> Inclusion of this class of debt [default assessments] in reports would lower the resultant 'collection rate' ...
>
> Information on financial year collection rates and the number of non custodial parents making payments could not be determined from the reports made available to the ANAO during the audit. ...
>
> The ANAO is concerned that the reporting practices used by the CSA are confusing in terms of providing analysis of actual results. At worst, performance reports tend to claim, better results than really exist, ...[9]

7.12 The ANAO recommended that the CSA collection rate needed to be based on financial year periods, include the number and proportion of payers with outstanding debts as well as the total outstanding debt and include a realistic assessment of the value of the default assessment component of outstanding debts.[10] The CSA partially accepted this recommendation by basing the collection rate on

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8 Submission No 5083, Vol 2, p 1

9 Australia National Audit Office, op.cit. p 11

10 Australia National Audit Office, op.cit. p 15

financial year periods.[11] However, in its response to the ANAO report, the CSA did not accept that 2.5 times average weekly earnings default assessments (or a 'realistic estimate') should be reported as outstanding debts. The Joint Committee strongly disagrees with this part of the CSA's response and believes that the CSA needs to dramatically improve its abysmal performance in this area. This is illustrated by the fact that the amount of child support debt due under default assessments has grown to some $202.5 million. Consequently, the Joint Committee considers that the collection rate would be a more accurate reflection of the CSA's performance if the actual amount, rather than an estimate of the collectable amount, of child support due under default assessments was included in the calculation of the CSA's collection rate.

7.13 The Joint Committee recommends that:

Recommendation 8

child support debts due under default assessments be included in the calculation of the Child Support Agency's collection rate.

7.14 The CSA advised the Joint Committee that the collection rate is based upon the amount of child support registered with the CSA.[12] Those amounts registered with the CSA comprise the CSA's total active caseload. The Joint Committee notes that a major component of the CSA's total active caseload is those clients who privately collect child support. The total number of CSA clients who privately collected child support as at 31 May 1994 was 89,460 which represented approximately 32.5 per cent of the CSA's total active caseload under Stage 1 and Stage 2 of the Scheme.[13] The balance of the CSA's active caseload (185,758) represents those liabilities which are registered with the CSA for collection. Consequently, the CSA performs its collection function in respect of these cases only. The child support due pursuant to private collection cases is paid privately by the non

11 see 1994–95 Child Support Agency Business Plan

12 Submission No 5083, Vol 2, p 18

13 CSA letter dated 8 July 1994

custodial parent to the custodian without any CSA involvement whatsoever. Consequently, the Joint Committee considers that the collection rate would be a more accurate reflection of the CSA's performance if the child support paid pursuant to private collection cases contained in the CSA's total active caseload was excluded from the calculation of the CSA's collection rate.

7.15 The Joint Committee recommends that:

Recommendation 9

child support debts paid pursuant to private collection cases registered with the Child Support Agency be excluded from the calculation of the Child Support Agency's collection rate.

National Support

7.16 The national office management of the CSA should play a major role in providing corporate support for the CSA's local administration. The CSA's national office management should provide support to local CSA branch offices in such areas as national resource management, access to corporate information and technical support, the development and co-ordination of accredited national training and the development of computer systems to support administration. However, the level of national support for local administration within the CSA has been disappointing. In particular, the Joint Committee found that:

- there is no national co-ordination of local or regional initiatives and no mechanism for translating improvements to administration into revised national procedure;
- training activities have been poorly co-ordinated nationally, training has not been updated regularly and training given to staff has not been accredited or evaluated; and
- the poor level of corporate support for CSA activities from the wider Australian Taxation Office (ATO) has meant that the potential advantages from locating the CSA within the ATO have not been realised.

(a) Implementing Best Practice

7.17 It is difficult for an organisation to operate efficiently without a co-ordinated approach for identifying and promulgating improvements to administrative practice which can occur through local initiatives. The lack of an effective mechanism for implementing worthwhile local initiatives nationally is of particular concern to the Joint Committee.

7.18 The ANAO recommended that the CSA develop and implement an effective scheme for identification, development and promulgation of best practice. The ANAO[14] noted that wide variances existed between branch offices in the costs of performing basic administrative tasks and no national action was taken to determine the reasons for these variations or to implement the most cost effective strategies. The Joint Committee considers that not only should local initiatives be identified but the CSA should also evaluate the performance of local initiatives against public and private sector best practice. This process should enable the CSA to objectively determine and then implement best practice on a national basis.

7.19 The Joint Committee recommends that:

Recommendation 10

the Child Support Agency establishes a nationally co-ordinated approach to identify, assess and introduce as revised national practice, administrative improvements from local branch office initiatives and from best practice in the public and private sector.

14 Australian National Audit Office, op.cit. p 105

(b) Training

7.20 The CSA has devolved the responsibility for training to individual branches. In evidence before the Joint Committee, the CSA indicated that a national training co-ordinator, located in Hobart, has responsibility for the development of training plans and for co-ordinating training activities nationally.[15] This person is supported by one officer in each branch office responsible for local training planning and the delivery of training to staff. All CSA training is 'in-house', with trainers largely drawn from people with training experience in the wider ATO. The CSA does not provide any accreditation for training or any formal evaluation of the training provided.

7.21 The CSA has no effective method of ensuring that staff receive quality training or the training received is translated into the workplace. Furthermore, the training provided has not been adequately focussed on the needs of CSA clients. The Joint Committee considers that the CSA must ensure that all training provided has an appropriate focus on client service. The effectiveness of the training provided must also be evaluated by measuring the transference of skills learnt by staff into the workplace. This evaluation process should be complemented by the introduction of a national program for validating and accrediting all training material and training received by CSA staff.

7.22 The ANAO, in its efficiency audit report on the CSA, was also critical of the CSA's training program. In particular, the ANAO considered that 'further work is needed by the CSA to develop a more comprehensive and coordinated staff training and development plan'.[16] The ANAO considered that the areas for attention include:

- development of a nationally coordinated training plan which focuses on clearly defined outcomes after appropriate job and task analysis;
- development of training which focuses on the needs of CSA clients;
- sound procedures for validation of training outcomes;

15 Transcript of Evidence, 22 September 1993, p 315

16 Australian National Audit Office, op.cit. p xvii

- evaluation of training conducted by outside agencies; and
- a training plan for the establishment of new branches.[17]

7.23 The Joint Committee strongly supports each of these suggestions made by the ANAO. While the size of the training task faced by the CSA in the past few years has been large, the task ahead, to re-shape the focus and environment of the CSA to meet the needs and expectations of its clients, is even greater. This will require a structured training process involving all staff and management.

7.24 The Joint Committee believes that the CSA's concentration on 'on the job' training has failed. The Joint Committee considers that at the very least it would be desirable to offer staff a training mix which includes intensive coursework outside the work environment. This would provide CSA staff with exposure to new ideas, new ways of doing things and the opportunity to develop supportive informal networks throughout the organisation.

7.25 The CSA has, as part of the Australian Taxation Office, absorbed much of the ATO's culture including a large number of predominantly tax and finance trained staff. The Joint Committee believes that the CSA must reassess it staffing mix to ensure that the necessary client service skills are available in the CSA. The Joint Committee envisages that this will necessarily involve the CSA in recruiting more staff with experience and qualifications in client service orientated disciplines.

17 ibid. p xvii

7.26 The Joint Committee recommends that:

Recommendation 11

the Child Support Agency:

(a) ensures that training has an appropriate focus on client service;

(b) evaluates the effectiveness of the training provided by measuring the transference of skills learnt by staff into the workplace;

(c) introduces a national program for validating and accrediting all training material and training received by staff of the Agency;

(d) adopts progressive and innovative approaches to training and abandons the Child Support Agency's reliance upon 'in house' and 'on the job' training; and

(e) recruits more staff with experience and qualifications in client service oriented disciplines to assist in changing the current predominantly tax and finance oriented staff culture.

(c) Not Making Full Use of ATO Resources

7.27 While the Child Support Agency is located in the charter of the ATO, it has grown in an embryonic fashion under the guidance of the Department of Social Security and the Australian Taxation Office. The DSS and the ATO have undertaken programs to raise their own profile, increase client friendliness and offer an overall better service delivery. While encouraging and providing more humanising services within their own Departments, the Department of Social Security and the ATO have permitted the CSA to continue without recognising or detecting the problems and difficulties encountered in its operation. In short, the CSA appears to have been left to its own devices.

7.28 This lack of corporate support and direction is illustrated by the large number of non custodial parents for whom locations are unknown (currently 7 per cent of non custodial parents and 23 per cent of outstanding debt) and the large number of default assessments of child support due to non custodial parents not having lodged income tax returns for several years (currently 12,000 default assessments worth some $202.5 million). The ATO maintains a wealth of

information on many people in Australia. It has access to employment information through its Employment Declaration System, the latest bank account information through the Income Matching System and personal taxation data from individual tax returns. The ATO also has a taxation return lodgement enforcement unit and extensive debt collection expertise. However, this information and expertise has been dramatically under-utilised by the CSA. The Joint Committee finds this to be extremely disappointing especially since the ability of the CSA to draw upon the ATO's information and collection expertise were two of the prime reasons for locating the CSA within the ATO. This lack of ATO support for fundamental administrative requirements of the CSA has also seriously undermined the effectiveness of the CSA's operations.

7.29 The ANAO was also critical of this lack of ATO corporate support:

> The ANAO was told by various branch staff that debtor enforcement in conjunction with other areas of the ATO was not possible nor appropriate, despite the fact that the reason for placing the CSA within the ATO was due to the believed ability of the ATO to obtain income details and to enforce collection. Lack of co-ordination between CSA and other elements of the ATO in the areas of compliance and enforcement of payment is of concern to the ANAO in that opportunities for CSA to use the knowledge, resources and practices of these areas may be missed.[18]

7.30 The Joint Committee notes that the 1994-95 ATO Corporate Plan includes the provision of corporate support to the functions of the CSA. The 1994-95 National Business Plan of the CSA also indicates that the work of the CSA will be supported by all areas of the ATO by the appropriate allocation of priorities and assistance.[19] The Joint Committee considers urgent corporate support from the ATO to the CSA is required in the following areas:

- ensuring that CSA clients lodge income tax returns so that the CSA can promptly issue future assessments of child support;

18 ibid. p 58

19 Submission No 6194, Vol 12, p 310

- incorporating CSA clients as priority cases into the ATO's audit program to ensure that parents cannot understate their income and avoid their child support obligations; and
- the improved tracing of CSA clients through the establishment of a specialised ATO tracing unit.

7.31 The Joint Committee is of the view that this corporate support should have been accorded to CSA activities from its inception. It is clear to the Joint Committee that the intended benefits from locating the CSA within the ATO have not been realised to date. However, the CSA and ATO should be given a further opportunity to demonstrate the benefits of locating the CSA within the ATO. The Joint Committee considers that the Government should review the location of the CSA at the end of the 1996-97 financial year to test the benefits of the CSA's continued location within the ATO.

7.32 The Joint Committee recommends that:

Recommendation 12

the Government establishes a review of the location of the Child Support Agency to be conducted at the end of the 1996-97 financial year to test the benefits of the Agency's continued location within the Australian Taxation Office.

Client Service

Introduction

7.33 The failure of the CSA to provide proficient client services has been consistently at the forefront of criticism of the CSA. The Joint Committee finds it unacceptable that the CSA has not been able to rectify the inadequacies of its service delivery. It appears to the Joint Committee that the area of client service is only now being addressed by the CSA as a result of the Joint Committee's inquiry process. There are at least five areas where changes are required:

- the development of a system of individual case ownership to improve the quality and accuracy of advice provided to clients and to make individual staff more accountable for their actions;

- the development of special case management strategies for sensitive cases such as those where clients are threatened by domestic violence;
- the provision of mechanisms to improve CSA client service delivery by identifying the information needs of clients and deficiencies in current administrative arrangements;
- the publication of a code of conduct and service standards to make clients aware of the standards of service and conduct they can expect from the CSA; and
- the provision of mechanisms to help clients better understand their rights and obligations under the child support legislation including the adoption of a more active approach by the CSA in this area.

(a) Dedicated Case Officers

7.34 Organisations which deal with large numbers of clients should establish strategies for efficient service delivery to clients. The CSA does not have a nationally consistent method of managing its client workload. The problems associated with the CSA's existing arrangements for serving its clients has been one of the major areas of complaint to the Joint Committee. Complaints have included:

- clients being unable to call the office handling their case;
- clients dealing with a different member of staff each time a call is made;
- clients unable to obtain the identity of the staff member handling their case;
- failure of staff to follow through on promised actions; and
- the CSA not accountable to clients for its lack of action.[20]

7.35 While the lack of effective administrative controls has contributed to many of the issues identified by CSA clients, the lack of a uniform case management structure and the inability of CSA staff to develop detailed knowledge of the cases they are dealing with, has exacerbated these problems.

20 see Chapter 8

7.36 The Joint Committee believes there are a number of principles upon which the CSA should base any long term strategy for service delivery. These are:

- to ensure that staff within the CSA are fully accountable for their actions or lack of action;
- to satisfy the needs of clients for prompt, professional and accurate advice on general issues of child support as well as on specific issues of immediate concern to a particular client;
- to recognise the different needs of clients for differing levels of service and advice; and
- to develop a rapport between clients and CSA staff so that stress and frustration is minimised.

7.37 The Joint Committee considers that the provision of a dedicated case officer, solely responsible for the administration of a particular case, is a necessary requirement for establishing an administrative model capable of providing quality service as well as clear lines of responsibility and accountability in the CSA's operations. The need within the CSA for specialised enforcement, accounting and technical advisers should not preclude one staff member being the sole contact officer for any one client. The use of dedicated case officers should be accompanied by the introduction of a reference number system to ensure accountability for the advice given to clients and to enable follow up on any commitments made by CSA staff or clients. A reference number system should also facilitate the provision of feedback by CSA staff to clients.

7.38 The Joint Committee recommends that:

Recommendation 13

the Child Support Agency introduces dedicated case officers, with assigned responsibility and accountability for individual clients.

Recommendation 14

the Child Support Agency introduces a reference number system to ensure accountability for the advice given to clients and to enable follow up on commitments and the provision of feedback to clients.

(b) Administration of Cases in Circumstances of Domestic Violence and Child Abuse

7.39 Most custodial parents are required to register with the CSA to meet the DSS requirement that social security recipients take 'reasonable action to obtain maintenance' under section 252 of the *Social Security Act 1991*. Approximately 90 per cent of custodial parents registered with the CSA are in receipt of an income tested benefit, allowance or pension. The Secretary of DSS has a discretion not to require custodial parents to take action to collect maintenance. Where there has been a history of physical, sexual or psychological abuse, the Secretary will not require a custodial parent to take this action. However, the CSA has no published national guideline on how to administer a case which involves a record of domestic violence and child abuse. Instead, ad hoc procedures are administered by directors in each CSA branch office.

7.40 In September 1993, Australia introduced to the United Nations General Assembly a declaration passed by the United Nations Commission on the Status of Women. The submission, the **Declaration on the elimination of violence against women**, was adopted by the UN General Assembly on 20 December 1993. This declaration recognised that women were entitled to fulfilment of the fundamental freedoms enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The declaration called on member states to:

> ... pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should ...
>
> (f) Develop, in a comprehensive way, preventative approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimisation of women does not occur because of gender-insensitive laws, enforcement practices, or other interventions; ...

(l) Adopt measures directed to the elimination of violence against women who are especially vulnerable to violence;...

(n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration; ...[21]

7.41 Australia has played a significant role in negotiating and introducing this major international initiative in human rights which calls on all member States to regulate both public and private acts of violence against women. The current ad hoc domestic violence procedures administered by CSA branch offices do not meet Australia's obligations under this Declaration. Moreover, the Joint Committee considers that the CSA has a duty to ensure that when a client has been subjected to abuse or feels that this may be likely, all appropriate measures are adopted to safeguard that client's future well being. This applies equally to children where there is a history or risk of abuse.

7.42 The types of domestic violence protection measures which should be introduced by the CSA include information sharing arrangements between the CSA and the DSS to ensure that both agencies are aware of cases where there is a history or a risk of domestic violence and / or child abuse. The CSA should assign senior staff to be solely responsible for the management of each case and provide direct telephone numbers of case officers to clients subject to, or at risk of, domestic violence. Furthermore, additional safeguards need to be developed within the child support computer system to limit access and disclosure of information concerning clients or children at risk of abuse. The CSA should also obtain access to the services of specialist counsellors to assist with the administration of domestic violence cases.

7.43 The Joint Committee considers that the CSA should, as a matter of urgency, develop national guidelines for the identification and administration of cases where there is a history or risk of domestic violence and / or child abuse.

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21 **Resolution and decisions adopted by the General Assembly during the first part of its forty-eights**, 48 / 104 Declaration on the elimination of violence against women, pp. 334–37

7.44 The Joint Committee recommends that:

Recommendation 15

the Child Support Agency introduces administrative measures to ensure it is advised of clients who are subject to, or at risk of, abuse.

Recommendation 16

the Child Support Agency, as a matter of urgency, develops national guidelines for the identification and administration of cases where there is a history or risk of domestic violence and/or child abuse.

7.45 As highlighted above, recipients of social security benefits are required to take reasonable maintenance action to qualify for a sole parent pension. When there are fears that this action may put the custodial parent or child at risk of abuse or domestic violence, DSS will assess the case and may exercise a discretion to waive the reasonable maintenance action requirement. The Joint Committee is of the view that the Child Support Registrar should have a discretion to suspend the enforcement of a child support liability where the continuance of enforcement action would result in the likely abuse of a child or parent. This discretion should be given statutory force as a child support liability is a debt due to the Commonwealth under Section 30 of the *Child Support (Registration & Collection) Act 1988.*

7.46 The Joint Committee recommends that:

Recommendation 17

the *Child Support (Registration and Collection) Act 1988* be amended to provide the Child Support Registrar with the discretion to suspend enforcement action where the continuance of this action would result in the likely abuse of a child or parent.

(c) Developing a More Accessible Client Service

7.47 The ATO operates from 17 regional offices and 25 branch offices. Of these 25 ATO offices, 23 contain CSA branch offices, 20 of which are located in capital cities and environs. The regional ATO offices provide general taxation assistance to all taxpayers. However, with the exception of the Darwin office, which contains a Child Support Review Office, no ATO regional office provides assistance to CSA clients.

7.48 Evidence before the Joint Committee has shown that the existing CSA branch office organisation provides poor accessibility for clients outside the capital cities and hence clients are further disadvantaged in terms of information and advice. Furthermore the Community Legal Centres, which are specially funded by Legal Aid and Family Services, a division of the Attorney-General's Department, to provide comprehensive legal services have noted an increase in their workload on CSA related matters. Although the Community Legal Centres have been established to provide legal and administrative advice across a range of government services, the Joint Committee believes it is incumbent on the CSA to provide a level of advice and assistance to not only make clients aware of their rights but to also enable clients to pursue these rights. An accessible CSA branch network is critical to this. The Joint Committee believes that the CSA must change the focus and structure of its client services to make them more accessible to clients.

7.49 The Illoura Centre, a community counselling service located 60 kilometres south-west of Brisbane, submitted the following in respect of the poor accessibility of the CSA:

> The nearest Child Support Agency (CSA) is in Brisbane city centre. As Beaudesert is not serviced by public transport, gaining access to the CSA is time-consuming and expensive. A private bus company runs three return trips between Beaudesert and Brisbane daily. This service is aimed at students and working people. As two of the three trips leave Beaudesert before 9.00am and do not return until after 3.00pm it makes this form of transport difficult for parents with young children to utilise. The price of a return trip to Brisbane is approximately $20, an amount which is prohibitive to many people.[22]

7.50 There are a number of organisational initiatives open to the CSA to make itself more accessible to clients. These initiatives include:

- establishing a nationally co-ordinated 'outreach' program targeted to the information requirements of CSA clients, especially those clients in remote locations; and
- making greater use of the ATO's regional office network by establishing full time CSA advisory staff in these offices; and
- making advisory staff available, short term, permanently, or on a rostered basis in remote locations in community legal aid, DSS, or other offices.

7.51 The CSA must also identify the information needs of its clients in order to ensure that its client service delivery is properly targeted. These information needs could be identified by a study which asked clients whether or not their information needs were being met and if not, where they believed there were shortfalls. The Joint Committee believes that the CSA should initiate such a study to identify client information needs within six months of the tabling of the Joint Committee's report.

22 Submission No 1669

7.52 The Joint Committee also believes that the CSA should report to the Assistant Treasurer, the Minister responsible for the CSA, within twelve months of the tabling of the Joint Committee's report on how the CSA can best meet the information needs of its clients. This report should include an analysis of the costs and benefits of introducing a client advisory function which incorporates each of the organisational initiatives listed above.

7.53 The Joint Committee recommends that:

Recommendation 18

within 6 months of the tabling of the Joint Committee's report, the Child Support Agency conducts a study of the information needs of its clients and identifies shortfalls in current representation.

Recommendation 19

within 12 months of the tabling of the Joint Committee's report, the Child Support Agency reports to the Assistant Treasurer on the costs and benefits, including savings to community organisations, of introducing an advisory function to meet the information needs of its clients. This is to include:

(a) a nationally co-ordinated 'outreach' program targeted to the information needs of Child Support Agency clients, especially those clients in remote locations;

(b) making greater use of the Australian Taxation Office's regional office network by establishing full time Child Support Agency advisory staff in these offices; and

(c) making advisory staff available on a short term, permanent or rostered basis in remote locations in community legal aid, the Department of Social Security or other offices.

(d) Code of Conduct and Service Standards

7.54 The Joint Committee received many submissions which complained about the CSA's inadequate service to clients. Complaints included the attitude of CSA staff, inaccessibility to the telephone service, and the CSA's failure to respond to written and oral requests for information. Moreover, complaints about the poor attitude of CSA staff towards clients included rudeness, being unhelpful, bias, making personal judgements about clients and their circumstances, refusing to give reasons for decisions, telling clients anything to get them off the phone and making inappropriate remarks such as 'you'd be better off on the dole'. The Commonwealth Ombudsman also commented to the Joint Committee that:

> Complainants also complain about CSA staff rudeness, perceived bias, judgemental attitudes and general unhelpfulness when they contact the Agency with a question or problem. The problem of judgemental attitudes is of particular concern when compared with the performance of other Commonwealth agencies. ...
>
> Payers often complain that when they contact the CSA they end up feeling that the Agency staff consider they are only trying to avoid their responsibilities ("like all payers") and therefore treat them with contempt. Payees, on the other hand, often complain that the CSA gives them the impression that they are all a bunch of whingers who should be grateful that the Agency is collecting (or trying to collect) their entitlements, and that they should stop bothering the staff. 'Don't call us, we'll call you' is the message payees pick up.
>
> The attitudinal problems may derive from the fact that the CSA operates within the general climate of revenue collection - which has always been the ATO's legitimate focus. Complaints made to the Ombudsman by both payers and payees indicate that there is a degree of insensitivity and lack of empathy on the part of some CSA staff in dealing with their clients.[23]

23 Submission No 1928, Vol 2, p 149

7.55 The CSA, as a program within the ATO, adopts ATO standards for client service matters. The Joint Committee believes that CSA clients have different needs to taxpayers in general. While ATO standards are appropriate for dealing with tax matters, they are inappropriate for dealing with the specialised needs of CSA clients. While ATO standards are appropriate for dealing with tax matters, they are inappropriate for dealing with the specialised needs of CSA clients. The Joint Committee considers that the CSA should develop, in consultation with its clients, a code of client conduct and service which clearly states the standards of conduct and service which clients can expect to receive from CSA staff. Each CSA client should be informed of this code of conduct and service as well as the avenues of redress which may be accessed by clients when CSA service and conduct fall short of the set standards. This will require the CSA to introduce appropriate administrative procedures to ensure that clients have redress to higher levels of management in these circumstances.

7.56 The CSA could inform its clients of the standards of conduct and service which they can expect in their dealings with the CSA in a user friendly pamphlet. The information provided should contain details on timeliness, attitude of staff and follow up action which can be expected across a range of CSA activities including correspondence, telephone contact and enforcement. It should also set out the avenues available to clients to seek redress when the conduct or service received falls short of the required standards. The minimum standards of service and conduct should include:

- **timeliness** - staff are to respond to clients within reasonable timeframes;
- **attitude** - staff are to be polite and helpful, and to assist clients to understand the choices available and explain clearly these choices. CSA officers are not to make judgemental statements about clients or their situations;
- **focus** - staff are to focus on solving the problem or issues raised by a client and to provide an explanation where necessary; and
- **follow-up** - staff are to follow up matters raised by clients within a specified timeframe. Clients are to be provided promptly with feedback on the completion of follow up activities.

7.57 The CSA should also be more sensitive and responsive to the nature of the complaints raised by its clients so that deficiencies in its conduct and service delivery can be readily identified and rectified. The Joint Committee considers that the CSA should develop administrative mechanisms to monitor client complaints to achieve this end.

7.58 The Joint Committee recommends that:

Recommendation 20

the Child Support Agency develops in consultation with its clients, a code of conduct and service standards for Child Support Agency staff and ensures all Child Support Agency clients are aware of the standards of conduct and service which have been set.

Recommendation 21

the Child Support Agency introduces administrative procedures to ensure that clients not receiving the set standard of service have redress to higher levels of management and informs all clients of the process and procedures required to pursue complaints about conduct and service delivery.

Recommendation 22

the Child Support Agency develops administrative mechanisms to monitor client complaints and solve the deficiencies in conduct and service delivery.

(e) Clients Rights and Obligations

7.59 The CSA does not automatically provide its clients with information on their rights and obligations under the child support legislation. Notices issued under various sections of the *Child Support (Assessment) Act 1988* provide information on specified appeal rights for parents, but no information is available which non custodial or custodial parents could read to give them an understanding of what is expected of them by the CSA and what rights they have for contesting CSA decisions or inaction.

7.60 The Joint Committee considers that the CSA should provide information to clients in a user friendly form which explains their rights and obligations under the child support legislation. In particular, clients should be informed of their rights of objection and review, what they should do if they remarry, change jobs or have a new child from another relationship. Clients should be informed of CSA administrative practices which may impact upon them such as the crediting of non agency payments. The CSA should also encourage clients to contact them should they encounter difficulties in meeting their child support commitments.

7.61 Any information provided by the CSA to clients must be sensitive to the information needs of the various groups which comprise the CSA's client base. Non custodial parents will have different information needs to custodians and client subgroups such as clients with non-English speaking backgrounds will have special needs which will have to be met. Consequently, the CSA will need to develop communication strategies, targeted at various groups of its client base, to ensure that all clients are informed of their rights and obligations under the child support legislation and of any administrative practice of the CSA which may materially affect them.

7.62 The Joint Committee recommends that:

Recommendation 23

the Child Support Agency develops communication strategies, targeted at the various groups of Child Support Agency clients, to inform them of their rights and obligations under child support legislation and Child Support Agency administrative practices which may materially affect each group of clients.

3. Public Education

7.63 The CSA informed the Joint Committee that:

> Client education is an essential part of the work as parents need to be given all the information necessary to ensure that they are aware of their rights and obligations. We also need to reach the wider community as we have found that our clients often rely on family and friends.[24]

7.64 The Joint Committee endorses this view about the need for public awareness of the Scheme. The Joint Committee is particularly concerned that education in respect of the Scheme reaches potential clients of the Scheme both within the general community and, in particular, specific sectors such as school children and the ethnic community. The Joint Committee considers that the focus of this education should be on the simple message that the parents of a child have the responsibility of caring for that child until he or she is at least eighteen years of age.

24 Submission No 5083, Vol 2, p 49

Advertising

7.65 An initial advertising campaign for Stage 1 of the Scheme was carried out in 1988 while a major campaign for Stage 2 commenced in 1989 around the start date for formula assessment on 1 October 1989. This included a print advertising campaign and an insert to a woman's magazine and a widespread public relations campaign on radio and television. There was also an outreach program into shopping centres. A monograph on Stage 2 of the Scheme was published by the Pearl Watson Foundation and called **Child Support: A User's Guide**.

7.66 The main message was to encourage custodians to telephone the CSA on its toll free line or to visit their local DSS Office for more information about the new Child Support Scheme. The campaigns were funded by the DSS. The CSA advised the Joint Committee that the effectiveness of this campaign was tested and it was found to inform custodians well but not to cover the concerns of non custodial parents.[25]

7.67 Subsequent campaigns were funded by the CSA. An amount of $500,000 was initially set aside for public education purposes. This has been reduced to $450,000 in the last two years because of Public Service efficiency dividends despite the increase in client growth and the consistently high numbers of new registrations.

7.68 The CSA advised the Joint Committee that later campaigns have been sporadic and have had a simpler message of **Relationship Breakdown - Need Info on Child Support? Phone 131 272 for the cost of a local call**. The advertising dollar has been targeted for maximum reach by surveying areas where there are high levels of married couples with children and a high divorce rate. Advertising was placed in suburban and free newspapers in these areas on the sides of buses and posters were placed in shopping centres.[26]

25 ibid.

26 ibid.

7.69 The CSA advised the Joint Committee that Tax Pack has also proved a successful form of advertising since 1991 with a high recognition rate.[27] Its major advantage is that it is sent to every Australian household and has a currency of at least twelve months. Those not contemplating a relationship breakdown at the beginning of the year may be considering one several months on. Tax Pack is a useful reference point and also is an everyday item which would not raise the suspicion of a violent partner. A full paged detailed advertisement appeared in the 1993 Tax Pack opposite the question on sole parent rebate.

7.70 The CSA also commissioned Dr John Irvine to produce an item on his **Coping with Kids** radio segment once a month from March 1992 to March 1993. Dr Irvine is a high profile and well respected Family Psychologist who gives regular tips on child raising. Dr Irvine also provided a child support article in Family Circle Magazine and made a television appearance on the Today show in October 1992.

7.71 The Joint Committee notes that the CSA has also targeted public advertising to promote education in specific groups such as school children and clients from a non-English speaking background.

School Education

7.72 In August 1993 the CSA launched a curriculum kit for high school and college students, featuring a teacher's handbook, a video and an audio tape about **Frank and Michelle** who are teenage parents, together with practical work exercises that should fit into social studies, legal studies and sex education. The CSA informed the Joint Committee that this kit was developed in close consultation with the Department of Employment, Education and Training and State Education Departments and has tested extremely well in the classroom.[28] The kit has been offered free of charge to all high schools in Australia with 1,800 kits going to secondary schools and other educational and community institutions.

27 ibid. p 51

28 ibid. p 55

7.73 The CSA advised the Joint Committee that it:

> ... will be arranging for independent evaluation of the kit by the end of 1994, after teachers have had at least two semesters use of the material. ... The video and audio tapes have been designed to have a three year life span. Feedback from teachers so far has been positive.[29]

Clients from a Non-English Speaking Background

7.74 The Joint Committee is concerned to ensure that potential clients who do not have English as a first language are not disadvantaged. The CSA advised the Joint Committee that:

> It has been difficult to gauge the percentage of clients from a non-English speaking background. The Australian Bureau of Statistics paper on Divorce in Australia indicates a high level of divorce among Australian born and those from English speaking backgrounds. This level remains high where only one spouse is from an English speaking background. Divorce rates are high amongst those with a German or Dutch background but these migrants have been shown to have a good knowledge of English. The next highest incidence of divorce is amongst those from an Italian, Greek, Croatian, Serbian or Macedonian background.[30]

7.75 The Joint Committee notes that the CSA has initiated advertising campaigns since 1990 in the Italian, Greek, Croatian, Serbian and Macedonian press. Furthermore, to reach people with non-English speaking backgrounds who may not read the newspaper advertising, the CSA commissioned a television program for SBS's **English at Work** series. The half hour program reinforced community messages about child support from a community legal centre lawyer and the president of the DADS group as well as CSA Directors. It also included a twenty minute drama on how parents could draw up a child support agreement or apply for an assessment. The program first went to air during the school holidays in April 1992 and was repeated twice daily the following weekdays in Italian, Greek, Vietnamese, Arabic and Spanish. It had a total audience of 1.2 million and was repeated during

29 Submission No 6194, Vol 12, p 15

30 Submission No 5083, Vol 2, p 51

the spring school holidays in October 1992 and once again during July 1993. The video itself is also being used by the CSA for staff training and community education.

7.76 The CSA informed the Joint Committee that it had commissioned a series of child support photocomics, designed for an adult audience, which consist of four stories, two of which are about families from an English speaking background and one from a Vietnamese and one from an Arabic family. The original edition is in English but will be translated when funds become available. The photocomic has been distributed through CSA offices, DSS offices, Migrant Resource Centres, Community Legal Centres and schools. It was publicly launched in August 1992 and the CSA advised the Joint Committee that it has tested well with the ethnic community.[31]

7.77 The CSA also advised the Joint Committee that it has been invited to participate in a series of information and help sessions to be jointly presented by the ATO and the Federation of Ethnic Communities Councils of Australia in 23 major cities and regional centres. While these forums will have primarily a tax focus, they should provide an excellent opportunity for the CSA to convey some key messages to leaders of the ethnic communities and will allow the CSA to develop networks within its ethnic client groups.[32] Furthermore, the CSA advised the Joint Committee that it:

> ... will be working closely with the Federation of Ethnic Communities Councils of Australia, which is represented on the Registrars Advisory Panel, to test our success in meeting the needs of the ethnic community.[33]

31 ibid. p 52

32 Submission No 6194, Vol 12, p 16

33 CSA letter dated 6 July 1994

Aborigines and Torres Strait Islanders

7.78 The Joint Committee has received little evidence about how the Scheme impacts upon Australia's Aboriginal and Torres Strait Islander communities. However, the Joint Committee notes that an Aboriginal or Torres Strait Islander in receipt of social security benefits may be granted an exemption from the DSS requirement to take reasonable maintenance action on the ground that exceptional circumstances apply. In these cases the DSS's administrative guidelines are as follows:

> If an exemption is requested for these reasons the case must be referred to a social worker for a recommendation. Particular care should be given to the client's cultural background. For example, in the case of an Aboriginal or Torres Strait Islander client living a traditional lifestyle, local knowledge may indicate that action would not be successful, and might cause hardship to the client and/or community.[34]

7.79 The Joint Committee also notes that the CSA has now produced a one page photocomic for the Aboriginal community which has been distributed through CSA offices, DSS offices, Aboriginal and Community Legal Centres and schools.

Those with Poor Literacy Skills

7.80 A national survey funded by the Department of Employment, Education and Training in 1989 indicated that 'between 10 per cent and 20 per cent of the adult population is functionally illiterate' - that is, they are not sufficiently literate or numerate to meet the normal written and oral communication requirements of society.[35] This could pose a problem in communicating the complexities of the Child Support Scheme to some clients or potential clients of the Scheme.

7.81 The CSA told the Joint Committee that:

> The market research has shown that the simple message in outdoor advertising of just our telephone number was able to be understood.

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34 DSS, **Guide to the Administration of the Social Security Act**, Vol 2, Chapter 38, p 25

35 Report of the House of Representatives Standing Committee on Employment, Education and Training, **Words at Work: Literacy Needs in the Workplace**, March 1991, p 7

> The photocomic has also tested well with adults with poor reading skills as has the English at Work program.[36]

7.82 Another initiative by the CSA was based on research provided by the Doctors' Television Network in 1991 and on Medicare statistics which showed that parents visit a general practitioner on average once a fortnight with the time spent in a waiting room lasting an average 30 minutes. Consequently, in 1991 the CSA subscribed to the Doctors Television Network who produced three five minute videos which they distributed to 1300 group practices nationally. This was later supplemented by a mail out of the child support parents' pamphlet to general practitioners and the design and production of a brochure holder. This mail out took place in August 1992 with the assistance of the Department of Health, Housing and Community Services and supplies are regularly updated.

Other Initiatives

7.83 The CSA informed the Joint Committee that advertisements were placed in the **Welcome to Life Calendar and Newsletter**, which is distributed free of charge to all new parents to ensure that the wider population is aware of the services provided by the CSA.[37]

7.84 During the course of this inquiry, the Joint Committee suggested to the CSA that it approach the Attorney-General's Department to see if it was appropriate that child support be listed in the advice given to all couples who have notified their intention to marry. The CSA advised the Joint Committee that:

> ... we approached the Attorney General's Department to see if advice on child support could be provided to those intending marriage. We have been working with Attorney-General's to find suitable wording on child support obligations for inclusion in the pamphlet *Happily Ever Before and After: important information for people planning to marry*. The wording will need Ministerial approval because including information about child support will require an amendment to the Regulations of the Marriage Act.[38]

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36 Submission No 5083, Vol 2, p 52

37 ibid. p 55

38 Submission No 6194, Vol 12, pp 15–16

7.85 The Joint Committee received evidence from the Australian Association for Marriage Education and the Catholic Society for Marriage Education drawing attention to the benefits of marriage education as a valuable resource that supports families. The organisations stated that:

> There are two aspects of marriage education that relate to the child support enquiry.
>
> First, effective programs of marriage education are important as a preventive measure against marriage breakdown. Yet just over $1 million is spent on education while separation and divorce cost the nation some $3,000 million annually.
>
> Secondly, there is a real place in marriage education for the provision of information to couples entering marriage about their on going responsibilities to any children.[39]

7.86 The Joint Committee recommends that:

Recommendation 24

the Child Support Agency in consultation with the Australian Association for Marriage Education and the Catholic Society for Marriage Education develop a resource package on child support and other legal responsibilities to be used by the Child Support Agency, marriage education bodies and other relationship programs.

39 Submission No 6195

Public Awareness of the Scheme

7.87 The CSA has carried out two pieces of research which give indications of an improvement of awareness of the CSA in the general community and by age:

- **Evaluating the CSA's 1991 Public Education Campaign**, Jenny Rush and Associates, January 1992; and
- **AGB McNair Client Profile Report**, January 1994.

7.88 The first evaluation by Jenny Rush and Associates was part of a market research project which evaluated the CSA's 1991 Public Education Campaign. Respondents were asked of their awareness of either the CSA or the Child Support Scheme on a totally unprompted basis. The findings were:

- 40 per cent of custodial parents had a high awareness and 26 per cent had no awareness;
- 40 per cent of non custodial parents had a high awareness and 22 per cent had no awareness;
- 19 per cent of unseparated parents had a high awareness of the Scheme and 52 per cent had no awareness; and
- 10 per cent of respondents aged 16 to 24 years had a high awareness of the Scheme and 13 per cent had no awareness.

7.89 Generally, the results showed that separated parents had a higher awareness of the CSA or the Scheme (40 per cent) in comparison with those who were still married. People in younger age groups had a lower awareness of the CSA or the Scheme. However, the survey was unable to obtain a statistically valid sample of people from non-English speaking backgrounds.

7.90 While a direct comparison cannot be made with the earlier research, the AGB McNair Client Profile Report, January 1994, showed a considerable increase in awareness of the CSA among those not actually using the CSA's services. In this situation, respondents were prompted slightly (given some clues) if necessary. The results were:

- 69 per cent of people not using the CSA were aware of the CSA, 28 per cent had not heard of it and 3 per cent did not know; and
- 54 per cent of those under 25 were aware of the CSA while 37 per cent were not.

7.91 The CSA also submitted to the Joint Committee that:

> Overall recognition of the Scheme in the potential population of separated with children was as high as 70%. The general population only had a 27% recognition of the Scheme and this is something we are addressing in the 1993 public education strategy.[40]

7.92 The Joint Committee considers that the CSA's public education strategy should aim to make the population aware of the Scheme and its impact on families.

7.93 The Joint Committee recommends that:

Recommendation 25

the Child Support Agency's public education strategy be aimed to make the population aware of the Child Support Scheme and its impact on families.

Information to Intermediaries Involved in the Scheme

7.94 The Joint Committee notes that there is a wide range of intermediaries involved in the Child Support Scheme:

- DSS staff who are often the first contact for custodial parents;
- family lawyers who are often the first point of contact for non custodial parents. In some cases advice on family law is obtained from solicitors who are not family lawyers;
- Family Court counsellors;
- legal aid workers and community legal centres;
- migrant resource centres, for people from non-English speaking backgrounds;
- tax agents who are developing a role in advice on child support to their clients;
- electorate staff and Federal politicians; and

40 Submission No 5083, Vol 2, p 50

- lobby groups for both non custodial and custodial parents.

7.95 The CSA submitted that:

> There is evidence from market research that the opinions expressed by these intermediaries have a strong effect on clients' opinions about the Scheme and therefore affect compliance rates. Nearly all intermediaries have expressed concerns about the CSA's administration. For this reason, the CSA has concentrated on providing public education facilities and improving service for them.[41]

7.96 The CSA advised the Joint Committee that it has taken the following action to improve public education and service to these intermediaries:

- a liaison group with the Law Council of Australia (Family Law Section) where CSA representatives meet with them regularly at both national and local levels. Several initiatives have come out of these meetings including a series of national seminars which were run jointly for family law practitioners as well as the production of the child support formula on disk for use on personal computers. The latter initiative resulted in CSACALC, a software child support calculator. This has proved successful with lawyers, tax agents and accountants and is being jointly marketed by the CSA and Figtree systems, a Sydney based software company;
- regular meetings are held with non custodial parents groups such as Dads Against Discrimination and the Council For Single Mothers and their Children;
- joint seminars with CSA and DSS staff have been trialled and proved successful;
- information packages on child support have been developed and mailed out to community groups, electoral offices, community legal centres, migrant resource centres and Aboriginal Community centres;
- the original **Pearl Watson User Guide** has been totally rewritten by legal author Jan Bowen (1992) and is available at a cost of $9.95 in bookshops. This book aimed at all CSA clients, not just sole parents, and has sections for custodial and non custodial parents, commonly asked questions, and an overview of the Scheme. Although the CSA commissioned the book and technically cleared

41 Submission No 5083, Vol 2, p 50

the wording, it is an independent publication that has been well received by the public;

- an edition of the Essential Guide by Jan Bowen is being written for legal practitioners. It will be available by August 1994 and will be marketed to the legal and accounting profession to keep them up to date with the Scheme;
- the CSA has an annual formal and informal visiting program to suburban shopping centres or to rural centres, where meetings are held with community groups, local Parliamentarians, major employers, and family lawyers;
- CSA information is displayed in the Family Court and Local Courts;
- a Child Support Newsletter is produced on a quarterly basis and mailed out to the legal profession, the courts, accountants, legal and community aid workers, migrant resource centres and other groups. The first issue went out in December 1992; and
- direct hotlines and local liaison officers have been provided for politicians, family lawyers and community legal centres.[42]

Registrar's Advisory Panel

7.97 On 6 April 1994 the Registrar of Child Support announced the establishment of a high level advisory group, the Registrar's Advisory Panel, to advise the Child Support Registrar on issues the community considers could improve the administration of the CSA. The Panel will function along similar lines to the group which advises the Commissioner of Taxation on tax administration and will be concerned with administrative and related legislative problems rather than formula issues or matters of policy.

7.98 The Panel which will meet quarterly in Canberra, held its first meeting on 20 April 1994. Apart from representatives of relevant Government departments and agencies, the community members of the Panel included:

- Australian Council of Social Services
- Business Council of Australia
- Council of Small Business Associations of Australia

42 ibid.

- Dads Against Discrimination
- Federation of Ethnic Communities' Councils of Australia
- Law Council of Australia
- Lone Fathers Association
- National Council for Single Mothers and their Children
- Springvale Community Advice and Legal Centre
- Victorian Council for Single Mothers and their Children

7.99 In its first meeting the Panel agreed to:

- work with the CSA to identify problems and solutions concerning communication with clients, especially in relation to correspondence, interviews and quality of advice. The CSA agreed to promote a fairer image of child support clients in an attempt to avoid the stereotyping of both non custodial and custodial parents that now occurs;
- review publications, pamphlets and other printed material so that they better meet the needs of custodial and non custodial parents, as well as other CSA clients such as employers;
- provide child support clients with better information regarding options for collection, including private agreements; and
- work together in providing advice to the Child Support Registrar on the general directions of the CSA in developing an agreed set of performance measures and providing input to current projects.[43]

7.100 The CSA advised the Joint Committee that the Panel's role at the national level will be mirrored by the establishment of Deputy Registrars' Liaison Groups, chaired by the four Deputy Child Support Registrars with regional responsibility for child support.[44] These Liaison Groups will include representatives from local community, welfare and professional organisations who will meet on a quarterly basis to discuss and resolve issues that arise on a regional or branch basis. They will also be able to feed issues of national significance to the Panel for discussion.

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43 ibid. p 28

44 NSW; Victoria / Tasmania; SA / WA; Queensland

7.101 The Joint Committee notes that there is no Aboriginal or Torres Strait Islander on the Registrar's Advisory Panel. The Joint Committee considers that it would be prudent for the CSA to ascertain whether some Aboriginal or Torres Strait Islander representation is desirable.

Child Support Help and Client Relations Managers

7.102 The CSA submitted to the Joint Committee that a 'Child Support Help' program, along the lines of Tax Help, will be established as a national volunteer program to provide advice and assistance to child support clients. The program will benefit those who are uncomfortable dealing with a government body or who find information and advice more accessible when it comes from a community group or an individual they can relate to. Child Support Help will encompass:

- a volunteer help program, based in community groups and related associations, which will help clients gain a better understanding of their rights and obligations; and
- a community education program.[45]

7.103 Child Support Help volunteers will be accredited by the CSA (just as Tax Help volunteers are by the ATO) and will offer CSA clients both general information about the way the Child Support Scheme works, as well as providing advice about options available to deal with changes in circumstances.

7.104 Furthermore, the CSA advised the Joint Committee that:

> CSH [Child Support Help] will have an important role to play in quickly disseminating into the community information about new policy or changes to the legislation and the vehicle used will be one that clients are familiar with.[46]

7.105 The Child Support Help program will be co-ordinated by a Client Relations Manager in each branch of the CSA. The CSA advised the Joint Committee that each of its branches will be appointing Client Relations Managers in the near future to take the child support message out into the community.[47]

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45 Submission No 6194, Vol 12, p 15

46 ibid.

47 ibid.

Conclusion

7.106 The Joint Committee considers that the CSA's program of public education is largely well directed given the limited level of funding. However, it should primarily focus on delivering the simple message that the parents of a child are responsible for the care of that child until he or she is at least 18 years of age. The CSA's public education programs must be pro-active with the aim of reaching as many people as possible in all age groups. The CSA should promote these programs through established community networks and the recently established Registrar's Advisory Panel, Child Support Help and Client Relations Managers. These networks should also enable the CSA to be more sensitive to their clients needs and provide useful external sources of feedback on the effectiveness of their public education initiatives.

Managing Change in the Child Support Agency

7.107 The Joint Committee notes that the CSA has moved to rectify the poor level of national management, support and direction through the appointment of senior management staff and the gradual formulation of national policies and guidelines in many areas. The CSA advised the Joint Committee that its senior management team comprises two senior executive public service officers based in the National Office and four Deputy Child Support Registrars (Deputy Commissioners of Taxation) who have been given regional responsibility for CSA matters. These six senior officers, along with the Deputy Registrar of the Wollongong CSA branch and two Public Service Union representatives, comprise the Child Support Executive. The CSA submitted that:

> The Executive is tasked with setting the future direction of the Agency and it is well placed, through its high level membership, to ensure that there is prompt and consistent implementation in all CSA branches of national policies and procedures. [48]

48 Submission No 6194, Vol 12 p 37

7.108 The Child Support Executive has developed for the CSA an overall strategic business plan which draws together the following items:

- a first draft statement of the CSA's role ...
- a translation of the ATO Corporate Plan into tactical statements and more detailed performance measures for CSA.
- inclusion of all the national improvement projects so that the full range of activities under way is visible and accessible in one document.[49]

7.109 The Joint Committee applauds these initiatives and envisages that they will help to rectify the CSA's management problems. However, the Joint Committee is concerned that the implementation of change of this magnitude may be beyond the resources of the CSA especially given the wide range of day to day administrative problems it has to address. The Joint Committee considers that an independent management consultant should be engaged to work with the CSA to realign its management and services so that the CSA focuses on the needs of clients. An independent management consultant would provide the CSA with an unbiased view of its operations and advise and assist in implementing best management practices from both government and private commercial operations.

7.110 The Joint Committee recommends that:

Recommendation 26

an independent consultant be engaged to work with the Child Support Agency to realign management and service to the needs of clients and develop strategies aimed at achieving best practice.

7.111 As highlighted above, the CSA has already implemented the vast majority of the ANAO's recommendations. However, the Joint Committee is concerned about the effective implementation of the Auditor General's recommendations and its own recommendations. The Joint Committee is of the view that the Auditor-General should conduct a supplementary audit to report on the effectiveness of the implementation of the ANAO and Joint Committee recommendations.

49 Submission No 6194, Vol 12 p 39

7.112 The Joint Committee recommends that:

Recommendation 27

that the Auditor-General conducts a supplementary audit of the Child Support Agency to evaluate the effectiveness of the implementation of the recommendations of:

(a) the Auditor-General in the report entitled, Management of the Child Support Agency; and

(b) this report of the Joint Select Committee on Certain Family Law Issues.

8

Communication with the Child Support Agency

Introduction

8.1 Communication difficulties are a serious problem with the Child Support Agency (CSA) and represent the second largest source of complaint in submissions to the Joint Committee. Of the total number of submissions received by the Joint Committee, 939 or 15.2 per cent commented on communication problems with the CSA. CSA clients, the Commonwealth Ombudsman, the Child Support Evaluation Advisory Group, (CSEAG) and the Australian National Audit Office (ANAO) have all commented on how difficult it is to get in touch with the CSA. Furthermore, complaints about the CSA include:

- the long delays involved in trying to contact the CSA by telephone;
- staff identification;
- the nature of CSA correspondence;
- privacy of information; and
- communication between the CSA and the Department of Social Security (DSS).

Telephone Service

8.2 Custodial parents and non custodial parents alike have condemned the CSA's telephone service. The inability of clients to get through to the CSA, their inability to talk to a specific office or case officer, the long waiting times hanging on the end of a telephone queue and the rudeness of some CSA officers are all regular occurrences. The Joint Committee was surprised to find that of the original 130 page submission from the CSA, less than two pages were devoted to the question of client contact with the CSA and one page only was devoted to the issue of telephone contact. The CSA's supplementary submission contained a further five pages on client service projects with two pages devoted to communication by telephone.

8.3 The CSA 'pioneered the use of Telecom's 131 Customnet service'.[1] The 131 number allows a client to telephone a single national number that will automatically link the client to their nearest CSA office for the cost of a local call. The system works by identifying the postcode area from which the call emanates and transferring it to the branch office administering cases for that postal area. When both parents reside in the same postal area and when business and residential addresses are in the same postal area, this system will automatically connect a parent to the branch office handling their case. When one parent moves or when a parent calls from a number that is not in the same postcode area as their home address, the 131 number may connect them to an office not handling their case. No procedures are in place to allow these clients to call directly the branch office handling their case.

8.4 Furthermore, there is no nationally consistent method for handling telephone enquiries within the CSA. When clients contact the CSA through the 131 number, they are placed in a queue. In some offices, the next available operator will answer the calls in the queue. In other offices, a central operator will obtain the name of the calling client and place them in another queue for the team handling their case. The next available operator within this team will respond to the call. In no office is a call through the 131 number directed to a specific officer. The Joint Committee received many submissions which complained about the CSA's queuing system:

1 Submission No 5083, Vol 2, p 47

> In attempting to explain my above situation by phoning the child support agency on several occasions and on each occasion I was put on hold waiting on the availability of a departmental officer to assist me in my explanation. Each time I ended hanging up in disgust because each time I waited on the phone for more than ten (10) minutes and on one occasion when I deliberately waited on the line just to see how long it would take till someone in the department could answer my call, I was still on the line and waiting 25 minutes later, so once again I hung up in disgust.[2]

8.5 Another submission stated:

> ... delays are experienced in the manner of QUEUES - up to 1/2 hour waiting to get on to a child support officer. When on[e] eventually gets to talk to a child support officer, often that person doesn't know WHY or WHERE your child support money is or WHEN you will get it. Sometimes the information one receives from the child support officer is incorrect. The child support officer may transfer you. This always means another QUEUE, or he/she may give you a phone number which can be OUT OF DATE, doesn't answer, is the wrong person or, another QUEUE. I've spent up to one whole working day chasing 'MY' child support.[3]

8.6 The Joint Committee is concerned that the extended periods of time clients are kept waiting in phone queues is not the only problem associated with CSA's telephone enquiry service. A large number of CSA clients provided evidence that, when they tried to call the CSA on the 131 number, they inevitably received an engaged signal. The ANAO in its efficiency audit report confirmed that:

> Telephone access continues to present difficulties for clients. A survey conducted by one CSA branch over four weekly periods in March-April 1993 indicated that some 17 000 to 32 000 calls per week were made to the CSA client contact number. Of these only about 10% were successful in entering the CSA queue. After entering the queue, only half the callers waited long enough for their call to be answered. In effect, about 96% of attempted phone calls failed.[4]

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2 Submission No 2550

3 Submission No 1764

4 Australian National Audit Office, **Audit Report No 39, 1993–94**, Efficiency Audit, Australian Taxation Office, Management of the Child Support Agency, p xv

8.7 The telecommunications equipment in use in most CSA offices is expensive and sophisticated technology. The equipment is capable of handling large volumes of calls by automatically transferring calls between offices if individual branch office telephone queues become full. It can also provide a large amount of management data which could be used to fine tune telephone staffing arrangements almost instantaneously if adequate management practices are in place. Even in those CSA branch offices with older telephone equipment, Telecom can provide information which can be used to estimate monthly, weekly and hourly fluctuations in demand for telephone services. It is apparent that this information is not being used effectively to adopt flexible staff management practices which meet the service demands of CSA clients.

8.8 The ANAO also considered telephone staffing practices, noting that:

> ... different branches gave different priority to telephone answering duties. At Hobart branch three phone lines were staffed on a full-time basis. Moonee Ponds had two telephone operators at any one time. Dandenong did have four but reduced this to three ... . At both Upper Mt. Gravatt and Moonee Ponds, telephone answering was stopped one morning each week to enable staff to participate in meetings and training. ...
>
> The ANAO had difficulty accepting that client needs always ranked as the priority factor in CSA telephone staffing arrangements. At Moonee Ponds on Wednesday afternoons staff were released from answering phones and the phones switched to Box Hill. At other times the normal complement of two staff members answered the phones. ...
>
> Very few of a total branch were involved at any one time on phones. The two Moonee Ponds staff members assigned to answering phones were from a staff complement of 58. [5]

8.9 The ANAO, while acknowledging that equipment capabilities have been cited as a problem, also believes that a significant and treatable cause of telephone access difficulties lies in the CSA practices for staffing telephones. Clearly, there is significant room for improving the CSA management of its telephone enquiry service to clients. The Joint Committee considers that the CSA would benefit from examining the management practices and operational standards applied to telephone communications in leading commercial organisations. These management

5 ibid. p 75–7

practices and operational standards could then be adapted to improve the CSA's management of this crucial area.

8.10 The Joint Committee recommends that:

Recommendation 28

the Child Support Agency examines the management practices and operational standards applied to telephone communications in leading commercial operations in order to improve the management of the Child Support Agency's telephone enquiry service to clients.

8.11 The CSA does not have a general telephone inquiry number to provide people with simple and routine advice and assistance which is not specifically case related. In the Joint Committee's view it is important that people wishing to receive general information about the operation of the CSA and the Scheme are not caught up in telephone queuing delays. The Joint Committee believes that the CSA should set up a separate general inquiry number so that simple and routine telephone enquiries can be handled promptly and effectively.

8.12 The Joint Committee recommends that:

Recommendation 29

the Child Support Agency sets up a separate general inquiry number so that simple and routine telephone enquiries can be handled promptly and effectively.

8.13 The CSA, in its Northbridge Office in Western Australia, has been trialing a voice messaging service since February 1993. This service enables clients to telephone a special number and, subject to the provision of a personal identification number and their tax file number, obtain information about their account as well as general information on the Scheme. The CSA submitted that this voice messaging service has proved highly successful and is currently answering a third of the enquiries in the region.[6]

6 Submission No 5083, Vol 2, p57

8.14 The ANAO, in its efficiency audit report, viewed the voice messaging system as a 'longer-term solution to the CSA's telephone problems'.[7] The CSA advised the Joint Committee that national implementation of the voice messaging service is planned for early 1995.[8] The Joint Committee endorses this strategy as it should provide significant workload and cost benefit gains to the CSA.

8.15 The Joint Committee recommends that:

Recommendation 30

the Child Support Agency introduces on a national basis the voice messaging telephone service.

Staff Identification

8.16 The Joint Committee found that many CSA clients are frustrated by the fact that they cannot obtain the name of a CSA staff member who has given them information. It is a common perception among clients of the CSA that staff refuse to identify themselves during telephone calls to avoid responsibility for the advice they give. Many complaints were received from both custodial and non custodial parents stating that when they call the CSA to find out why previous commitments have not been met, the staff member who gave these commitments can not be found.

8.17 The following submission is typical of the complaints made to the Joint Committee:

> Once contact is established you are unable to solicit the name of the contact. This is understandable in an emotional environment, but surely a contact number or code could be used such that the advice given can be verified later.[9]

7 ANAO, p 77

8 Submission No 6194, Vol 12, p 10

9 Submission No 3067

8.18 Similarly, another submission stated:

> Since April 1993 I have contacted the CSA approximately seven times. I have been told "The person handling this case is not in. I can't help You." I have left messages for the mysterious Bernadette who has my case and has not yet rung me back after messages were left. At this point in time I do not know what is happening with my case, except I still haven't received any money.[10]

8.19 It is a fundamental requirement of sound public administration that decision makers and advisers be held accountable for the decisions or commitments they make and the advice they provide. It is also one of the foundations of developing a sound client relationship that clients are able to identify and develop a relationship with the person they are dealing with. However, there will be cases where staff will have legitimate concerns about providing their names to clients. In these circumstances, staff should act to protect their own safety by not disclosing their names to clients.

8.20 The Joint Committee recommends that:

Recommendation 31

the Child Support Agency requires staff to identify themselves to clients unless staff believe their safety to be at risk.

Child Support Agency Correspondence

8.21 The CSA's computer generated correspondence is seen by many clients as threatening and complex. The correspondence does not explain issues in a 'user friendly' manner and often fails to address the matter or issue raised by the client in the first place. Computer generated correspondence appears to have developed, in tone and content, from ATO practice. As noted in one submission:

10 Submission No 2925

> The complicated nature of the notice of Child Support Assessment ... may well have something to do with Taxation Department practice. The Initial Assessment Child Support Payable, the formula by which it is arrived at and follow-up Notices of Arrears owing are all far more appropriate in the context of a businessman (or woman) who has tax to pay to the Taxation department than they are to a non custodial parent and the obligations of that parent to maintain their own children. The very nature of maintenance of a child, or children, is an emotional and personal one and anything less than most of the communications from the Child Support Agency is hard to imagine![11]

8.22 The ANAO efficiency audit of the CSA showed that a major reason for clients calling the CSA was to clarify information contained in CSA computer generated correspondence. The ANAO noted that:

> Calls requiring explanation of CSA-generated letters and accounts (16% combined) suggest that these could be more clearly written - or used more judiciously.[12]

8.23 The inability of the CSA to respond to an individual problem, both in the written and verbal form, was highlighted in evidence to the Joint Committee:

> ... a major part of the Agency's problem is related to the fact that it is only really equipped to respond to "complications" that can be settled by pressing a key on a computer keyboard. There is a reluctance or inability to recognise the existence of a problem that is raised by telephone or in writing if it does not conform to a proforma response.[13]

8.24 The Joint Committee is also concerned that a computer generated letter is more often than not the first contact which a non custodial parent has with the CSA. To receive such a letter, written in a bureaucratic and overbearing manner, often creates angst among non custodial parents. When this is combined with the difficulties in contacting the CSA by telephone and the poor level of information and advice provided by the CSA, it is easy to understand why many non custodial parents feel alienated by the CSA.

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11 Submission No 1754

12 Australian National Audit Office, op.cit. p 82

13 Submission No 4000

8.25 The Joint Committee considers that the CSA must re-write its computer generated correspondence so that it is clear, concise and user friendly. Furthermore, the CSA should move away from computer generated responses where clients raise specific issues. Instead, the CSA should respond on an individual basis. The adoption of these practices should not only reduce the strain on CSA resources caused by client telephone enquiries seeking an explanation of notices sent by the CSA, but should also improve the CSA's general relationship with its clients.

8.26 The Joint Committee recommends that:

Recommendation 32

the Child Support Agency re-writes computer generated correspondence to provide clients with the information they require in a clear, concise and user friendly fashion.

Recommendation 33

where clients raise specific issues the Child Support Agency responds on an individual basis and avoids the use of a computer generated response.

Privacy of Information

8.27 All information collected and kept by government agencies is subject to the provisions of the *Privacy Act 1988* and the Information Privacy Principles described in this Act. These principles establish:

> ... the practices to be observed when collecting personal information; record-security practices; the maintenance of accurate and fair records; access and correction rights; and limitations on use and disclosure of personal information.[14]

14 Submission No 3684, Vol 6, p 33

8.28 The Joint Committee received 166 submissions from custodial and non custodial parents which expressed concerns that the CSA had unnecessarily intruded into their private lives. The Privacy Commissioner, in his submission, echoed the concerns expressed by CSA clients and raised several concerns about actual and potential CSA breaches of the Information Privacy Principles of the *Privacy Act 1988*. These breaches involved:

- unrestricted access by CSA staff to the National Taxpayer System;
- disclosure of information about children of a new relationship;
- action based on inaccurate information, security and confidentiality issues and timing of notices; and
- disclosure of information between the parties in the Child Support Review Office process.

8.29 Of particular concern to the Privacy Commissioner was the unrestricted access of CSA staff to the taxation information of all ATO clients. The CSA argued that, as a division of the ATO, there were no grounds for applying different access arrangements for CSA staff from other ATO staff and that CSA staff, like all ATO staff, are subject to strict secrecy and confidentiality provisions. The Privacy Commissioner considered that:

> ... this position undermines the principle that access to information, particularly sensitive personal information, should only be on a "need to know" basis and, further, that it is not consistent with the Government's stated intention to minimise the privacy intrusiveness of the Child Support Scheme.
>
> The issue of appropriate privacy notification to clients of the CSA and ATO that information that is provided for income tax assessment purposes will also be used to assess liability under the Child Support Scheme is also still of concern.[15]

8.30 The Joint Committee agrees with the Privacy Commissioner that taxpayers should be notified that information they provide to the Commissioner of Taxation for income tax assessment purposes may be used to assess their liability for child support. Taxpayers could be easily notified of this by the Australian Taxation Office advertising in Tax Pack and on individual income tax return forms each year.

15 ibid.

8.31 The Joint Committee recommends that:

Recommendation 34

the Australian Taxation Office advertises in Tax Pack and on individual income tax return forms that information provided in tax returns may be used by the Child Support Agency to assess liability for child support.

8.32 Given the experience of the ATO in dealing with personal taxation information and the strict secrecy provisions of the *Income Tax Assessment Act 1936*, the Joint Committee received a surprising number of complaints, largely from non custodial parents, that the CSA had divulged their personal information to a third party or they had mistakenly been informed of another party's details. Submissions on this issue concerned:

- inappropriately addressed envelopes to employers;
- personal letters being sent to the non custodial parent's place of employment;
- letters to employers in plain envelopes and not marked ‘private’ or ‘confidential’;
- phone messages being left with secretaries;
- letters being sent to previous employers;
- being told other people's information over the phone; and
- being sent another person's notice of assessment or Child Support Review Office determination.

8.33 Some of these problems relate to the fact that the CSA does not verify the accuracy of the information it holds before it is acted upon. The problems also relate to the inadequacy of controls used by the CSA to ensure that the privacy of its clients is protected. These breaches of individual privacy are serious and the Joint Committee considers that the CSA needs to investigate and review its procedures for contacting clients and responding to client enquiries to ensure that personal information is not divulged to unauthorised people.

8.34 A major contributor to the unauthorised disclosure of personal information appears to be a lack of understanding by CSA staff of the requirements of the *Privacy Act 1988*. The Joint Committee considers that all CSA staff should be trained in the requirements of the *Privacy Act 1988* to overcome this problem.

8.35 The Joint Committee recommends that:

Recommendation 35

the Child Support Agency reviews and amends procedures for contacting clients and responding to client enquiries to prevent the unauthorised disclosure of personal information.

Recommendation 36

Child Support Agency staff be trained in the requirements of the *Privacy Act 1988.*

Communication between the CSA and DSS

8.36 The Joint Committee received complaints from CSA clients dissatisfied with the level of co-operation which exists between the CSA and DSS. These complaints included:

- poor communication between the agencies. In particular, delays in transmitting information to each other and inaccuracies in information passed between agencies;
- conflicting advice received from each agency;
- confusing and often contradictory information in DSS and CSA computer generated letters, especially about details of child support payments;
- the lack of co-ordination between the two agencies. In particular, when custodial parents call one agency about payment difficulties they are often told to ring the other agency;

- the CSA not being told by DSS when non custodial parents become unemployed; and
- tensions between the two agencies.

8.37 There is much confusion from both the clients of the CSA and DSS about the roles and responsibilities of each agency under the Scheme. This confusion occurs particularly when one of the agencies is assisting clients with payment difficulties or helping them to understand the different requirements of the two organisations. For instance:

> If I ring CSA they say ring DSS and vice a verse ... . My phone bills to the CSA and the DSS are unbelievable.[16]

8.38 A non custodial parent expressed concern over the conflicting advice he received from DSS and the CSA:

> My wife and I came to an arrangement whereby I would pay her the amount of $100.00 per fortnight and would also provide MBF top hospital cover medical insurance for both her and our son at the rate of $68.10 per fortnight, plus I would also pay their Ambulance subscription. ...
>
> On the 15th of April the Social Security Department wrote to my wife and informed her that her sole parent pension would be cut off if she did not get at least $144.53 per fortnight from me. I told her that according to the Child Support Handbook, payments for private health insurance can form part of the child support payment made by me to her. On the 6th of May she was informed by Social Security, both verbally and in writing, that this was not the case and that she had to "fill out the attached form and return it to them", the form being an application for the CSA to collect support payments on her behalf. ... I have been given conflicting information both verbal and written from the Child Support Agency, the Child Support Review Office, and the Department of Social Security. There appears little coordination between these three Agencies. ...[17]

16 Submission No 2286

17 Submission No 551

8.39 Similarly, a custodial parent submitted:

> I feel that the communication between the CSA and the DSS needs investigating. I have received several letters from the DSS stating that my maintenance had not been collected therefore I would not receive it. After ringing the CSA each time I find this to be incorrect.[18]

8.40 The NSW Combined Legal Centres Group identified the lack of training for DSS staff as an issue which may have contributed to a conflict in advice:

> DSS officers have little or no understanding of the child support process and although training is available to them through their own staff training division this is often not taken up. DSS officers have very little interest in child support as they do not see it as their responsibility.[19]

8.41 The provision of conflicting advice by the CSA and DSS is of concern to the Joint Committee since the CSA and DSS have now had four years in which to resolve administrative problems between the respective organisations. The Joint Committee believes clients may well continue to receive conflicting information unless DSS and CSA staff are made more aware of how the child support and social security legislation and procedures interact.

8.42 Both the CSA and DSS submissions mentioned the close working relationship between the two organisations. This was not borne out by submissions received by the Joint Committee which mentioned 'tensions' between the two agencies:

> Social Security and Child Support constantly blame each other for the inefficiencies and errors of the system. ... Social Security advise me that they cannot help as [the] Child Support System is inefficient. ... Social Security suggest contacting the local MLA. The staff of Social Security often have complained to me that they, too find dealing with Child Support frustrating.[20]

18 Submission No 2597

19 Submission No 2716

20 Submission No 1764

8.43 The Joint Committee considers the working relationship between the CSA and DSS to be crucial to the success of the Scheme. Clearly there is room for improvement in this area. The level of co-ordination and co-operation could be improved by the CSA and DSS jointly examining ways of training their staff in the roles of each organisation so that the staff of each agency have an appreciation of the other's role and the need for co-operation between the agencies. The level of co-ordination and co-operation could also be enhanced by staff exchanges between the CSA and DSS. These and other initiatives should be reported upon in the respective annual reports of each agency.

8.44 The Joint Committee recommends that:

Recommendation 37

the Child Support Agency and the Department of Social Security jointly examine ways of training their staff in the roles of each organisation and the interaction of child support and social security legislation.

Recommendation 38

staff of the Department of Social Security and the Child Support Agency be encouraged to undertake an exchange between the offices of the Department of Social Security and the Child Support Agency to improve working co-operation between the two organisations and the results be reported in the respective Annual Reports.

9

Application, registration and collection of child support

Introduction

9.1 The initial delay between the custodial parent's application for child support and the receipt of the first payment of child support from the Department of Social Security (DSS) has been a problem with the Scheme since its inception. The process to register new applications and establish payment arrangements can take months. Payment delays have occurred even when regular private payments are being made prior to registration with the Child Support Agency (CSA).

9.2 The delays under the Scheme are predominantly caused by the combination of administrative delays within the CSA and time delays inherent in the establishment of payment arrangements under the Scheme. These delays differ under each stage of the Scheme due to the different application and registration procedures which apply to each stage. In particular, the delays under Stage 2 are much longer than under Stage 1 of the Scheme. This not only pushes back the date upon which the custodial parent receives his/her first child support payment but also substantially contributes to the level of child support debt under the Scheme. This Chapter will examine ways in which the application, registration and collection processes under the Scheme can be improved so that these delays can be overcome.

Analysis of Submissions

9.3 The Joint Committee received 338 submissions which complained that the CSA payment transfer to the custodial parent was too slow. Of these submissions, 221 were received from custodial parents. This rated as the fifth most common custodial parent complaint and represented 11.2 per cent of the total custodial parent submissions received by the Joint Committee.

9.4 The following submission was representative of the custodial parent submissions received by the Joint Committee:

> In my case it was a pretty simple straight forward case in which all the information was supplied and the other party is willing to pay and we agreed on the amount but it took 12 months before I received any money ...[1]

9.5 Similarly, another custodial parent submitted:

> I have waited 7 months for my claim to be processed, and still have not had a satisfactory result. How much longer?[2]

9.6 The Joint Committee considers that the current delays in the registration and collection of child support by the CSA are seriously undermining the operation and effectiveness of the Scheme.

Registration of Stage 1 Applications

9.7 The CSA is only able to register a case under Stage 1 of the Scheme where a maintenance liability for a child or spouse has been established by either a court order or a court registered agreement. In the vast majority of cases, both parties will be aware of the terms of the court order or court registered agreement even though they may not be complying with it. The CSA's role is limited to the collection of child or spousal maintenance due under a court order or court registered agreement. Disputes about the amount due are solely a matter to be resolved by the courts.

9.8 The custodian must either register the court order or court registered agreement with the Child Support Register for collection or elect to collect the maintenance liability privately. This must be done within 14 days

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1 Submission No 2244

2 Submission No 2071

after the day on which the court order is made or the agreement is registered in the court and the Child Support Registrar must be notified on an approved form of the custodian's decision. The liable parent is also required to notify the Child Support Registrar of the court order or court registered agreement except where the custodian elects to collect the maintenance liability privately. If the custodian or liable parent fail to notify the Child Support Registrar of the court order or court registered agreement within the specified 14 day period then they are guilty of an offence punishable on conviction by a fine not exceeding $1,000.[3]

9.9 When an application for registration of a court order or an agreement registered in a court for maintenance is received, the Child Support Registrar registers that maintenance liability commencing from:

- the date on which the liability arose under the court order or court registered agreement, if the custodial parent has registered the maintenance liability within 14 days of it being made by, or registered with, the court; or
- a day not earlier than the date on which the liability arose under the court order or court registered agreement, if the custodial parent has failed to register the maintenance liability within 14 days of it being made by, or registered with, the court.[4]

9.10 Under section 24 of the *Child Support (Registration and Collection) Act 1988* the Child Support Registrar must register duly completed applications for collection of maintenance within 28 days of their receipt. Section 80 of the *Child Support (Registration and Collection) Act 1988* requires the Child Support Registrar to notify the custodian and liable parent of the particulars entered in the child support register 'as soon as practicable' after registration. This notice must contain information on each party's objection and appeal rights against the registration of the maintenance liability or particulars entered in the Child Support Register in relation to the maintenance liability. Each party has 28 days to object to the Child Support Registrar after receipt of the notice. This notice shall be referred to as a section 80 notice in the following discussion.

9.11 The CSA advised the Joint Committee that collection action is initiated once the 28 day appeal period specified in the section 80 notice has expired. Where the liable parent is an employee, the CSA's practice is to collect child support debts by deduction from the salary or wages of this

3 s. 23 *Child Support (Registration and Collection) Act 1988*

4 s. 28 *Child Support (Registration and Collection) Act 1988*

parent. This practice is discussed in the context of the collection of Stage 2 formula assessments below.

9.12 The legislative timeline associated with the registration of a Stage 1 maintenance liability is illustrated by Figure 9.1:

Figure 9.1 Legislative Timeline[5] for the Registration of Stage 1 Applications by the Child Support Agency

5 This Timeline was prepared on advice from the Child Support Agency

9.13 Figure 9.1 shows that it can take up to 70 days for the CSA to initiate collection action in a Stage 1 case. This period is close to a worst case scenario as the CSA is able to register a Stage 1 application at any time within 28 days of its first receipt. The CSA advised the Joint Committee that the average time for registration is 19 days. Consequently, the time lag between receipt and collection action by the CSA is likely to be approximately 60 days. The Joint Committee considers that this time lag could be reduced further if the CSA registration process was more efficient.

9.14 The Joint Committee notes that there may be no need for the CSA to initiate collection action if the liable parent is voluntarily complying with his/her child support liability. This is possible because the liable parent is generally aware of his/her actual child support liability from the very start. This contrasts with the situation under Stage 2 of the Scheme where child support arrears often build up because the liable parent is simply unaware of the amount of his/her child support liability until a number of weeks after the start date of that liability.

Administrative Problems with the Registration of Court Orders

9.15 The Joint Committee received submissions describing problems with the CSA registration of Stage 1 court orders for maintenance. Problems in this regard have included:

- the CSA incorrectly registering applications to a court for an order for maintenance as a court order. This creates hardship for a custodial parent who is then required to repay substantial amounts of child support following detection of the CSA's registration error; and
- incorrect interpretation of court orders by CSA staff.

9.16 Both problems indicate clearly the need for improved training of CSA staff in court systems and the interpretation of court orders. The mistaken registration by CSA staff of applications for court orders for maintenance also highlights an inadequacy in the procedural documentation for registering Stage 1 applications. The Joint Committee considers that the CSA should review its registration procedures to ensure that it registers court orders and court registered agreements correctly and does not register applications for court orders.

9.17 The Joint Committee recommends that:

Recommendation 39

the Child Support Agency reviews its registration procedures to ensure that it registers court orders and court registered agreements correctly and does not register applications for court orders.

Recommendation 40

the Child Support Agency revises its training programs in order to improve the ability of staff to interpret correctly court orders.

9.18 The difficulties encountered by CSA staff in the interpretation of court orders is partly due to the way in which some court orders are drafted and, in particular, the use of imprecise terms in court orders. The Family Court advised the Joint Committee that it intended to establish a closer relationship with the CSA to overcome these problems:

> Recent correspondence between the Child Support Agency and the Court has identified difficulties being experienced by the Agency in the interpretation of Court orders in Stage 1 matters. These include difficulties with terminology, start dates of liability, the effect of suspension or discharge of arrears and clauses requiring additional payments over and above the periodic amount.[6]

9.19 The Joint Committee endorses this co-operative approach and shares the Family Court's optimism that it will overcome most of the problems in this area. However, the Joint Committee considers that this approach could be augmented by the Family Court issuing a practice direction containing precedents for the wording of court orders to provide guidance to magistrates exercising family law jurisdiction.

6 Submission No 5328, Vol 7

9.20 The Joint Committee recommends that:

Recommendation 41

the Family Court of Australia issues a practice direction containing precedents for the wording of court orders to provide guidance to magistrates exercising family law jurisdiction.

Registration and Collection of Stage 2 Child Support Assessments

9.21 The current registration and collection process administered by the CSA under Stage 2 of the Scheme consists of the following steps:

- receipt of application by the CSA;
- pre-acceptance letter sent by the CSA to the prospective liable parent;
- acceptance of application by the CSA;
- Section 34 and Section 76 notices sent by the CSA to the prospective liable parent;
- Section 45 notice sent by the CSA to the liable parent's employer to initiate collection of child support by autowithholding where practicable; and
- payment of child support to the custodian.

Receipt of Application

9.22 An application for child support formula assessment under Stage 2 of the Scheme may be lodged with the CSA, the ATO or DSS. The Joint Committee notes that approximately 90 per cent of child support applications are lodged with DSS. It is DSS practice to vet child support formula applications to ensure that custodial parents have provided the required proof of parentage. Where this is not the case, DSS generally assist custodial parents to obtain the requisite proof before forwarding the application to the CSA for registration.

9.23 The CSA advised the Joint Committee that it takes an average of eighteen days for these applications to be forwarded to the CSA by DSS. This time period of eighteen days includes those cases where no proof of parentage is required which are generally transferred to the CSA within 3 or 4 days.[7]

Pre-Acceptance Letter

9.24 Upon receipt of an application for formula assessment the CSA issues a pre-acceptance letter to notify the prospective liable parent that the CSA has received the application. The CSA advised the Joint Committee that it began to issue pre-acceptance letters in late 1993 in response to recommendations by the Commonwealth Ombudsman. The pre-acceptance letter is a creature of the CSA's administrative practice and has not been sanctioned by the child support legislation. The ramifications of this practice are discussed below.

Acceptance of Application

9.25 The Child Support Registrar must accept an application for formula assessment if he is satisfied:

(a) that the person is or was a party to the marriage and the child was born to the person, or the other party to the marriage, during the marriage; or

(b) that the person's name is entered in a register of births or parentage information, kept under the law of the Commonwealth or of the State, Territory or prescribed overseas jurisdiction, as a parent of the child; or

(c) that, whether before or after the commencement of this Act, an Australian Court or a Court of prescribed overseas jurisdiction has found, or could reasonably be inferred to have found, that the person is the father or mother of the child, and the finding has not been altered, set aside or reversed; or

7 CSA Comparative Performance Report – March 1994

(d) that, whether before or after the commencement of this Act, the person has under the law of the Commonwealth, or of the State, Territory or prescribed overseas jurisdiction, executed an instrument acknowledging that he or she is the father or mother of the child, and the instrument has not been annulled or otherwise set aside; or

(e) that the child has been adopted by the person.[8]

9.26 In determining whether an application for formula assessment of child support is properly made, the Child Support Registrar may act on the basis of the application and the documents accompanying the application, and is not required to conduct any enquiries or investigations into the matter.[9] If an application for child support is accepted by the Child Support Registrar then the person from whom the application sought payment of child support becomes a liable parent in relation to the child. If the liable parent has been paying maintenance before the date of the application then child support is payable from the date upon which the application is received in an office of the ATO, the CSA or DSS. However, where the liable parent has not been providing maintenance for the child before the date of application then child support is payable from the day 28 days before the application day or, if the earliest date upon which the custodial parent could properly have sought child support from the liable parent was less than 28 days prior to the actual application for child support, then child support is payable from that earliest entitlement day.[10]

9.27 If the Child Support Registrar refuses to accept an application for formula assessment of child support then the Child Support Registrar must immediately notify the applicant and draw his or her attention to the right to apply to a court having jurisdiction under the Act for a declaration under section 106 that the applicant was entitled to formula assessment of child support payable by the person from whom the application sought such payment.[11] If the court grants the declaration then the Child Support Registrar is to be taken to have accepted the application for formula assessment for child support for the child.[12]

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8 s. 29(2) *Child Support (Assessment) Act 1989*

9 s. 29(1) *Child Support (Assessment) Act 1989*

10 s. 31(1)(d) *Child Support (Assessment) Act 1989*

11 s. 33 *Child Support (Assessment) Act 1989*

12 s. 106(5) *Child Support (Assessment) Act 1989*

9.28 The CSA advised the Joint Committee that 82 per cent of applications are registered within 28 days of receipt. On average, it takes the CSA 19 days to register applications. The best performing CSA branch office takes an average of 9 days to register applications, with others taking up to 37 days.

Section 34 and Section 76 notices

9.29 Upon acceptance of a child support application, the Child Support Registrar is required under section 34 of the *Child Support (Assessment) Act 1989* to immediately notify the person from whom the application sought payment of child support of his or her acceptance of the application and specifically draw that person's attention to his or her right to apply to the court for a declaration under section 107 of the *Child Support (Assessment) Act 1989* that the applicant was not entitled to child support from that person. This notice shall be referred to as a section 34 notice in the following discussion.

9.30 The Child Support Registrar must also assess the liable parent's child support liability as quickly as practicable after acceptance of an application.[13] When the Child Support Registrar has made this assessment, he is required under section 76 of the *Child Support (Assessment) Act 1989* to immediately notify the liable parent and custodian of the child support assessment and the basis upon which it was calculated. This notice shall be referred to as a section 76 notice in the following discussion.

9.31 The CSA's administrative practice is to issue the section 76 notice and the section 34 notice at the same time. The section 76 notice must also include, or be accompanied by, statements of the following kinds:

(a) a statement that specifically draws the attention of the liable parent and the custodian entitled to child support to the right, subject to the *Family Law Act 1975,* to appeal under section 110 to a court having jurisdiction under this Act against the assessment if he or she is aggrieved by any of the particulars of the assessment;

(aa) a statement that specifically draws the attention of the liable parent and the custodian entitled to child support to the right, subject to subsection 98A(2), to apply to the Registrar for a determination under Part 6A having the

13 s. 31(2) *Child Support (Assessment) Act 1989*

effect that the provisions of this Act relating to administrative assessment of child support will be departed from in relation to a child in the special circumstances of the case;

(b) a statement that specifically draws the attention of the liable parent and the custodian entitled to child support to the right, subject to section 115 of this Act and the *Family Law Act 1975*, to apply to a court having jurisdiction under this Act for an order under Division 4 of Part 7 having the effect that the provisions of this Act relating to administrative assessment of child support will be departed from in relation to a child in the special circumstances of the case;

(c) a statement that specifically draws the attention of the liable parent and the custodian entitled to child support to the right, subject to the *Family Law Act 1975*, to apply to a court having jurisdiction under this Act for an order under section 124 that the liable parent provide child support for the child otherwise than in the form of periodic amounts paid to the custodian entitled to child support;

(d) a statement that specifically draws the attention of the liable parent and the custodian entitled to child support to the provisions of section 128 (Pensioners entitled to apply to have assessed child support not reduced by more than 25%).[14]

9.32 As highlighted above, the CSA's administrative practice of sending the prospective liable parent a pre-acceptance letter fulfils part of the function of a section 34 notice by notifying the prospective liable parent of the existence of the application for formula assessment. This administrative practice was introduced in response to the following criticisms by the Commonwealth Ombudsman:

> The CSA does not send this notice [section 34] as a matter of course because the application is not accepted and keyed into the Agency's computer system until it is actually processed and the assessment completed.

14 s. 76(3) *Child Support (Assessment) Act 1989*

> At that point the CSA sends the payer and payee a notice as required by section 76 of the Assessment Act. ... The section 76 notice is computer-generated and is the first notice the payer usually receives from the CSA and the first s/he knows of the Agency's involvement in his/her maintenance. The chance to apply for a declaration that Stage 2 of the child support system should not apply to them is lost, in practice, because the CSA does not notify them of their right to apply. Because the assessment notice is the first time payers have heard of the CSA they often get off to a bad start with the Agency - because the notice usually backdates the liability to the date of separation and claims that the payer owes arrears which have accumulated since then, regardless of whether the payer has paid the payee direct in the meantime.
>
> If the CSA sent the payer a notice at the time it first received the application, rather than at the point of acceptance, the payer could contact the Agency to dispute the applicant's eligibility to apply and the issue could be explained or sorted out without resort to court and without getting the payer offside from the start.[15]

9.33 The CSA advised the Joint Committee that the liable parent's appeal period under section 107 of the *Child Support (Assessment) Act 1989* is calculated from the date upon which the CSA issues the pre-acceptance letter. The CSA's administrative practice is to allow the liable parent an appeal period of 28 days from this date.

9.34 These CSA administrative practices conflict with the child support legislation. Section 107 of the *Child Support (Assessment) Act 1989* only allows an appeal against a formula assessment where the Child Support Registrar has accepted an application for formula assessment. This means that a prospective liable parent cannot appeal to the court under section 107 of the *Child Support (Assessment) Act 1989* on the basis of the CSA's pre-acceptance letter. The section 34 notice is required but this is not issued until an average of 19 days later. By this time the prospective liable parent has lost over half of the 28 day appeal period allowed by the CSA. The Joint Committee considers that this administrative practice of issuing pre-acceptance letters and calculating the appeal period from the date of issue of this letter seriously undermines the rights of prospective liable parents.

15 Submission No 1928, Vol 2, p 163

9.35 Furthermore, the appeal period of 28 days allowed under section 107 of the *Child Support (Assessment) Act 1989* by the CSA is also incorrect. The Family Court Rules state that the appeal period under section 107 of the *Child Support (Assessment) Act 1989* to be one month after the receipt of the section 34 notice or within such further time as the court allows.[16] Given the CSA's practice of posting section 34 notices, the prospective liable parent's appeal period must include an additional postage period. The Family Court Rules deem the prospective liable parent to have received the section 34 notice on the day on which the document would have reached that person in the ordinary course of the post.[17] The Joint Committee considers a postage period of 3 days to be reasonable given that the CSA has clients spread throughout Australia. Consequently, the CSA should be waiting at least 33 days from the date it issues the section 34 notice before taking any collection action whatsoever. This means that the CSA's current administrative practice of only allowing 28 days for a prospective liable parent to appeal under section 107 of the *Child Support (Assessment) Act 1989* and its practice of calculating this period from the date of issue of the pre-acceptance letter are both illegal. The Joint Committee strongly believes that the CSA must comply with the statutory requirements of, and time frames set by, the child support legislation.

9.36 The Joint Committee recommends that:

Recommendation 42

the Child Support Agency complies with the statutory requirements of the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989* and allows prospective liable parents the statutory time to exercise their rights under the Acts.

16 Family Law Rules, Order 31B, Rule 10

17 ibid. Rule 30

Section 45 Notice

9.37 Section 43 of the Child Support (Registration and Collection) Act 1988 states that:

> ... where the payer of an enforceable maintenance liability is an employee, the Registrar shall, as far as practicable, collect amounts due to the Commonwealth under or in relation to the liability by deduction from the salary or wages of the payer under this Part.

9.38 In order to commence autowithholding, the Child Support Registrar must send a notice under section 45 of the *Child Support (Registration and Collection) Act 1988* to the employer of the liable parent which requires the employer to deduct a specified amount from the salary or wage of the liable parent. The liable parent must also be sent a copy of this notice. This notice shall be referred to as a section 45 notice in the following discussion.

9.39 An employer who has during any month deducted child support from a liable parent's salary or wages as required by the section 45 notice must pay this amount to the Child Support Registrar before the seventh day of the following month.[18] If the employer fails to either comply with the section 45 notice or to pay the Child Support Registrar the amounts deducted, then the employer may be penalised.

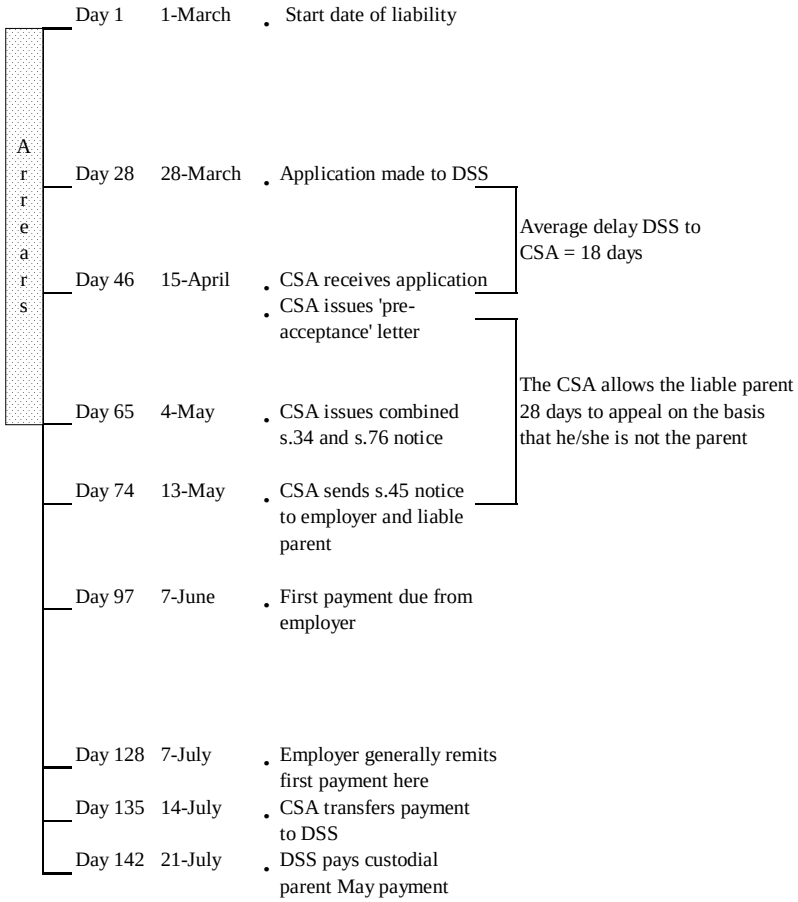
Payment of Child Support

9.40 Section 76 of the *Child Support (Registration and Collection) Act 1988* requires the Child Support Registrar to transfer to the custodial parent, by the first Wednesday of each month, all payments received in settlement of child support obligations up to the seventh of the previous month. In the first years of the Scheme, all these transfers occurred on the seventh day of the following month, denying the custodial parent the benefit of additional monies where these had been paid on time by the non custodial parent. In response to comments by the Child Support Evaluation Advisory Group (CSEAG) about delays in custodial parents' receipt of their first payment, the Government introduced an additional payment date on the third Wednesday of each month. This aspect is discussed further in Chapter 10.

18 s. 47(1) *Child Support (Registration and Collection) Act 1988*

9.41 Figure 9.2 illustrates the current administrative practice of the CSA in accepting, registering and collecting child support applications under Stage 2 of the Scheme.

Figure 9.2 Administrative Timeline[19] for the Acceptance, Registration and Collection of Stage 2 Applications by the Child Support Agency



Section 34 notice - Notice to non custodial parent advising of acceptance of an application for ch This notice also advises non custodial parent of their right to make an applica court under section 107 of the Child Support (Assessment) Act 1989 that the parent from whom child support can be sought for a particular child [see s.34 Child Support (Assessment) Act 1989]

Section 76 notice - Notice of child support assessment which informs both parents of the amoun assessment and their right to apply to a court for changes to the assessment o grounds [see s.76 Child Support (Assessment) Act 1989]

Section 45 notice - Notice requiring an employer to deduct a specified amount from the salary or non custodial parent. A copy of this notice must be sent to the non custodial [see s.45 Child Support (Registration and Collection) Act 1988]

19 This Administrative Timeline was prepared on advice from the Child Support Agency

9.42 Figure 9.2 shows that it currently takes the CSA an average of approximately 142 days from the start date of liability to transfer the first child support payment to the custodian. The Joint Committee considers this time lag to be unacceptable. Figure 9.2 also shows that at least 65 days of child support arrears can accumulate before the non custodial parent is made aware of his or her child support liability. The existing legislative provisions, compounded by the administrative practices of the CSA and DSS ensure that all administrative assessments, when first raised by the Child Support Registrar, contain a substantial amount of arrears, unless private payment arrangements have been established in the interim. The Joint Committee received many complaints from non custodial parents that the first contact they had with the CSA was a letter informing them of their liability which included reference to a number of months of arrears. This inherent build up of arrears in the system also often creates resentment on the part of non custodial parents.

9.43 Under section 25 of the *Child Support (Assessment) Act 1989* only a custodial parent may apply to the Child Support Registrar for an administrative assessment of child support. Non custodial parents cannot make an application to register with the CSA for administrative assessment. It is incumbent upon the custodial parent, usually as a result of DSS requirement for them to take reasonable action to obtain maintenance, to make an application to the Child Support Registrar. Consequently the accrual of substantial arrears following the application by a custodial parent for child support is not a case of deliberate avoidance on the part of the non custodial parent. The non custodial parent has no control over a decision by the custodial parent to apply to the CSA and is often unaware of this decision and its impact on their life for quite a number of weeks after it has been made. The Joint Committee considers that it is inconsistent with principles of justice and equity that a person be held liable for a debt before they are given an opportunity to present facts relevant to the establishment of this debt.

Child Support Liability Commencement Date

9.44 The establishment of a child support liability is not like the creation of a tax debt, or other debt to the Commonwealth. A child support debt is a continuing liability which may last for one or two decades. It is critical that bureaucratic considerations do not outweigh the potential advantages in creating an environment in which non custodial parents are given an opportunity to plan and rationally discuss their future child support liabilities. The existing provisions which determine the starting date of a liability under Stage 2 of the Scheme create substantial arrears of child support before the non custodial parent is even notified of his/her child support liability. This often results in animosity on the part of the prospective liable parent which discourages voluntary compliance.

9.45 The Joint Committee considered a number of alternatives to the current complicated provisions for determining the date upon which a liable parent's child support liability commences. This included the day upon which an application is made and the day after the day upon which the appeal period under section 107 of the *Child Support (Assessment) Act 1989* against the acceptance of an application by the Child Support Registrar expires. The overriding concern of the Joint Committee was to reduce the damaging build up of child support arrears caused by the current provisions and to protect the prospective liable parent's appeal rights under the child support legislation.

9.46 The Joint Committee considers that the liable parent's child support liability should start on the date upon which the appeal period under section 107 of the *Child Support (Assessment) Act 1989* expires. As Figure 9.3 shows, this would immediately eliminate the initial build up of child support arrears for new applications under Stage 2 of the Scheme. It also ensures that the appeal rights of prospective liable parents under section 107 of the *Child Support (Assessment) Act 1989* are preserved and provides the prospective liable parent with at least one month's notice of the creation of a child support liability. This period can be used by the prospective liable parent to budget for their future liability, to discuss with the CSA their rights and obligations under the child support legislation and to bring forward relevant facts if necessary. Their relationship with the CSA can commence on a more positive footing without the shock and anger caused by the creation of substantial start-up arrears. This new starting date would also enable the CSA to contact prospective liable parents to encourage them to voluntarily meet their child support

obligations rather than the CSA automatically initiating collection by withholding child support from the liable parents' salary or wages. This aspect is discussed in detail later in this Chapter.

9.47 The Joint Committee notes that this new child support liability starting date may reduce the level of financial support available for children during the first two months. However, this impact should be minimal as the delays inherent in the current Scheme mean that few custodians receive child support payments from the CSA in this period anyway. Consequently, a near total reliance on DSS payments during this period already exists.

9.48 This new child support liability starting date may also reduce the Scheme's savings as measured by reductions in social security outlays on Additional Family Payments through the maintenance income test. However, this impact should be minimal due to the current treatment of initial lump sum payments of arrears under the Scheme. These lump sum payments are currently applied against one instalment of Additional Family Payment under the maintenance income test irrespective of the size of this lump sum. This means that the maximum reduction in the Scheme's savings is also limited to only one Additional Family Payment. The Joint Committee considers this to be a very small sacrifice considering the longer term benefits which are likely to flow from a more positive relationship between liable parents and the CSA.

9.49 The Joint Committee recommends that:

Recommendation 43

section 31 of the *Child Support (Assessment) Act 1989* be amended so that the liability to pay child support under Stage 2 of the Child Support Scheme arises on the day after the day upon which the appeal period under section 107 of the *Child Support (Assessment) Act 1989* expires.

Forwarding of Applications by the Department of Social Security

9.50 As highlighted above, the average delay caused by DSS holding child support applications until proof of parentage is provided by the custodian is 18 days. This is an administrative practice of DSS for which it does not have any statutory authority under the child support legislation. The delays created by this DSS administrative practice lead to the following problems:

- significant start-up arrears for the prospective liable parent as the start date of liability is determined by, or with reference to, the date upon which the application was lodged with DSS; and
- the prospective liable parent is unaware of his or her accruing child support arrears. The retention of applications by DSS not only prevents prospective liable parents from being made aware of their potential liabilities but, if they are making private provision for maintenance in the meantime, they will generally be unaware that this may not be credited as child support when the application is finally registered.

9.51 The Joint Committee considers that the delay caused by the retention of child support applications by DSS is unacceptable given that DSS has no statutory authority for retaining child support applications. Rather, DSS should change its administrative practice so that all child support applications are immediately forwarded to the CSA.

9.52 The Joint Committee recommends that:

Recommendation 44

the Department of Social Security immediately forwards all applications for child support to the Child Support Agency.

Automatic Acceptance of Application

9.53 As highlighted above, the acceptance of an application for child support by the CSA focuses on the production of proof of parentage by the custodian. Under section 29(2) of the *Child Support (Assessment) Act 1989* the proof of parentage requirements are limited to those things the applicant can prove by the production of a piece of paper such as a marriage, birth or adoption certificate, a court order or a statutory declaration. The Child Support Agency advised the Joint Committee that its current practice is to accept the parentage of children born during marriage as given without asking for proof or even requiring a marriage certificate. However, proof of parentage is required for a child born outside marriage. This arguably discriminates against children born outside marriage including those conceived during marriage but born thereafter. Whilst this practice may be convenient for both the CSA and custodians whose children were born during marriage, it is arguably inconsistent and inequitable to accept what one person states on their application and yet ask another to prove it.

9.54 The Joint Committee notes that there is an inconsistency between what is acceptable for proof of parentage under the *Child Support (Assessment) Act 1989* and what is acceptable under the *Family Law Act 1975*. Section 7 of the *Child Support (Assessment) Act 1989* states that 'unless the contrary intention appears, expressions used in this Act and in Part VII of the *Family Law Act 1975* have the same respective meanings as in that Part'. Part VII of the *Family Law Act 1975* defines a 'child of a marriage' to include adoptions, children of the husband and wife born before marriage and a child born through artificial conception.[20] It also sets out a range of presumptions of parentage to simplify the application of this definition.[21] In contrast, section 29(2) of the *Child Support (Assessment) Act 1989* sets out specific circumstances which will satisfy the Child Support Registrar that a person is a parent. These circumstances do not reflect all of the presumptions of parentage set out in the *Family Law Act 1975*.

20 s. 60A(1) *Family Law Act 1975*

21 ss. 66P-66S *Family Law Act 1975*

9.55 DSS gave evidence to the Joint Committee that the adoption of the Family Law Act presumptions would:

> ... be beneficial to both custodial and non-custodial parents - in the former's case by averting delays and effecting an assessment, and in the latter's by averting a build-up of arrears of child support while proof of parentage by other means is established. The change along these lines would in no way limit the existing rights of non-custodial parents to dispute the presumption before the Family Law Court.[22]

9.56 The Government announced, on 6 April 1994, its intention to make the proof of parentage requirements under the Scheme consistent with the definitions under the *Family Law Act 1975*.[23] In effect, this will remove the requirement to prove parentage for a child:

- born to a woman who co-habited with a man for a period of at least six months, ending not more than 10 months before the birth of a child;
- of a husband and wife born before their marriage; and
- born through artificial conception.

9.57 Whilst the Joint Committee endorses this initiative as it will simplify the legal requirements in certain proof of parentage cases, the Joint Committee is concerned that it does not overcome the administrative delays inherent in the Scheme. The Joint Committee believes that the acceptance process can be streamlined further by requiring the Child Support Registrar to automatically accept all child support applications upon their receipt. This would immediately eliminate the existing proof of parentage delays thereby ensuring that child support payments are collected and paid by the CSA at the earliest possible time.

9.58 The Joint Committee notes that the automatic acceptance of child support applications eliminates the requirement for custodial parents to provide proof of parentage to the CSA and transfers the onus of disproving parentage to the prospective liable parent. DSS stated to the Joint Committee that it:

> ... has no in principle difficulties with the notion of reversing the presumption. DSS understands that this is the approach

22 Transcript of Evidence, 21 January 1994, p 1259

23 In the Child Support Legislation Amendment Bill 1994 introduced into the House of Representatives on 12 October 1994

> recommended by the Family Court in its submission to the Joint Committee.
>
> All objective evidence suggests that such an approach is likely to have a low risk of paternity disputation for the following reasons:
>
> the Australian experience is that 81% of ex-nuptial children have the father's name on the birth certificate. This percentage has been rising over recent years;
>
> the experience with the Child Support Scheme to date is that there is a very high level of acknowledgment of paternity where the father of the child has been nominated by the custodian. ...
>
> preliminary DSS consultations with the Office of Legal Aid and Family Services (OLAFS) and a number of laboratories suggests that each year an estimated 200 people have their paternity disproved and are not liable for child support. This is a very small proportion (0.14%) of the current rate of lodgement of Stage 2 applications (around 140,000 a year); and
>
> the likelihood of mischievous claims is constrained by the fact that the majority of custodians are undergoing a formal process to establish ongoing entitlement to an income security payment.[24]

9.59 Consequently, the Joint Committee considers that the introduction of automatic acceptance of child support applications by the CSA should have very little impact on prospective liable parents as past experience has shown that they generally freely acknowledge paternity. However, where paternity is not acknowledged the automatic acceptance of child support applications will not prejudice the rights of prospective liable parents provided that they are allowed the full period in which to appeal against the Child Support Registrar's acceptance of the child support application.

9.60 The Joint Committee recommends that:

Recommendation 45

the *Child Support (Assessment) Act 1989* be amended to require the Child Support Registrar to accept automatically applications for child support.

24 DSS letter dated 19 May 1994

9.61 The existing provisions of the *Child Support (Registration and Collection) Act 1988* require the CSA to continue to collect child support under a formula assessment or agreement and disburse these amounts to the custodial parent on a monthly basis until a court makes a decision on an application under section 107 of the *Child Support (Assessment) Act 1989*. The Joint Committee received submissions from some non custodial parents which suggested that their liability to pay child support should only commence once their parentage had been proved:

> When the baby was born the three of us through our solicitors had our blood test done, proving that I was the father. I could not believe what happened after that, 2 weeks later I received a bill from the Child board saying that I owed $1300 in back-payments plus $300 dollars per month. ... I could not believe they could bill me before (4 months) I got back my blood test results.[25]

9.62 However, if a child support liability only commenced after parentage was established, custodians would be deprived of any right to child support for a number of months after they had lodged an application for child support with the CSA. It would also be in the interests of vexatious non custodial parents to prolong the proof of parentage process for as long as possible so as to minimise their child support obligations. The Joint Committee considers this approach to be unacceptable. In disputed cases the interests of both parties have to be carefully balanced. It is important that neither party is adversely affected by the disputation but that the interests of the child are treated as paramount.

9.63 The rights of the prospective liable parent could be protected in these circumstances by requiring the CSA to hold any child support collected during the period in which parentage is under dispute in trust until the dispute is settled by the courts. The prospective liable parent would have to notify the CSA of the dispute as to parentage so that the necessary trust account could be established and would need to apply to the court for a declaration that he or she was not the parent under section 107 of the *Child Support (Assessment) Act 1989*. The CSA would then commence collection on the day after the expiration of the prospective liable parent's right to appeal under section 107 of the *Child Support (Assessment) Act 1989* and hold any monies collected in trust.

25 Submission No 2414

9.64 If the prospective liable parent is held by the courts to be the biological parent of the child then the amount held in trust would be paid directly to the custodial parent. If he or she is not held to be the biological parent then the child support payments would be refunded to the prospective liable parent. This approach balances the interests of both parties by avoiding the practical difficulties of repayment that occur under the present system where the prospective liable parent is found not to be the parent of the child(ren) in question. However, there remains a possibility that one or both parties may be subjected to hardship due to the considerable delays in the hearing of disputed parentage cases by the courts. This potential hardship could be mitigated by the courts hearing these cases as a matter of priority. The current delays caused by disputed parentage cases may also be ameliorated by the Family Court delegating to Family Court Registrars powers to resolve child support related paternity disputes. The Joint Committee considers that the Family Court should seriously consider this option.

9.65 The Joint Committee notes that there is the potential for prospective liable parents to abuse this system by informing the Child Support Registrar of an intent to apply to court under section 107 of the *Child Support (Assessment) Act 1989* when no such intent exists. To minimise this potential area of abuse, the Child Support Registrar should be given the discretion to disburse monies collected from a prospective liable parent if he is satisfied that the prospective parent has had reasonable opportunity to apply to court and no such application has been made. The Joint Committee considers that this discretion should be ordinarily exercised to disburse the monies collected where the prospective liable parent has not exercised his/her appeal rights within the period allowed under section 107 of the *Child Support (Assessment) Act 1989*.

9.66 The Joint Committee notes that section 140 of the *Child Support (Assessment) Act 1989* allows a non custodial parent to apply to court for a stay of an assessment. Under the existing provisions of the *Child Support (Registration and Collection) Act 1988*, the exercise of this right can be advantageous in preventing large overpayments of child support. If the Joint Committee's recommendation requiring the payment of disputed monies to be held in trust is adopted, section 140 of the *Child Support (Assessment) Act 1989* can no longer provide this benefit. Instead, it could be used to obstruct this process thereby creating large arrears of child support which the CSA must attempt to collect. Consequently the Joint Committee considers that this section serves no useful purpose under the proposed regime and should be repealed.

9.67 The Joint Committee recommends that:

Recommendation 46

section 107 of the *Child Support (Assessment) Act 1989* be amended to require a prospective liable parent to notify the Child Support Registrar when he or she intends to appeal to a court under this section.

Recommendation 47

the *Child Support (Registration and Collection) Act 1988* be amended to require the Child Support Registrar to hold in trust monies collected from a prospective liable parent when notified that an appeal is to be made to a court under section 107 of the *Child Support (Assessment) Act 1989.*

Recommendation 48

the *Child Support (Registration and Collection) Act 1988* be amended to allow the Child Support Registrar the discretion to disburse these monies to the custodial if the Child Support Registrar is satisfied that no such appeal has been made.

Recommendation 49

the Family Court of Australia and other relevant courts hear disputed parentage cases as a matter of priority.

Recommendation 50

the Family Court of Australia considers delegating to Family Court Registrars powers to resolve child support related paternity disputes.

Recommendation 51

section 140 of the *Child Support (Assessment) Act 1989*, allowing a prospective liable parent to apply to a court for a stay of a child support formula assessment, be repealed.

9.68 The Joint Committee notes its recommendation that all applications for formula assessment be automatically accepted by the Child Support Registrar will mean that the section 34 notice will be issued immediately by the CSA upon receipt of an application. This will eliminate the existing delay between receipt and acceptance of the application and render the CSA's current illegal administrative practice of issuing pre-acceptance letters redundant. The CSA should also discontinue its practice of combining section 34 and section 76 notices as this would only create delays under the proposed regime.

9.69 The Joint Committee believes that, in addition to the advice on avenues of objection and appeal, the section 34 notice should contain a description of what additional correspondence the non custodial parent can expect to receive from the CSA. The section 34 notice should also contain advice on how private collection arrangements can be made so that private collection, rather than CSA collection, is encouraged as much as possible under the Scheme.

9.70 The Joint Committee recommends that:

Recommendation 52

the Child Support Agency includes the following information in the notice issued under section 34 of the *Child Support (Assessment) Act 1989*.

(a) advice on what further correspondence parties will receive; and

(b) advice on making acceptable private child support collection arrangements.

Amendments to Child Support Assessments

9.71 The Joint Committee received submissions which complained that the CSA refused to accept documentary evidence from liable parents which contradicted the information upon which the child support assessment was calculated. Not only does the *Child Support (Assessment) Act 1989* give the Child Support Registrar various powers to act administratively, the Act also allows either party to a formula assessment to appeal to a court for a change to the basis of that assessment. Section 75 of the *Child Support (Assessment) Act 1989* also allows the Child Support Registrar, at any time, to amend a formula assessment to correct any errors, mistakes, or false or misleading statements.

9.72 The CSA provides the following advice to prospective liable parents in its combined section 36 and section 76 notice:

> If you think the assessment is incorrect, you have the right to appeal to a court. (For example, you may think that some wrong information was used in the assessment.) Speak with the Agency first. This may avoid the need to appeal.[26]

9.73 The Joint Committee considers the advice provided by the CSA to be inappropriate. Not only does the advice initially direct non custodial parents to apply to a court to obtain a change in their personal details, it is inappropriate when the Child Support Registrar has power under section 75 of the *Child Support (Assessment) Act 1989* to correct errors, mistakes, and false or misleading statements. Instead, the section 76 notice should advise both parents of the Child Support Registrar's powers under section 75 of the *Child Support (Assessment) Act 1989.*

9.74 The CSA advised the Joint Committee that it does not have a national guideline on the use of the Child Support Registrar's power to amend a formula assessment under section 75 of the *Child Support (Assessment) Act 1989*. The Joint Committee considers that the CSA should develop a national guideline on the use of this power.

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26 CSA notice issued under ss. 34 and 76 *Child Support (Assessment) Act 1989*, 'Notice of acceptance of application for administrative assessment of child support and notice of child support assessment'

9.75 The Joint Committee recommends that:

Recommendation 53

notices of formula assessment issued under section 76 of the *Child Support (Assessment) Act 1989* must clearly advise both parents that the Child Support Registrar has powers under section 75 of the Act to correct factual errors and false or misleading statements in a formula assessment.

Recommendation 54

the Child Support Agency develops a national guideline on the use of the Child Support Registrar's power under section 75 of the *Child Support (Assessment) Act 1989.*

Compulsory Use of Automatic Withholding of Wages

9.76 As highlighted above, section 43 of the *Child Support (Registration and Collection) Act 1988* requires the Child Support Registrar to, as far as practicable, collect child support from the wages or salaries of employed liable parents. It is the CSA's practice to initiate autowithholding as soon as the liable parent's appeal period under section 107 of the *Child Support (Assessment) Act 1989* has expired, irrespective of the circumstances.

9.77 The Joint Committee received 281 submissions which stated that the CSA should not be allowed to automatically garnishee the wages of non custodial parents. Of these submissions, 221 were received from non custodial parents. This represented 6.7 per cent of the total non custodial parent submissions received by the Joint Committee. These submissions focused on the invasive nature of the CSA's autowithholding practice, especially for non custodial parents who have been making regular payments to the CSA prior to being subjected to autowithholding of their wages, and the methods used by the CSA to ensure non custodial parents have their wages automatically withheld by their employer. The Joint Committee was advised of one case where:

> Even though I have punctually met all my payments the CSA now deducts payments through my place of employment because the

> recipient is on a government benefit. I tried to prevent this from happening as my employers were also my parents-in-law. When I explained to a representative of the CSA that my paymistress was my mother-in-law and I didn't want this issue reaching my wife's family the response was "She has to comply with the privacy laws the same as we do. Perhaps you could take her to court if she tells anyone".
>
> I have since changed employment and my wife also works at the same place, and my past □as not□common knowledge. I again met a 'brick wall' when I requested that payments not be deducted through my pay.[27]

9.78 Even where a non custodial parent has been regularly making payments to the CSA they are likely, without any consultation, to be informed that in future their employer will deduct these payments automatically from their wage. One non custodial parent submitted:

> For many months my child support payments were being duly attended to on a voluntary basis albeit I did run into an arrears situation but never at any time did I not make some contribution either in part or in full!
>
> About mid or early June I found a deduction was made from my wages which was a complete mystery. Upon enquiring with the payroll people I was shown a letter from the ATO outlining the deductions to be made.[28]

9.79 The automatic withholding of child support liabilities by an employer from an employee's salary or wages was expected to be the principle method of collection by the CSA. As noted by CSEAG in its report:

> There was clearly an expectation that the proportion of cases where autowithholding would be used would approach the proportion of income tax collections through PAYE [approximately 80%].[29]

27 Submission No 1410

28 Submission No 2334

29 CSEAG, op.cit. p 302

9.80 The Scheme's adoption of automatic withholding as the means of collection wherever possible appears to be based on a dated stereotype of non custodial parents which assumes that they will ordinarily default on their child support liabilities. The Joint Committee received submissions which suggested that the use of automatic withholding in this manner was biased against non custodial parents. One typical submission stated:

> I should add, incidentally, that during the time it took to "reassess" my case, my employer received a directive from the agency to remove $730 per month from my salary whether I could afford it or not. This ruling remains in place today.
>
> I have been absolutely appalled at the insensitive and apathetic attitude taken by the department and I believe it is a clear case of discrimination of the highest order.[30]

9.81 Given that one of the major reasons for the establishment of the Scheme was to improve the prevailing low level of compliance with court ordered maintenance, the implementation of automatic withholding as an enforcement tool wherever possible under the Scheme is understandable. However, the Joint Committee considers that one of the great successes of the Scheme has been the change in community attitudes towards child support obligations which it has engineered. This change in community attitudes is evidenced by the improved level of voluntary compliance under the Scheme. In particular, 56 per cent of all liabilities registered with the CSA are paid on time[31] and almost half of these liabilities are paid without the use of automatic withholding. Consequently, the Joint Committee considers that whilst the use of automatic withholding wherever possible has proved successful as an enforcement tool in the past, its use should preferably be selective to encourage voluntary compliance under the Scheme. In this way the current reliance on CSA collection and the cost of administering the Scheme can be reduced.

9.82 The Joint Committee considers it important that the intrusiveness of the Scheme be minimised and that parents should be given a choice in deciding the means by which they pay their child support liabilities. While child support continues to be paid on a regular basis, non custodial parents should be able to pay the CSA through the mechanism of their choice. If a non custodial parent defaults on child support payments, the Child Support Registrar could immediately contact the non custodial parent's employer to commence autowithholding of child support. This

30 Submission No 3695

31 Submission No 5083, Vol 2, p 9

would avoid the necessity of unnecessary disclosure of personal information to non custodial parents' employers and offer an incentive to non custodial parents to comply voluntarily with their child support obligations.

9.83 Non custodial parents could be notified of their collection options in the section 34 notice which notifies them that the Child Support Registrar has accepted an application for collection of child support. The section 76 notice could then inform the non custodial parent of how they may pay voluntarily and the consequences if the voluntary payment is not made by the due date. This should provide an incentive to non custodial parents to pay on time and avoid the present difficulties with large child support arrears accruing before autowithholding is able to commence from an employer.

9.84 The Joint Committee notes that the proposed movement away from automatic withholding towards the encouragement of voluntary payment of child support will require section 43 of the *Child Support (Registration and Collection) Act 1988* to be amended so that the CSA is able to allow employed non custodial parents the opportunity to make voluntary child support payments. Non custodial parents who elect to pay voluntarily should only be subjected to automatic withholding by the CSA where they default on their child support liabilities.

9.85 The Joint Committee recommends that:

Recommendation 55

section 43 of the *Child Support (Registration and Collection) Act 1988* be amended to require the Child Support Agency to give non custodial parents the option of voluntarily paying their child support liabilities, rather than being automatically placed on autowithholding.

Recommendation 56

the Child Support Registrar be given the power to remove non custodial parents from the automatic withholding provisions and allow them to elect to pay direct to the Child Support Agency where the Child Support Registrar is satisfied that the child support liabilities will continue to be paid by the due date.

Recommendation 57

where a non custodial parent defaults on direct payment to the Child Support Agency, the Child Support Registrar can request the non custodial parent's employer to commence automatic withholding of child support from that non custodial parent's wages.

Collection of Child Support Liabilities in Advance

9.86 Under section 66 of the *Child Support (Registration and Collection Act) 1988* an amount that becomes a child support debt in any month is due and payable on the seventh day of the following month. This builds in a delay of up to one month in the collection of child support by the CSA. The CSEAG highlighted this delay:

- child support liabilities to be collected by the Agency are collectable on a monthly basis.
- a child support liability for a given month (say, September) is due to be paid to the Child Support Agency by the seventh day of the following month (in this case, October). This day is called the 'due date'.
- the amount received by the Agency in payment of child support debts is placed in the Child Support Trust Account. The Agency advises the Department of Social Security on the last Wednesday of October of the payments it has paid into the account.
- the Department of Social Security must distribute the payments from the Trust Account to the payee on or before the first Wednesday of the following month (November). The amount that each payee is entitled to receive is the amount collected and credited to the Trust Account up to the 'closing day' for payment. The closing day is nine days before the first Wednesday.

> Thus, for example, a child support liability for the month of September is received by the custodian on the first Wednesday in November, provided the Agency has received it by the closing day in late October.[32]

9.87 According to the CSA the scenario described by CSEAG, although prolonged, actually assumes a 'best case' situation. Where the CSA has difficulties locating a non custodial parent's employer, or where the notification to the employer to commence automatic withholding occurs at an inopportune time in the company's pay cycle, further delays will occur. The administrative delays in the registration of applications discussed above also compound the delays in a custodial parent's receipt of his/her first child support payment.

9.88 An alternative to the current arrears basis of collection is to require non custodial parents to pay each month's liability in advance by the seventh of that month. The liability for April would therefore be paid to the CSA on or before the seventh of April and disbursed to the custodial parent in the same month. However, the act of bringing the liability to pay child support forward one month would result in existing non custodial parents under the Scheme being suddenly placed in arrears by one month which may create an administrative backlog for the CSA. It would also be likely to cause anger among non custodial parents who have been assiduous in meeting their monthly obligations. Consequently, the Joint Committee considers that this change in the due date of payment should only apply to new clients of the Scheme.

9.89 The impact of the Joint Committee's proposed changes in respect of the payment date is illustrated by Figure 9.3 below. This shows the child support liability starting date (that is, the day after the day upon which the prospective liable parent's appeal rights under section 107 of the *Child Support (Assessment) Act 1989* expire) falling before the seventh day of the month. The Joint Committee notes that there will be many occasions when the child support liability starting date will fall after the seventh day of the month. In these cases it would be inequitable to require payment on the seventh day of the month as this would intrude upon the liable parents' appeal period under section 107 of the *Child Support (Assessment) Act 1989*.

32 CSEAG, **Child Support in Australia**, Vol 1, p 312

9.90 One possibility is to require child support liabilities with a starting date after the seventh day of a month to be paid with the next months payment, that is, by the seventh day of the next month. However, this would build in a potential time lag of up to one month between the child support liability starting date and the first due date for payment. This time lag would be similar to the existing monthly delay caused by only one due date for payment each month[33] but would only occur in the first month when payment arrangements are established.

9.91 The Joint Committee believes that this potential time lag could be halved by introducing a second due date for payment on the twenty-first day of the first month. This would mean that where the child support liability starting date falls after the seventh day of a month but on or before the twenty-first day of a month, the child support debt would be due on the twenty-first day of that month. However, where the child support liability starting date falls after the twenty-first day of a month, the child support debt for that month would be due at the same time as the next months payment, that is, by the seventh day of the next month. All subsequent monthly child support liabilities would be due for payment in advance on the seventh day of the month to which they relate.

9.92 The introduction of a second monthly due date for payment in the first month of a child support liability is consistent with the CSA's current bi-monthly administrative payment arrangements. Under these arrangements the child support collected by the CSA is paid by DSS to the custodian on the first or third Wednesday of each month. This will mean that a child support liability which is received by the CSA by the seventh day of a month should be paid by DSS to the custodian on the third Wednesday of that month while a liability which is received by the CSA by the twenty-first day of a month should be paid to the custodian on the first Wednesday of the next month. This is reflected in Figure 9.3 below which shows that a payment received by the CSA on 7 May 1994 should be paid by DSS to the custodian on 18 May 1994. The CSA's payment arrangements are discussed further in Chapter 10.

33 s. 66 *Child Support (Registration and Collection) Act 1988*

9.93 The Joint Committee recommends that:

Recommendation 58

the *Child Support (Registration and Collection) Act 1988* be amended so that, in the first month of liability, the following payment dates apply to new child support applications registered under the Child Support Scheme:

(a) where the child support liability starting date falls after the seventh day of a month but on or before the twenty-first day of a month, the child support debt is due for payment on or before the twenty-first day of that month; and

(b) where the child support liability starting date falls after the twenty-first day of a month, the child support debt is due for payment on or before the seventh day of the next month.

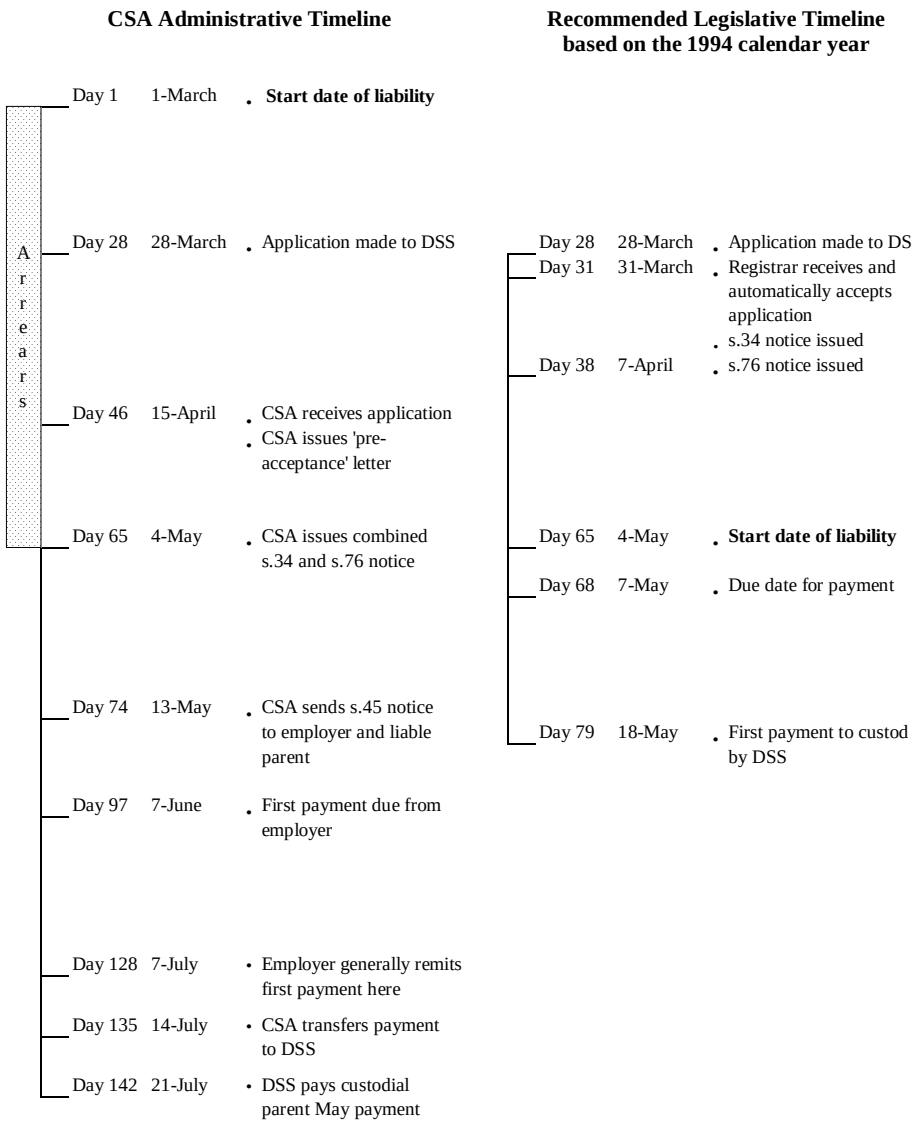
Recommendation 59

section 66 of the *Child Support (Registration and Collection) Act 1988* be amended so that, after the first month of liability, an amount that becomes a child support debt in any month is due and payable on the seventh day of that month.

The Impact of the Joint Committee's Recommendations

9.94 A comparison of the existing CSA administrative timeline with the Joint Committee's recommended legislative timeline for the application, registration and collection of Stage 2 applications is provided by Figure 9.3.

Figure 9.3 Comparison of the Existing CSA Administrative Timeline[34] with the Joint Committee's Recommended Legislative Timeline for the Acceptance, Registration and Collection of Stage 2 Applications



34 See Figure 9.2

9.95 Figure 9.3 shows that under the Joint Committee's recommended legislative timeline, the combined effect of DSS immediately forwarding all child support applications to the CSA and the Child Support Registrar automatically accepting all applications for child support will reduce delays associated with the CSA's current acceptance and registration process by 34 days. A comparison of the CSA's current administrative timeline and the Joint Committee's recommended legislative timeline also shows that the Joint Committee's recommendations will reduce the existing delay in the custodian's first receipt of child support by 63 days and completely eliminate the build up of child support arrears in the period prior to the non custodial parent gaining knowledge of the quantum of his/her child support liability. The recommended legislative timeline allows 3 days for DSS to forward child support applications to the CSA and 7 days for the CSA to issue the required section 76 notice. The Joint Committee considers each of these timeframes to be realistic and achievable.

9.96 The Joint Committee's recommendations will also:

- not create liabilities for non custodial parents until they have been given their full statutory rights of appeal against the Child Support Registrar's acceptance of the child support application;
- give non custodial parents the opportunity to voluntarily pay their child support liabilities in the first month in which they fall due; and
- give the CSA the opportunity to establish automatic withholding of child support if a non custodial parent does not pay the child support liability by the due date for payment. This would still result in the custodial parent receiving the child support payment at least one month earlier than under the current administrative arrangements.

9.97 The Joint Committee considers that both custodians and non custodial parents will benefit greatly from these recommended changes. Custodians will benefit from the dramatic reduction in the existing delay between the receipt of the custodian's application for child support and the custodian's first receipt of child support. Non custodial parents' rights of appeal will now be protected and the current problematic build up of child support arrears for new applications will be completely eliminated. The Joint Committee's recommendations will also encourage a more positive relationship between the CSA and non custodial parents and should improve the level of voluntary compliance under the Scheme. This will in turn reduce both the current reliance on CSA collection and the cost of administering the Scheme. These aspects are discussed further in the

context of encouraging the private collection of child support in Chapter 11.

10

Child support payment issues

Introduction

10.1 The Joint Committee received numerous complaints from custodial and non custodial parents about the existing arrangements for the collection and payment of child support. The irregularity of payments, refunding of overpayments and the administrative difficulties within the Child Support Agency (CSA) which resulted in payments being lost were all issues of complaint. Furthermore, non custodial parents expressed dissatisfaction with the CSA's treatment of payments made directly by them to custodial parents and their lack of control over how child support payments are used by custodial parents.

Irregular Payments

10.2 The Joint Committee received 228 submissions which complained that the payment of child support by the CSA was infrequent and / or of a variable amount. Of these submissions, 204 were received from custodial parents. This represented 10.3 per cent of the total number of custodial parent submissions received by the Joint Committee. One custodial parent submitted:

> I've never received the same amount monthly. My life is a constant roller-coaster ride. ...

> Life has become a financial night-mare. Currently I draw a pension of 317 a fortnight, $41.80 family allowance per fortnight and what ever comes in each month ranging from $1.92, $44.99, $280, $980 or $0.00.[1]

10.3 All child support payments received by the CSA must be paid into the Child Support Trust Account.[2] Section 76 of the *Child Support (Registration and Collection) Act 1988* requires the Child Support Registrar to transfer to the custodial parent, by the first Wednesday of each month, all payments received in settlement of child support obligations up to the seventh of the previous month. In practice the transfer of child support from the Child Support Trust Account to custodians is performed by the Department of Social Security (DSS). The rationale for this practice appears to be the fact that the vast majority of custodians under the Scheme are DSS clients. Therefore, DSS must apply the maintenance income test to the child support received by the CSA in order to determine whether the custodians' entitlement to Additional Family Payment is affected. In addition, DSS is able to transmit child support payments to custodians through its social security payment system thereby avoiding the need for the CSA to set up its own payment arrangements with clients.

10.4 In response to the Child Support Evaluation Advisory Group (CSEAG) report, the Government introduced an additional payment date on the third Wednesday of each month. The CSA advised the Joint Committee that this change was effected by an administrative arrangement rather than by a amendment to section 76 of the *Child Support (Registration and Collection) Act 1988*. The Joint Committee approves of the CSA's administrative practice of a second payment date as it allows for the earlier payment of child support by DSS following receipt by the CSA. However, the Joint Committee is concerned with the practice of the CSA effectively changing its statutory functions without appropriate legislative amendment. The Joint Committee is of the view there should be an amendment to section 76 of the *Child Support (Registration and Collection) Act 1988* to correctly reflect CSA administrative practice.

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1 Submission No 249

2 s. 74 *Child Support (Registration & Collection) Act 1988*

10.5 The Joint Committee recommends that:

Recommendation 60

section 76 of the *Child Support (Registration and Collection) Act 1988* be amended to give statutory force to Child Support Agency practice.

10.6 The introduction of the second payment date created additional problems for some custodial parents as it made the receipt of ongoing child support payments less regular. Custodial parents submitted that they can go for six weeks without a payment and then receive two payments at once. This irregularity, which also impacts on the amount of DSS payments through the application of the maintenance income test, has created confusion and anger amongst custodial parents. The original payment arrangement, whereby DSS disbursed monies paid to the CSA by the seventh of the previous month on the 1st Wednesday of each month created certainty about the dates on which custodians could expect to receive child support payments. The current arrangements could see the next payment being received in two, four, or six weeks time. Typical of the evidence provided is the following:

> Before the change I was guaranteed payment on the first Wednesday of the month. I knew exactly how much I would receive and when. Now I've no idea when it will be paid. For example:
>
> 7th April- $150.00
>
> 5th May- $150.00
>
> 19th May- $150.00
>
> 16th June- $116.00
>
> Nothing for July because I got 2 pay-days in May.[3]

3 Submission No 834

10.7 Most payment irregularities are caused by the CSA's failure to process child support payments received by the seventh of a month in time for the next payment date. The Joint Committee notes that under section 47 of the *Child Support (Registration & Collection) Act 1988*, all employers must remit child support payments collected through the withholding of wages from non custodial parents by the seventh of each month. The next payment date is the third Wednesday of that month. The smallest amount of processing time for the CSA occurs when the first day of the month is a Wednesday as this minimises the time between the receipt of the payment by the CSA on the seventh and the next payment date on the third Wednesday of that month. Where this is the case, the CSA has a minimum of five clear business days between the seventh and third Wednesday of that month in which to process child support payments. The maximum processing time for the CSA occurs when the first day of the month is a Thursday. In this month the CSA has thirteen clear business days between the seventh and third Wednesday of that month in which to process child support payments.

10.8 The Joint Committee believes that, even where the CSA has only five clear business days for processing, the CSA should be able to process child support payments received by the seventh of a month in time for payment by DSS on the third Wednesday of that month. The CSA advised the Joint Committee that its processing of child support payments is sometimes delayed by employers remitting amounts which do not match the child support liabilities owed by their employees. The Joint Committee cannot see why this should be the case as either part or all of the amounts remitted must relate to the child support liability in question and therefore is capable of being paid to the custodian pursuant to section 78 of the *Child Support (Registration & Collection) Act 1988*. Clearly, the CSA needs to dramatically improve its processing times in order to ensure that all child support payments received by the seventh of the month are paid by DSS to the custodian on the third Wednesday of the same month. The receipt of child support by the custodian will become more regular as soon as these CSA processing delays have been rectified.

10.9 The existing payment arrangements which require non custodial parents to pay the CSA, the CSA to deposit these monies in the Child Support Trust Account and DSS to then credit these monies to custodial parents' bank accounts could also be streamlined to produce administrative savings and a better service to clients. The Joint Committee received a number of suggestions including

amalgamating CSA and DSS payments, requiring weekly payments and requiring the CSA to pay parents as soon as money is received from the non custodial parent. Other custodial parents indicated that they would prefer to receive monthly child support payments because knowing the date on which to expect their next payment assists them to budget on limited income. For example, one custodial parent submitted:

> Unfortunately now however the circumstances have changed completely. For many months now the money has not been paid in by the C.S.A. on the first Wednesday, now it is paid in any time and it varies quite a lot, sometimes it is the middle of the month, the end of the month, I never know, any more when it is going to be and it does pose quite a lot of problems. The system was very good before and dependable but now it is very inconsistent, and all the waiting is very annoying.[4]

10.10 There is no reason why a government agency should retain, for some weeks, money which properly belongs to a government client when that client would prefer to have immediate use of that money. Similarly, if a custodial parent prefers regularity of payment to a more prompt payment, there is no reason why this choice should not be made available.

10.11 The current double handling of payments and highly structured arrangements for transferring payments to custodial parents seem anachronistic in a time when the vast majority of payments are through the electronic transfer of funds into a custodial parent's bank account. The Joint Committee considers that the existing administrative delays could be reduced and the CSA's service to clients improved if the CSA introduced an independent child support payment system which paid child support received by the CSA directly into the custodial parents' bank accounts. This payment system would eliminate the double handling of child support which currently occurs and bring the CSA into closer day to day contact with its clients. It should also improve the efficiency and accountability of the child support collection and payment process as the responsibility for these functions will be in one agency rather than in two as is currently the case. The DSS's information requirements could also be met by the CSA advising them of the amount of child support which has been paid to those custodians who are also DSS clients. This would enable DSS to apply the maintenance income test

4 Submission No 2309

to these payments and to adjust their clients' entitlement to Additional Family Payment where necessary.

10.12 The Joint Committee recommends that:

Recommendation 61

the Child Support Agency develops its own payment system and no longer relies on the Department of Social Security.

Recommendation 62

the Child Support Agency gives custodial parents the option to obtain child support payments as soon as practicable after collection by the Child Support Agency or to receive the payments on a fixed day of the month following collection.

Recommendation 63

the Child Support Agency makes arrangements for child support payments to be credited directly into the bank accounts of custodial parents with:

(a) the Child Support Agency to advise custodial parents when funds for child support have been electronically credited to their accounts; and

(b) the Child Support Agency to advise the Department of Social Security of the amount of child support which has been transferred to a custodial parent's account when the custodial parent is a Department of Social Security client.

Refunding Overpayments to Non Custodial Parents

10.13 The Joint Committee received submissions from non custodial parents which complained that they have been unable to obtain refunds of overpaid child support. One non custodial parent stated:

> Incorrect information provided by staff of the Child Support Agency (Penrith) has meant that I have made overpayments in the Child Support Allowance payments, money that I expect will almost certainly never be recovered. ...
>
> I commenced these payments on 11th October 1990 and have maintained regular payments since then.
>
> In March 1992 my wife made application to the Child Support Agency for an assessment. This was accepted by the agency and I was notified in writing on 27th March 1992.
>
> Upon receipt of the notice from the Child Support Agency I realised I had been paying far in excess of what was required. The amount overpaid was over $2000-00.
>
> I phoned the Child Support Agency at Penrith and was told there was nothing they could do.[5]

10.14 Custodial parents submitted that when overpaid child support is being recovered from them, they receive no maintenance payments at all yet DSS continues to 'clawback' amounts from the benefit they are receiving through the application of the maintenance income test.

10.15 Overpayments of child support can arise in a variety of situations, including:

- when a non custodial parent, part way through a financial year, completes a form estimating his or her income at an amount less than that previously assessed;
- when a custodial or non custodial parent informs the CSA of an event which affects the calculation of child support under the formula (for example, the birth of a relevant dependant child);
- when a departure order by the Child Support Review Office or a court reduces the liability of the non custodial parent;

5 Submission No 1609

- when the CSA pays the custodial parent an amount from Consolidated Revenue in the mistaken belief that the non custodial parent (or his or her employer) has paid the liability to the CSA;
- as a result of administrative delays within the CSA in processing estimate forms and client correspondence; and
- when the CSA intercepts a non custodial parent's tax refund for arrears when, in fact, he or she had been making direct payments to the custodial parent without either party informing the CSA.

10.16 The majority of overpayments are a result of the CSA not necessarily being notified promptly by parents of changes in their circumstances and the CSA's tardy recording procedures. A non custodial parent, for example, may not inform the CSA of the birth of a relevant dependent child until some months after the event. In these circumstances it is reasonable for the parent who had responsibility for providing this information to the CSA to bear the inconvenience associated with recovery of the overpayment over time, especially when the provision of prompt advice to the CSA would have avoided an overpayment arising.

10.17 The Commonwealth Ombudsman noted in her submission to the Joint Committee that:

> In all of these situations, where there were ongoing payments of child support being collected, the CSA adopted the practice of taking recovery action, without notifying the payees, seizing all ongoing payments. In some case, the payees had not realised there had been an overpayment. Several payees complained to the Ombudsman that the sudden cessation of child support had caused them severe hardship and made budgeting impossible. The CSA did not negotiate with the payees about repayments and refused to give them any opportunity to repay the debt over time.
>
> In situations where there were no ongoing payments being made, the CSA demanded repayment of the overpaid amounts from the payee, despite the fact that the liability remained and the payer's account was in arrears, for the amount overpaid. In some cases, overpayments amounted to several thousand dollars and payee complainants said that they had spent the money they had received and had no capacity to repay it ...

> The CSA undertook to negotiate repayment arrangements with payees, rather than seizing whatever payments came in, without warning them beforehand. We are still receiving complaints which indicate that the CSA is continuing to seize payees' ongoing entitlements, on occasions, without warning them to giving them an opportunity to negotiate about the rate of repayment they can afford to make.
>
> It also appears that CSA staff do not differentiate when taking recovery action, between payee debts that are true debts, because the payer has overpaid for whatever reason and has no arrears, and debts which appear on the payee's account simply because s/he has been paid from Consolidated Revenue ... . In fact, these Consolidated Revenue "payee debts" are false, because the payer still owes the amount paid out to the payee from Consolidated Revenue. In our view, the CSA should pursue the payer for recovery of the overpaid amounts (the payer's arrears) in the latter situation.[6]

10.18 The Joint Committee endorses the Ombudsman's views especially in regard to the negotiation of repayment arrangements. The Joint Committee considers the current CSA practice of seizing funds without notice to be inconsistent with fundamental principles of natural justice. A client must be informed of the existence of an overpayment before collection action is taken so that the client has an opportunity to raise any objection to the proposed action. A client may object on a range of grounds including that the amount of the overpayment calculated by the CSA is incorrect or that the proposed collection action will result in severe financial hardship. The Joint Committee considers that clients in financial difficulties should be given the option of negotiating a repayment arrangement with the CSA. The availability of this option should encourage both a more positive relationship between the CSA and its clients and voluntary compliance under the Scheme.

10.19 The Joint Committee notes that the compliance policy issued by the CSA in June 1994 provides limited guidance to CSA staff and clients on the treatment of overpayments. It states that where there has been an overpayment and where the custodian is entitled to ongoing maintenance, the Child Support Registrar may recover the overpayment by reducing the ongoing entitlement. Where there is no ongoing entitlement, the Child Support Registrar may make

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6 Submission No 1928, Vol 2, p 162

arrangements to take the overpayment out of the custodian's entitlement from the DSS. Furthermore, the Child Support Registrar may set-off any income tax or refunds or other amount due by the Commonwealth to the custodial parent against those amounts owed by the custodial parent.[7]

10.20 The Joint Committee believes that this broad statement of policy does not provide sufficient guidance to meet the day to day needs of CSA staff. It must be supplemented by detailed national guidelines on the recovery and repayment of overpayments in specific situations. These national guidelines should stipulate that clients are to be informed of the existence and amount of any overpayment, made aware of the option to negotiate repayment arrangements and of their right of objection against any administrative decision of the CSA before any collection action is taken by the CSA. The CSA should also inform parents of the content of these guidelines and of the potential collection problems created by parents not promptly advising the CSA of any change in circumstances which may affect their child support liabilities.

7 Child Support Agency, **Compliance Policy**, p 1012

10.21 The Joint Committee recommends that:

Recommendation 64

the Child Support Agency:

(a) develops national guidelines on the recovery of overpayments from custodial parents and repayment to non custodial parents;

(b) gives effect to its commitment to the Ombudsman that, prior to seeking to recover overpayments from custodial parents, the Child Support Agency informs both parties of the overpayment and provides the opportunity to negotiate the period over which an amount should be repaid; and

(c) informs parents of the content of the national guidelines and the potential collection problems created by not advising the Child Support Agency promptly of any change in circumstances.

Other Payment Problems

10.22 There are a number of administrative problems within the CSA which compound the problem of the irregularity of payments to custodial parents. Complaints received from custodial and non custodial parents about payment difficulties include:

- lost payments;
- confusing and conflicting advice from within the CSA and between the CSA and DSS about the amount of, and even the existence of, any payments received; and
- the inability of clients and staff of the CSA to understand the CSA accounting system and statements generated by it.

10.23 The complexity of the CSA accounting system has made it difficult for clients of the CSA to obtain an accurate understanding of their account and the amount of arrears. This is further complicated by the administrative practices within the CSA. As noted by the Commonwealth Ombudsman in an Annual Report:

> Further investigation revealed that the CSA's accounting system does not enable the staff to provide a detailed explanation of what has happened. It is therefore often difficult for CSA staff to work out what transactions have taken place over time, and why. It also appears that any manually processed payment which bypasses the computerised disbursement system is highly likely to result in misleading standard letters ... one of the effects of these systems problems is confusion on the part of payers, payees, and CSA and DSS staff alike and an exacerbation of the tension and conflict between payers and payees ... .[8]

10.24 In her submission to the Inquiry the Commonwealth Ombudsman stated:

> Another problem for payers occurs when the CSA reconciles their employer accounts, if they are paying by way of autowithholding, and discovers surplus funds. The Agency allocates the surplus amount to different parts of the payer's account, for different months. This makes it extremely difficult for anyone to work out what amounts the CSA received and when the Agency received them.
>
> Payee complainants are also confused by account statements, particularly when the CSA has credited to the payer's account a total amount of direct payments made to the payee over a period of months. This appears on the statement as one sum received on one particular date. The payee denies that s/he has ever received such a lump sum and believes the CSA has made a mistake.[9]

10.25 The complexity of the system and the administrative practices adopted in crediting amounts to clients' accounts has left many CSA clients not being able to compare their records of the payments made or received against the schedules of account provided by the CSA. One parent stated:

> I have requested a schedule of payments on 5 occasions since 1989 due to the discrepancies I have found. The discussion that followed with the staff of C.S.A. confused both myself and their staff. On the last occasion, in May 1993, 3 staff tried

8 Commonwealth and Defence Force Ombudsman, **Annual Report 1991–92**, p 29

9 Submission No 1928, Vol 2, p 158

> to fathom out their schedule and in the end an accountant was needed to explain their system.[10]

10.26 The Joint Committee received a number of submissions which have mentioned payments being lost within the Australian Taxation Office (ATO) for up to 2 weeks before being correctly credited to the non custodial parent's account. Non custodial parents have complained that the CSA has then imposed a Late Payment Penalty because of payments being credited after the seventh of the month. The great majority of these complaints, however, appear to remain unresolved. The following experiences were drawn to the attention of the Joint Committee:

> When the CSA payments were first taken from my ex-husbands pay, the amount he had been paying me stopped - that was in February 1992. However there was a gap of three months (Feb, March, April) during which I received no payment at all. I expected to receive the Feb, March and April payments in May when the CSA began paying me but I have never received those payments. My ex-husband told me that the CSA definitely began removing those payments from his pay in Feb '92. What has happened to this money?[11]

10.27 The Joint Committee considers that non custodial parents' accounts would be easier to read if the CSA introduced procedures to ensure that any amounts remitted by employers are promptly and accurately recorded against the correct non custodial parent's account and that amounts are credited for the correct contribution period. In addition, amounts which are credited to non custodial parents' accounts in recognition of direct payments to custodial parents must reflect the timing and amount of each transaction so that both the CSA and its clients can easily follow the entries made to each account.

10.28 The Joint Committee notes that the CSA implemented a new accounting system on 4 July 1994. The CSA claims that this redeveloped system simplifies account enquiries, and provides monthly bankcard-like statements of account to non custodial parents. The CSA envisages that the new accounting system will resolve many of the difficulties that have been identified with account and payment enquiries. This remains to be seen.

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10 Submission No 1861

11 Submission No 763

10.29 The Joint Committee recommends that:

Recommendation 65

the Child Support Agency introduces procedures to ensure that:

(a) amounts remitted by employers are promptly and accurately recorded against the correct non custodial parent's account and that amounts are credited for the correct contribution period; and

(b) amounts credited to non custodial parents' accounts which represent direct payments to custodial parents, accurately reflect the timing and amount of each transaction to assist clients and staff to understand the account with the Child Support Agency.

10.30 The Joint Committee notes that subsection 78(3) of the *Child Support (Registration and Collection) Act 1988* requires the Child Support Registrar to pay money to custodial parents from Consolidated Revenue where he is satisfied that money required to be remitted by an employer has been deducted but not remitted in time for disbursement. However, where an individual payment is made to the CSA, the Child Support Registrar does not have the statutory authority to make an interim payment from Consolidated Revenue if this payment is lost by the CSA. The custodial parent is required to bear the inconvenience of not receiving prompt payment until the CSA is able to locate the payment within the organisation. The Joint Committee considers this situation to be inequitable and that the Child Support Registrar should be provided with the authority to make a payment to a custodial parent from Consolidated Revenue where he is satisfied that the child support payment was received by the CSA but has not been credited to the non custodial parent's account. Such a provision would be compatible with the situation applying to unexplained remittances from employers under section 78(3) of the *Child Support (Registration and Collection) Act 1988*.

10.31 The Joint Committee recommends that:

Recommendation 66

the *Child Support (Registration and Collection) Act 1988* be amended to allow the Child Support Registrar to make a payment from Consolidated Revenue where the Child Support Registrar is satisfied that a payment from a non custodial parent has been received by the Child Support Agency but has not been credited against the child support liability.

Non Agency Payments

10.32 Non agency payments refer to payments made by the liable parent to the custodial parent, or satisfying a debt incurred by the custodial parent, in lieu of child support, which do not pass through the CSA. As described in the Explanatory Memorandum for the *Child Support (Registration & Collection) Bill 1988* the provisions for non agency payments were introduced to cater for:

> ... circumstances which may arise whereby the payee is, for example, in urgent need of his or her maintenance, and the payer agrees to pay an amount of maintenance directly to the payee.[12]

10.33 Non agency payments were intended to allow parents registered for CSA collection the discretion, in exceptional circumstances, to bypass the CSA collection mechanism. They were never originally intended to allow parents general control over the form or timing of payments, but merely to allow some cash payments to bypass CSA collection when the need arose.

10.34 The provisions dealing with non agency payments are sections 71 and 71A of the Child *Support (Registration and Collection) Act 1988.* Section 71 of the *Child Support (Registration and Collection) Act 1988* allows the Child Support Registrar to credit a payment made directly by a non custodial parent to a custodial parent where he is satisfied that the amount was intended by both parents to be paid in full or as partial satisfaction of a child support liability and where the special

12 Explanatory Memorandum. *Child Support (Registration and Collection) Bill 1988,* p 64

circumstances of the case warrant a direct payment being made. Section 71A of the *Child Support (Registration and Collection) Act 1988* allows the Child Support Registrar to credit payments made by a non custodial parent to a third party, satisfying a debt owed by either or both parents where he is satisfied that the amount was intended by both parents to be paid in partial or full satisfaction of a child support liability and where the special circumstances of the case warrant a direct payment being made.

10.35 The Joint Committee notes that if separated parents are unable to negotiate a child support agreement, there exists no scope for a non custodial parent under the Scheme to exercise any control over the form, or timing of child support to be provided. The Joint Committee received 727 submissions which complained that the non custodial parent has no control over how child support is spent. This represented 11.7 per cent of the total number of submissions received by the Joint Committee. Of these submissions 601 were from non custodial parents. This rated as the third most common non custodial parent issue and represented 18.3 per cent of all non custodial submissions received by the Joint Committee.

10.36 The Joint Committee also received 536 submissions which criticised the child support formula and / or the CSA for not taking into account the payment of school fees, mortgages and other expenses by the non custodial parent when calculating that parent's child support liability. These submissions represented a total of 8.7 per cent of the total number of submissions received by the Joint Committee. One non custodial parent submitted to the Joint Committee that his non agency payments in the form of mortgage repayments and medical benefit payments should be taken into account when calculating his child support liability:

> From that date [separation] until property settlement on the 3rd November 1992 I continued to pay the full mortgage on the matrimonial home and medical benefits at the family rate. The mortgage, held with my employer, was made available at 5% under comparable rates offered by the Commonwealth Bank. The mortgage repayments were deducted from my salary. For these reasons I would not have been able to discontinue mortgage repayments and, transferring the mortgage to another lending institution would have been quite costly. Medical benefit payments were also cheaper, the alternative would have been for me single rate and for my wife to take out comparable cover. ... My request for the last

> 2½ years has been that the Child Support Agency accept 50% of the mortgage and medical benefit payments which amount to $12,257.60, as a non cash payment.[13]

10.37 Another non custodial parent submitted that other payments such as school fees are not credited by the CSA:

> I make a significant contribution to the welfare of my son. For example payment of school fees (private school that she insisted that he attend), school books, clothes, travelling expenses plus the normal day to day expenses. The agency does not take these matters into consideration when working out the assessment.
>
> Because I am forced to contribute over and above what is fair (payments are taken directly out of my salary without my permission) I am now reluctant to comply with any of my sons requests for purchases of other items. If I do not agree I appear to be mean to him. How can I appear to be fair to him?[14]

10.38 Other non custodial parents criticised the CSA's practice of not crediting non agency payments without the custodial parent's approval:

> In dealing with the CSA on what constitutes maintenance and Non-Agency Payments, I am advised that unless my wife agrees to my non-agency payments, such payments cannot be deducted from my Child Support Assessment. The difficulty with this is that if the payee is uncooperative, the payer is out of pocket, despite a seemingly black and white case as to who the beneficiary is / was. ... Example: In the last twelve months I have spent $300 on shoes for my son, $900 in health benefits, hundreds of dollars in clothing and other opportunity costs. For 50% of the time the child has been in the mother's care and obviously my wife has been a beneficiary of my expenses. Yet, if she does not concede to accepting this as child support I do not get any relief from monthly child support payments. This situation is likely to continue into our child's educational arrangements unless I force the issue (at great expense) for a Child Support Agreement through the Family Law Court. ... There should be in place some

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13 Submission No 4510

14 Submission No 2754

> guidelines that the CSA can adjudicate what constitutes child support.[15]

10.39 In his 1991-92 Annual Report, the Commonwealth Ombudsman stated that:

> The child support legislation provides that the CSA can credit such direct payments against a payer's debt if it is satisfied that at the time the payment was received both parties intended the payment as child support.
>
> The CSA's interpretation of this provision is that, if the payee does not agree that the payments received direct from the payer were for child support, it does not matter how much objective evidence there is to indicate that at the time the payments were made the payee intended them as child support. Without the payee's agreement, the CSA will not credit such payments against the payer's liability. ...
>
> In my view, the CSA is not applying the law correctly in these cases. The child support legislation authorises the CSA to exercise a discretion to credit payments made outside its system. It appears that the CSA ignores the existence of this discretion and simply acts on the advice provided by the payee, regardless of the objective evidence available. This leads to a perception among some payers that the CSA is biased in favour of payees -a perception that is not conducive to their voluntary compliance with their child support responsibilities.[16]

10.40 Most non agency payments are made in the period immediately following the breakdown of a relationship, whilst both parents are subject to stress and trauma, it will not be surprising should most parents fail to address their minds to the necessary intention at the time non agency payments are being made. The Joint Committee considers that the provisions of sections 71 and 71A of the *Child Support (Registration and Collection) Act 1988* to be unnecessarily restrictive. It is important that the child support legislation encourages non custodial parents to make provision for the financial support of their children as soon as possible after separation occurs. The requirements of these sections for parents to address their minds

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15 Submission No 3628

16 Commonwealth and Defence Force Ombudsman, **Annual Report 1991–92**, 99 34–35

to the intent of these payments, during a period of significant stress, is both unrealistic and needlessly bureaucratic.

10.41 The Joint Committee considers that non custodial parents should be given more choice in respect of the form in which child support is provided by them as this would allow them a more realistic opportunity to participate in the upbringing of their children if they so desire. This could be achieved by allowing non custodial parents to direct a portion of their child support payment to specific expenses of the child. The Child Support Registrar could be given the discretion to accept certain forms of child support when, in his opinion, these forms are in the interests of the child and would not serve to impoverish the custodial parent and children. The Child Support Registrar should publish a list of what are broadly considered acceptable forms of support and discuss, on a case by case basis, any other items on which acceptance may be doubted.

10.42 The percentage of the child support payment which the non custodial parent should be allowed to direct should not be so high as to threaten the custodial parent's ability to provide essential support such as food and rent. The Joint Committee notes the provisions of section 128 of the *Child Support (Assessment) Act 1988* allow custodial parents who are in receipt of an income tested pension, allowance or benefit to elect to receive at least 75 per cent of their child support entitlement in periodic payments thereby ensuring that the priorities for financial support are compatible with the children's financial needs.[17] Using this as a guide, setting 25 per cent of the child support payment as the maximum amount of child support which can be directed by the non custodial parent should ensure that the financial priorities for support of the child are not threatened.

10.43 Moreover, the flexibility of this approach could be augmented by allowing the non custodial parent to direct a further 35 per cent or more to eligible expenses if the custodial parent is in agreement. This could be extended to 100 per cent where the non agency payment is made in an emergency with the consent of the custodian. This would retain the flexibility of the existing non agency provisions which are often used by parents to overcome situations where the custodian is in urgent need of support.

17 Submission No 5085, Vol 1, p 89

10.44 It is important that any mechanism which allows non custodial parents greater input into the form of support they provide to their children not be capable of being used as a weapon in cases where the relationship between parents is antagonistic. As an example, if a custodial parent in receipt of social security benefits purchases an item for his or her children, a non custodial parent could reduce that month's child support payment by purchasing the same item as a means of 'getting back' at the previous partner. The Joint Committee considers that these circumstances would simply be a factor which the Child Support Registrar would take into account in exercising his discretion to accept non agency payments as child support.

10.45 Undoubtedly disputes will arise between parents about whether the child in question received the form of child support which was supposed to be provided by the non custodial parent. In particular, when the non custodial parent has formed a second relationship, it may be difficult to obtain sufficient evidence that the child support allegedly provided was for a child of the previous relationship. Custodial parents may find it difficult to prove that this support had not been provided by the non custodial parent. Where disputes like this arise, the Child Support Registrar may not have sufficient evidence on which to make an informed decision as to whether or not the child support in dispute was paid. In these circumstances the Joint Committee considers that the Child Support Registrar should be given the discretion to remove a liable parent's option to select the form in which he or she will provide child support. This discretion should only be exercised when, in the opinion of the Child Support Registrar, continued provision of non cash support will result in intractable disputes between the parents.

10.46 The Joint Committee recommends that:

Recommendation 67

the child support legislation be amended to allow the Child Support Registrar the discretion to credit certain non agency payments as child support when, in the Child Support Registrar's opinion, these payments are in the interests of the child, subject to the following circumstances:

(a) limit the Child Support Registrar's discretion to accept non agency payments as child support to 25 per cent of the liable parent's child support payment for any given month without requiring the consent of the custodial parent;

(b) allow the Child Support Registrar the discretion to accept a further 35 per cent of the child support payment as non agency payments but only where the custodial parent's consent is forthcoming;

(c) allow the Child Support Registrar the discretion to accept 100 per cent of the child support payment as non agency payments where the non agency payment is made in an emergency with the consent of the custodial parent; and

(d) allow the Child Support Registrar the discretion to remove a liable parent's option to select the form in which he or she will provide child support when, in the opinion of the Child Support Registrar, continued provision of non cash support will result in intractable disputes between the parents.

10.47 The Joint Committee also considers that the CSA has been seriously remiss in not informing non custodial parents of the basis upon which it assesses direct payments. This has denied non custodial parents access to information essential to an educated decision on how to arrange for the financial support of their children. It is clear, on the basis of evidence before the Joint Committee, that the failure by the CSA to caution non custodial parents about the CSA practice of allowing custodial parents a veto on whether direct payments were in lieu of child support, has financially disadvantaged many non custodial parents. Consequently, the Joint Committee considers that the CSA should take immediate steps to inform both custodial and non custodial parents in CSA correspondence of its policy on the

crediting of non agency payments to ensure that parents' decisions are made with the full knowledge of their rights and obligations.

10.48 The Joint Committee recommends that:

Recommendation 68

the Child Support Agency takes immediate steps to inform parents in Child Support Agency correspondence of its policy on the crediting of non agency payments.

Child Support Accountability

10.49 An alternative to giving the non custodial parent more choice in respect of the form in which child support is provided by them is to require the custodial parent to account for how he or she spends the child support monies received from the non custodial parent. Some submissions suggested that custodial parents should be accountable for the use of child support monies. One non custodial parent submitted to the Joint Committee:

> Firstly, I take pride in financially supporting my children. I am happy to spend whatever amount of money I can on my children's education, health, entertainment, clothing, etc. ... However, the money is given to my former wife with no requirement placed on her as to HOW the money is being spent. The presumption is made that the money would be spent in support of the children and for their benefit. But no check is in place to ensure or verify this. I have seen more than ample evidence that the money is NOT spent in this way, for the most part, by my former wife.[18]

18 Submission No 3649

10.50 Similarly, another submission stated that:

> Probably my main concern and discontent with the law as it stands is that I am forced to pay, but there is no check to ensure that the money is used to keep Lloyd. Nobody is interested. ... If I think my son is not being kept in the manner to which he should considering the $90 per week I am paying, I have no recourse. ... Up until recently the only pair of shoes he had was a second-hand pair of sneakers given to him by his half sister (the daughter of my ex wife's first marriage), he now has one new pair of sneakers. Presently to my knowledge he only has one pair of long trousers, which I bought him recently, the rest of the time he is dressed in cheap track pants.[19]

10.51 On the other hand, custodial parents have submitted that it is unacceptable that they be made accountable for the use of child support payments. One custodial parent explained:

> Whilst I do receive maintenance from my ex-husband, I am constantly harassed by him for explanations of what I do with the $60 / week and why I do not move "his" children away from this area to a more suitable housing situation. It is a constant bone of contention with him that I "must spend all his money on myself" and this is a common grievance in many letters to the editor of different newspapers. ...
>
> From my experience with other sole parents, any maintenance paid must just be absorbed into a 'general' purse for any use by the custodial parent. It is totally illogical to set aside this amount and determine exactly what it is to cover. For instance: in my case, the amount of maintenance would barely cover food, let alone any clothes, school excursions, social activities, health & medical items.
>
> I hope that this issue will not become a viable by-law, making it possible for non custodial parents to be able to make the custodial parent accountable for every cent paid as child maintenance. That would be a totally unacceptable situation, open to considerable abuse by the non custodial parent in that it could lead to increased harassment, aggravation and possibly violence.[20]

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19 Submission No 1670

20 Submission No 2486

10.52 This issue was raised in the Joint Committee's previous report on the Child Support Hotline[21] where concern was expressed that child support money was being expended to enhance the lifestyle of the custodial parent and possibly a new partner and was not being directed towards the children. In this regard, the Australian Council of Social Service (ACOSS) submitted that:

> To require a separate accounting for spending on weekly household expenses such as food, rent, clothes, school and child care, would be complex, intrusive and pointless.[22]

10.53 The Joint Committee agrees that to require the custodian to separately account for how child support was spent would be very intrusive, complex, costly and an administrative nightmare.

21 Paragraph 11.12 of **Thanks for Listening**

22 Submission No , Vol 6, p 172

11

Private collection of child support

Introduction

11.1 The original philosophy of the Child Support Scheme was based on the premise that the best way for parents to decide how their children are to be supported is to amicably agree what the arrangements should be without the intervention of Government in the form of the Child Support Agency (CSA). The mechanism which was intended to provide the vehicle for private agreements and therefore private collection was the child support agreement which could also be lodged with the CSA for collection if necessary. In this way, the CSA would only be responsible for the collection of the more difficult cases where parents could not reach an agreement in relation to child support or where an existing agreement had broken down.[1] The effect of this would be to minimise the intervention of Government as well as the CSA's cost of administering the Scheme.

11.2 The Joint Committee notes that private collection under the Scheme has developed in a different manner from what was originally envisaged. Child support agreements have not been widely used by parents. Instead, many parents have opted for private collection of a CSA determined liability.

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1 Submission No 5083, Vol 2, p 69

11.3 The development of the Scheme towards this type of private collection has occurred because the Scheme has placed certain restrictions on the ability of parents to choose their own arrangements. These restrictions vary depending upon whether Stage 1 or Stage 2 of the Scheme applies to the children and whether the custodial parent is in receipt of, or has applied for, the sole parent pension or Additional Family Payment.

Stage 1 Child Support Collection Options

11.4 Under Stage 1 of the Scheme parents can:

- negotiate an 'informal agreement' for the private collection of child support. This is purely a personal agreement (written or unwritten) between the parents which is outside both the Courts and the CSA;
- register an agreement for the payment of child support with the Court and either privately collect the child support or register the court registered agreement with the CSA for collection; or
- obtain a court order for the payment of child support and either privately collect the child support or register the order with the CSA for collection.

11.5 If the custodial parent is in receipt of, or has applied for, a sole parent pension or Additional Family Payment then he or she must take 'reasonable maintenance action' to continue to qualify for these social security benefits. The definition of reasonable maintenance action under Stage 1 of the Scheme is set out in the Department of Social Security Administrative Guidelines discussed in detail in Chapter 5. Briefly, this means either:

- receiving child support under an informal agreement;
- applying to the CSA for collection of child support under a court order or court registered agreement;
- privately collecting 100 per cent of a court order or court registered agreement; or
- having court proceedings in progress.

Stage 2 Child Support Collection Options

11.6 Under Stage 2 of the Scheme parents can:

- negotiate an informal agreement for the private collection of child support which is outside the Courts and the CSA;
- complete a 'child support agreement' on a standard form available from the Child Support Agency and either privately collect the child support or register the child support agreement with the CSA for collection; or
- apply to the CSA for a child support formula assessment and either elect to privately collect the child support or register the child support assessment with the CSA for collection.

11.7 If the custodial parent is in receipt of, or has applied for, a sole parent pension or Additional Family Payment then he or she must take 'reasonable maintenance action' to continue to qualify for these social security benefits. Reasonable maintenance action under Stage 2 differs from the definition under Stage 1 and is set out in Department of Social Security Administrative Guidelines discussed in Chapter 5. Briefly, this means that the custodial parent must apply to the CSA for a child support assessment and either:

- have payments collected by the CSA; or
- privately collect 100 per cent of the child support assessment.

11.8 Where a custodian applies for the sole parent pension or Additional Family Payment but already has a child support assessment or registered child support agreement which is being privately collected, the Department of Social Security (DSS) will check that the amount of child support being received is at least as much as the child support assessment amount. If the custodian does not take the necessary action to increase the amount privately collected to 100 per cent of the formula assessment the sole parent pension and Additional Family Payment may be suspended by the DSS.

11.9 The Joint Committee notes that an anomaly arises when the Child Support Registrar accepts a child support agreement which is for less than 100 per cent of the formula assessment. This occurs, for example, when a custodian lodges a child support agreement with the Child Support Registrar and it is accepted before she/he applies to the DSS for the sole parent pension or Additional Family Payment. The acceptance of a child

support agreement by the Child Support Registrar means that the CSA is satisfied that the children of the parents are eligible under Stage 2 of the Scheme. It does not mean that the CSA has made a judgement about whether the child support payable under the child support agreement is adequate or, in the case of a sole parent pensioner, whether it meets the reasonable maintenance action requirement of being for at least 100 per cent of the applicable child support assessment. Consequently, a custodian who has applied for sole parent pension or Additional Family Payment may be in the position where he or she or the CSA is collecting child support pursuant to an 'accepted' child support agreement which fails the 'reasonable maintenance action' test for eligibility for sole parent pension and Additional Family Payment.

11.10 The Joint Committee notes that the DSS's practice in these circumstances is to grant the relevant social security benefit. On 6 April 1994, the Assistant Treasurer announced that this anomaly would be rectified by an amendment to the child support legislation requiring the CSA to accept only child support agreements from a custodian who is a DSS client which are for 100 per cent or more of the amount that would have applied under the child support formula. Presumably, existing child support agreements which are for less than 100 per cent of the formula assessment will also be unacceptable unless they are amended so that they satisfy the DSS reasonable maintenance test.

Private Collection of Child Support

11.11 DSS submitted to the Joint Committee that:

> One of the hallmark and unique features of the Australian Scheme is the right of parents, even where the custodian is receiving social security payments, to collect child support privately provided the amounts collected are adequate - thereby protecting the interests of children, and those of taxpayers in relation to the level of fiscal savings on outlays.
>
> This right of private collection limits Government intervention to those cases where it is essential and is a significant efficiency mechanism for keeping costs down. In 1992-93, around 73 percent of the $450m child support declared to DSS was paid privately

between parents. The remaining 27 percent was collected by the Child Support Agency.[2]

11.12 As highlighted above the private payment of child support can arise from the private collection of informal agreements, court orders or court registered agreements under Stage 1 or the private collection of informal agreements, child support agreements or child support formula assessments under Stage 2 of the Scheme.

11.13 The Joint Committee notes that statistics are not available in respect of the number of parents using informal agreements for the private collection of child support. Given that around 73 per cent of the $450m child support declared to DSS in 1992-93 was paid privately, agreements may account for a significant proportion of the total child support declared to DSS. However, a major proportion of this figure must also stem from the private collection of child support formula assessments and child support agreements which are registered with the CSA. The following analysis of the CSA's caseload highlights the importance of this type of private collection.

11.14 The CSA's total caseload and active caseload for each year of the Scheme's operation is set out in the following table:[3]

Table 11.1 Total Caseload of the Child Support Agency[4]

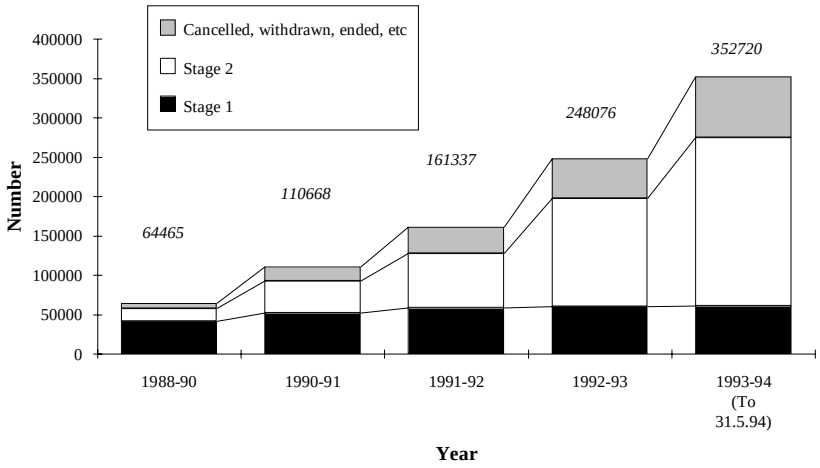
	1988–90	1990–91	1991–9	1992–93	1993–94 (to 31.5.94)
Active Caseload Stage 1	41,904	52,230	59,070	60,386	61,022
Active Caseload Stage 2	15,954	40,348	68,865	137,761	214,196
Cancelled, withdrawn, ended, etc	6,607	18,090	33,402	49,928	77,502
ANNUAL TOTAL	64,465	110,668	161,337	248,076	352,720

2 Submission No 5085, Vol 1, p 12

3 The annual caseload figures show the amount of new cases for each year while the cumulative annual total shows the total caseload for each year

4 CSA letter dated 8 July 1994

Figure 11.1 Total Caseload of the Child Support Agency[5]



11.15 The Joint Committee notes that in 1992-93 there was a major increase in the Stage 2 active caseload caused by the abolition of pseudo assessments from 1 July 1992. This meant that social security custodians could no longer obtain an estimate of the amount that would be payable under the formula (that is, a pseudo assessment) if they wished to collect privately. Instead they must now apply to the CSA for a formula assessment, thereby becoming part of the CSA's active caseload, and then elect to collect 100 per cent of this amount privately.

11.16 Those clients which make up the difference between the total and active caseload of the CSA are those who are now ineligible, cancelled, withdrawn or their case has ended. These terms reflect CSA computer codes which have the following meanings:

- ineligible - this applies when the applicant does not meet the criteria as set out in the legislation or those Stage 1 cases where they do not have a court order;
- cancelled - this applies when the CSA cancels the case prior to any activities being undertaken. This occurs in cases such as duplications;
- withdrawn - this applies when the payee provides the CSA with a form which stops the assessment before the assessment is made. This occurs in cases such as reconciliations; and

5 ibid.

- cases ended - this applies when the payee lodges a form with the CSA which ends the liability. This would occur in circumstances such as when the payee opts out of Stage 1 or there is some form of reconciliation.

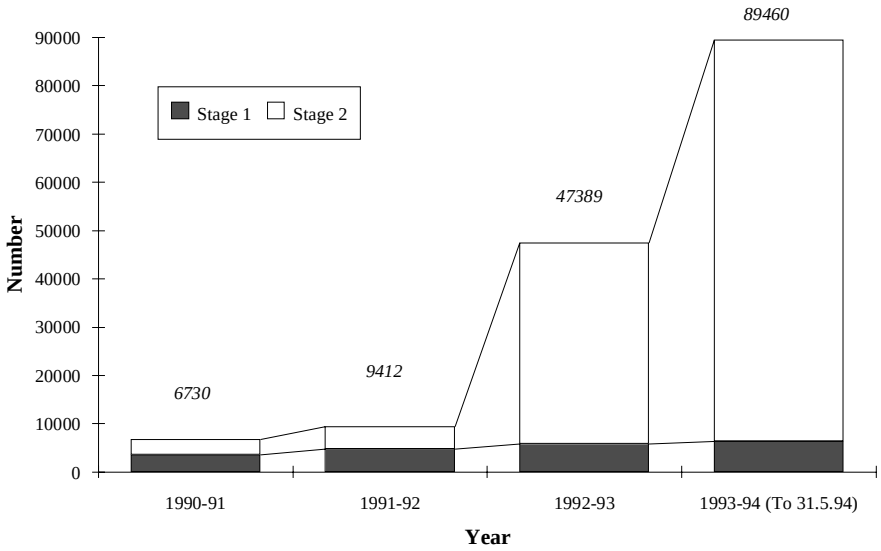
11.17 A major component of the CSA's active caseload is those clients who privately collect child support. As Table 11.2 shows, the total number of CSA clients who privately collect child support as at 31 May 1994 was 89,460 which represents approximately 32.5 per cent of the CSA's active caseload. The balance of the CSA's active caseload represents those liabilities which are registered with the CSA for collection. Figure 11.2 illustrates the level of cases collected by the CSA under each Stage of the Scheme.

Table 11.2 CSA Clients who Privately Collect Child Support[6]

	1988–91	1991–92	1992–93	1993–94 (to 31.5.94)
Private Collection Stage 1	3,513	4,715	5,794	6,385
Private Collection Stage 2	3,217	4,697	41,595	83,070
ANNUAL TOTAL	6,730	9,412	47,389	89,460

6 ibid.

Figure 11.2 CSA Clients who Privately Collect Child Support under each Stage of the Scheme[7]



11.18 The number of CSA clients collecting privately and the total amount of child support declared by sole parent pensioners to the DSS contrasts with the comparatively small number of CSA clients who have registered child support agreements with the CSA. As Table 11.3 shows, the total number of child support agreements is only 8,791 with 4,573 (52 per cent) being collected by the CSA and 4,218 (48 per cent) being collected privately.

Table 11.3 Registered Child Support Agreements[8]

	1988–91	1991–92	1992–93	1993–94 (to 31.5.94)	Total
Collecting (by consent)	206	909	1,099	2,359	4,573
Not collecting (by consent)	192	634	1,039	2,353	4,218
TOTAL	398	1,543	2,138	4,712	8,791

11.19 In its final report to the Parliament, the Child Support Evaluation Advisory Group (CSEAG) was critical of the low number of registered child support agreements:

> The numbers of child support agreements registered at the Child Support Agency - only six hundred - is very disappointing. At the commencement of the Scheme this was thought to be a major proposal presenting the opportunity for many separating couples

7 ibid.

8 ibid.

> simply to take an agreement to the Agency and register it. Except in the case of pensioners, there would be no need for any third party to participate in setting this agreement, relieving the parents of legal expenses and delays in process.[9]

11.20 CSEAG noted that initially the CSA's form to register such an agreement was far too complex and may have inhibited participation. CSEAG also suspected that the knowledge in the community of child support agreements was generally low and concluded that a greater effort was needed to publicise their availability. The CSA submitted to the Joint Committee that:

> ... since the Advisory Group [CSEAG] raised this issue we have worked hard to promote private agreements through the following means:
>
> - a plain English agreement application form was developed by the CSA in consultation with the Law Council of Australia and tested with clients; the form was widely promoted and circulated in July 1991
> - revising all written publicity and advertising to place the option of entering into a private agreement first; this was promoted in a national newspaper and outdoor advertising campaign which ran from April to August 1991 and recommenced in April 1992
> - producing newspaper articles on agreements which received widespread national coverage from June to August 1992 and talking on national radio on the issue. The national radio segment 'Coping with Kids' by eminent family psychologist, Dr John Irvine, covered this issue in his mid-May 1992 program
> - two videos have been produced, one circulated through doctors' surgeries in April, May and October 1991 and the other aired on SBS television during April 1992, both of which emphasised the benefits of agreements
> - a book on child support was developed jointly by the CSA and the educational publishers Jacaranda-Wiley and distributed nationally through bookshops and newsagencies in August 1992, a major segment of this book was devoted to agreements
> - seminars were held nationally for family lawyers in March and April 1991 and they stressed the importance of agreements.[10]

9 CSEAG, **Child Support in Australia**, Vol 1, p 158

10 Submission No 5083, Vol 2, pp 53–54

11.21 The CSA submitted that the number of child support agreements may be low for the following reasons:

> The use of agreements is still not widespread. Only 3151 have been lodged with the CSA to date. We suspect that this is because the application for formula assessment is so simple and that the majority of our clients are also DSS clients. As part of its reasonable action rules, DSS requires any custodian applying for a sole parent pension from 1 July 1992 to apply for a child support assessment. This makes child support agreements for sole parent pensioners largely superfluous since any agreed amount must be at least what would be payable under a child support assessment.[11]

11.22 The Joint Committee received 317 submissions complaining that the CSA removes the ability of parents to make their own arrangements. This represents 5.1 per cent of the total submissions received. Of these submissions, 224 were from custodial parents (11.3 per cent of custodial parents submissions) while 44 were from non custodial parents.

11.23 The general thrust of these submissions is summed up by the following submission from a custodial parent:

> In my case my husband and I fully discussed the topic of child support and mutually agreed that we did not want to pay or receive [sic] it. Both of us sharing the needs of the children financially. It then seems an invasion of our privacy and our rights as adults to make our own amicable agreements that suit us, for the Agency to [sic] be called in by the social security and virtually insist on a formal agreement through the courts or whatever. These actions by the Agency and the Dept. Social Security can only breed unnecessary unrest between parties that before were totally happy with their own decisions [sic].[12]

11.24 Similarly, a non custodial parent submitted:

> The heavy handed and totally inflexible attitude of the Department of Social Security is another factor worth mentioning. The fact is that my ex-wife and I had a personal agreement regarding the amount of maintenance to be paid, and we were both happy to continue with this agreement. When my ex-wife lost her job recently and went on to the pension, she was told by

11 Submission No 5083, Vol 2, p 102

12 Submission No 3048

> the Department of Social Security that I would have to pay the full amount of maintenance (under the assessment formula) or she would not receive the pension. My ex-wife and I had a personal maintenance agreement (which is allowed by the Child Support Agency) which was working and acceptable to us both - why does a third party (Department of Social Security) have to interfere and demand that I pay a higher amount, thus causing more hardship for myself and my family?[13]

11.25 These submissions show how the DSS requirement that custodians take reasonable maintenance action to qualify for social security benefits draws Stage 2 custodians into contact with the CSA. The requirement that these custodians must collect 100 per cent of the child support formula assessment pursuant to any private arrangement is clearly intrusive to both custodial and non custodial parents and has the effect of disrupting established amicable private payment arrangements. Consequently, it is not consistent with the objectives of the Scheme that overall arrangements are not intrusive upon personal privacy and are simple, flexible and efficient. It is also inconsistent with section 4(3) of the Child Support (Assessment) Act 1989 which states:

> **4(3) [Private arrangements for financial support]** It is the intention of the Parliament that this Act should be construed, to the greatest extent consistent with the attainment of its objects:
>
> (a) to permit parents to make private arrangements for the financial support of their children; and
>
> (b) to limit interferences with the privacy of persons.

11.26 However, the DSS requirement in respect of reasonable maintenance action stems from another objective of the Scheme, namely, that Commonwealth expenditure is limited to the minimum necessary for ensuring that adequate support is available to all children not living with both parents. The Joint Committee considers that this objective must be the overriding objective in these circumstances as this interpretation promotes the adequacy of the child support payment and ensures that the parents of the child bear the primary responsibility for the support of that child rather than the taxpayer.

13 Submission No 6080

Impact of Private Collection on the Child Support Agency

11.27 The Joint Committee notes that the relatively high rate of private collection by CSA clients (32.5 per cent) and the high amount of privately collected child support declared to DSS (73 per cent of $450m in 1992-93)[14] appears to indicate that the low number of child support agreements has not adversely affected the overall level of private collection under the Scheme. The Joint Committee welcomes this high level of private collection and considers that this should be encouraged wherever possible.

11.28 The Joint Committee also notes that there should be a direct relationship between the rate of private collection by CSA clients and the cost of administering the Scheme by the CSA. The higher the rate of private collection the lower the number of clients requiring CSA collection and the lower the cost of administration of the Scheme by the CSA.

11.29 Whilst this relationship does not precisely reflect the original philosophy of the Scheme that parents negotiate private agreements for the payment of child support with custodial parents only applying to the CSA if the arrangement breaks down,[15] it has a similar effect on the resources of the CSA. The only difference is the CSA bears the administrative cost of providing a child support formula assessment or processing registration of court orders, court registered agreements or child support agreements which may have been avoided if the parents had reached an agreement for private collection outside the CSA. However, this cost is minimal compared with the cost of CSA collection and may have been incurred in any event through the registration of child support agreements. The low number of these agreements demonstrates how the Scheme has developed towards increased private collection of a CSA determined liability rather than through an increase in child support agreements as originally envisaged. The Joint Committee welcomes this development as it minimises Government involvement in people's lives, improves the adequacy of child support received and minimises the administrative cost of the Scheme all at the same time.

14 This includes private collection of CSA registered child support liability as well as private collection of informal agreements outside the CSA

15 Submission No 5083, Vol 2, p 69

11.30 The Joint Committee notes that the trend towards private collection of a CSA determined liability will probably be reinforced by the following proposed amendments to the Child Support (Assessment) Act 1989 announced by the Assistant Treasurer on 6 April 1994:

- where the custodian is a DSS client, the CSA will not be able to accept a child support agreement which is for less than 100 per cent of the amount which would have applied under the child support formula; and
- custodians on DSS benefits who receive regular child support payments will have more than one opportunity of opting to collect their child support privately. Currently, a DSS beneficiary can make a once-only election to either have the CSA collect or have the non custodial parent pay privately. This will put custodians who are DSS beneficiaries in a similar position to custodians not in receipt of social security benefits who can currently opt out of CSA collection at any time.

11.31 The amendment relating to child support agreements will tend to make these agreements superfluous for social security clients as any agreed amount must be at least what would be payable under a child support assessment. This will mean that child support agreements made by social security clients will only determine the form, that is the split between cash and non cash child support, rather than the amount of the child support. The latter will be determined by the CSA although parents will be able to agree to pay more than the child support formula amount. Consequently, the number of clients requiring the CSA to determine the applicable amount of child support should increase. However, this does not necessarily mean that the number of CSA clients using the collection function of the CSA will increase as the amendment relating to opting out will allow custodians on DSS benefits the option of collecting privately.

11.32 The CSA advised the Joint Committee of some of the proposed administrative arrangements which will apply to the amendment relating to opting out:

> It will be at the Child Support Registrar's discretion to agree to a request from the payee for private collection. Some conditions will apply: e.g. the Registrar will have to be satisfied that the payer has a "reliable payment record". There is also likely to be a limit on the number of times a payee can opt in or out of collection, so that the CSA is not faced with the administrative difficulties caused by constant changes of mind. There will also be limitations on the extent to which the CSA will pursue arrears if private

payment arrangements break down and the payee asks the Agency to collect.[16]

11.33 This amendment will allow parents more choice, more privacy and, as custodians on DSS benefits opt out of CSA collection, should reduce the workload on the CSA's staff, thereby freeing up resources to concentrate on more difficult cases. Whilst it is impossible to calculate how many custodians on DSS benefits will elect to opt out, the number is likely to be significant and this should translate into significant savings to the CSA. Custodial parents should also benefit from receiving their child support more promptly and perhaps at more frequent intervals, while non custodial parents will be able to avoid having their privacy compromised by employer deductions of child support from their pay.

11.34 Whilst the Joint Committee supports the amendment relating to opting out for DSS clients, the Joint Committee is concerned that it does not go far enough in encouraging both DSS and CSA clients to opt for private collection in preference to the simpler option of remaining with the CSA for collection purposes. There will be many custodial parents who will prefer to retain the use of the CSA as an intermediary even when the non custodial parent has consistently demonstrated that he or she is a reliable payer of child support. Their reasons for doing this may simply be a lack of trust in their former partner or it may be vexatious. Whatever the reason, the result is that many of these cases not only unnecessarily tie up the CSA's resources but also intrude upon the non custodial parent's right to privacy as well as his/her input into the decision regarding how the child support should be paid.

11.35 The CSA submitted to the Joint Committee that 56 per cent of the liabilities registered for collection with the CSA are paid on time.[17] This total represents approximately 104,024 of the liabilities registered with the CSA for collection as at 31 May 1994.[18] A subset of this figure is those clients whose child support liability is collected by the CSA through automatic withholding. This automatic withholding represents approximately 33 per cent (61,298) of the total liabilities registered with the CSA for collection. Consequently, the difference between the total number of liabilities registered with the CSA for collection which are paid on time (104,024) and the number of liabilities collected by the CSA through autowithholding (61,298) represents the number of liable parents who

16 Submission No 6194, Vol 12, p 32

17 Submission No 5083, Vol 2, p 9

18 That is, total active caseload (275, 218) less than total private collection caseload (89,460) equals liabilities registered with the CSA for collection (185,750) multiplied by 56 per cent equals liabilities registered with the CSA for collection which are paid on time (104,024)

voluntarily pay child support to the CSA on time (42,724 or 23 per cent of the total number of liabilities registered with the CSA for collection). The Joint Committee considers that the CSA would be able to save substantial resources if these 'voluntary payment cases' (42,724 or 23 per cent) were collected privately.

11.36 The Joint Committee notes that included amongst these voluntary payment cases will be those custodians who receive DSS benefits and who will elect to opt for private collection of child support once the amendments announced by the Assistant Treasurer on 6 April 1994 are implemented. Other voluntary payment cases will include:

- custodial and non custodial parents who are happy with the CSA collection of their child support liability and who do not wish to move to private collection;
- non custodial parents who wish to pay privately but are deprived of this opportunity by the custodian or the CSA;
- custodians who do not wish to have any contact with the liable parent due to special circumstances such as duress or domestic violence; and
- non custodial parents who do not know the whereabouts of the custodian and who would therefore have difficulty in establishing a private collection arrangement.

Opting Out of CSA Collection

11.37 The Joint Committee considers that a large proportion of those parents who voluntary pay child support to the CSA on time could be safely moved off CSA collection. This could be achieved by giving the Child Support Registrar the discretion to substitute private collection for CSA collection where a liable parent has established a reliable voluntary payment record of six months. However, there will be some special cases, such as those involving duress or domestic violence, where private collection will not be appropriate. The Joint Committee considers that in order to encourage private collection and minimise the CSA's collection costs, the Child Support Registrar should ordinarily exercise his discretion to substitute private collection for CSA collection except where the special circumstances of the case require otherwise.

11.38 The encouragement of opting out of CSA collection is consistent with the Joint Committee's recommendations concerning the CSA's use of its power to automatically withhold[19] child support from the income of liable parents through the PAYE taxation system. Liable parents will be able to request the CSA to discontinue autowithholding in favour of voluntary payments to the CSA. The introduction of opting out would then generally enable these parents to leave CSA collection once the liable parent has demonstrated a regular payment record. The end result would be a less intrusive Scheme and further reductions in the CSA's administration costs. The CSA would then be able to redirect these saved resources into dealing with the more difficult collection cases as was originally intended.

11.39 The Joint Committee considers that opting out would require a safety net where the liable parent defaults on his/her child support liability. If this occurs the CSA must immediately assume responsibility for collection of the liability. The Joint Committee also considers that once parents have opted out of CSA collection there should be no avenue for opting back in unless the Child Support Registrar determines that the liable parent has defaulted or that special circumstances apply.

11.40 The Joint Committee recommends that:

Recommendation 69

the child support legislation be amended to give the Child Support Registrar the discretion to substitute private collection for Child Support Agency collection where a liable parent has established a reliable voluntary payment record of 6 months.

Recommendation 70

the Child Support Registrar's discretion to substitute private collection for Child Support Agency collection be ordinarily exercised in favour of private collection except where the special circumstances of the case require otherwise.

19 See Chapter 9

11.41 The CSA should also establish a national guideline setting out what arrangements are suitable for private collection so that an audit trail is created to allow the payment of child support to be tracked if necessary. This would provide the Child Support Registrar with the means to determine any dispute about whether or not the liable parent has paid the required child support.

11.42 The Joint Committee recommends that:

Recommendation 71

the Child Support Agency establishes a national guideline on acceptable private child support collection arrangements.

Child Support Agreements

11.43 Part VI of the *Child Support (Assessment) Act 1989* regulates the content and form of private agreements and applies whether or not a formula assessment is already in force in relation to the child. An agreement is a child support agreement only if it is in writing, signed by the custodial and liable parent, made in relation to a child in relation to whom an application for formula assessment is entitled to be made and includes provisions of one or more of the following kinds:

- provisions under which a party is to pay child support for a child to another party in the form of periodic amounts paid to the other party;
- provisions under which the rate which a party is already liable to pay child support for a child to another party in the form of periodic amounts paid to the other party is varied;
- provisions agreeing between parties any other matter that may be included in an order made by a court under Division 4 of Part VII (orders for departure from formula assessment in special circumstances);
- provisions under which a party is to provide child support for a child to another party otherwise than in the form of periodic amounts paid to the other party;
- provisions under which the liability of a party to pay or to provide child support for a child to another party is to end from a specified day.

11.44 If the agreement includes provisions under which a party is to provide child support for a child otherwise than in the form of periodic amounts it must state whether this child support is to be credited against the liable party's liability under any formula assessment that relates to the period for which the provisions of the agreement have effect.[20] It must also state either:

- that the child support has an annual value of a specified amount and that the annual rate of the child support payable under any relevant formula assessment is to be reduced by that amount; or
- that the child support is to count for a specified percentage of the annual rate of child support payable under any relevant formula assessment.[21]

11.45 If the agreement also includes provisions of a kind not falling within those stated above then these provisions have no effect for the purposes of section 84(5) of the *Child Support (Assessment) Act 1989*. If the required provisions are present in the agreement and an application, in the approved form, is made to the Child Support Registrar, the Child Support Registrar must accept the child support agreement. This has the following implications:

- where child support is not already payable by the liable parent for the child, its acceptance by the Child Support Registrar has the same effect as the acceptance by the Child Support Registrar of an application for formula assessment of child support for that child; or
- where child support is already payable by the liable parent for the child, the Child Support Registrar must immediately take such action as is necessary to give effect to the agreement in relation to any formula assessment that has been made in relation to the child (whether by amending the assessment or otherwise).

11.46 Where the child support agreement does not include provisions under which a party is to provide child support otherwise than in the form of periodic amounts, those provisions have effect as if they were an order made by consent by a court under Division 4 of Part VII.[22] This means that the formula assessment which would otherwise have applied is amended to reflect the terms of the child support agreement as if the court had accepted a departure application on these grounds. However, if the child

20 s. 84(2) *Child Support (Assessment) Act 1989*

21 s. 84(2)(c)(d) *Child Support (Assessment) Act 1989*

22 s. 95(2) *Child Support (Assessment) Act 1989*

support agreement includes provisions under which a party is to provide child support otherwise than in the form of periodic amounts and states that this child support is to reduce any relevant formula assessment by a specified amount or percentage, those provisions have effect as if they were a statement included in an order made by consent by a court pursuant to section 125 of the *Child Support (Assessment) Act 1989.* This means that the formula assessment will be varied to give effect to the child support agreement.

11.47 The provisions of Part VI do not prevent the same agreement being both a child support agreement under the *Child Support (Assessment) Act 1989* and a child agreement under Part VII of the *Family Law Act 1975* or a maintenance agreement under that Act.[23] The Joint Committee notes that the *Family Law Reform Bill 1994* introduces provision for the making of a parenting plan which will be an agreement dealing with, among other things, the maintenance of a child. The Joint Committee is of the view that the *Family Law Reform Bill 1994* should specifically refer to the child support liability of parents as a matter which may be included in a parenting plan. This will ensure the compatibility of the *Family Law Act 1975* and the *Child Support (Assessment) Act 1989* in relation to child support agreements.

11.48 The Committee recommends that:

Recommendation 72

the *Family Law Act 1975* and the *Child Support (Assessment) Act 1989* have compatible provisions to ensure that parenting plans, which include child support liability, and child support agreements are capable of acceptance by the Child Support Registrar pursuant to section 88 of the *Child Support (Assessment) Act 1989*.

23 s. 84(7) *Child Support (Assessment) Act 1989*

Pensioner's Right of Veto

11.49 If the custodial parent is in a receipt of an income tested pension, allowance or benefit then he or she may apply to the Child Support Registrar to limit the reduction in the annual rate of child support by only 25 per cent irrespective of precisely what percentage the child support agreement payments represent. This in effect gives the custodial parent a limited right of veto notwithstanding the child support agreement.

11.50 Either party may also apply to the court (at any time) for an order that the liable parent provide child support otherwise than in the form of periodic amounts where a formula assessment is in force in relation to that child. The court may make such orders as it thinks fit but any order is again subject to the right of a custodial parent receiving income tested pension, allowance or benefit to apply to the Child Support Registrar to limit any reduction in the annual rate of child support to only 25 per cent.[24] Subsection 124(2) of the *Child Support (Assessment) Act 1989* requires the court to have regard to this right of the custodial parent when making an order.

11.51 The exercise, by the custodial parent, of his or her right to limit the reduction in the annual rate of child support to a maximum of 25 per cent, may lead to the situation where the liable parent is making non periodic payments which amount to more than 25 per cent of the annual rate of child support under the formula assessment, but only receives credit under the formula assessment for 25 per cent of the annual rate of child support. The only way the liable parent can change this situation is to apply to the court for a modification of the child support agreement or its original order thereby incurring the associated costs and delay. This appears to contradict the additional particular objects of Division 5 of the *Child Support (Assessment) Act 1989*, namely, that parents share equitably in the support of their children.[25]

11.52 DSS submitted to the Joint Committee:

> This provision is included in section 128 of the *Child Support (Assessment) Act 1989* and is designed to protect custodians and their children in a number of circumstances:
>
> - to prevent a situation arising where the provision of non-cash forms of maintenance impoverishes the custodian and children

24 s. 128 *Child Support (Assessment) Act 1989*

25 s. 121 *Child Support (Assessment) Act 1989*

by reducing the social security payments to the extent that the family does not have enough liquid funds to live on; and

- to ensure that NCPs' expectations about priorities for financial support are compatible with the child(ren)'s financial needs, for example, to ensure that expensive schooling is not substituted for basic needs such as the costs of housing, clothing etc.

This is one of those areas where the provision is a difficult balancing act between providing flexibility and recognition for NCPs and protection for custodians. The number of cases using section 128 is small but conflict situations can emerge. Overall DSS considers that the current arrangements are appropriate.[26]

11.53 The Joint Committee agrees with the DSS view that the pensioner's right of veto contained in section 128 of the *Child Support (Assessment) Act 1989* is necessary to protect adequately custodians and their children. The Joint Committee notes that this right of veto does not affect the Joint Committee's recommendations in respect of non-agency payments in Chapter 10.

Enforcement of Child Support Agreements

11.54 Where a child support agreement has been accepted by the Child Support Registrar it may only be varied by a subsequent child support agreement that is accepted by the Child Support Registrar or by a court order if the child support agreement has been registered in a court having jurisdiction under the *Child Support (Assessment) Act 1989*.

11.55 Where a custodial parent has a child support agreement but is collecting privately, he or she can opt for the CSA to collect and enforce the periodic child support component of that child support agreement should the liable parent fail to pay. However, there is no simple and inexpensive mechanism available should the non custodial parent fail to make the non periodic payments agreed between the parties. In these circumstances, the custodial parent can only seek the non custodial parent's agreement to increase the periodic amount collected by the CSA in substitution for the previously non periodic payments or apply to the court for an amendment to the child support agreement. In the former case, the agreement of the non custodial parent is unlikely to be forthcoming, whilst in the latter the custodial parent would incur significant legal costs and delay.

26 Submission No 5085, Vol 1, p 89

11.56 A similar situation also arises where the non custodial parent's capacity to pay is either increased or decreased and the capacity to reflect this change was not included in the original agreement. This has the potential to cause hardship to either parent and can only be alleviated by a new agreement between the parties or by an application to the courts. This illustrates a conflict between the principal object of the *Child Support (Assessment) Act 1989*, namely, to ensure that children receive a proper level of financial support from their parents based upon their capacity to pay and the intention of Parliament that the *Child Support (Assessment) Act 1989* should be construed, to the greatest extent, consistent with the attainment of its objects, to permit parents to make private arrangements for their financial support of their children and to limit interferences with the privacy of persons.[27]

11.57 The Joint Committee considers that the ability of parents to negotiate the means by which child support should be provided is an important element of flexibility within the Scheme. However, child support agreements are a far from perfect tool in providing this flexibility, because they are often drawn up by parents with no legal expertise during a period of great stress. Consequently, the agreements entered often do not include necessary provisions for changes in individual circumstances over time, or for the possibility that the custodial parent may elect, at some stage in the future, to limit the reduction in the annual rate of child support by only 25 per cent. The immutability of these agreements therefore creates problems similar to those suffered by many Stage 1 clients of the CSA.

11.58 The CSA submitted the following in respect of this problem:

> Despite the philosophy of agreements they are inflexible at present. They can, of course, be changed at any time by mutual agreement. Parents would often establish agreements after separation to find later on that they had been too generous or been unaware of additional income or circumstances of their partner. Human nature being what it is they would change their attitude to their former partner, especially if there was a new circumstance such as the other partner remarrying or having a new child. One party alone cannot alter an agreement. If they wish to do this they have to go to court. We have been faced with the situation where a payer is unemployed yet the payee was insisting in collection by the CSA under a registered agreement. For this reason we are currently seeking the revision to have agreements reviewed by the

27 s. 4(3) *Child Support (Assessment) Act 1989*

> Child Support Review Office to give parents with an agreement similar flexibility. Parents should consider limiting the agreement to a certain period so that it can be replaced by another, more appropriate agreement to recognise changing circumstances.[28]

11.59 A method which could be used to improve the flexibility of child support agreements would be to allow either party to apply to the Child Support Registrar for a departure from the child support agreement when the actions or circumstances of either party change sufficiently to make the ongoing use of the agreement inequitable. This option would be simple to implement and would also have the benefit of promoting the adequacy of the original child support agreement.

11.60 The Joint Committee is concerned that it would be improper for the Child Support Registrar to vary existing child support agreements as this would be an exercise of judicial power. Existing child support agreements should continue to be only subject to variation by a new child support agreement or by a court order. However, the Child Support Registrar should be given the power to vary future child support agreements where this is clearly accepted by both parties to the agreement. This could be simply achieved by inserting a clause into the CSA's standard form child support agreement which grants the Child Support Registrar the power to vary the agreement in particular circumstances.

11.61 The Joint Committee recommends that:

Recommendation 73

the Child Support Registrar be given the power to vary future child support agreements on application from either parent where, in the Child Support Registrar's opinion, the actions of either party render the child support agreement, or clauses in the child support agreement, inequitable.

28 Submission No 5083, Vol 2, p 102

Recommendation 74

the Child Support Registrar be given the power to vary future child support agreements on application from either parent where, in the Child Support Registrar's opinion, the circumstances of either party have changed sufficiently to make the child support agreement, or clauses in the child support agreement, inequitable.

12

Review of child support agency decisions

Child Support Review Office

12.1 The Child Support Review Office (CSRO) was administratively established in July 1992 to be an independent and impartial process with the aim of providing an accessible system of review of child support formula assessments at no cost. The Government's announcement in the 1990-91 Budget to establish the CSRO followed expressions of concern that few parents were availing themselves of the departure process through the courts. Evidence to the Joint Committee from the Family Court of Australia supported the observation of the Child Support Evaluation Advisory Group (CSEAG) which stated that the low level of departure applications was partially attributable to the costs associated with going to the Family Court.[1]

12.2 Prior to the introduction of the CSRO an application for departure from a formula assessment was made to the Family Court of Australia under Division 4 of Part 7 of the *Child Support (Assessment) Act 1989* where special circumstances existed and the grounds for departure under section 117 of the Act were met. To be successful in obtaining a departure order an applicant must have demonstrated that at least one ground for departure existed.

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1 Submission No 5328, Vol 7, p 181

12.3 The CSRO was not specifically established by legislation other than by a description of the mechanism by which applicants may apply for a departure under Part 6A of the *Child Support (Assessment) Act 1989*. The Act only refers to the Child Support Registrar performing certain functions under Part 6A of the Act. The manner in which the Child Support Registrar has chosen to perform these functions is to appoint review officers who are established within the structure of the Child Support Agency (CSA). This differs from other Commonwealth review processes as the CSRO is not a separate entity from the CSA or the Child Support Registrar. The term 'review officer' is a descriptive title applied to persons who discharge the Child Support Registrar's functions.[2] There is no formal delegation of the Child Support Registrar's functions to the review officers.

12.4 As review officers have no independent power in their own right and are exercising limited powers delegated by the Child Support Registrar under section 149 of the *Child Support (Assessment) Act 1989*, the scope of their powers is limited to determining applications for departure. The term 'review officer' may indeed be misleading as the review officers do not appear to review a decision, but rather make a determination for the departure from the formula, thereby making an initial administrative decision. The CSRO is not empowered to review or consider any other administrative decisions of the CSA.

12.5 The present administrative review process enables a custodial or non custodial parent to apply to the CSRO for a departure from the child support formula assessment without the need to go to a court. The review process does not undertake a review of decisions of the CSA but reconsiders applications for departure from the formula assessment. The grounds for a review of a CSRO decision are still the same as those under section 117 of the Act. Consequently, if a person is dissatisfied with an administrative decision of the CSRO that person may apply to a court for a further determination.

12.6 An application for a departure from a formula assessment must be made in writing on the prescribed form to the CSRO or the CSA. When an application is received by the CSRO an acknowledgment is sent and a preliminary assessment of the application is made to see whether the elements of the requested departure exist. If the preliminary assessment shows that this is not the case then the matter is referred to a review officer who is required to make a formal decision that there are no grounds for review and the applicant is notified. If it is determined that

2 See Appendix 7 for the legislative functions of the review officers

there are valid grounds for a departure, a copy of the application is sent to the other party who is required to respond within 28 days. Following receipt of the response the matter is listed for a hearing before a review officer who is required to make a decision and provide reasons for the decision. Both parties are then advised of this decision. The child support review process is based on informality as opposed to the more legalistic and formal procedures of a court or tribunal.

12.7 Figures provided to the Joint Committee by the CSA indicate that, as at May 1994, 23,242 applications for a departure had been received. Of those applications 13,069 (56 per cent) have been heard resulting in a change to 7,221 assessments. Another 5,019 (22 per cent) applications were completed without a hearing. This leaves 4,735 (20 per cent) cases which have not been finalised by the CSA.[3] Most cases are completed within 90 days of receipt, and on average, a case will be completed within 60 days. The CSA advised the Joint Committee that those cases which take longer than the average 60 days to finalise are usually a result of the whereabouts of the other party being unknown.[4]

12.8 The Joint Committee received many complaints about the operation of the CSRO. Delays in the hearing of departure applications and the review officers not taking into account material produced by non custodial parents were major causes for complaint. Complaints were also made about the lack of discretion, the impersonality of the procedures, little publicity about people's rights, the unnecessary legalistic structure and approach of the CSRO, the inflexibility of the procedures and the lack of an effective and simple internal review mechanism.

12.9 There are problems with the legislative establishment of the CSRO and the review officers. The Joint Committee questioned the proper delegation of functions and the nature of the review process in administrative law. In particular, the Joint Committee is concerned that the review process is inconsistent with other delegations in Commonwealth legislation. It is also unclear whether the CSRO is exercising administrative review functions or quasi-judicial powers given that both the Family Court and the CSRO make decisions under section 117 of the *Child Support (Assessment) Act 1989*.

3 Child Support Agency letter dated 10 October 1994

4 Submission No 5083, Vol 2, p 87

12.10 The CSA submitted that there is a case for expanding the functions of the CSRO.[5] The CSA advised the Joint Committee that proposals have been put before the Government for the expansion of the functions in two areas. The first proposal is to include the power to review child support agreements when the parties cannot agree to a change to the original agreement. The second proposal is to enable the CSRO to make substitution orders as part of a determination. The CSA claims that this would increase the range of outcomes available to clients of the Scheme. Furthermore, the CSA maintains that if review officers were granted a wider range of powers then clients will have 'one stop shopping' for all their child support matters, except the determination of paternity and lump sum maintenance issues. This the CSA says would involve a reduction in work for the Family Court with associated cost savings to the courts and legal aid resources.

12.11 Expanding the CSRO's powers and functions begs the question of whether the CSRO should remain an internal appeal mechanism or be a system for checking decisions before they are dispatched from the CSA. This issue also relates to the process of challenging CSA decisions and the manner of rectifying errors and processing objections to the courts from the CSA. In this respect it is important to take into account that the CSRO is performing a function previously performed by the Family Court. A matter heard by the Family Court undergoes a more extensive process of defining issues and identifying and resolving problems by the legal representatives of both parties. In contrast to this, an application for departure from the formula assessment is referred to the CSRO without any initial preparation for a hearing.

12.12 The review officers have argued for an improvement in their status and accommodation, suggesting that it is important for them to be independent and physically separate from the CSA. However, if the internal mechanisms within the CSA were improved then there may not be a need for an upgrading in the status of review officers. This would particularly be the case if an alternative external review process was introduced.

5 Submission No 5083, Vol 2, p 130

12.13 There are other aspects of the CSRO which are of concern to the Joint Committee. The accountability of the review officers to the Child Support Registrar and the non-publication of decisions of the review officers are important issues. The lack of a legislative structure means that the review officers are not accountable to the Child Support Registrar who cannot then ensure consistency in decision-making by all review officers. Furthermore, the failure to publish decisions means that there is no precedent to follow and accordingly parties do not have the ability to predict what may happen in their situation. It also means that parties cannot obtain advice as to what can be expected to happen to their application for a review. This causes uncertainty and a lack of confidence in the review system.

12.14 Delays and the lack of publicity as to the existence of the CSRO were issues raised with the Joint Committee. The Joint Committee was advised that:

> The role of the Child Support Review Office should be more widely publicised so that the custodial or non-custodial parent are more aware of their right to have an assessment altered if their financial situation changes. At present most parents feel that they are locked into the assessment made by the CSA.
>
> The Child Support Review Office legislation requires amendment to provide it with powers to compel a person / company to provide information or documents within a specified time. This would allow the Review Office to conduct reviews in a more efficient manner and avoid delays to clients.[6]

12.15 The Joint Committee strongly believes that information about the CSRO must be freely and widely available to CSA clients. There is a need for the development of simple plain English and multi-lingual pamphlets for both custodial parents and non custodial parents, explaining their rights and obligations and including information on how to apply for a review. These pamphlets should be included with every formula assessment issued by the CSA under the Child Support Scheme.

6 Submission No 3053

12.16 The Joint Committee recommends that:

Recommendation 75

the Child Support Agency provides information in multi-lingual pamphlets explaining the review avenues available and how to apply for a review.

Form of Review

12.17 The assessment of liability under the child support formula is an administrative decision and the parties affected by the decision must have a right of review. Indeed, as the Child Support Scheme is so closely linked with the social security system, a strong argument can be made that the parties subject to the Scheme should have the same rights of review as social security clients. The review process under the Scheme, as already mentioned, is not the same process as in other Commonwealth administrative review processes, such as the Social Security Appeals Tribunal (SSAT). This raises the issue of whether the same review process should apply to the Scheme, that is, an internal review from the decision maker, followed by an external review by a tribunal with an appeal to a superior court.

12.18 The Attorney-General's Department put forward the argument that as the Child Support Scheme is so closely linked to the family law system, the appropriate form of review of decisions in relation to formula assessments was an appeal to the Family Court of Australia.[7] The Attorney-General's Department distinguished child support applications for review from the social security system by stating that child support is an arrangement between two parties of which the Government is not one, while in the social security system the arrangement is between the Government - in the form of DSS - and an individual. This distinction is a fine one especially as the Commonwealth Government is the only party which may take enforcement action under the Child Support Scheme.[8]

7 Transcript of Evidence, 21 January 1994, p 1349

8 Section 30 of the *Child Support (Registration and Collection) Act 1988*

12.19 Given that the review process under the Scheme is an administrative one it is important that it provides the opportunity for the review of decisions which affect parties under the Scheme. In her submission to the inquiry, the Ombudsman noted that the following practices are a prerequisite to a sound decision making process within the Scheme:

- the CSA must give each party to a review (payer and payee) adequate notice of the other parties argument;
- the CSA must give each party full access to the other party's evidence and documents on which their arguments rely;
- the CSA must give each party adequate opportunity to respond to further arguments put during the hearing process;
- each party must have an adequate opportunity to present their arguments to the determining officer;
- the determination officer must give adequate reasons for the decision;
- the CSA should be able to identify quickly those complex disputes about the financial resources of a party, which the Assessment Act authorises the registrar to refuse to determine and instead to recommend that the applicant take court proceedings to resolve the dispute;
- the CSA must institute a system to encourage consistency in decision making.[9]

12.20 The Ombudsman suggested there should be some form of quality control mechanism in relation to the decisions of review officers. The Ombudsman added:

> ... the CSA should have in place systems to encourage a consistent approach and to check for aberrant decisions before they are notified to the parties.[10]

12.21 Another major concern referred to by the Ombudsman is the delays from the time of the lodgement of the review application to the actual hearing. These delays cause hardship as the assessment remains in place and, as the Ombudsman points out, delays 'prolong the hardship which the new review system was set up to address.'[11]

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9 Submission No 1928, Vol 2, p 156

10 ibid.

11 ibid. p 157

12.22 The Administrative Review Council (ARC) submitted to the Joint Committee that the role of the Child Support Review Office should be clarified; that the Administrative Appeals Tribunal (AAT) and the Family Court should have concurrent jurisdiction to hear appeals and that it is not necessary for parties to be legally represented at the review interview.[12] The ARC considers that there is a need to clarify the function of the review officers to recognise that they do not undertake a 'review' of decisions of the CSA, but that they are engaged in a reconsideration of applications made to the CSA on the basis of different criteria.

12.23 There appears to be inconsistencies in the procedures adopted by the CSA in acting upon client requests for departures from formula assessments and the review of CSA administrative decisions. Clients are referred to the court, the CSRO or the original decision is reviewed within the CSA. The Joint Committee received the following evidence in relation to the operation of the CSRO from senior CSA management indicating that there is a preference for dealing with these clients requests administratively:

> Mr Galeotti [Director, Child Support Agency, Moonee Ponds] - If they have made an application for review and if upon looking at that application we believe the matter could be dealt with administratively, we would be advising the applicant that the matter could be dealt with administratively and refer the applicant back to the agency. In that circumstance where a person had become unemployed, we would get that person to fill out an estimate. The support people within the review office come from the agency. They have an agency background. If on looking at the application they believe there is something that can be dealt with administratively, they can say to the applicant, 'This can be dealt with administratively; it does not need to come through the review process'.
>
> Senator Spindler - But if any officer in the agency gets a phone call from a person saying, 'My situation is radically changed', that person would be referred to the review office in the first instance?
>
> Mr Carmody [Child Support Registrar] - No. If they approached the agency and said, 'I have lost my job', or whatever, that is a common ground for changing the assessment. Anyone approaching the agency would then be notified of the relevant forms and the processes to be gone through. Such a person would not be referred to the review office.

12 Submission No 5339

> Senator Spindler - They would not be referred to the review office at all?
>
> Mr Carmody - No. There is no need.[13]

12.24 The Joint Committee believes that the CSA must have consistent procedures for dealing with client requests for departures from formula assessments and the review of CSA administrative decisions. These procedures must allow client access to an independent external review in respect of all administrative decisions made by the CSA. The SSAT and the AAT are pertinent examples of how an external review process could be established.

Social Security Appeals Tribunal

12.25 The SSAT was initially established in 1975. It was set up by the Minister for Social Security and operated without a statutory basis making recommendations to the Secretary of DSS. After November 1988 the SSAT has had the power to make final decisions which improved the decision making process through simplified and streamlined appeals. The SSAT is established in Part 7.3 of the *Social Security Act 1991*.

12.26 The SSAT is an external tribunal and is headed by a National Convenor who has statutory functions and is responsible for the overall operation and administration of the SSAT. Section 1323 of the Act provides:

> (2) The National Convenor is to:
>
> (a) monitor the operations of the Social Security Appeals Tribunal; and
>
> (b) take reasonable steps to ensure that decisions of the Social Security Appeals Tribunal are consistent; and
>
> (c) take reasonable steps to ensure that the Social Security Appeals Tribunal efficiently and effectively performs its functions.
>
> (3) The National Convenor may give directions:
>
> (a) for the purpose of increasing the efficiency of the operations of the Social Security Appeals Tribunal; and
>
> (b) as to the arrangements of the business of the Tribunal.

13 Transcript of Evidence, 29 October 1993, p 739

12.27 Pursuant to section 1328 of the *Social Security Act 1991*, the SSAT usually consists of three or four members. The composition of the panel may vary from persons with medical, legal, social welfare and social security policy backgrounds depending on the nature of the matter being dealt with. If a party is aggrieved by a decision of the SSAT then they may appeal to the AAT.

Administrative Appeals Tribunal

12.28 The AAT was established by the *Administrative Appeals Tribunal Act 1975* and has jurisdiction under nearly 300 Commonwealth Acts. The jurisdiction of the AAT to review decisions of the Commonwealth or delegated officers is not a general one as it gains its jurisdiction partly from the *Administrative Appeals Tribunal Act 1975* and partly from specific provisions of the legislation under which the decision being reviewed was made. The AAT's primary function is to review, on the merits, the administrative decision in question on the basis of the material before it.

12.29 There is a major difference between an administrative review by the AAT and a judicial review by a court. A judicial review is concerned with the legality of a decision while the AAT reviews a decision on its merits. In contrast to a judicial review, the AAT is not limited to the reasons of the original decision maker and is not confined to the material before the original decision-maker when conducting a review on the merits. The AAT is also not confined to a review of the facts existing at the time of the decision or the law that existed at that time. Pursuant to section 33(a)(c) of the *Administrative Appeals Tribunal Act 1975*, the AAT is not bound by rules of evidence and accordingly may consider any evidence including hearsay evidence. The practice of the AAT in reaching a decision is to assess the evidence before it on its relevance and its weight.

12.30 An important aspect of the *Administrative Appeals Tribunal Act 1975* is that a decision maker is required, upon request, to provide reasons for a decision together with findings on the material questions of fact and a reference to the evidence or other material upon which the findings are based. Where a decision is reviewable by the AAT the aggrieved person may request the decision maker to provide a statement setting out the facts found and the reasons for the decision. A request for reasons should be made within 28 days after the original decision and a response must be made within 28 days of the request. A significant feature of the review process is that before approaching the AAT, the department or agency concerned must be given an opportunity to review its decision after it knows on what basis its decision has been challenged before the AAT.

12.31 Applications to the AAT must be in writing and set out the reasons for the application. The application may be made on forms available from the registries of the AAT but the use of those forms is not compulsory. The application must contain:

- the name and address of the applicant with an address for service;
- the decisions to be reviewed and the name and office or title of the person making the decision; and
- the reasons for the application.

12.32 An application for the review of a decision does not suspend the consequences of the decision and action on the decision may still proceed. The AAT does, however, have the power to order otherwise and by the issuing of a stay order may suspend any action to be taken pursuant to the decision. A request for a stay must be filed with the AAT which may decide to hold a preliminary conference with all the parties involved. This conference is held in private to encourage an open discussion of the issues and if an agreement is reached there will be no need for a formal hearing.

12.33 Where a hearing is required the AAT advises the parties in writing of the location and time. Hearings are normally open to the public and are recorded. An applicant may represent themself or may be represented by another person, including legal representation. The department or agency may be represented by one or more officers. The applicant should attend the hearing as the AAT may proceed in their absence without the benefit of additional information from the applicant to strengthen their own case.

12.34 The AAT attempts to deal with cases with as little formality as possible, however, minimum procedures are required to allow for an orderly hearing. Some parts of a hearing may be held in private which would be appropriate for child support matters. The AAT will usually ask the applicant why they think the decision should be changed and to outline the case to support the application. The department will be given an opportunity to respond to the applicant's case. The AAT has the power to affirm, vary or set aside the original decision. It may also substitute its own decision or remit the matter to the decision maker with any direction it may make. The AAT does not have any power to order the payment of costs.

Restructuring of the Review Process

12.35 The Joint Committee considered each of the following methods of reviewing administrative decisions made by the CSA:

- no change to the existing structure, however, devolve more powers to the review officers without necessarily increasing their status;
- maintain the existing review office structure, however, as an independent agency of the CSA;
- no change to the existing structure of the review office, however, establish a tighter internal objection / review process within the CSA, similar to the objection process in the Australian Taxation Office (ATO) and DSS, for the review of administrative decisions by enabling senior staff to exercise a discretion with the aim of minimising the need for the referral to a review office;
- abandon the CSRO structure and replace it with a Child Support Appeal Tribunal with internal review within the CSA. This Tribunal could be based upon the model of the SSAT. The advantage of this model is that it is not bound by technicalities, legal forms, or rules of evidence;
- instead of establishing an additional Tribunal, refer matters from the CSA to the existing AAT or the SSAT; or
- abandon the CSRO structure and tighten the CSA internal review with appeal to the Family Court of Australia. This option would not comply with the initial aims of providing a quick, cheap and easy review process.

12.36 The Joint Committee believes that a combination of the above methods should be used in reviewing administrative decisions of the CSA. An important principle which the Joint Committee considers is critical to the development of a review process for the Child Support Scheme, is that primary decisions which may be the subject of a review should be reconsidered within the decision making organisation before an application is made to an external body of review.

Internal Review of CSA Decisions

12.37 A proper internal review process would act as a buffer between the initial decision maker and any external review and would reinforce the need for care and accountability at the primary decision making level. The internal review processes operating in DSS and the ATO were considered by the Joint Committee.

12.38 Under DSS's internal review process, authorised review officers are appointed to provide a quick, fair and informal review of disputed decisions. A person who is dissatisfied with a decision is encouraged to discuss the matter in person with the original decision maker. If the decision is not changed the person is advised that the matter may be reviewed by an authorised review officer. This review process 'allows many disputed decisions to be resolved quickly and economically and, at the same time, reinforces the need for care and accountability at the primary decision-making level'.[14]

12.39 Under the ATO review process every taxpayer has a right to seek a review of a decision made by the ATO. Taxpayers also have the right to have that matter finally determined by either administrative review or judicial determination. The ATO review process applies to all administrative decisions and legal interpretations made by the ATO.

12.40 The first step in the ATO review process commences within the ATO. The objections, review and appeals process is established under Part IVC of the *Taxation Administration Act 1953*. The internal review by the ATO is conducted by an Appeals and Review Group which operates independently from the original decision maker. The procedure is started by the taxpayer making an objection when they are aggrieved by an assessment, determination, notice or decision of the ATO. The taxpayer must object in writing and lodge the objection with the Commissioner of Taxation within 60 days. The notice must provide in detail the grounds for objection. Pursuant to section 142 of the *Taxation Administration Act 1953*, the Commissioner must make a decision on the objection. If the taxpayer is not satisfied with the decision of the ATO they may apply to the AAT for an external review or appeal to the Federal Court of Australia pursuant to section 14ZZ of the *Taxation Administration Act 1953*.

14 DSS, **Annual Report 1992–93**, p 64

12.41 A review is heard by either the AAT or the Federal Court of Australia. A filing fee of $300 applies and further expenses may be incurred if the matter proceeds to a hearing. The proceedings also become more formal and legalistic. In some cases the costs of proceedings may outweigh the amount in dispute thereby acting as a hurdle to challenging the original decision.

12.42 The Joint Committee believes that the CSA should establish an internal review procedure to enable a custodial or non custodial parent to lodge an objection to any administrative decision, including legal interpretations, made by the CSA. The internal objection procedure should also examine all applications for departure from the formula assessment. Objections are to be determined by review officers from within the CSA. The review officers must be senior officers who are familiar with the child support legislative requirements and review procedures in order to be able to review decisions in a fair and equitable manner. This internal review procedure is in line with the Joint Committee's belief that the CSA must take care and be accountable for its initial decisions. It should also provide CSA clients with an inexpensive and speedy initial review of any CSA decision.

12.43 The Joint Committee recommends that:

Recommendation 76

the child support legislation be amended to establish an internal objection procedure for all administrative decisions and applications for a departure from formula assessment.

External Review of CSA Decisions

12.44 The Joint Committee anticipates that most disputed decisions will be resolved through the internal objection procedure. However, as it is an internal procedure it may not be seen to be truly independent of the CSA, its environment and culture. Accordingly, the Joint Committee sees the need also to establish an external review mechanism to ensure the independence of the review process. It is proposed that the external review will, in the first instance, be to a Child Support Appeals Office. This office will have jurisdiction to review any administrative decision or legislative interpretation made by the CSA after a determination has been made through the CSA's internal review procedure. The Child Support Appeals Office must be established by legislation so that it is independent

of the CSA with matters to be determined by an appeals officer sitting alone. Appeal officers should be appointed by the Minister responsible for the Child Support Agency.

12.45 The Joint Committee is of the view that there should be no filing fee for an application to the Child Support Appeals Office. All review decisions of the CSA and the Child Support Appeals Office must be published in order to ensure consistency in decisions and to provide clients with a degree of certainty as to what is likely to be the outcome of an appeal against a CSA decision. The identity of clients could be protected by deleting their names from all published decisions. The publication of decisions should improve both the accountability of the CSA for its administrative practices and public confidence in the CSA's operations and the Scheme generally.

12.46 The Joint Committee recommends that:

Recommendation 77

the child support legislation be amended to establish an external review office, called the Child Support Appeals Office, to determine appeals by custodial parents or non custodial parents.

Recommendation 78

the appeal officers of the Child Support Appeals Office be appointed by the Minister responsible for the Child Support Agency.

Recommendation 79

all review decisions of the Child Support Appeals Office be made by an appeals officer sitting alone.

Recommendation 80

all review decisions made by the Child Support Agency and the Child Support Appeals Office be published without naming the parties.

12.47 If a party disputes a decision of the Child Support Appeals Office then that party should be able to exercise a right to apply for a review of that decision. The Joint Committee considers that the AAT would be the appropriate forum for a further review where the decision in dispute is an administrative decision. However, if the disputed decision relates to a point of law then the Joint Committee considers the Family Court of Australia to be the appropriate forum. Consequently, whatever course of action is taken will depend upon whether the issue requiring determination is a legal or an administrative matter and whether there are valid grounds for a further review or appeal.

12.48 The Joint Committee is strongly of the view that matters reviewed by the AAT should be dealt with by a Child Support Claims Tribunal established within the AAT. This Tribunal would be comprised of members with expertise in child support matters. Furthermore, in line with the Family Law Regulations no filing fee should be charged by the AAT. The emphasis in proceedings should be on mediation and simplified procedures. This proposal is similar to the proposal for a Small Taxation Claims Tribunal within the AAT recommended by the Joint Committee of Public Accounts[15] for taxation matters. The recommendation of the Joint Committee of Public Accounts has been accepted by the Government and is a precedent for the establishment of a Child Support Claims Tribunal.

12.49 The Joint Committee recommends that:

Recommendation 81

the relevant legislation be amended to establish a Child Support Claims Tribunal within the registry of the Administrative Appeals Tribunal.

Recommendation 82

the relevant legislation be amended to enable an application for a review of a Child Support Appeals Office decision to be made to the Administrative Appeals Tribunal and an appeal from the Child Support Appeals Office to be made to the Family Court of Australia on a point of law.

15 Joint Committee of Public Accounts, Report 326, **An Assessment of Tax**, November 1993

Recommendation 83

no filing fee be charged by the Administrative Appeals Tribunal.

12.50 The Joint Committee believes that the Child Support Appeals Office should itself have the power to refer a matter to the AAT or the Family Court of Australia for determination if the Child Support Appeals Office considers that the matter requires further consideration by a higher jurisdiction. This may be necessary in matters where there is no clear legal precedent to guide the Child Support Appeals Office in its review of a decision. Such cases should be small in number as the Joint Committee envisages that the majority of matters will be determined satisfactorily by the CSA's internal review procedure or the Child Support Appeals Office.

12.51 The Joint Committee notes that the cross-vesting legislation enables the Family Court of Australia to exercise Federal Court jurisdiction for any appeals from the AAT arising from the operation of the Child Support Scheme.

12.52 The Joint Committee recommends that:

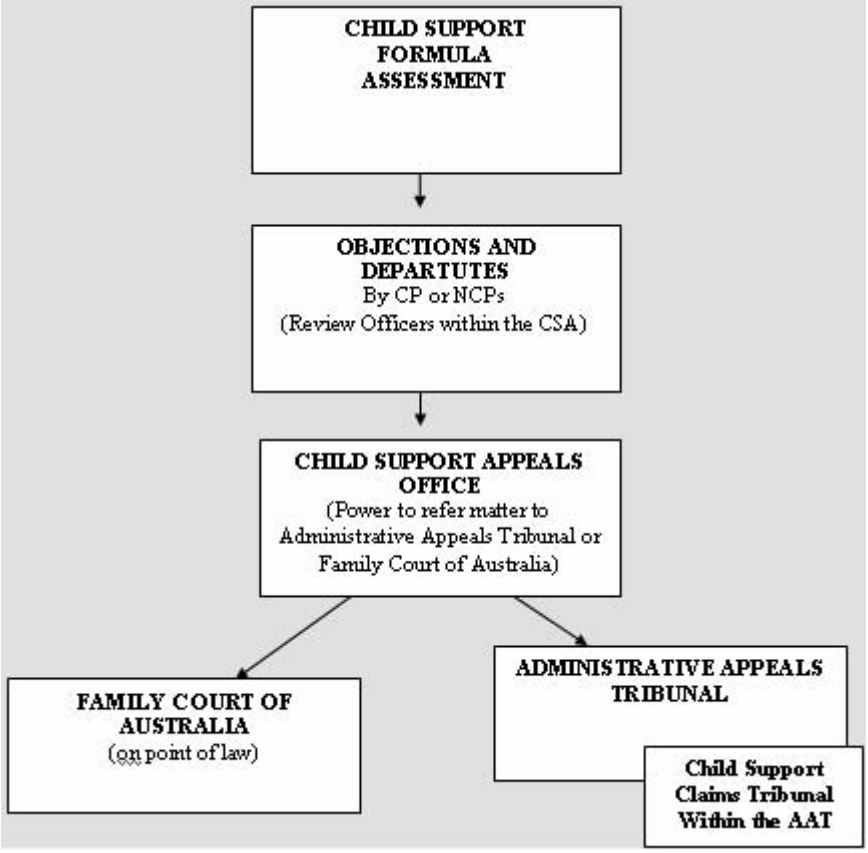
Recommendation 84

the Child Support Appeals Office be able to refer a matter to the Administrative Appeals Tribunal or the Family Court of Australia for determination.

12.53 The Joint Committee's proposed review process must be implemented by legislation in contrast to the administrative establishment of the existing Child Support Review Office. The proposed review process will also require consequential amendments to the legislation, such as Part 7 of the *Child Support (Assessment) Act 1989*.

12.54 The Joint Committee's proposed three tiered review process is set out in Figure 12.1.

Figure 12.1 Proposed Review Process



13

Child support debt and enforcement

Introduction

13.1 When a child support liability under either Stage 1 or Stage 2 of the Scheme is registered with the Child Support Agency (CSA), the amount payable under the liability becomes a debt due to the Commonwealth.[1] As a result the Commonwealth is the only party which can undertake enforcement action to collect this debt. This means that custodial parents forfeit the right to pursue the debt owed to them privately and become totally dependent on the CSA for the enforcement of their child support liabilities.

13.2 The CSA advised the Joint Committee that:

> In the period from 30 June 1991 to 30 April 1994 child support debts have grown from $98.7m to $272m. In addition, during the same period liabilities resulting from the issue of default assessments based on 2.5 AWE have grown from $60m to around $200m. In excess of 97,500 payers are in arrears with payments and more than 50% of the total debt has been outstanding for more than 12 months.[2]

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1 S. 30 *Child Support (Registration and Collection) Act 1988*

2 Submission No 6194, Vol 12, p 69

13.3 As at May 1994 this total amount of debt owed to the CSA had grown to $481.5 million which included approximately $202.5m for default assessments. The Joint Committee considers that the growth in and size of this debt is a major threat to the operation and effectiveness of the Child Support Scheme.

Analysis of Submissions

13.4 The Joint Committee received 751 submissions which complained that the CSA's enforcement of child support liabilities is unsatisfactory. These submissions represented 12.1 per cent of the total number of submissions received by the Joint Committee. Of these submissions, 671 were received from custodial parents. This represented 34 per cent of the total number of custodial parent submissions thereby making it the most common custodial parent complaint received by the Joint Committee.

13.5 The following submission is representative of the frustration and disappointment expressed by custodial parents to the Joint Committee:

> When six months had passed with no arrival of money, I rang the CSA to find out what was happening. The phone was perpetually engaged from 9am until late in the afternoon. I tried again on another day, and after starting at 9am, was finally connected at 11.30am with somebody, who listened to my story and said, "You must be patient. If the payer does not give us the money, we can pass nothing on to you." Three months later, I rang again. the procedure was the same : hours of ringing to an engaged signal, and when finally getting someone, being told that the Agency can do nothing if the man does not give them the money.
>
> A year went by. I had been receiving monthly letters from the CSA announcing that "your maintenance for this month is $0.00". After a year had gone by, these letters stopped coming. When I wrote to find out why, the answer was that "after a while, when no money comes, women find these $0.00 letters depressing, so we stop sending them". ...

> Four years and $12,000 of unpaid support later, I am sorry, but the CSA has failed my children dismally and is, in our family, nothing but a sorry and black joke.[3]

13.6 Similarly, another custodial parent submitted:

> The Child Support Agency clearly states "THAT THEY CAN ONLY PAY TO YOU WHAT THEY COLLECT". This is certainly not good enough, this shows just how inadequate the enforcement of collection procedures really are. Why should we, the custodial parent have to wait for the arrears to be paid.
>
> Every little cent counts when your bringing a child up by yourself.[4]

13.7 The CSA acknowledged the problem caused by mounting child support debt in the following way:

> After five years of operation CSA is now facing up to writing off bad debt. Some Schemes overseas automatically write off debt each year and concentrate on current collection. This is not acceptable in the Australian context. The child support debt is due to the Commonwealth but we have a duty to collect for children, unlike tax debt which can be written off as there is no third party involved.[5]

13.8 The Commonwealth Ombudsman's Annual Report 1993-94, tabled in Parliament on 18 October 1994, reported that the most complained about CSA issue was the CSA's failure to collect maintenance or recover arrears.[6] The Commonwealth Ombudsman went on to issue the following warning in respect of this issue:

> It is important that the backlog of arrears is reduced as soon as possible; if it is not, the effectiveness of the CSA in administering the child support scheme will be undermined.[7]

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3 Submission No 5

4 Submission No 3482

5 Submission No 5083, Vol 2, p 78

6 Commonwealth Ombudsman, **Annual Report 1993–94**, p 55

7 ibid. p 61

Child Support Enforcement Powers

13.9 The Child Support Registrar has both administrative powers and access to the legal system to enforce child support debts. The CSA's administrative powers enable the Child Support Registrar to make direct collection of child support debts without having to go to court to obtain an order. These powers include:

- intercepting tax refunds from the Australian Taxation Office and applying them against child support debts;[8]
- power to collect money from third parties where it is due to be paid to the person with a child support debt;[9] and
- power to require a non custodial parent or a third party, such as a financial institution, employer or creditor, to provide information or attend an interview[10].

13.10 The Child Support Registrar can also take legal action to collect child support debts. This may be done through the civil court system in each state and territory jurisdiction or through the Family Court of Australia. Civil action in a local court produces a judgement debt which may result in a warrant of execution (or similar) for the court to seize and sell goods in satisfaction of the debt. The CSA submitted that:

> The use of local court is speedier than the Family Court of Australia (FCA) and convenient. It is useful to show non-custodial and custodial parents that we are serious about legal action but it does not always achieve results in getting the debt. As most commercial creditors would attest, this is not an entirely effective method to enforce payment. There is no guarantee that obtaining judgement for a debt will ever mean we obtain payment.[11]

13.11 In addition to civil court action, the Child Support Registrar may take action in the Family Court or Local Court using the Family Law jurisdiction. The *Child (Registration & Collection) Act 1988* allows the Child Support Registrar to enforce child support debts pursuant to Order 33 of the Family Law Rules. This allows the child support debt

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8 s. 72 *Child Supoprt (Registration and Collection) Act 1998*

9 ss. 72A & 72B *Child Support (Registration and Collection) Act 1988*

10 s. 120 *Child Support (Registration and Collection) act 1998*

11 Submission No 5083, Vol 2, p 83

to be enforced in the Family Law jurisdiction by one or more of the following means:

- garnishment;
- seizure and sale of personal property;
- division of property through sequestration (legal seizing of part of a debtor's property jointly owned) ; or
- the sale of real property (real estate).[12]

13.12 Section 72C of the *Child Support (Registration and Collection) Act 1988* also allows the Family Court to set aside or restrain transactions where the Court is satisfied that these transactions were, or are proposed to be, made to reduce or defeat a child support liability.

Management of Child Support Enforcement

13.13 It is clear that there are significant deficiencies in the management of enforcement by the CSA which need to be urgently addressed. In particular, the Joint Committee is concerned that the CSA is unable to provide information on:

- the costs of conducting various enforcement activities;
- the effectiveness of various enforcement activities against particular types of income, especially self employed people;
- collection rates for self employed and non resident non custodial parents;
- the number of self employed non custodial parents from whom they have to collect child support;
- the composition of outstanding debt; or
- the reasons why non custodial parents comply, or fail to comply with their child support obligations.

13.14 This lack of quantitative and qualitative information from the CSA has not allowed the Joint Committee to identify the extent to which the outstanding debt is being improperly avoided or whether part of this debt represents a real and genuine incapacity to pay. Given that

12 Order 33, rule2(5) Family Law Rules

the Scheme has been in operation for over five years, the absence of this critical information is deplorable.

13.15 The CSA needs to develop improved strategies for enforcing child support debts and a systematic method for enforcement case selection and computer based support for enforcement case management. Before this can occur, the CSA must develop an understanding of outstanding debt, its non custodial parent client base and the reasons why non custodial parents do not comply with their obligations. Where the reasons for non compliance are related to the structure of the Scheme, they should be brought to the attention of the relevant policy departments and the responsible Ministers. The CSA also needs to assess accurately the costs and benefits of various enforcement approaches against different categories of its non custodial parent population.

13.16 The Australian National Audit Office's (ANAO) efficiency audit report examined the CSA's enforcement practices in considerable detail. The ANAO concluded that the CSA strategic management of enforcement was inadequate. In particular, the ANAO noted that the CSA did not have a national enforcement policy, there were few national enforcement strategies and guidelines, and enforcement practices and priorities differed between each branch office. The report also noted that the CSA did not possess adequate management information which would allow it to implement strategies to target categories of debt. The ANAO concluded that the CSA needed to develop:

- a monthly debtors reporting system with debts structured by appropriate age intervals;
- a reporting system to provide accurate and timely information on debtors arrears; and
- a reporting system capable of identifying and classifying non custodial parents who have just entered arrears.

13.17 The ANAO confirmed the findings of the Joint Committee:

> Sound debt management was found to be lacking in all branches visited. There is a high workload in debt, which is impeded by the inability of the CSA computer system to provide relevant and meaningful data with which appropriate strategies could be developed. Only one branch visited was able to provide a figure for the number of defaulting payers in a client group. At no branches, nor

> nationally, was demographic profiling of debtors undertaken.
> ...
> Further problems with the reporting system include the inability of the system to provide information to develop enforcement procedures, measure enforcement performance indicators outlined in branch office business plans or to evaluate enforcement strategies. Branches were unable to access reports that tell them of new default cases each month. ... Some branches visited by the ANAO expressed the desire to introduce a procedure of contacting payers by telephone when the first payment default occurs, but were unable to develop reports that alert them to first payment defaults.[13]

13.18 When the CSA registers an application for child support, both parents become its clients. The CSA's compliance and enforcement activity should service the needs of both parents. On the one hand, compliance and enforcement practices need to be timely and effective and to provide regular child support to the custodial parent. On the other hand, these same practices must be sensitive to the needs and individual circumstances of the non custodial parent. One of the key functions in any successful CSA enforcement strategy is to assist non custodial parents to understand their obligations and manage their affairs to meet their ongoing child support commitments. Ultimately, any successful enforcement strategy should reduce the need for ongoing enforcement action and allow non custodial parents to make informed decisions about repaying child support debts and voluntarily complying with their ongoing obligations. Submissions from non custodial parents frequently mentioned that the CSA's attitude to them was antagonistic. As highlighted in Chapter 4, non custodial parents commented in submissions to the Joint Committee that the operation of the CSA is biased against them. Common complaints were that:

- the CSA automatically assumes you will be a bad payer; and
- the CSA does not sit down and discuss your individual circumstances, but tells you how much you owe and when it will be paid.

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13 Australian National Audit Office, **Audit Report No 39, 1993–94**, Efficiency Audit, Australian Taxation Office, Management of the Child Support Agency, p 61

13.19 The CSA has, on numerous occasions, created stereotyped roles for its clients. It has been assumed that the non custodial parent requires strong enforcement action before he or she will willingly meet their child support obligations. In the absence of national guidelines on a correct approach to enforcement matters, there have been occasions when the rights of non custodial parents, and their ability to make decisions for their ongoing provision of child support, have been usurped. Some examples of this practice provided to the Joint Committee were placing non custodial parents on autowithholding even before they were aware they had a child support liability with the CSA and serving a summons on non custodial parents before giving them the opportunity to negotiate for the repayment of arrears. This approach discourages open and frank dealings with the CSA and has, at times, created non-compliance problems when a non custodial parent had previously been voluntarily meeting his or her commitments through satisfactory private arrangements.

13.20 The CSA's approach to enforcement and the priorities to be adopted in enforcement activity were finally established on 1 June 1994, with the release of the CSA's policy on compliance. The principles of the compliance policy are that the CSA will:

- deal with its non custodial clients in a professional manner and understand its clients and their needs;
- work with its non custodial clients to build trust and respect; and
- understand its non custodial clients and act fairly.

13.21 The aim of the CSA's compliance policy is:

> ... to encourage and assist liable parents to meet their obligations voluntarily. Rather than taking legal action to recover outstanding debts the Registrar would prefer that liable parents enter into arrangements to pay their debts.[14]

13.22 The compliance policy established the following approach in relation to the CSA's collection activities:

> Where there is an outstanding debt, the Registrar will consider whether collection action is appropriate. Where a liable parent may qualify for a reduction in arrears the Registrar will encourage him or her to take this action rather than commence collection action. For example, a liable parent

14 CSA, **Compliance Policy**, p 1007

> may qualify to use an estimated current income as the basis for his or her assessment or may have grounds for applying for a variation or review.
>
> Collection action will only be considered appropriate where the liable parent has the capacity to pay.
>
> Where there is no present capacity to pay, collection action will be deferred. If a liable parent's circumstances change, the Registrar will review the decision to defer action and may take further action.
>
> Where there is a future capacity to pay the Registrar may make arrangements to secure that income or asset to meet the outstanding debt.

13.23 The compliance policy also established general criteria for selecting the appropriate administrative and legal procedures to be used for enforcing payment of child support debts and the appropriate jurisdiction for litigation. The Joint Committee endorses the broad direction set by the compliance policy but is concerned that it lacks sufficient detail to guide adequately branch offices in their day to day enforcement activities. The Joint Committee considers that there is an urgent need for the CSA to implement detailed national procedures based on the broad directions established by its compliance policy.

13.24 The Joint Committee recommends that:

Recommendation 85

the Child Support Agency establishes uniform national procedures for determining when enforcement action should commence and the types of enforcement action which are appropriate based upon the following criteria:

(a) sources of income and assets available to the non custodial parent;

(b) the age of the debt; and

(c) the size of the debt.

Recommendation 86

the Child Support Agency develops debt management and enforcement procedures consistent with the philosophy espoused in the Child Support Agency compliance policy.

Recommendation 87

the Child Support Agency develops an internal reporting system that:

(a) structures debts by appropriate age intervals and size;

(b) provides accurate and timely information on debtors arrears; and

(c) identifies and classifies non custodial parents who have recently defaulted.

Recommendation 88

the Child Support Agency develops a risk profile of its non custodial parent client base which enables it to assess accurately:

(a) the costs and benefits of each enforcement practice against categories of its non custodial parent population; and

(b) the short falls of existing enforcement approaches and develops alternative approaches to increase the Child Support Agency's enforcement effectiveness.

Recommendation 89

the Child Support Agency analyses outstanding debt and classifies it into various categories to enable the Agency to understand the nature of outstanding debt.

Inconsistent Use of Enforcement Powers

13.25 There has been a lack of consistency in the CSA's use of enforcement powers. The Commonwealth Ombudsman, in her submission to the Joint Committee, noted:

> So far as the Ombudsman's office can tell, the CSA does not often use its powers to require payers to attend for an interview about their financial circumstances; or take action for bankruptcy. The use of other powers ... appears to vary from one branch to another. Some of the CSA's branch offices seem to take action in the Family Court or magistrates courts more regularly than others, while other branches appear to rely almost exclusively on the administrative methods available to them. Even where administrative options are used, payees sometimes complain that there are often long delays in getting the Agency to take the appropriate action, for example, to notify the payer's employer to increase the amount collected by autowithholding to recover arrears.[15]

13.26 The comments by the Commonwealth Ombudsman were supported by other submissions. The Law Council of Australia considered that the CSA rarely used its power to garnishee bank accounts of non custodial parents.[16] Several legal aid offices also supported comments that CSA enforcement practices were insufficient and inappropriate.

13.27 In addition to the lack of consistency noted by the Commonwealth Ombudsman, the submission by the Family Court suggested that there was a need for the CSA to provide more training to staff in the use of the court systems in Australia and to establish consistent criteria so that appropriate enforcement action is taken in each case:

15 Submission No 1928, Vol 2, pp 148–9

16 Submission No 5086, Vol 2, p 281

> The Agency appears to move between Courts of summary jurisdiction and Family Court systems almost at will, and there is an impression of some uncertainty in how it approaches enforcement.
>
> Generally, there is an understanding in the Agency that the two systems differ in their ability to allow arrears accruing after filing to be added to the amount in the application or plaint but, that apart, there is a need to improve information about enforcement and the operation of the legal system within the Agency. Relevant matters include that it is cumbersome and inefficient to:
>
> (a) obtain an order for payment in one court and seek to enforce it in another;
>
> (b) adjourn proceedings to allow the respondent to make an application for variation or discharge of a Stage 1 order in another court; and
>
> (c) seek a declaration of the debt due while apparently having no intention to proceed further, possibly because it was already suspected that the respondent had no assets; (the problem here is not the application but the Agency's apparent reluctance to use the remedy it has obtained).
>
> In addition, the uncertainty as to the most appropriate mode of enforcement has caused difficulties.[17]

13.28 These comments by the Family Court were supported by the Law Council of Australia which described the CSA's enforcement practices as 'woeful' and their use of the court system as 'cumbersome'.[18] This again highlights the CSA's failure to make effective use of the full range of its enforcement powers and the inconsistency in its approach to the use of these powers. The Joint Committee considers that the CSA must, as a matter of priority, ensure that staff in the enforcement area receive training in the appropriate use of existing enforcement powers so that these inadequacies are quickly identified and dealt with.

17 Submission No 5328, Vol 7, p 187

18 Submission No 5086, Vol 2, p 280–1

13.29 The Joint Committee recommends that:

Recommendation 90

Child Support Agency enforcement staff be trained, as a matter of priority, in the appropriate use of existing enforcement powers.

Additional Enforcement Powers

13.30 In evidence before the Joint Committee, the Child Support Registrar and the Ombudsman were not prepared to suggest or request that further enforcement powers were necessary. The Child Support Registrar made the point that the powers were 'fairly extensive' and 'very substantial'.[19] He said that he believed that the CSA was not operating as effectively as it should be in the area of enforcement and until the CSA was able to inject resources to tackle the collection of arrears in a systematic way he would not be in a position to say that the present powers were inadequate.

13.31 The Joint Committee examined a number of enforcement initiatives which have been tried in other countries, particularly in the United States of America, some of which are:

- **publication of a 'most wanted' list** - United States collection agencies make use of posters and television programs to publicise those non custodial parents who successfully avoid providing financial support for their children;
- **credit ratings** - the state of Kentucky reports people with child support debts to credit reference bureaus. Experience in Kentucky has shown that parents are more likely to pay their child support debts if they are unable to obtain loans to acquire personal or business assets;
- defaulting on child support payments has been mandated as a federal offence in the United States, making interstate enforcement of child support debts far simpler;

19 Transcript of Evidence, 29 October 1993, p 711

- the removal of State and local licences for non custodial parents refusing to pay child support. Examples of the types of licences which have been removed in the United States are a driver's licence, gun licence, and licences to practice or operate a business;
- the State of Tennessee has **privatised collection** of child support under five year contracts. The contract, for specified percentages of total collections, requires contracted companies to meet all state and federal program requirements and has resulted in a 37 per cent improvement in collection performance. The success of the scheme in Tennessee has seen the State offer two further contracts for private collection agencies; and
- the State of Missouri has introduced **part time private process servers** as an adjunct to sheriffs' offices with substantial gains in efficiency and effectiveness. The use of process servers has helped increase the service success rate from under 50 per cent to 80 per cent. Also, the average contractor fee for an actual service was the same as a single service attempt by the sheriff's office.

13.32 Some of these enforcement initiatives have been developed in response to peculiar problems experienced overseas and may not be appropriate in the Australian context. In particular, initiatives such as the 'most wanted' list, while effective in the American schemes, do not establish an environment in which non custodial parents would be encouraged to contact the CSA to make arrangements for meeting their child support obligations. Nevertheless, the success of some of these enforcement initiatives are worth examining to see whether or not they may be appropriate in Australia. Three ideas were of particular interest to the Joint Committee - allowing the CSA to report the child support debts owed by non custodial parents to credit reference bureaus, making use of private process servers and introducing private collection agencies.[20]

13.33 Reporting a parent's child support debt to credit reference bureaus may impose limitations on a parent's ability to organise their future finances. It would also reinforce the primacy of the parent's responsibility to pay child support and prevent that parent from obtaining additional creditors who may compete in a distribution of available assets. These considerations must also be balanced against the damage which may be done to the reputation of a parent who is incorrectly referred to a credit reference bureau as well as the

20 Discussed later in this Chapter

personal anguish and financial hardship which may result. The grant of this discretion to the Child Support Registrar would also make parents' personal information available to a large number of people which is contrary to the principles established by the *Privacy Act 1988*.

13.34 Some non custodial parents, particularly those subject to Stage 1 court orders for maintenance, have substantial arrears which they cannot afford to pay because changing circumstances have not been reflected in their court orders. It may not be appropriate for these cases to be referred to credit reference bureaus, although informing these bureaus of the existence of this debt would prevent them assuming additional financial burdens before they were able to make adequate provision for their children. Furthermore, it may not be appropriate to notify credit reference bureaus where a parent has not been given a reasonable opportunity to pay or where the amount of child support owed is insignificant. The Joint Committee considers that the Child Support Registrar must exercise the discretion to notify credit reference bureaus of a parent's child support debt in a manner which is both reasonable and consistent with the principles espoused by the CSA's compliance policy discussed above.

13.35 There are also widespread concerns that the CSA has been unable to enforce child support debts where non custodial parents are self employed or able to shift their income and assets to other entities. The Joint Committee considers that when a non custodial parent is in substantial arrears and other collection measures have failed to recover the debt then credit reference bureaus should be informed of the size of the outstanding child support debt. This should encourage compliance in these circumstances and emphasise the importance of a non custodial parent's child support liability.

13.36 The Joint Committee recommends that:

Recommendation 91

the *Child Support (Registration and Collection) Act 1988* be amended to allow the Child Support Registrar to report defaulting non custodial parents to credit reference bureaus in cases where there are substantial arrears and other collection measures have not been successful.

13.37 Introducing private process servers, along the lines of the United States experience, should reduce the demands placed upon sheriffs' offices. Part time process servers, dedicated to particular CSA cases, would provide additional flexibility and, on the basis of the United States experience, may prove to be both cost effective and more productive. However, it is unclear whether the volume of work in Australia for serving of warrants would be sufficient to make this exercise worthwhile or whether the differences between the United States and Australian court systems would reduce the benefits obtained. The Joint Committee considers that the Child Support Registrar should report to the Assistant Treasurer on the costs and benefits of introducing private process servers in Australia within six months of the tabling of the Joint Committee's report.

13.38 The Joint Committee recommends that:

Recommendation 92

the Child Support Agency reports to the Assistant Treasurer within 6 months of the tabling of the Joint Committee's report on the costs and benefits of introducing private process servers.

13.39 The Joint Committee also considers that the CSA's use of its enforcement powers needs to be regularly reviewed to ensure that they are being efficiently used and to counter any changes in client behaviour which may lead to the evasion of child support liabilities. In particular, given the Child Support Registrar's statement that he was not in a position to say whether or not the present powers were adequate, the Joint Committee considers that the CSA should report to the Assistant Treasurer within twelve months of the tabling of the Joint Committee's report on any difficulties in enforcement which might be remedied by the granting of further powers.

13.40 The Joint Committee recommends that:

Recommendation 93

the Child Support Agency:

(a) reports to the Assistant Treasurer within 12 months of the tabling of the Joint Committee's report on any difficulties in enforcement which might be remedied by the granting of further powers; and

(b) reviews its enforcement strategies on a 12 monthly basis to counter changes in client behaviour which leads them to avoid liability.

Publication of Child Support Enforcement Proceedings

13.41 The use of court processes for debt recovery can provide wider gains in compliance through the publicity it generates and the message it sends to other non complying parents. The Joint Committee notes that all successful civil court actions are reported in the White Mercantile and the Dunn and Bradstreet Gazettes which, in turn, are widely used by financial institutions and credit reference bureaus. Consequently, successful civil debt recovery actions are not only publicised but are also recorded against a person's credit rating.

13.42 Under section 121 of the *Family Law Act 1975*, Courts exercising Family Law Jurisdiction bar the reporting of information which can identify people involved in proceedings. The CSA expressed the following concerns about this provision:

> The Family Law Act has strict provisions to protect the identity of families involved in Family Court Matters. This is a good provision to protect people at a sensitive time of their life. However, we find that many defaulting non custodial parents are hiding behind this provision. We think that if determined defaulters, who are often model citizens otherwise, faced the possibility of their name being publicised from the court record they would be far more likely to pay their child support. The Family Court may wish to consider a

> discretionary power of the court to release a defaulter's name after successful court enforcement action.[21]

13.43 The Joint Committee considers that if child support enforcement proceedings in the Family Court were reported in a similar way to the reporting of civil debt recovery proceedings then the payment of child support liabilities would be encouraged. The Joint Committee considers that the interests of both parties could be protected by amending section 121 of the *Family Law Act 1975* to allow the identity of parties to a child support enforcement proceeding to be published only where a Court has made an order in respect of those proceedings.

13.44 The Joint Committee recommends that:

Recommendation 94

section 121 of the *Family Law Act 1975* be amended to allow the identity of parties to a child support enforcement proceeding to be published where a court has made an order in respect of those proceedings.

Enforcement Resources

13.45 The Joint Committee is concerned that the resources available to the CSA for the enforcement of child support liabilities may not be adequate. The Commonwealth Ombudsman noted in her submission that:

> ... the Ombudsman's office understands that the Department of Finance regards the question of staff resources for the CSA's debt recovery responsibility as one related to financial cost-benefit in the short term. Because the debts in question are relatively small, the Department's position seems to be that they are not worth pursuing in costly venues such as the Family Court.[22]

21 Submission No 5083, Vol 2, p 85

22 Submission No 1928, Vol 2, p 148

13.46 The CSA, in its submission to the Joint Committee, estimated that 16 per cent of its resources are dedicated to enforcement action and tax refund intercepts. While this is a significant commitment of resources, the CSA is unable to identify what resources were applied to using each of the administrative powers available to the CSA and what resources had been dedicated to court action.

13.47 The CSA, in its response to the ANAO, indicated that there had been a number of activities, such as the tracing of non custodial parents, which did not have sufficient resources dedicated to them to enable effective and timely action. Furthermore, the CSA indicated that the resources required for 'up front' activities such as telephones, registration of applications and handling counter enquiries were a higher priority. The Joint Committee found that the effect of these priorities led to the enforcement area being the first area from which staff were redeployed. This generally resulted in the enforcement area being under staffed.

13.48 The Joint Committee notes that on 7 June 1994 the Assistant Treasurer announced that the CSA was considering the following two pronged strategy to attack the level of child support debt:

> First, we will look at stabilising the growth of new debt by early intervention, by phone and mail, but with direct enforcement as an ultimate back-up. Second, 150 additional staff are to form special teams to attack the old debt. The strategy involves more effective tracing procedures, upgraded computer systems, and a concerted attack on very old debt through the courts.[23]

13.49 The Joint Committee welcomes these initiatives and expects them to rectify many of the problems caused by the five years of neglect in this area. However, the Joint Committee is concerned that the additional staff which have been assigned to the CSA enforcement area may only be a temporary measure. The Joint Committee considers that enforcement should continue to be a high priority activity of the CSA and that dedicated staff should be permanently assigned to the CSA's enforcement area. This should ensure that the CSA's enforcement performance is not only improved in the short term but is also sustained in the longer term.

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23 Child Support Agency, Media Release, 7 June 1994

13.50 The Joint Committee recommends that:

Recommendation 95

the Child Support Agency makes enforcement a high priority activity and urgently provides dedicated staff to enforcement to remedy the five years of neglect in this area.

13.51 As highlighted by the Commonwealth Ombudsman, the current formula used by the Department of Finance to calculate the level of resources to be dedicated to CSA enforcement compares the cost of enforcement with the amount of money saved by the Department of Social Security in the form of reduced Additional Family Payments to custodians through the maintenance income test (clawback). The Joint Committee considers this method of determining the level of enforcement resources to be totally unsatisfactory and lacking in social justice. Rather, staffing of CSA enforcement activities should be based upon the costs and benefits of additional enforcement resources to total collections.

13.52 The Joint Committee considers that estimates should be prepared on the staffing needs of the CSA in the enforcement area. The Joint Committee is of the view that additional resources are required by the CSA, in the short term, if it is to give immediate effect to the Joint Committee's recommendations which will provide efficiencies in the medium term. The Joint Committee notes that many of the difficulties faced by the CSA in devoting adequate resources to its enforcement activities arose from inadequate staffing of the CSA when Stage 2 of the Scheme was introduced and inappropriate 'efficiency dividends' imposed by the Department of Finance.

13.53 The Joint Committee recommends that:

Recommendation 96

the Department of Finance calculates baseline and additional staffing for enforcement activity on the costs and benefits to total Child Support Agency collections, rather than on the amount of Department of Social Security benefits saved (clawback).

Recommendation 97

the Child Support Agency prepares a submission for additional staffing which needs to be treated sympathetically by the Department of Finance if improvements in this area are to be made.

Child Support Debts Under Default Assessments

13.54 The CSA may issue a default assessment where the CSA is unable to readily ascertain a person's taxable income for the relevant tax year and that person has, in response to the CSA's request, refused or failed to furnish a return, give information or produce a document for the purpose of ascertaining that taxable income. Originally, the Child Support Registrar could only issue a default assessment on the basis that the person's taxable income was 2.5 times average weekly earnings. In 1992 this situation changed so that the Child Support Registrar can now issue a default assessment on the basis that the person's taxable income for the relevant year was such amount as the Child Support Registrar considers appropriate as long as this amount does not exceed 2.5 times the yearly equivalent of average weekly earnings (AWE).[24]

13.55 The CSA issued an interim guideline in March 1993 which purported to set a uniform national policy for the exercise of the Child Support Registrar's discretion in respect of default assessments. This interim guideline stated that:

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24 s. 58 of the *Child Support (Assessment) Act 1989* as amended by Act No 151 of 1992

> If there is insufficient information about the person's income which could be used to assign a provisional income for the relevant year of income, then the person is assessed on the basis that their income is 2.5 times the annual equivalent of average weekly earnings.
>
> If details of the person's income are held for a year other than the relevant year of income, the income may be used as a basis to assign an income of up to 2.5 AWE.[25]

13.56 In October 1994 a new draft guideline was issued by the CSA. This guideline emphasised that the CSA must use the best information available when determining the most appropriate default income level. In particular, information obtained from tax returns lodged in respect of subsequent years of income or information provided by the person in respect of the relevant year of income or any subsequent year of income should be used in preference to issuing a default assessment. However, if no information is available for these years of income and the Child Support Registrar has been unable to ascertain the person's taxable income in any of these years after having taken reasonable steps to do so, then average weekly earnings is to be used as the person's child support income base for the purpose of calculating the default assessment. The draft guideline stated that the average weekly earnings figure was chosen as the most appropriate default income level because:

- it is the best approximation for an average income figure for the Australian population;
- the reason for not choosing to apply the maximum 2.5 times AWE figure is so that child support clients are not frightened away from the child support scheme; and
- the AWE figure is higher than the average income figure for the majority of child support payers thereby still encouraging them to contact the Agency and provide a more accurate figure.[26]

13.57 The Joint Committee notes that the approach adopted by the CSA draft guideline acknowledges that:

> ... issuing default assessments when relevant income details are not available, and often when the payer's whereabouts are also unknown, is not an efficient use of CSA resources. Only

25 Child Support Agency interim guideline for default assessments, March 1993, p 2

26 Child Support Agency draft policy guideline on default incomes 1994, p 4

> in a minority of cases do these assessments result in payment, which after all is what the agency was established to achieve. It is accordingly recommended that default assessments only issue as a last resort and that, in lieu, efforts be put into ascertaining actual income details so that bona fide assessments can be issued that can then be enforced (Courts have made it clear they will not enforce default assessments raised on an arbitrary basis). It appears that around 80,000 CSA payers have not lodged recent income tax returns although it must be remembered that many may not have an income tax liability. It is recommended that resources be deployed to follow up these cases to obtain either lodgment of a return or details of actual income. While the numbers are high, it is essential that in the future CSA payers either lodge tax returns where they have a liability to do so, or provide the agency with income details. Efforts in this area should therefore be seen not only as an enforcement exercise but also one of education.[27]

13.58 The Joint Committee is amazed that it has taken the CSA so long to acknowledge the ineffectiveness of default assessments in promoting compliance by parents through the lodgement of income tax returns so as to reduce their child support assessments. This is especially so given that over $200 million of the total amount of child support debt is due solely to default assessments.

13.59 The CSA advised the Joint Committee that the administrative practice in this area varied from branch to branch with either the interim guideline or the subsequent draft guideline being applied. However, once the draft guideline has been subjected to internal CSA review it will become national policy for all branches. The Joint Committee endorses the use of average weekly earnings as the default child support income base and considers that the CSA should issue the draft guideline as national policy as soon as possible.

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27 Submission No 6194, Vol 12, p 72

Action to Initiate Recovery of Child Support Debt

13.60 The size of the existing debt is a matter of major concern to the Joint Committee. While recommendations have been made for reducing child support debt in the future, something must be done about the collection of the existing debt. The credibility of the Child Support Scheme is at risk if the Child Support Agency cannot collect outstanding liabilities.

13.61 The Joint Committee finds it disturbing that the CSA acknowledges it has a duty to collect child support debt for children, unlike tax debt which can be written off as there is no third party involved,[28] yet the CSA has allowed child support debt to blow out to some $481.5m. If the Child Support Agency was a private commercial enterprise it would risk bankruptcy for its failure to collect this debt.

13.62 The answer to the problem of collecting the debt is not simply to increase resources. What is also required is efficient and effective use of existing powers and remedies available to the Child Support Agency. The Child Support Agency has tended to rely upon it clients providing information and evidence on an ad hoc basis to assist the recovery of child support debt. The CSA has not taken positive action itself to seek the necessary information and evidence.

13.63 The Child Support Agency has the power to obtain information and evidence pursuant to section 120 of the *Child Support (Collection and Registration) Act 1988* by issuing a notice requiring a person to attend before the Child Support Registrar or provide to the Child Support Registrar such information as required by him. The Joint Committee believes this provision should be used to obtain updated information on the capacity to pay of non custodial parents with more than three months of arrears. The CSA would then be in a position to reassess the debt and negotiate a method of payment. In the negotiations with these non custodial parents every avenue for payment needs to be explored until a resolution for payment is achieved.

28 See paragraph 13.7

13.64 The Joint Committee notes that there will be cases where action to recover outstanding child support arrears has been unsuccessful or the liable parent does not have the capacity to pay and any action would not result in payment. In these cases the CSA's compliance policy states that the Child Support Registrar may decide that the outstanding debt is not collectable and will not generally be pursued.[29] However, the debt is not written off, rather, it remains on the CSA's system and may be collected if there is a significant change in the circumstances of the liable parent or if the liable parent has provided misleading information about his or her financial position to the Child Support Registrar.[30]

13.65 The Joint Committee strongly believes that the CSA must exercise its duty to collect child support and only categorise debt as uncollectable as a matter of last resort. In performing this duty the Child Support Registrar must exercise the power under section 120 of the Child Support (Collection and Registration) Act 1988 to require all non custodial parents with more than three months of arrears to attend before the Child Support Registrar to enable the Child Support Agency to reassess these debts and/or to negotiate the payment of these debts.

13.66 The Joint Committee recommends that:

Recommendation 98

the Child Support Registrar exercises the power under section 120 of the *Child Support (Registration and Collection) Act 1988* to require non custodial parents with more than 3 months of arrears to attend before him to enable the Child Support Agency to reassess these debts and/or to negotiate payment of these debts.

29 Child Support Agency Compliance Policy, p 1010

30 ibid.

Treatment of Child Support Debts Under the Maintenance Income Test

13.67 Child support debts may build up over long periods of time for a variety of reasons. The payment of child support debts by a non custodial parent is, like all other child support payments, subjected to the maintenance income test to determine whether the custodian's eligibility for Additional Family Payment is reduced. These arrears are currently applied against one instalment of Additional Family Payment under the maintenance income test irrespective of their size or the length of the period over which they have accrued. However, if each of the child support payments which collectively constitute the arrears lump sum amount had been paid at the required time, then each Additional Family Payment over the applicable child support debts period would potentially have been reduced. Consequently, it is likely that the savings to the Scheme through reduced outlays on Additional Family Payment would have been much greater if these arrears had been paid on time than is the case under the current treatment of arrears under the maintenance income test. The Committee considers the current treatment of arrears to be inconsistent with the treatment of child support payments generally.

13.68 The Joint Committee considers that the operation of the maintenance income test should be amended so that any child support debts are applied against each of the Additional Family Payments paid to the custodian over the arrears period. This treatment of child support debts on a pro rata basis is not only consistent with the treatment of child support payments generally but will also result in larger savings to the Scheme through reduced outlays on Additional Family Payment. The Joint Committee notes that these savings represent overpayments of Additional Family Payment to the custodian which would have to be collected. The Joint Committee considers that these overpayments could be collected by the Child Support Registrar from future child support payments or Additional Family Payments as appropriate.

13.69 The Committee recommends that:

Recommendation 99

the maintenance income test be amended so that any child support debts paid by non custodial parents are notionally applied against each Additional Family Payment paid to the custodial parent over the applicable child support arrears period.

Late Payment Penalties

13.70 Section 67 of the *Child Support (Registration and Collection) Act 1988* requires the Child Support Registrar to impose a late payment penalty on all child support debts which remain unpaid by the seventh day of each month. The rate of penalty is:

> ... an amount ... equal to one-twelfth of the annual rate for the time being specified in the *Income Tax Assessment Act 1936* for the penalty for unpaid income tax.[31]

13.71 In effect, this provision requires the Child Support Registrar to impose a penalty for late payment of child support of $20, or eight per cent per annum primary penalty, plus an interest component equivalent to the weighted average of Treasury Bond rates over specified periods plus four per cent, whichever is the greater. This amounts to approximately 16 per cent per annum at current rates and, when paid, is credited to Consolidated Revenue.

13.72 The Child Support Registrar does not have the authority to use the remission of late payment penalty as a bargaining tool when negotiating the repayment of arrears or to remit this penalty if he is satisfied that this would encourage a non custodial parent's long term voluntary compliance with his or her obligations. The imposition of a late payment penalty may also result in undue hardship in some circumstances. Accordingly, the Joint Committee considers that the Child Support Registrar should be given the discretion to remit late payment penalty in circumstances such as these.

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31 s. 67 *Child Support (Registration and Collection) Act 1988*

13.73 The Joint Committee recommends that:

Recommendation 100

the *Child Support (Registration and Collection) Act 1988* be amended to allow the Child Support Registrar the discretion to remit a late payment penalty.

13.74 The Joint Committee notes that the Explanatory Memorandum for the original *Child Support (Registration and Collection) Act 1988* explained that a late payment penalty was being introduced because it was customary to do so and to provide an incentive for non custodial parents to pay in a timely manner. The CSA noted in its submission that the collection of penalties 'are intended to cover the cost to the taxpayer of enforcement action'.[32] The CSA also pointed out that only a small, unspecified, percentage of this penalty was ever collected. Both the benefits of the late payment penalty as a deterrent, and as recompense to the Commonwealth for the costs of enforcement, are moot points. If the CSA was to remit the bulk of late payment penalty and this became generally known, then its value as a deterrent or cost recovery tool may be reduced.

13.75 The Joint Committee considers that the size of the current late payment penalty is unnecessarily large. The rate of late payment penalty should accurately represent the opportunity cost of a non custodial parent not making payments by the due date. The Joint Committee considers that the medium term Treasury bond rate, compounded from the date on which the child support payment fell due, would be a better estimate of the opportunity cost of the child support payment. The Joint Committee notes that this penalty, while significantly reduced from present levels, should still provide a significant deterrent to the late payment of child support.

32 Submission No 5083, Vol 2, p 81

13.76 The Joint Committee recommends that:

Recommendation 101

the late payment penalty be determined by reference to the prevailing medium term Treasury bond rate, compounded from the date on which a payment falls due.

13.77 Ultimately, it is the custodian, not the Commonwealth, who bears the opportunity cost of not receiving child support payments in a timely manner. The main difficulties with making the late payment penalty payable to the custodial parent appears to be the difficulties this would create for the Child Support Registrar if he or she did decide to remit this penalty, and the false expectations this may build with the custodial parent of receiving far more money than they are ever likely to receive in practice. Notwithstanding this, the Joint Committee considers that the late payment penalty should be disbursed to the custodian rather than credited to Consolidated Revenue.

13.78 The Joint Committee recommends that:

Recommendation 102

the late payment penalty, when received by the Child Support Agency, be disbursed to the custodial parent.

Inability of the CSA to Give Reasons for its Actions

13.79 Subsection 113(2) of the *Child Support (Registration and Collection) Act 1988* allows the Child Support Registrar to inform custodial parents of all actions taken to recover child support debts. The secrecy provisions under section 16 of the *Child Support (Registration & Collection) Act 1988* and section 150 of the *Child Support (Assessment) Act 1989* may appear to prevent the Child Support Registrar from explaining why enforcement action has been ineffective. When the CSA acts to collect a debt, these actions may be unsuccessful when a non custodial parent becomes unemployed, becomes seriously ill, or

has suffered a downturn in business. The Child Support Registrar has not been advising payees why a debt is not recovered. This can create or reinforce perceptions that the CSA does nothing to collect outstanding debts when, in reality, the non custodial parent may not have the capacity to pay. Custodial parents can be left feeling frustrated and angry that they are left to struggle financially on limited support, while the non custodial parent appears to be successfully avoiding his or her financial responsibilities.

13.80 There may be some confusion about the role of the Child Support Registrar providing information about the reason why the recovery of a debt has been unsuccessful. Section 16(2) of the *Child Support (Registration and Collection) Act 1988* prevents the communication of protected information unless it is in the performance of duties under or in relation to the Act. Under section 113(2) of the Act the Child Support Registrar may take such steps as appropriate to keep the payee informed of action taken to recover debts. This is a specific statutory duty to be performed under the Act. Consequently the Child Support Registrar has a statutory duty to provide this information which overrides the information being protected under section 16(2) of the *Child Support (Registration and Collection) Act 1988.*

13.81 The Joint Committee is aware that providing information to custodial parents about why enforcement action has been unsuccessful may upset some non custodial parents. However, on balance, the Joint Committee believes that custodial parents are entitled to know why enforcement action has been unsuccessful or discontinued.

13.82 The Joint Committee recommends that:

Recommendation 103

the Child Support Registrar informs custodial parents about the reasons why particular enforcement activities have been unsuccessful or why a decision has been made not to proceed further with enforcement action in accordance with section 113(2) of the *Child Support (Registration and Collection) Act 1988.*

Recommendation 104

the Child Support Agency as a matter of practice, regularly notifies each custodial parent with arrears of child support owing to them, of current and recent Child Support Agency enforcement activity and the results of the activity.

Recommendation 105

the Child Support Agency advises custodial parents immediately a decision is made not to proceed with enforcement of child support debts and makes them aware of their objection and appeal rights as defined in the *Child Support (Registration and Collection) Act 1988.*

Compensating Clients

13.83 The CSA operates under the Australian Taxation Office's (ATO) Taxpayer Compensation Guidelines which are expected to be updated by the ATO shortly. There are three methods by which compensation may be paid to a CSA client under the ATO compensation guidelines:

- compensation for CSA errors or unreasonable delays;
- compensation under Finance Direction 21/3; and
- Act of Grace payment.[33]

13.84 Compensation for CSA errors or unreasonable delays provide for a gratuitous payment to be made in situations where there is no legal liability while compensation under Finance Direction 21/3 may only be made where there is likely to be a legal liability for negligence. An Act of Grace payment is a special 'gift of money' by the Commonwealth which will only be paid in special circumstances where no legal entitlement exists and an amount is not otherwise payable under any other statutory or government approved scheme.[34]

33 ATO, **Taxpayer Compensation**, May 1994, p 9

34 ibid. p 11

13.85 The ATO compensation guidelines will be supplemented by a CSA policy guideline which is currently in draft form and is expected to be introduced on a national basis by the end of January 1995.[35] This guideline:

> ... outlines the occasions where factors unique to the administration of the Child Support Program necessarily cause the policy or procedures for dealing with compensation requests from clients of the Agency to differ from the ATO policy and procedures.[36]

13.86 The ATO compensation guidelines establish the following basis for making compensation payments which apply equally to CSA clients:

> The ATO will not compensate taxpayers simply on the basis that an error has been made or a delay has occurred. It must be recognised that in an organisation the size of the ATO it would be impossible to eliminate all errors, mistakes or delays, despite our continuing best efforts to do so. We have to set realistic and achievable standards for ourselves. To say that we will not make errors or have delays is not a realistic or achievable standard. What is essential, however, is that a taxpayer must notify the ATO that an error or delay has occurred which is causing them financial detriment and that the ATO must rectify this error within a reasonable time of being notified. If the ATO does not do so, then compensation is payable.[37]

13.87 The Joint Committee considers the general application of this policy to the CSA and its clients to be totally inappropriate and symptomatic of the ATO's failure to understand the different needs of the CSA. Unlike the ATO, the CSA continually deals with people at an often stressful and emotional time in their lives, people who often require advice for immediate action so they can arrange child support for their children. The CSA is also a much smaller organisation than the ATO and must be capable of delivering a prompt and professional service to cater for the needs of its clients. It must also be accountable for the advice it gives to its clients. Consequently, the Joint Committee considers that the CSA should formulate its own compensation guidelines so that they are completely independent of

35 CSA letter dated 28 October 1994

36 Draft CSA Policy Guideline, September 1994, p 1

37 ibid. p 22

the ATO and reflect the sensitive, service orientated agency that the Joint Committee envisages it becoming.

13.88 The Joint Committee recommends that:

Recommendation 106

the Child Support Agency introduces national compensation guidelines which are independent of the Australian Taxation Office guidelines.

13.89 The CSA draft compensation guideline briefly summarises the CSA's basic procedures in respect of client compensation and refers back to the ATO guidelines for the necessary detail. It also outlines two case studies and makes the following statement in respect of advising clients to apply for compensation:

> Clients will normally be aware when a financial loss is caused by the administration of the Child Support Program and therefore there is no need to advise clients to apply for compensation. Where the Agency is negligent in failing to intercept an income tax refund under section 72 of the *Child Support (Registration and Collection) Act 1988* it is legally liable for any damage incurred by the custodian as a result of its negligence. In this circumstance the custodian would not be aware of his or her entitlement. When we become aware we have failed to intercept a refund, we should advise the custodian that he or she may be entitled to compensation for the particular amount we should have intercepted, and how to apply. If applicable, we should also advise of the entitlement to claim compensation for interest.[38]

13.90 The Joint Committee notes that there will be other instances where the CSA's failure to act, and the costs of this failure, will not be apparent to custodial parents. Consequently, the Joint Committee considers the proposed general CSA practice of not advising clients to apply for compensation to be inequitable. It is the CSA, not the custodial parent, which will generally be in the best position to know when mistakes have occurred, and the potential costs of these mistakes, in these circumstances. Accordingly, the Joint Committee considers that the CSA should always inform clients where it finds its actions, or

38 ibid. p 2

lack of action, has caused financial loss. This advice should also include instructions to clients on how to apply to the CSA for compensation.

13.91 The Joint Committee recommends that:

Recommendation 107

the Child Support Agency amends its compensation guidelines to require it to advise clients where its action, or lack of action, has caused financial loss and to include instructions in this advice to clients on how to apply for compensation.

13.92 As already discussed, many submissions from custodial parents have complained to the Joint Committee that the CSA has failed to act upon advice provided despite persistent telephone calls and the passing of many months if not years. Similarly, some submissions complained that the CSA has refused to commence enforcement action until the child support debt has become large enough (in some cases in excess of $10,000) to warrant enforcement action. The age and size of these debts then make them far more difficult to collect. Other submissions have complained about the CSA's failure to intercept tax refunds and to update records when advised of new places of employment or residence.

13.93 The Joint Committee also received complaints from non custodial parents that misleading or incorrect oral advice received by the CSA had cost them substantial amounts of money. These complaints included:

- the CSA telling non custodial parents to apply to a court for departure from a formula assessment when the correct approach was either to lodge a current year income estimate with the CSA or seek a review by the Child Support Review Office; and
- the CSA telling non custodial parents whose formula assessments had yet to be processed that making direct payments to custodial parents was recognised by the CSA as meeting their child support obligations. The CSA, at a later date, rejected these payments as child support on the grounds that the custodial parent did not consider them to be child support.

13.94 Where these CSA errors and delays cause financial loss, the Joint Committee considers that redress should be available under the CSA's compensation guidelines. However, few clients of the CSA are aware of their right to claim for compensation in these circumstances and the CSA has not explained this avenue of redress in any public information it prepares. The Joint Committee considers that the CSA should rectify this oversight by informing all clients of its compensation guidelines and the situations in which claims can be made.

13.95 The Joint Committee recommends that:

Recommendation 108

the Child Support Agency informs its clients of the existence of the compensation guidelines, clients' rights to claim for compensation and the situations in which claims can be made.

Private Collection Agencies

13.96 The CSA claims it is changing the focus of its enforcement activity to concentrate upon improving the compliance of non custodial parents to meet their child support obligations. The Joint Committee recognises that this approach will not be universally successful and that some non custodial parents will refuse to comply with their obligations. Many of these parents will be pay as you earn taxpayers who can continue to be subject to the autowithholding provisions of the *Child Support (Registration and Collection) Act 1988*. Many others however, will not be pay as you earn taxpayers and for these parents the collection of child support debts will require increasingly sophisticated techniques. As already discussed, the evidence before the Joint Committee clearly shows that the CSA has not made consistent, thorough, or efficient use of its existing administrative powers of enforcement or of the powers available through courts under either the civil or family law jurisdiction. The limited changes announced by the Assistant Treasurer in April 1994 allowed parents who are able to make regular private arrangements for support of their children to 'opt out' of CSA collection. Over time, these changes are likely to make the enforcement function of the CSA even more

complex as the CSA will be left to collect largely from non custodial parents who will not comply with their obligations.

13.97 One means of improving the efficiency of enforcement practices could be to allow either the custodial parent or the Child Support Registrar to refer difficult cases to private collection agencies. The expertise provided by these agencies could either be employed on an hourly basis as required or they could be employed for a fixed percentage of monies they recover. The advantage of this approach is that experienced private industry expertise could be utilised in the enforcement of those cases where the CSA has been unsuccessful in collecting, with the balance of cases remaining with the CSA.

13.98 A concern with the use of private collection agencies is the potential for breaches of individual privacy. The enforcement actions of the CSA are constrained by the Information Privacy Principles. If this activity was to be subcontracted, the CSA would lose control over the methods employed to collect funds. There is the possibility that private collection agencies will take cost-effective and profitable recovery action which may intrude upon the rights of the non custodial parent thereby resulting in breaches of individual privacy.

13.99 Another concern with the use of private collection agencies is that once a child support liability is registered with the CSA it becomes a debt due to the Commonwealth pursuant to section 30 of the *Child Support (Registration and Collection) Act 1988*. Consequently, consideration will need to be given to the assignment, or otherwise, of the collection of the debt on behalf of the Commonwealth.

13.100 In line with the current CSA compliance policy, the Joint Committee considers it important that initial enforcement action has as its focus the requirement to encourage the non custodial parent to come to a voluntary arrangement to provide child support. While this will never always be the case, before referring cases for private collection, the Child Support Registrar should be satisfied that the non custodial parent is unlikely to enter into arrangements to voluntarily repay arrears and that the CSA's administrative enforcement tools have proved to be, or are likely to be, ineffective.

13.101 The Joint Committee considers that the CSA should establish a pilot to closely examine the costs and benefits of using private collection agencies to collect child support debts from non complying parents. This pilot should test how the expertise of private collection agencies can be efficiently used to collect child support in difficult cases while maintaining the CSA's collection function in voluntary compliance

cases. The cost of using private collection agencies should be tested along with possible conditions of use and charges to custodial parents for their use. The pilot should also consider the feasibility of allowing custodial parents to apply to the Child Support Registrar for the right to use private collection agencies themselves where the CSA has been unable to collect their child support debt after a reasonable period. The Joint Committee considers that the CSA should bear the costs of collecting child support debts incurred by this pilot.

13.102 The Joint Committee recommends that:

Recommendation 109

the Child Support Agency pilot the use of private collection agencies to collect child support debts. This pilot should test:

(a) methods of maximising the benefits obtained from the use of private collection agencies while maintaining the Child Support Agency's initial focus on voluntary compliance;

(b) the most appropriate fee structures and the cost effectiveness of private collection agencies;

(c) allowing custodial parents to apply to the Child Support Registrar for private enforcement of child support debts if the Child Support Agency has been unable to collect these debts; and

(d) the conditions and charges which might apply to custodial parents for the collection of child support debts by these agencies.

Recommendation 110

the costs of collecting child support debts during this pilot be borne by the Child Support Agency.

14

International enforcement of child support liability

Introduction

14.1 The Joint Committee is concerned about the possibility of liable non custodial parents under the Child Support Scheme leaving Australia and thereby avoiding their responsibility to pay child support. Assistance should also be available to custodial parents who may reside in an overseas jurisdiction and require the continued payment of child support from the non custodial parent residing in Australia. International enforcement of child support also applies to liable parents from overseas who have a responsibility towards children in other countries as well as a custodial parent from overseas now residing in Australia.

14.2 The Child Support Agency (CSA) in Hobart has responsibility in relation to international enforcement of child support liabilities. The approximate number of overseas cases held is 600 Stage 1 court orders and 100 Stage 2 cases. All Child Support branches hold Stage 2 cases where the payer has been determined to be a non resident and therefore the debt is uncollectable. This latter issue is discussed below in more detail.

14.3 The 1992-93 Annual Report of the Attorney-General's Department states[1] that in 1992-93, 108 maintenance orders were received from overseas jurisdictions for registration in Australia and 89 were sent to the appropriate authorities overseas for enforcement. In addition 28 applications were received under the United Nations Convention on the

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1 Attorney-General's Department, **Annual report 1992–93**, Vol 1, p 49

Recovery Abroad of Maintenance (UNCRAM) for appropriate maintenance action in Australia and 8 requests were sent overseas.

14.4 Article 27(4) of the United Nations Convention on the Rights of the Child provides:

> States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or in conclusion of such agreements as well as the making of other appropriate arrangements.

14.5 In the spirit of the United Nations Convention, Australia is a party to both bilateral and multilateral international arrangements for the obtaining of, and enforcement of, child support obligations. The countries Australia has an international arrangement with are listed in Appendix 8. With the unfortunate high levels of family breakdown it is important to protect the interests of children who can be most vulnerable in the turbulent period following family breakdown. For families who have their origins in another country, it is important to have international arrangements to protect those children and to ensure that their financial needs are met. For these reasons international cooperation must be seen as being most important in ensuring the welfare of children as a paramount consideration following family breakdown.

14.6 In relation to international arrangements the *Family Law Act 1975* makes provision for the implementation of Australia's international obligations in relation to maintenance and child support. Section 110 of the *Family Law Act 1975* relates to the recognition and enforcement of maintenance orders made in overseas jurisdictions and section 111 of the Act provides for implementation of the United Nations Convention on the Recovery Abroad of Maintenance, signed at New York on 20 June 1956.

Reciprocal Arrangements

14.7 Section 110 of the *Family Law Act 1975* provides that regulations may make provisions for and in relation to, among other things, the registration in, and enforcement by, courts having jurisdiction under the *Family Law Act 1975* for maintenance orders made by courts or authorities of reciprocating jurisdictions. Under the Act a 'maintenance order' means:

> an order or determination (however described) with respect to the maintenance of a party to a marriage - this includes child support legislation;
>
> an order or determination (however described) with respect to the maintenance of the child who has not attained the age of 18 years; and
>
> an order or determination (however described) with respect to the needs of the child for continued education and with respect to a child requiring special vocational training or education because the child is mentally or physically handicapped.

14.8 The definition of 'maintenance order' was amended to 'maintenance order or determination (however described)' to cover both court and administrative determinations or assessments for child maintenance or child support.

14.9 Section 110(2)(ab) of the *Family Law Act 1975* provides for enforcement proceedings by an authority entitled to monies payable under a maintenance order, in the authority's discretion. The Explanatory Memorandum to the 1989 amendment of the *Family Law Act 1975* explains that section 110 be amended:

> ... to permit the establishment or reciprocity with prescribed overseas jurisdictions when maintenance liabilities are determined by, or collected by, public authorities.

14.10 It also provides that the amendment will:

> ... enable the public authority to be entitled to recover monies payable by determination, assessment or order made by that authority or be entitled to collect, in its own name, monies owing to it.

14.11 This provision is the legislative basis establishing the reciprocity with prescribed overseas jurisdictions. From the Australian perspective these amendments are necessary following the introduction of the Child Support Scheme which is based upon an administrative assessment for the liability of child support obligations. Prior to these amendments the reciprocal arrangements between Australia and overseas jurisdictions were based upon the registration of court orders only.

14.12 The procedural requirements for obtaining the registration of an overseas maintenance order are contained in Part III of the Family Law Regulations. The Regulations provide that all maintenance orders, other than applications for a variation to orders already registered in Australia, must be forwarded to the Secretary of the Attorney-General's Department in Canberra, together with a request for registration or confirmation of the order in Australia and with the supporting documents required by Regulation 26, being:

- a certified copy of a maintenance order from a reciprocating jurisdiction; and
- a certificate signed by an Officer of a Court or authority in that jurisdiction relating to the order and containing a statement that the order is, at the date of the certificate, enforceable in that jurisdiction and a statement as to the amount of any arrears owing under the order.

14.13 When the Secretary's authorised officer is of the belief that there are reasonable grounds that the person against whom the order is made is ordinarily resident in, present in or proceeding to Australia, that officer shall then send the documents received by the Secretary to a Court having jurisdiction under the *Family Law Act 1975*. The documents are transmitted to the appropriate Court with a request for registration and enforcement.

14.14 Australia will accept orders for the recognition and enforcement of maintenance orders from a country or part of a country with which reciprocity has been established for recognition and enforcement of those orders. To become a prescribed overseas jurisdiction a country must be declared to be a reciprocating jurisdiction for the purposes of section 110 of the *Family Law Act 1975*. To establish reciprocity, compatibility of laws on maintenance is required together with an assurance of reciprocal treatment of the recognition and enforceability of maintenance orders. Prescription of a reciprocating jurisdiction is achieved by amending the Regulations by Governor-General in council.

14.15 Upon receipt of the request from the Secretary the Registrar of the recipient court is required to register a final order in the court. Once an overseas maintenance order is registered under the Regulations, until the registration is cancelled, the order is enforceable in Australia and has the effect in Australia as if it were an order made under the *Family Law Act 1975*. Once an order has been transmitted by the Secretary of the Attorney-General's Department to an Australian court there is no further requirement to communicate through the Attorney-General's Department.

14.16 All requests for registration or confirmation must be accompanied by residential details of the person against whom the order was made. The Attorney-General's Department does not have a facility to locate persons for the purpose of maintenance enforcement. Consequently, the Attorney-General's Department function is limited to obtaining the registration of the overseas maintenance order.

14.17 For the purposes of collection of monies due under an overseas order which has been registered or confirmed in an Australian court, the amount of money expressed in the currency of the overseas country is converted into Australian dollars on the date on which the order (by registration, confirmation or otherwise) becomes an enforceable order in Australia. The conversion is on the basis of the relevant telegraphic exchange rate prevailing on that date.

14.18 Upon registration of the overseas maintenance order, the Registrar or Clerk of the Court notifies a requesting State of the registration. The respondent is then served with a certified copy of the order together with a notice of registration specifying the amount (including any arrears) due under the order. The respondent is also notified of the person, authority or court to whom or to which money payable under the order is to be paid. Following the registration of the order, it is open to the respondent to challenge the validity of their liability to pay maintenance by either requesting the order be discharged or varied.

Multilateral International Arrangements

14.19 The UNCRAM entered into force for Australia on 14 March 1985. It was concluded at New York in 1956 and is a relatively old Convention. The procedures under the Convention are cumbersome and practically it is of little benefit to Australia. In 1992-93 there were 117 applications made under UNCRAM of which 89 (76 per cent) were made to Australia. The Convention is contained in Schedule 3 of the Family Law Regulations.

14.20 The purpose of the Convention is to enable a person living in one convention country to institute proceedings for the recovery of maintenance against a person living in another convention country. To overcome the difficulties created by the differences between maintenance regimes of different countries, the Convention provides for claims to be processed under the law of the country where the respondent is found. To enable this to be done, the Convention provides for each country to establish a transmitting and receiving agency. In Australia the transmitting and receiving agency is the Controller of Overseas Maintenance Claims. The Secretary to the Attorney-General's Department was appointed as the controller on 14 January 1985.

14.21 Currently, in excess of 40 countries or states have ratified, or acceded to, the Convention. The requirement that the person making a claim for maintenance must rely upon the existing law of the country where the respondent resides to obtain an order, is an advantage in that the claimant can then use the enforcement mechanisms available in that country to enforce the order.

14.22 In order to make a claim, an applicant must provide the transmitting agency with sufficient documentation to enable a claim to be instituted. The transmitting agency, assuming the documents are in good order, then transmits them to the receiving agency of the respondent's country. Under the Convention, the receiving agency is required to take, on behalf of the claimant, all appropriate steps for the recovery of maintenance, including the settlement of the claim, and when necessary institution and prosecution of an action for maintenance and the execution of an order or other judicial act for the payment of maintenance.

14.23 An important aspect of the Convention is that it is a facilitating one in the sense that an applicant is not required to first obtain a maintenance order in the country in which they reside. The Convention assists in the obtaining of an original order in the country where the respondent resides.

14.24 An application under the United Nations Convention should include the following documentation:

- an affidavit setting out the personal particulars of a claimant, including the full name, address, date of birth, nationality, occupation, photograph and particulars of the claimants legal representative;
- the affidavit should also include particulars of the respondent, including full name, date of birth, nationality, occupation, if possible addresses for the last five years, and a photograph;
- particulars of a marriage, children thereof, current marital status, together with certified documentation in relation to these;
- details of living standards and the costs of living in the claimant's country of residence; and
- specific details relating to the costs of maintaining the children for whom maintenance is claimed.

14.25 A useful document for the purpose of establishing the applicant's financial circumstances is a document contained in Form 17 of the Family Law Rules entitled ‘Statement of Financial Circumstances’. Applicants are required to complete this detailed form as to their financial circumstances.

14.26 Upon receipt of an UNCRAM application from a transmitting authority, the Controller of Overseas Maintenance Claims will examine the documents for compliance with the Convention and with Australian legal requirements. If necessary, the Controller will write to the transmitting authority requesting further information and may either transmit the documents to the relevant authorised person in Australia, or return them pending receipt of further information. When the application is in a satisfactory form, it will be transmitted to the relevant authorised person. That office will then take such steps as are appropriate in order to facilitate the recovery of maintenance. The authorised person may enter into negotiations with the respondent seeking either a maintenance agreement or consent orders, but if negotiations are not successful, then the authorised person may make application to the appropriate court for an order seeking the respondent to pay periodic maintenance. Any settlement or agreement requires leave of a court for approval.[2]

2 r.50(4) *Family Law Regulations*

14.27 At the hearing of an UNCRAM application, assuming the court is satisfied as to the liability of the respondent to pay maintenance, it will then assess the amount to be paid on the basis of the financial details available before the court. The fundamental consideration is a balancing of the needs of the applicant and/or child and the capacity of the respondent to pay. If the court makes an order in favour of the applicant, such an order will be expressed in Australian currency and will normally stipulate that all payments are made into the court for direct payment to either the applicant or the relevant Government agency in the overseas country for transmission to the applicant or child.

Child Support Legislation and Overseas Maintenance

14.28 Not only does the CSA administer the child maintenance collection system established by the child support legislation, but arrangements have been made with the CSA to collect maintenance in relation to overseas orders which have been registered in accordance with the provisions of the *Family Law Act 1975*. Section 124 of the *Child Support (Registration and Collection) Act 1988* provides that the Act applies to orders registered in a court under the *Family Law Act 1975*. After registration under the *Family Law Act 1975* the overseas order may then be collected through the CSA as if it were an Australian order. The CSA then makes arrangements for the payment of maintenance obligations to the recipient who resides overseas. Enforcement of maintenance orders or determinations is available through the CSA provided that the order or determination is registered in a court in Australia.

14.29 These orders may then be registered with the CSA under the terms of section 124 of the *Child Support (Registration and Collection) Act 1988.* The existing arrangement is that these orders and determinations will continue to be received under existing reciprocal arrangements under the *Family Law Act 1975* and once registered would be passed to the CSA for enforcement action. Where possible, the CSA will collect periodic child maintenance through automatic deductions from the non custodial parent's salary or wages, in the same way as income tax is collected. Self employed persons are required to forward their maintenance liabilities direct to the CSA each month.

Conclusion

14.30 While parents may no longer be married or living together, they still have a fundamental responsibility for the financial upbringing of their children. The need for children to be cared for and supported until they are adults is recognised in Article 27(4) of the United Nations Convention on the Rights of the Child. Both parents of the child must continue to have and bear their fundamental responsibility for ensuring that their children's needs are met.

14.31 The Joint Committee is concerned that there are migrant source countries, such as Italy and Greece, with which Australia has no bilateral reciprocal arrangements and that until the Attorney-General's Department undertakes to complete arrangements with these outstanding countries, a significant loophole remains in the international enforcement of child support.

14.32 In the spirit and the intent of Article 27(4) of the United Nations Convention on the Rights of the Child, Australia is a participating party to the above international arrangements for the purpose of ensuring that parents contribute to the maintenance and well being of their children until they reach the age of 18 years. It is important that parents residing both within Australia and in overseas jurisdictions continue to contribute to the support of their children no matter where they reside. It is for these reasons that the Joint Committee concludes that as many arrangements as possible should be entered into by Australia in the international arena to enhance and support the financial security and future of children.

14.33 The Joint Committee recommends that:

Recommendation 111

Australia, through the Attorney-General's Department, increases the number of arrangements in the international arena for the reciprocal enforcement of child support responsibilities.

14.34 In supporting the need for as many international arrangements as possible, the Joint Committee considers that the simplest and most effective method of enforcement of overseas maintenance orders should be utilised. In this regard the Joint Committee concludes that the preferred approach is the expansion of the existing reciprocal arrangements as the approach adopted by UNCRAM is too cumbersome and costly.

14.35 The Joint Committee recommends that:

Recommendation 112

reciprocal enforcement arrangements be made in preference to the United Nations Convention on the Recovery Abroad of Maintenance multi-lateral approach.

14.36 The Joint Committee considers that the CSA should assume the functions of the Attorney-General's Department in the enforcement of overseas maintenance orders because the CSA has better facilities to perform these functions. The CSA has access to the resources of the Australian Taxation Office to both locate non custodial parents in Australia and enforce collection of the child support liability if necessary. Consequently, the CSA should be much more effective than the Attorney-General's Department in administering and enforcing overseas maintenance orders. However, the Attorney-General's Department, in consultation with the CSA, should maintain the role of negotiating reciprocal child support arrangements as it possesses the expertise in international family law.

14.37 The Joint Committee recommends that:

Recommendation 113

the Child Support Agency assumes the functions of the Attorney-General's Department in the enforcement of overseas maintenance.

14.38 At present there is a major loophole in the child support legislation as all a liable parent has to do to avoid any payments is to emigrate to another country. This is a serious anomaly as it does not matter whether a person goes to a country with which Australia has an arrangement or not. The consequence is that the custodial parent must institute their own proceedings overseas at additional cost and often with the frustration of proceeding in an unfamiliar jurisdiction.

14.39 The Joint Committee received a number of submissions which complained that this loophole was unjust. One custodial parent submitted:

> In 1992 my estranged husband was retrenched. He is a computer programmer and networker and was headhunted by an overseas company. Ultimately he went to work in the Netherlands in July 1992.
>
> In May 1992 when I became aware of his proposed departure I informed the Child Support Agency and made enquiries as to how I could ensure continuing maintenance or stop him from leaving the country if necessary. I was advised that there was nothing I could do as there was no legal agreement between Australia and The Netherlands to enforce Interim Maintenance Agreements. He was also up to date with his payments. ...
>
> I am sure there are a number of supporting parents in the same position as myself because the non-custodial parent is secure in the knowledge that maintenance payments cannot be enforced in countries where there is no International Agreement concerning the matter of child support. We do not have the money to pay high legal fees to fight our cause and Legal Aid is not available.[3]

14.40 This loophole arises under section 12(3) of the *Child Support (Assessment) Act 1989* which states that a child support terminating event happens in relation to a person who is a liable parent in relation to a child if the person ceases to be a resident of Australia. As Australia is a party to international arrangements enabling action to be taken against non custodial parents residing overseas, the Joint Committee is of the view that section 12(3) of the *Child Support (Assessment) Act 1989* should be amended to enable enforcement action to be taken by the CSA against non custodial parents residing in countries with which Australia has an arrangement.

3 Submission No 2942

14.41 The Joint Committee recommends that:

Recommendation 114

section 12(3) of the *Child Support (Assessment) Act 1989* be amended so that a liable parent moving overseas is not a child support terminating event, thereby allowing child support to continue to be collected from that parent.

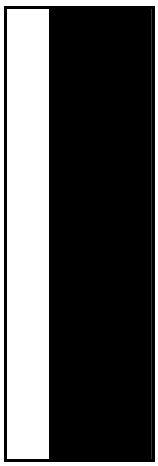
14.42 There are circumstances where it is desirable for the Child Support Registrar to have the power to restrain a liable parent from leaving Australia. This includes where a liable parent may be leaving Australia permanently without making satisfactory arrangements for the payment of child support or where it is believed the person is leaving Australia for the purpose of avoiding child support. There are several measures which could be used to restrain a person from leaving Australia including impounding passports, seizure of assets where there is a debt, a caveat on property or proving to the Child Support Registrar that a satisfactory arrangement for payment has been made. Alternatively, the Child Support Registrar could be given a general power to apply to the courts for a prohibition order preventing a liable parent from leaving Australia.

14.43 The Joint Committee considers that a general prohibition order would be more effective than specific action, such as impounding a passport, as a general prohibition order cannot be easily avoided or frustrated by other legal procedures. In contrast, the impounding of a passport may be easily overcome by a dual national obtaining another passport. The purpose of a prohibition order would be to force the liable parent to negotiate satisfactory arrangements for the payment of child support with the CSA. It should apply to a liable parent leaving Australia permanently or for a limited period of time. Non compliance with such an order should be an offence.

14.44 The Joint Committee recommends that:

Recommendation 115

the Child Support Registrar be given the power to apply for a court order prohibiting the departure of a liable parent where satisfactory arrangements for the payment of child support have not been made



PART III—Child support assessment considerations

15

Formula percentages

Introduction

15.1 The current formula used in the administrative assessment of child support under Stage 2 of the Child Support Scheme was based on the recommendations contained in the May 1988 report from the Child Support Consultative Group (Consultative Group) entitled, **Child Support: Formula for Australia** (CSCGR).

15.2 A major factor in the recommended formula is the contribution percentage which is applied to the income of the non custodial parent (above the self support component) to calculate the relevant child support liability. The percentages recommended were:[1]

- One child 18 per cent
- Two children 27 per cent
- Three children 32 per cent
- Four children 34 per cent
- Five or more children 36 per cent

1 CSCGR, **Child Support: Formula for Australia**, p 67

15.3 The Consultative Group identified the following factors which were relevant in its determination of the formula percentages:

> In determining appropriate percentage levels to apply above the self support component, available evidence that might indicate the proportion of family income normally devoted to children in a two parent family was taken as a starting point. However in arriving at percentage contribution rates a number of other factors need to be taken into consideration. These include additional costs of rearing a child where parents do not live together, indirect costs of children to custodial parents, access costs incurred by non-custodial parents, retention of appropriate incentives to earn for non-custodial parents and the views of the community on what would be considered a fair level of child support. In ascertaining community views the results of the consultations which followed publication of the Child Support Discussion Paper were considered along with additional views put to the Group by individuals and interest groups.
>
> The above factors were weighed against the overriding objective of ensuring non-custodial parents share in the cost of supporting their children according to their capacity to pay. In particular the comparative disposable incomes of custodial and non-custodial parents at a range of income levels and child support payment levels were closely examined to provide a picture of the comparative living standards of both households.
>
> The formula percentages arrived at are the result of weighing up the empirical evidence related to on the percentages of family incomes devoted to children, along with the range of economic and human factors which have an impact on the support of children of separated parents. It is important to note that the percentages adopted are, under the formula, higher than average proportion of income non-custodial parents will be required to pay in child support because of the existence of the self support component.[2]

2 ibid. p 68

Research into the Costs of Children

15.4 The following studies were identified by the Consultative Group as being of 'particular assistance in ascertaining the predominant trends of research and assisted in shedding light on the amount of family income spent on children':[3]

- A United States report entitled **Development of Guidelines for Child Support Orders** by Dr Robert Williams which gave precedence to the work of an American researcher, Thomas Espenshade, in arriving at formula percentages;
- The research which lead to the development of the contribution percentages of the Wisconsin formula in the United States (as summarised in various papers by Irwin Garfinkel from the Institute of Research on Poverty) which included a detailed review of economic literature on the cost of children in a paper by Jaques Van der Gaag entitled **In Measuring the Cost of Children** (1981); and
- Peter Whiteford (1987): **Costs of Children**, Social Security Journal (Australia).

15.5 The studies by Van der Gaag and Whiteford into the costs of children appear to have been of particular significance to the Consultative Group as the conclusions reached therein were specifically referred to by the Consultative Group.[4]

Costs of Children

15.6 The costs of children are often divided into two distinct classes, namely, direct and indirect costs. Direct costs are the additional costs that a household has because of the presence of children and generally includes expenditure by parents on children's requirements for food, clothing, education, transport, health care, leisure goods, together with the extra costs incurred for accommodation, heating, electricity and household equipment. On the other hand, indirect costs refer to the forgone lifetime earnings of the child rearers caused by one or both parents spending time out of paid employment or taking a lower paying job in order to look after the children.

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3 ibid. p 69

4 ibid. p 70

15.7 A study by Beggs & Chapman (1988) entitled **The Forgone Earnings from Childrearing in Australia**,[5] estimated that a broad minimum summary statistic of forgone earnings 'indirect costs' would be around AUS $300,000 (1986) for the first child, with second and third children costing around $50,000 and $35,000 respectively.[6] This estimate was obtained through complicated econometric modelling of the determinants of labour force participation, hours worked if employed and wage rates. It depended on a range of factors including the woman's education and the availability of capital market opportunities. Beggs & Chapman emphasised 'that the cross-sectional estimates have several problems ... and should not be taken too literally'.[7] Nevertheless, the Joint Committee notes the potential size of the estimated indirect costs and the fact that the studies referred to below disregard indirect costs in estimating the costs of children.

15.8 The Joint Committee also notes the evidence given by the Australian Institute of Family Studies (AIFS) that the use of the term 'costs of children' may be misleading as the widely accepted equivalence scale research in this area is:

> ... based on the amounts of money that Australian families spend on their children. In that sense, the notion of 'costs of children' is not the right terminology. 'Expenditure on children' is the more correct terminology.[8]

15.9 However, the Joint Committee will continue to use the term 'costs of children' in its report for the sake of uniformity.

15.10 A major difficulty with estimating the direct costs of children is the reliability of the methodologies available and the wide range of results they produce. This arises because of the inherent difficulty in separating the discrete costs of children from total family costs. This is further complicated by the different data sources available, the changing patterns of family composition and varying household expenditures over time.

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5 Beggs & Chapman, **The Foregone Earnings from Childrearing in Australia**, Centre for Economic Policy Research, Australian National University, Canberra, 1988

6 ibid. pp 41–2

7 ibid.

8 Transcript of Evidence, 20 January 1994, p 1165

The Van der Gaag Study (1982)

15.11 This study set out to sketch the development of the measurement of the cost of children in the economic literature as the means of arriving at an estimate of the cost of a child. Its conclusions were specifically referred to by the Consultative Group.[9]

Equivalence Scales

15.12 Van der Gaag noted that the most popular approach to the problem of determining the cost of a child:

> ... considers the determination of scales to adjust income (or consumption) levels of families of different composition in order to make them 'equally well off'.[10]

15.13 These so called 'equivalence scales' are usually expressed as a set of numbers with some arbitrarily chosen family or household type taken as the base with a value set equal to 100 (or 1.0). Other family types are then expressed as proportions of this base. For example, if the benchmark is taken to be a couple without children then to determine that the figure for an individual is 60 (or 0.6) implies that a single individual needs only 60 per cent of the income of a couple to be as well off as they are. Similarly, if the figure for a couple with 2 dependant children is 140 (or 1.40), then they need 140 per cent of the income of a couple without children to obtain the same level of well being. This also implies that couples with no children and incomes of say $10,000, couples with 2 children and incomes of $14,000, and individuals with incomes of $6,000 should, on average, be able to obtain a similar standard of living.

15.14 Most of the literature on household equivalence scales starts with the familiar economic assumption 'that households maximise a utility function under a budget constraint'.[11] The result is a set of demand equations, explaining the consumption of goods and services as a function of prices, income, and household characteristics.

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9 CSCGR, op.cit. p 70

10 Van der Gaag, On Measuring the Costs of Children**,** p 2

11 ibid. p 4

15.15 However, this economic theory does not assist in answering the practical question of how to estimate equivalence scales. A range of methodologies have attempted to answer this difficult question.

Estimating Equivalence Scales

15.16 The major methods of estimating equivalence scales, as identified by Van der Gaag, are:

- the food share method;
- the basic necessities method;
- the constant utility method; and
- the direct survey method.

Food Share Method

15.17 This method estimates equivalence scales by actually observing the consumption of different market bundles of food by households with different incomes and different family composition. On this consumption behaviour differences in economic well being are inferred. Van der Gaag stated that 'one of the best-known examples of this approach again goes back to the work of Engel'.[12] Engel observed that the proportion of income spent on food declines as income rises[13] and that large households spend a larger proportion of their income on food than small households. Van der Gaag stated that this approach suggests that the 'food share can be used as a measure of well being as it is often assumed that two households are equally well off if they spend the same proportion of income on food. Once this measure of 'well-offness' is accepted, the measurement of the cost of the child is relatively straight forward, as in the following example:

> Assume we observe two households. One is childless, has an income of $10,000 and spends 25% of that income on food. The other has one child, the same income and spends 30% on food. According to our food-based definition of economic well-being, the childless couple is "richer". The question is: How much additional income is needed to make the second household equally well off. We can answer this question by

12 ibid. p 8

13 A relationship which subsequently became known as 'Engel's law'

> observing one- child families at different income levels. Suppose we find that the average one-child family spends 25% of its income on food at an income level of $12,000. We conclude that the cost of the child is $2,000[14] [being the difference between $10,000 and $12,000]

15.18 Van der Gaag noted that the advantages of using food share as a measure of economic well being are clear. It is a relatively easy measure, and the amount of information needed is limited. Furthermore, 'it is based on some intuitive notion of basic needs: large families "need" more food than small families'.[15] It is also based on Engel's observations of household consumption which have 'been repeatedly confirmed in later work'.[16]

15.19 However, Van der Gaag also identified a number of problems with this approach noting that a society 'in which basic food needs can virtually always be met, the focus on food seems somewhat arbitrary, and is too restrictive'.[17] Furthermore, 'the observation that food shares decline as income rises, and go up if family size increases, does not imply that equal food shares represent equal welfare levels'.[18]

Basic Necessities Method

15.20 This method extends the food share method to include other commodities based on the assumption that households that spend 'equal proportions of their income on "basic necessities" (food, housing, clothing and transportation) are equally well off'.[19] Van der Gaag noted that the choice of the goods to comprise 'the basic necessities' is somewhat arbitrary and 'less convincing in a rich society where the concept of "necessities" is less anchored in a notion of physical needs than in some notion of socially acceptable minimum living conditions (which might include such "un-necessities" as a colour TV, theatre tickets, and, say one two-week vacation per year)'.[20]

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14 Van der Gaag, op.cit. p 9
15 ibid.
16 ibid. p10
17 ibid.
18 ibid.
19 ibid.
20 ibid. p 11

Constant Utility Method

15.21 This method is based on the Stone-Geary utility function and assumes that households first spend part of their income on some specific minimum level of each good distinguished before they decide how to spend the remainder of their income. Van der Gaag noted that the strength of this approach was that it had a strong basis in economic theory.

15.22 Van der Gaag noted that each of the three measures outlined above (food share, basic necessities and constant utility) depend on the size of the household and use observed household consumption patterns to provide the information needed to obtain estimates of the cost of a child.[21] Accordingly, they represent indirect methods of estimating equivalence scales.

Direct Survey Method

15.23 An alternative to the above indirect methods is to conduct a survey which simply asks the question of how much it takes, under various circumstances, to reach a given welfare level.

15.24 One of the shortcomings of this approach is that respondents are asked to judge the economic well being of a hypothetical household. Van der Gaag noted that this problem can be overcome by asking the following question:

> Living where you do now, and meeting expenses you consider necessary, what would be the very smallest income you (and your household) would need to make ends meet?[22]

15.25 Van der Gaag states that this way of posing a question has to do with 'welfare levels [which] refers directly to respondent's own circumstances'.[23] More specifically, the answer to this question is a function of the income level of the respondent and his family size and therefore contains all the information needed to calculate the cost of the child.

21 ibid. p 14
22 ibid. p 16
23 ibid.

Summary of Results

15.26 The range of estimates of the cost of the first child obtained under each of the above methodologies is summarised in the following table:

Table 15.1 Estimate of Cost of the First Child under each of the Equivalence Scale Methodologies

Method	Result
Food Share	0–42%
Basic Necessity	7–40%
Constant Utility	0–35%
Direct Survey	13–28%

15.27 Van der Gaag noted that:

> ... there is not much consensus about the numbers. The percentage increase of income needed to compensate a couple for having a first child runs from 0% to 42%. There seems to be no systematic relation between the outcome and the technique used.[24]

15.28 Van der Gaag also noted that the results vary widely depending upon the age of the child and the income level used. In particular, Van der Gaag referred to Espenshade's results[25] which estimated the average cost of a child over an eighteen year period to be 32 per cent of parental income. In addition, the 'Van der Gaag Smolensky result[26] is consistent with the assumption that the cost increases approximately two percentage points each year, yielding an average cost of 18 per cent'.[27] Van der Gaag then applied this as a 'tour de force' to reduce the range of the results to conclude that the arrival of a child requires between 18 per cent and 32 per cent of additional income for a couple with about $12,000 income in order to maintain an equivalent standard of living.[28] Van der Gaag then stated:

> If I were obliged to give an estimate on the basis of the information given above, I would say that the 'true value' of the cost of the first child is between 20% and 30% of the childless couple's income. An obvious point estimate would

24 ibid. p 18
25 US study, 1973
26 US study into the costs of children, 1981
27 Van der Gaag, op.cit. p 20
28 ibid.

> be 25%. ... But we would like to emphasize the large variance in the estimates. Other observers might easily reach a different point estimate.[29]

15.29 Van der Gaag also conceded that the derivation of this point estimate for the cost of the first child was only possible after 'extensive manipulation of the data'.[30]

15.30 The Joint Committee considers these statements to be extraordinary especially in light of the fact that Van der Gaag's study was important in the Consultative Group's deliberations. They demonstrate how divergent the research into the costs of children is and, as a result, how arbitrary any assessment of appropriate formula percentages must be. In the final analysis it appears to be simply a matter of judgement or best guess.

The Cost of Second and Subsequent Children

15.31 In relation to the cost of second and subsequent children, Van der Gaag stated that:

> ... the consensus about the cost of subsequent children is even lower than that for the first child.[31]

15.32 Van der Gaag concluded that:

> ... if any general result can be derived. ... one could argue that the second child costs about half as much as the first, the third costs the same as the second, and the subsequent children are about half as expensive as the second and third.[32]

29 ibid. p 21
30 ibid.
31 ibid.
32 ibid. p 24

15.33 This conclusion is reflected in the following summary of Van der Gaag's results, based on a reference income of $12,000, which again was only possible 'after excessive data manipulation'.[33]

Table 15.2 Summary of Van der Gaag's Results

Number of Children	Percentage of Income Shared with Children
1	20
2	27
3	33
4	36
5	39

The Wisconsin Child Support Formula[34]

15.34 The following extract from the discussion paper **Reforming Wisconsin's Child Support System**[35] indicates the importance of Van der Gaag's study in the determination of the percentages used in the Wisconsin (USA) formula:

> For several reasons, the proportion of their incomes that absent parents share with their children should be lower than the proportion they would have shared had they been living with the children. First, some of the costs of raising the child will be borne by the custodial parent. Second, a parent derives less benefit from a child when he or she lives apart from rather than together with the child. Third, the non-custodial parent will incur some costs for the children in the course of normal visitation. Finally, extremely high child support tax rates on non-custodial parents should be avoided because they will encourage evasion.
>
> None of these reasons for expecting absent parents to share less of their income with their children than if they lived with them suggest an exact amount. Ultimately, decisions about how much the non-custodial parent should pay depend also upon judgements about how to balance the conflicting objectives of providing well for the children; minimising

33 ibid.

34 See Appendix 9

35 Ann Nichols-Casebolt, Irwin Garfinkel and Patrick Wong, 1985 – See Appendix 9

public costs; and retaining incentives and a decent standard of living for the non-custodial parent.

Combining the midpoint of the estimated range of what percentage of income parents who live with their children share with their first child - 25 percent, with the first three reasons for expecting absent parents to contribute a smaller percentage of their income to the children, led the joint task force to recommend a child support rate of 17 percent for the first child. Based upon estimates of the cost of a child, the additional rate for the second and subsequent children should be about half the rate for the previous child. The committee[36] also suggested that the highest rate for children in one family be 34 percent, hence the recommended rates of 17, 25, 29, 31, and 34 percent for 1, 2, 3, 4, and 5 children.

The Whiteford Study (1987)

15.35 This study by Peter Whiteford[37] provided a comprehensive summary of the results of the Australian and overseas equivalence scale research. It was also specifically referred to by the Consultative Group.[38]

15.36 Whiteford noted that 'estimates of the cost of children can vary quite markedly and that the figures are not always plausible'.[39] As a result he took the further step of presenting the geometric means of all the research estimates of the cost of children and also separated out the geometric mean of the Australian research results. Table 15.3 summarises these results:

36 The Wisconsin Committee

37 Senior Research Fellow, Social Welfare Research Centre, University of New South Wales

38 CSCGR, op.cit. p 69

39 Whiteford, **The costs of children: The implication of recent research for income support policies**, p 9

Table 15.3 Geometric Means Derived from Equivalence Scale Research[40]

Family Composition		Overall	Australian
Adult	Children	Geometric Mean	Geometric Mean
1	0	0.64	0.61
1	1	0.90	0.88
1	2	1.10	1.01
1	3	1.31	1.17
2	0	1.00	1.00
2	1	1.20	1.16
2	2	1.38	1.30
2	3	1.59	1.48

15.37 Whiteford concluded that the above table:

> ... shows that the estimated costs of each child are around 20 per cent of the costs of a couple without children, if the international research is included, and somewhat lower at around 16 per cent if only the Australian research is taken as relevant. [41]

Other Factors

15.38 Whilst the costs of children research identified above acted as the starting point, the Consultative Group identified the following factors as having a bearing on its final formula percentage recommendations:

- indirect costs of children [ie, loss of earning capacity];
- access costs;
- additional costs of children where parents do not live together;

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40 Source: Results for the overall geometric mean were calculated from all equivalence scales except the administrative results which represent the scales implicit in the social security systems of a limited range of countries including Australia. The other results are calculated from the Australian research (not including the Henderson relativities). The geometric mean is defined as the nth root of the product of n numbers, in this case the relevant equivalence scale values. It was used as a measure of the central tendency of the results – primarily because it has been used in previous equivalence scale research.

41 Whiteford, op.cit. p 9

- incentive effects; and
- community views.

Indirect Costs of Children

15.39 This factor was discussed above and includes both indirect costs of a market nature, that is, loss of work force participation opportunities by the custodial parent, together with indirect costs of a non market nature, that is, time and labour spent on the child or children. The Consultative Group stated that:

> ... in general the indirect costs of children were considered as a factor which might justify higher formula percentages.[42]

15.40 The Joint Committee notes that it is unclear how and to what degree the Consultative Group specifically accommodated these indirect costs within the recommended formula percentages.

Access Costs

15.41 Whilst there is a specific formula which deals with situations where access costs are very substantial or where the level of access is very high, the Consultative Group noted that:

> The percentages arrived at recognise that while a non-custodial parent may not have high cost of access ... he or she may have some costs of access.[43]

15.42 The Joint Committee notes that it is unclear how the Consultative Group specifically accommodated these 'smaller' costs of access within the recommended formula percentages.

42 CSCGR, op.cit. p 71

43 ibid. p 72

Additional Costs of Children where Parents do not Live Together

15.43 The Consultative Group stated that:

> It is clear that it costs less to maintain an intact family at a given standard of living than it does to maintain that family after parents separate. This is because items such as the house or the car can be shared by an intact family whereas to maintain the same standard of living after separation each parent's household requires a equivalent house, car etc. Studies also indicate that the share of family income devoted to a child in a one parent family is higher than in a two parent family. This implies that a non-custodial parent may need to devote a larger proportion of income to children postseparation to maintain the preseparation living standard of those children.[44]

15.44 Again, it is unclear, and probably impossible to second guess, how this factor specifically impacted upon the formula percentages recommended by the Consultative Group.

Incentive Effects

15.45 The Consultative Group examined the likely impact of formula percentages on incentives for non custodial parents to earn income and on incentives to evade child support obligations with the ultimate aim being to:

> ... design a formula which delivered a just and acceptable result to both parents while giving primary consideration to the needs and rights of children.[45]

15.46 Again, the precise impact of this factor upon the final formula percentages is impossible to determine.

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44 ibid.

45 ibid.

Community Views

15.47 The Consultative Group considered the views of the community and relevant interest groups on appropriate support levels for children through the examination of the results of consultations and submissions to which the Consultative Group had access. The Consultative Group stated that:

> In general these views do not relate to the percentage of parental income which is or should be devoted to children. ... Rather they concentrated on the inadequacy of current levels of child support payments and on the disparity in postseparation living standards between the non-custodial parent and the custodial parent and children.[46]

15.48 The Consultative Group also considered the comparative disposable incomes of the custodial and non custodial parent's households 'in some detail'.[47] Again, it is difficult, if not impossible, to assess precisely how this factor impacted upon the Consultative Group's final recommendations. However, the Consultative Group's comments suggest that it acted in support of higher formula percentages.

Capacity to Pay

15.49 In determining the child support formula percentages, the Consultative Group's final step was to weigh the research into the costs of children and the other factors mentioned above against:

> ... the overriding objective of ensuring non-custodial parents share in the cost of supporting their children according to their capacity to pay. In particular the comparative disposable incomes of custodial and non-custodial parents at a range of income levels and child support payment levels were closely examined to provide a picture of the comparative living standards of both households.[48]

46 ibid.
47 ibid.
48 ibid. p 68

Analysis of Submissions

15.50 The Joint Committee has received 1505 submissions which state that the formula is too harsh. These submissions represent 24.3 per cent of the total number of submissions by the Joint Committee.

15.51 One non custodial parent submitted to the Joint Committee that child support calculations are harsh and illogical:

- fixed quantum is both iniquitous and inequitable
  - ⇒ eg 18% of $80,158 (the maximum possible child support income) compared with 18% of say $30,000 - How much can a child eat? How many clothes can he/she wear?
- no logical and/or discernible relationship with other social security benefits/allowances payments
  - ⇒ eg. Job Search, Newstart and Sickness Allowance rate for a single person under 18 with no children ($129.80 per fortnight); 18-20 living at home ($156.10 per fortnight); 18-20 living away from home ($237.70 per fortnight) and over 21 ($282.70 per fortnight)
  - ⇒ by comparison, CSA has in recent days assessed my maintenance obligation for my 11 year old son as $229.29 per fortnight
- How can maintenance payments for a ingle child exceed comparable social support maximum benefit amounts. Shouldn't age be a consideration? Where is the logic, the common sense, the social equity?[49]

15.52 Similarly, another non custodial parent submitted:

> Why are the percentages 18% for one child, 27% for two, 32% for three etc? As a non-custodial parent I have never been told why the number is not 5% or 50% for one child. It is not possible to criticise an arbitrary, unjustified percentage. When you consider that prior to the Child Support Scheme, maintenance levels were of the order of $30.00 per week and under the Child Support Scheme the amount (for someone on average weekly earnings) is over $80 per week, there simply must be a solid justification. Otherwise the government is open to charges that it is merely forcing non-custodial parents to pay spouse maintenance not child maintenance because the

49 Submission No 4974, Vol 6, p 115

> government wants to disguise unemployment numbers as sole parent benefits but cannot afford to pay the cost. Non-custodial parents should not have to pay for the cost of their ex-spouse, only their fair share of their childrens' costs.[50]

15.53 DSS submitted that the following points should be noted in respect of the costs of children:

> ... the American and Australian research outcomes on the costs of children point to broadly similar conclusions; and
>
> the child support amounts derived from the Australian formula remain below the direct costs of children. This gap widens when the indirect costs to custodians are taken into account.[51]

15.54 Similarly, AIFS gave evidence that:

> The methodologies for estimating the costs of children are rough. There is no question that there is no good single way of estimating the costs of children. From that point, you are trying to find the best methodology that you can. ...
>
> People have been investigating this question for over 100 years. There is no simple methodology. There is no simple approach to this. You will never have a simple methodology. ... The principle in the end is probably not so much the cost of the children but that parents are sharing the expenditure on the children and we should look for a fair way of each sharing that expenditure. The expenditure on children is a background issue which perhaps is used to assess whether a formula is just or not. Our analysis tends to suggest that the present formula is basically right on that kind of criterion, but it is not the only criterion that one would use. That is how I would sum up that area.[52]

50 Submission No 236, Vol 3, p 9

51 Submission No 5771, Vol 10, p 158

52 Transcript of Evidence, 20 January 1994, pp 1147 & 1193

15.55 The Joint Committee also notes the comments concerning the equivalence scales method of estimating the cost of children by Dr Peter McDonald, the current Deputy Director (Research) of the AIFS:

> The accuracy of the method is thus highly dependant on the assumption that these two families have the same standard of living - a relatively loose assumption.[53]

Conclusion

15.56 The Joint Committee considers that the formula percentages recommended by the Consultative Group are arbitrary and simply represent the Consultative Group's judgement of the appropriate balance points for the Child Support Scheme. As highlighted in Chapter 4, it is this Joint Committee's task to assess whether the original balance points are still appropriate. The Joint Committee considers that these balance points must be assessed against the objectives of the Scheme and the Scheme's impact upon the relative disposable incomes of its clients as a whole. The formula percentages are only one factor in this assessment.

15.57 The Joint Committee is concerned that the predominantly American research into the costs of children relied on by the Consultative Group may not have been representative of Australian conditions. Whilst this research may have only been used as a starting point, the Joint Committee considers it essential to ensure that this starting point is valid in Australian circumstances.

53 McDonald, **The costs of Children, A Review of Methods and Results**, *Family Matters*, No 27, November 1990, p 20

Australian Research into the Costs of Children

The Lovering Study (1983)

15.58 This study was undertaken under the auspices of the AIFS. It used a different approach to estimating the cost of children from those described above. The methodology used is often called the budget or basket-of-goods approach and involves a researcher specifying a standard 'basket' of goods that a child of a given age would need. This approach 'necessitates arbitrary decisions on minimum requirements and the identification of acceptable and adequate standards'.[54]

15.59 The Joint Committee notes that the Lovering study was not specifically referred to by the Consultative Group despite it being the major Australian study existing at the time.

15.60 The study derived two expenditure levels - first, a minimum diet and basic wardrobe of clothes based on prior English studies by Piachaud (1979) & (1981) and secondly, a medium income level based on a home economist's food plans and the cottage mothers' wardrobe. The methodology is summarised below.

Food

15.61 **Low income families** - Piachaud's methodology, that is, the low cost diet from a study of nutrition in the United States, was adopted to give the minimum requirements of different age groups of three meals per day. These items were priced in May 1983 at an inner city (Fitzroy) supermarket and at the same time in a high socio-economic area (Doncaster) in Melbourne.

15.62 **Middle income families** - a nutritional adequate diet was constructed by a home economist from the Home Economics Department of Victoria College for children of different ages. The resulting food plans were costed on the basis that all food would be prepared at home and cut lunches would be provided.

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54 Lovering, **Cost of Children in Australia**, 1984, p 17

15.63 Lovering noted that 'food costs from all surveys show an increase with the age of the child'.[55] In particular, for the low income group the increase in food costs is just over 50 per cent from age 2 to 11 while, for the medium income group, the cost almost doubles from age 2 to 11. Furthermore, food costs for young children (aged 2 to 5 years) in low income families are approximately three quarters of such costs in medium income families while older children (aged 7 to 11 years) food costs in low income families are three fifths of those in medium income families.

Clothing

15.64 **Low income families** - The clothing items considered essential by the Piachaud study were costed in Australia in 1981 and 1983 dollars and, after comparison with similar surveys, was considered as the most appropriate measure of minimum clothing costs.

15.65 **Medium income families** - The Cottage Mothers in the Family Group Homes in Victoria in 1981 detailed a wardrobe of clothes which included more items than the Piachaud clothing list and was adopted as an appropriate measure for adequate to moderate expenditure on clothing. Lovering noted that 'further empirical work is needed to find out what kinds of clothes are worn by different age groups, and what these cost'.[56]

Other Costs Attributable to Children

15.66 The Piachaud costings were used as a general guide to the minimum cost of the items listed below. Other case studies and surveys were also used for some items.

15.67 **Household provisions** - included such things as toiletries and cleaning materials. An average costing based on case studies was used.

Result: low income families - 80 cents per person per week
medium income families - $1.08 per person per week

55 ibid. p 20
56 ibid. p 21

15.68 **Lighting and Heating Costs** - The findings of an information paper produced by the Victorian Department of Minerals and Energy in 1983 were adopted. It found that a family of three has a power bill very similar to the average of all households.

Result: low income families - $2.56 per person per week
medium income families - $3.54 per person per week

15.69 **Schooling** - Lovering based school expenditures on state primary school expenditure from an ACOSS study.[57]

Result: 85 cents per child per week

15.70 **Entertainment costs** - Lovering noted that in 1983 the average price in Melbourne of a ticket to the cinema was $3.00 for children 15 years and under while it cost between 10 and 20 cents to play one game on a pin ball machine.[58] Furthermore, 'the ACOSS study of families in Sydney found that a one parent family with one child spent irregular amounts over a twelve week period averaging $4.06 per week for entertainment'.[59]

Result: low income families - $2.00 per child per week
medium income families - $4.00 per child per week

15.71 **Pocket Money** - Lovering noted that this 'is a discretionary expenditure which varies with age'.[60] A survey done by the Australian Institute of Family Studies in 1983[61] revealed that about 20 per cent of 8 to 9 year olds have no pocket money whilst the most common amount of pocket money reported in this survey was $1.00, with the next most common amount being approximately 37 cents. Accordingly, the following 'guesstimates' were adopted:

Result: low income families
- 2 to 11 years: 37 cents to $1.00 per child per week
- teenagers: $3.00 per child per week

medium income families
- 2 to 11 years: 50 cents to $1.00 per child per week
- teenagers: $10.00 per child per week

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57 Smith, 1982
58 Lovering, op.cit. p25
59 ibid.
60 ibid.
61 **Children in Families**

15.72 **Gifts** - Lovering noted that expenditure on gifts in families can vary enormously.[62] The following 'guesstimates' were used:

> Result: low income families
> - 2 to 11 years: 50-75 cents per child per week
> - teenagers: $2.00 per child per week
>
> medium income families
> - 2 to 11 years: 50 cents to $2.00 per child per week
> - teenagers: $4.00 per child per week

15.73 **Holidays** - This item was deemed irrelevant for a low income family. However, for medium income families, a two week holiday at the beach was estimated to cost in the region of at least $300 for a family of four, that is, $1.44 per person per week averaged over the year.

> Result: low income families – ignored
> medium income families - $1.44 per person per week

Summary

15.74 The table below summarises the final results of the above methodology.

Table 15.4 Summary of Lovering's Results

	Age 2	Age 5	Age 8	Age 11	Teenage
Low income					
Per week	$16.69	$21.41	$26.25	$27.86	$41.48
Per year	$867.88	$1113.32	$1365.00	$1448.72	$2156.96
Middle income					
Per week	$25.11	$28.18	$36.36	$45.90	$69.01
Per year	$1305.72	$1456.36	$1890.72	$2386.60	$3588.52

15.75 Lovering made the following comments in respect of these results:

> It is important to note that these figures do not include costs of housing (mortgages, rents, rates), transport, school fees or uniforms, child care, holidays (in the case of low-income

62 Lovering, op.cit. p 27

> families), medical or dental expenses. In the case of low-income families the figures are a basic survival costing only.[63]

15.76 The AIFS updates quarterly the above summary of Lovering's results to reflect changes in the consumer price index. Appendix 10 contains the June Quarter 1993 update.

Omitted Costs

15.77 **Housing Costs** - One of the stated reasons for omitting housing costs from the calculations is that they vary greatly from state to state. Furthermore, Lovering noted that:

> It can be argued that the main costs [of houses] would be attributed to adults in the household who need to expend money on housing for themselves in any case.[64]

15.78 However, Lovering also noted that when children reach the teenage years accommodation expenses may increase because what was formerly adequate for young children may not be suitable for older children.

15.79 **Medical Costs** - were omitted for very low income groups because of government subsidies and benefits while for medium income groups there are costs for health insurance and levies which are not related to the number or ages of children.[65] The Joint Committee notes that the introduction of Medicare should dramatically lessen the impact of this omission as it applies regardless of the age or number of children involved. However, a 'gap' may still exist between what Medicare reimburses and the actual cost of the medical services supplied.

15.80 **Consumer Durables** - such as furniture and vehicles. Lovering noted that 'there may well be no relationship between the acquiring of consumer durables and the size of the household'[66] and concluded that more research on this matter would be needed in order to establish the validity of any relationship.

63 ibid. p 1
64 ibid. p 17
65 ibid.
66 ibid. p 29

15.81 **Child Care** - Lovering stated that in future child care costs should be counted for parents who have custody of young children as it adds between $20-$45 per week at least to the cost of a 2-5 year old.[67]

15.82 **Transport Costs** - Lovering noted that these costs may, for secondary school students, be in the order of at least $5.00 per week excluding weekend sport activities or school excursions. In addition, the cost of running a car was also excluded. However, Lovering pointed out that car costs would be incurred whether there are children or not and it is only if a large car or a second car is needed that they should be included as direct costs.[68]

15.83 **Discretionary Costs** - such as private school fees and school uniforms were not counted because of their very nature.

The Lee Study (1989)

15.84 This study was undertaken by Donald Lee of Deakin University, working under contract to the AIFS. It is a computer program which uses the 1984 Australian Bureau of Statistics Household Expenditure Survey to estimate the cost of a child. An analysis of the results of this study appears in a paper by Dr Peter McDonald,[69] Deputy Director (Research) AIFS. The AIFS also regularly updates the Lee results by using the change in average weekly earnings from May 1984, rather than the change in the consumer price index. McDonald notes that this is done because the Lee estimates are derived for a family with a given income level.[70] Appendix 11 contains Lee's results updated to the March Quarter 1993 for a one child, single income family with an income of $611.00 per week.

15.85 The Lee study used an equivalence scale approach which assumed that two households of different composition will have the same standard of living if they spend the same proportion of their total household expenditure on food at home. As a result, the cost of children is the difference in expenditures between a couple with children and a couple without children who both spend the same proportion of their consumption on food at home.

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67 ibid.

68 ibid. p 30

69 McDonald, op.cit. p 20

70 ibid.

15.86 The results of the Lee study show that transport is the largest of the expenditure types. McDonald notes that this category does not refer simply to expenditure on public transport but also includes the additional expenses that one-child couple families have compared to couples with no children in purchasing and running private vehicles.[71] However, the Joint Committee considers the allocation of $38.09 for the transportation of a 0-1 year old to be excessive particularly if one takes into account the possibility that a couple earning average weekly earnings may not need to purchase a vehicle upon the arrival of their child as they may already own one.

15.87 Similarly, other 'fixed costs' such as housing and consumer durables may also have been 'acquired' by a couple prior to the arrival of a child. Therefore, the act of attributing a portion of these costs to the presence of a child or children may result in double counting, thereby artificially inflating the Lee estimate of the cost of children.

15.88 The Joint Committee also finds it difficult to imagine spending $26.42 per week on recreation for a 0-1 year old. However, McDonald notes that this category includes not only holidays and outside entertainment but also such 'items as toys, television, sound equipment, home computers, records and cassettes, books, newspapers, sporting and camping equipment and pet food'.[72] Again, it is arguable that a childless couple would have spent a substantial proportion of this amount in any event meaning that an element of double counting may again be present.

15.89 Lee's figures for the cost of a child as a percentage of average weekly earnings range from 24.3 to 35.3 per cent depending on the age of the child while the corresponding Lovering figures for low and medium income families range from 4.7 to 11.8 per cent and 7.1 to 19.6 per cent respectively. McDonald states that this result is indicative of:

> ... an important difference between results obtained by using the basket-of-goods method [Lovering] and the equivalence method survey [Lee]. The basket-of-goods method indicates how much parents would spend on their children if the child was to enjoy the fruits of the basket specified by the researcher. In this sense, it provides an 'ideal' or desirable costing. In contrast, the expenditure survey method indicates how much parents actually spend on their children, even

71 ibid. p 21

72 ibid.

> though the amount spent might be considered inadequate or excessive by the objective standards of the basket-of-goods method.[73]

15.90 The AIFS gave the following response to the statement by the Joint Committee Chairman at a public hearing that the Lee study could produce misleading results as to the costs of children due to the limitations of the Australian Bureau of Statistics Household Expenditure Survey:

> I would say that it is possible, but I would not say that there is any evidence that is the case. I think one does need to be concerned about those one-off purchases. The methodology that we have used can be refined with a bigger sample. We are stuck with the household expenditure survey, which is 6,000 cases. If you have more cases you can take account of more characteristics.
>
> When we are talking about comparing the couple with one child with the couple with no children, an improvement is to standardise some of their characteristics so that they are at the same education level, and so on. If we had a bigger sample we could do that kind of thing; we do not. One would feel more confident about the results of the study if a revised approach to the one-off, large purchases were applied. That is, they need time frames of a longer nature to look at those purchases.[74]

15.91 The Joint Committee notes that the usefulness of the Lee study is further undermined by the fact that 90 per cent of custodial parents involved in the Child Support Scheme are dependant on social security payments (primarily sole parent pensions) and therefore earn well below average weekly earnings.[75] However, the AIFS gave evidence that:

> The poorer the family, the more likely - and this agrees with the basic methodology - the much higher proportion of their money is spent on food for the child. ... The bottom line is that parents cannot spend any more money than they have got. In Australia, most families with children spend all their money on their expenses. They do not save. They get up to that

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73 ibid. pp. 20–21

74 Transcript of Evidence, 20 January 1994, p 1175

75 Submission No 5085, Vol 1, p 10

> point of 100 per cent expenditure by spending on their children.[76]

15.92 The Joint Committee acknowledges that this may well be true but has difficulty in justifying the results that are produced by the Lee study. A much simpler and more easily understood starting point would be to estimate the average cost of a 'basket of goods' which reflect the basic costs of a child. This could be upgraded to apply to higher income levels in a similar manner to that used by Lovering if required. The resulting estimate of the costs of a child could then be compared to outcomes under the existing child support formula, across the full range of income levels and family permutations, to determine whether the current formula percentages are appropriate. The Joint Committee considers it likely that the general public would also more easily understand this approach meaning that the formula, as a measure of the cost of children, would be more widely accepted than is presently the case.

Conclusion

15.93 The Joint Committee reiterates its view that whilst the research into the costs of children may only have been used as a starting point by the Consultative Group in determining the child support formula percentages, it is essential to ensure that this starting point is valid in Australian circumstances. The Joint Committee notes that the major Australian studies in this area, Lee and Lovering, not only produce widely divergent results but are also dated and possibly misleading. Whilst the equivalence scale approach used in the Lee study appears to be the preferred method internationally, the Joint Committee has difficulties with both its assumptions and the wide variation in results produced by the studies using this approach. In particular, the Lee study's results in a number of categories appear to be excessive and difficult to justify.

15.94 Furthermore, given that the Lee study was conducted in 1989 (based on 1984 figures) and the Lovering study was conducted in 1983, the AIFS practice of updating the results of each study to reflect changes in average weekly earnings and the consumer price index respectively may also have undermined the validity of these two studies.

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76 Transcript of Evidence, 20 January 1994, p 1149–50

15.95 The Joint Committee recognises that recent reliable Australian research into the costs of children is essential to ensure that the current formula percentages are validly underpinned. In the absence of this research the Joint Committee is left with no choice but to accept the current formula percentages despite the Joint Committee's view that these percentages are arbitrary. Consequently, the Joint Committee considers that the Minister for Social Security should commission an independent study into the costs of children to enable a critical evaluation of the current formula percentages.

15.96 The Joint Committee recommends that:

Recommendation 116

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

16

Formula related issues—part I

Introduction

16.1 The Joint Committee has received many written submissions raising concerns about specific aspects of the current child support formula. In addition the Joint Committee conducted a telephone Hotline via a 008 number in order that those people who might not have been inclined or felt comfortable putting in a written submission to the Joint Committee were able to have their say. The overwhelming response to this telephone Hotline led to the Joint Committee's previous report to Parliament, **Thanks for Listening**. **A report on the Child Support Inquiry Hotline** in August 1993. This report identified many of the issues raised in respect of the child support formula.

16.2 The Joint Committee endorses the view expressed by DSS in its submission:

> There are no absolutes in relation to child support. Rather the issue is the balance points between separated and intact families; between children of first and subsequent families; between custodial and non-custodial parents; and between parents and taxpayers generally. These balance points are complex and, in both social and economic terms, are affected by the interactions of the taxation, social security and child support systems.
>
> The Inquiry provides the opportunity to re-test the balance points and to clear the air on certain issues which have emerged ... .[1]

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1 Submission No 5085, Vol 1, p 8

16.3 This Chapter and Chapter 17 discuss those issues which relate to the basic formula,[2]while Chapter 18 discusses those issues which relate to the subsequent family formula. The aspects of the formula which have the major impact on where these balance points are drawn are the non custodial parent's self support component, the custodial parent's disregarded income level and the maximum income base against which the child support formula is applied. This Chapter focuses on these aspects as well as the modelling provided by the Department of Social Security (DSS).

Non Custodial Parent Self Support Component

Introduction

16.4 The self support component for a non custodial parent who is single or who has repartnered but does not have a relevant subsequent family for the 1994-95 child support year is the single pension rate payable on 1 January before the child support year, namely $8,221.00 pa. A non custodial parent's subsequent family is only relevant if the children in that family are new natural or adopted children. In this case the non custodial parent self support component increases in recognition of the dependency of these children. However, there is no increase in the self support component if the children in the non custodial parent's subsequent family are step or defacto children. These aspects are discussed in detail in Chapter 18.

The Consultative Group's Approach

16.5 The self support component is deducted from the non custodial parent's child support income base before the application of the relevant child support percentage. In recommending that the child support formula should include a self support component for the non custodial parent the Child Support Consultative Group (Consultative Group) recognised that:

> ... there is an income below which there could reasonably be said to be no capacity to pay without impoverishing the non-custodial parent and any second family. This income level would clearly

2 As defined in Chapter 5

> increase with the number of children in the non-custodial parent's second family with whom the non-custodial parent is obliged to share his or her income.[3]

16.6 Consequently, the purpose of the self support component was to ensure that the non custodial parent and any subsequent family have enough income to meet their basic needs. The Consultative Group stated that its basic aim was to treat all children of the parties involved as equitably as possible. However, at the same time the Consultative Group was also very conscious that the non custodial parent will usually give priority to his or her current family.[4]

16.7 The Consultative Group noted that the provision of a self support component may have the following effects:

- it may entitle children in the second family to a higher proportion of the non custodial parent's income than children in the first family;
- it could encourage non custodial parents, especially those on low incomes, to form new families especially to relieve themselves of their child support obligations to the first family;
- it could cause some disincentives for low income non custodial parents to earn sufficient income to take them over the self support component; and
- it could encourage non custodial parent's to conceal their true level of income.[5]

16.8 The Consultative Group considered three possible levels at which to set the self support component, namely:

- the medicare levy threshold, namely, $12,688 in 1993-94;
- the level of pension rate plus the value of pensioner rebate, namely, $10,558.50 in 1993-94; and
- the level of pension rate, namely, $8,270.50 in 1993-94.[6]

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3 CSCGR, **Child Support: Formula for Australia**, p 73

4 ibid. pp 73-74

5 ibid. p 73–74

6 Based on DSS Rates as at July 1994

16.9 The Consultative Group formed the view that the medicare-based exception was too high for child support purposes, providing the non custodial parent's current family with a substantially higher level of income security than would be provided to children in the custodial parents family through the availability of a pension. This would result in contributions for child support only commencing at an unacceptably high level of income.[7]

16.10 The pension plus rebate level is the level at which a pensioner is expected to start contributing to revenue by paying tax. In reaching its recommendation in respect of the level at which the self support component should be set, the Consultative Group:

> ... carefully considered this [the pension plus rebate level] and the third option, pension level, and, given the intention and purpose of the self-support component selected the latter as the most appropriate and reasonable level.
>
> The Consultative Group considers the standard pension rate emphasises the limited nature of the self support component and reflects the importance to be attached to the obligation of parents to contribute to support of their children whenever it is possible for them to do so.[8]

16.11 The Joint Committee considers that the term 'self support component' is misleading as it gives the impression that this is the only amount available for the support of the non custodial parent and his/her second family (if any). The non custodial parent also receives the percentage of income left after child support and taxation have been deducted. Therefore, the Joint Committee considers that a term such as 'excluded income' would be more appropriate.[9]

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7 CSCGR, op.cit. p 77

8 ibid.

9 The Committee will continue to use the term 'self support component' in its report to avoid confusion

16.12 The Joint Committee recommends that:

Recommendation 117

the child support legislation be amended to substitute the term, 'excluded income' for 'self support component' wherever it appears.

Is the Current Self Support Component Appropriate

16.13 The Joint Committee received 432 submissions stating that the non custodial parents' self support component is set at too low a level. These submissions represent 7 per cent of the total number of submissions and 10.5 per cent of the non custodial parent submissions received by the Joint Committee.

16.14 The Sunshine Branch of Dads Against Discrimination submitted to the Joint Committee that the self support component is too low and creates impoverishment:

> The protected income of $188.63 per week should be raised to a more realistic figure to enable non-custodial parents a chance to start over again. Presently, if a non-custodial parent earns $380 per week after tax and pays to Child Support Agency $180 per week child support for four children, that person has $192 to pay food, phone, rent/mortgage, electricity, car running expenses, car registration, insurance, superannuation and the list goes on. We have enough poverty in this country without creating more.[10]

16.15 In this context the Joint Committee notes that the liable parent will have the benefit of the percentage of income left after child support and tax have been deducted. This point was emphasised by DSS who provided the following examples of the impact of the self support component, the child support formula, taxation and Medicare contributions on the disposable incomes of non custodial parents at a range of income levels:

> The self-support component is a means for making the formula progressive, that is, it ensures that low income NCPs pay less than high income NCPs. It does this because it represents a larger proportion of low incomes than of high incomes, for example:

10 Submission No 953, Vol 3, pp 131–2

- $7,958.60 represents 53.1 per cent of $15,000. The formula percentages are applied to the remaining 46.9 per cent of income. The child support to be paid for one child therefore represents 8.4 per cent of gross taxable income; or
- • $7,958.60 represents 31.8 per cent of $25,000. The formula percentages are applied to the remaining 68.2 per cent of income. The child support to be paid for one child therefore represents 12.3 per cent of gross taxable income; or
- $7,958.60 represents 15.9 per cent of $50,000. The formula percentages are applied to the remaining 84.1 per cent of income. The child support to be paid for one child therefore represents 15.1 per cent of gross taxable income.

This means that an NCP on $15,000 pays $25 per week for one child compared with an NCP on $25,000 who pays $59 per week and an NCP on $50,000 who pays $146 per week.

After the payment of tax and medicare contributions and child support for one child, the net disposable income of an NCP on $15,000 is $11,625.05; that of an NCP on $25,000 is $16,926.05; and that of an NCP on $50,000 is $25,493.55. Put another way this means that an NCP on $15,000 has around 87 per cent of income to spend after paying tax, medicare and child support for one child. An NCP on $25,000 has around 67 per cent and one on $50,000 around 53 per cent.[11]

16.16 The Joint Committee notes that this analysis focuses on what could be termed legislative fixed costs and fails to consider a wide range of day to day living costs which may also be unavoidable for the non custodial parent. It also does not recognise that work incentives are mainly affected by marginal rates of impost rather than gross or average rates. The impact of high combined marginal rates of taxation, child support and other imposts is discussed in Chapter 17.

16.17 Some of the Child Support Review Officers also criticised the current level of the self support component on the following basis:

> It does not effectively give the liable parent that net amount after tax [i.e. the relevant pension level]. Assuming the purpose served by choosing a Department of Social Security linked figure is to provide the liable parent with that basic amount upon which his or her family can survive, it is appropriate that the Department of Social Security rate be "grossed up" as if it were the first $$ of

11 Submission No 5085, Vol 1, p 79

> income earned by the liable parent prior to being deducted from the liable parent's income.[12]

16.18 The Joint Committee received submissions supporting the view that where a non custodial parent is employed the pension level is inappropriate given that it does not allow for the additional costs associated with employment. One submission from a non custodial parent referred to the costs of maintaining a motor vehicle for work:

> In a majority of cases, it is a requirement for the paying parent to use a motor vehicle to attend his / her place of employment. In many cases, there is an inadequate public transport system to enable every employee to travel to work using public transport. If the paying parent requires a motor vehicle to attend his / her place of employment to earn a wage, to pay child support, then a percentage of the loan repayments, repairs, registration and insurance should either be a tax deduction or deducted from the amount of child support to be payed.[13]

16.19 The Joint Committee notes that some employment related expenses would be available as a deduction from the non custodial parent's taxable income and so would not form part of that parent's child support income base. However, some expenses such as transport costs to and from the place of employment and personal clothing necessary for work are generally not deductable under the Income Tax Assessment Act 1936. They are also generally unavoidable for an employed non custodial parent.

16.20 The Joint Committee notes that similar concerns about the adequacy of the non custodial parents 'protected income' were raised by the first review of the United Kingdom Child Support Scheme[14] by the House of Commons Social Security Committee which was tabled on 1 December 1993.[15] The United Kingdom Social Security Committee recommended that, among other things:

> ... the £8 element in protected income should be increased to £20, £30 or even £40: this would help the lowest paid absent parents, increase incentives to work and is not restricted to particular categories of expenses (e.g. travelling to work) ...[16]

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12 Submission No 5083, Vol 12, p 123

13 Submission No 1633

14 See Appendix 9 for outline of United Kingdom Scheme

15 House of Commons Social Security Committee, **The Operation of the Child Support Act**, 1 December 1993, p V

16 ibid.

16.21 The Parliamentary Under Secretary for Social Security made the following response to this recommendation:

> The present formula contains a provision intended to ensure that absent parents remain better off working than relying on income support. The maintenance assessment is reduced to ensure that the absent parent retains a level of protected income at least some £8 a week above what he and his second family would be entitled to on income support. I propose to nearly quadruple the margin above income support to £30.[17]

16.22 The Joint Committee is concerned that the current level of the Australian self support component does not recognise that employed non custodial parents incur additional costs associated with their employment. The current level also appears to be creating serious work disincentives for some non custodial parents.[18] These aspects indicate that the existing non custodial parent self support component may be set at too low a level.

The Impact of Social Security Fringe Benefits and Concessions

16.23 The Joint Committee notes that sole parent pensioners and other social security recipients qualify for a large range of government non-cash items or 'fringe benefits' which provide free or subsidised access to goods and services which have the effect of reducing their costs of living. These fringe benefits are provided by the Federal, State and local governments and include the following:

- health benefits card;
- pharmaceutical allowance;
- housing assistance;
- rental assistance;
- rate, electricity and gas rebates; and
- travel concessions.

17

18 This aspect is discussed in Chapter 17

16.24 The Joint Committee received submissions from non custodial parents which suggested that the self support component should be increased to take account of these pension fringe benefits:

> In calculating the figures an allowance (which is taxable) equal to that paid to a single pensioner is allowed to the non-custodial parent. This is hardly equitable as the non-custodial parent is employed and therefore has some additional expenses such as travelling and clothes, etc., incurred in earning this wage that a pensioner does not have to incur in obtaining the allowance. Furthermore pensioners get other benefits such as free pharmaceuticals, concessional travel and other benefits that are not available to working persons.[19]

16.25 Similarly, another non custodial parent submitted:

> The amounts of rates of child support (the % of gross income) that are applied are too high, and are often causing hardship for the non-custodial parent. Their capability to support themselves (and possibility another dependent family) is greatly reduced, with, unlike pensioners, no support mechanism to help them. Medical and hospital insurance, prescriptions, superannuation, rates or rent, earning a wage (the day to day expenses that are not tax deductable) etc, are all financial burdens yet the exempt income is the same as the pension. Many of these benefits are provided free to pensioners, yet this is not taken into consideration when calculating the exempt income of a wage earner. Living, is more expensive for a wage or salary earner than for pensioners.[20]

16.26 DSS provided the Joint Committee with the following evidence in respect of the value of 'fringe benefits' available to sole parent pensioners:

> The value of concessions also varies according to the living arrangements and other circumstances of card holders. For example, people who own a home and car will get more value from their concessions than those who do not. The single most valuable concession is the Commonwealth's provision of free hearing aids (which normally cost $1,825 for a pair), but only a small proportion of the PCC-holder population uses this concession. Public transport and recreational concessions will be more valuable to some people than others due to lifestyle or location.

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19 Submission No 3955

20 Submission No 4852

> There is, therefore, no accurate way of placing an actual dollar value on fringe benefits, because the level of value depends on the level of use of services. However, the range of values has been estimated to be between $300 and $1,800 per year.[21]

16.27 The Joint Committee sought further information from DSS on how this estimate of the value of pensioner fringe benefits ($300 to $1800 pa) was calculated:

> These figures were an estimate of the average range of fringe benefits and were provided with the qualification that it is impossible to place an exact dollar value on fringe benefits, both because of the ways in which they are provided (ie often as "revenue foregone" by the provider, rather than a cash benefit to the receiver) and because of the different levels of use by pensioners. Pensioners would be unlikely to use every available concession, and most concessions would not be used to their maximum value. The following describes the concessions potentially available to pensioners, with dollar values where available.
>
> Concessions or fringe benefits are provided to holders of the Pensioner Concession Card by the Commonwealth, State and local governments as well as by some private businesses.
>
> Commonwealth Government concessions to this group include:
>
> - free hearing aids provided by Australian Hearing Services (normally over $1,800 per pair);
> - pharmaceuticals at $2.60 per prescription (compared to $16 for non-card holders), up to an annual expenditure safety net of $135.20 (compared to $400 per year for non-card holders), after which prescriptions under the PBS are free to card holders;
> - access to a two stage dental health scheme, comprising an Emergency Dental Scheme and a General Dental Scheme, providing up to $400 a year per person for a wide range of private dental services;
> - telephone allowance of $52.80 per year, paid quarterly by the Department of Social Security;
> - concessions on Australian National Railways travel; and
> - free postal redirection for one month after changing address (normally $5 per month).

21 DSS letter dated 26 May 1994

The value of these concessions to individuals will depend on their particular circumstances and use of services for which a concession is available. Only a small proportion of pensioners use hearing aids, the most valuable Commonwealth concession. Average prescription usage among pensioners is approximately 35 per annum, which represents a benefit in comparison to non-pensioners with equivalent usage of $335.[22] At lower levels of script usage, the relative value of the pharmaceutical concession declines; at higher levels, the relative value of the concession only exceeds $335 (by $2.60 per script) when script usage exceeds 52 scripts.

It could be expected, therefore, that a pensioner with a high level of need in any one year for dental health care and pharmaceuticals and who is a telephone subscriber could benefit from Commonwealth concessions by approximately $800 per annum. If that pensioner also needs to acquire a hearing aid during that period, an additional one-off benefit valued at over $1800 would also be available.

Concessions provided by State and local governments vary from State to State, but generally include concessions on:

- municipal and water rates;
- electricity (and gas if government-owned);
- motor vehicle registration and drivers' licences;
- some dental and optical services; and
- public transport.

In addition, States and Territories provide a range of concessions on recreational services, such as entry fees to museums, art galleries and swimming pools.

While different States/Territories often provide concessions on the same services, the value of these concessions also varies considerably from State to State. For example, most States provide a 50 per cent concession on the cost of motor vehicle registration, but in Victoria the whole fee is waived for one vehicle per card holder.

22 The difference between an outlay by an average pensioner of $91 per annum (35 scripts @ $2.60) and an outlay of $426 by a non-pensioner with equivalent script usage (25 scripts @ $16 plus 10 scripts at concessional $2.60)

Table 16.1 Average Value of State Concessions for Selected Concession Types and States, January 1993

Concession type	NSW	VIC	QLD	SA	TAS	NT	AUST AVERAGE
Energy	$75	$94	$93	$70	$153	$251	$123
Rates	$308	$293	$186	$330	$360	$417	$280
Public transport	$132	$40	$52	$59	$66	$19	$61
Motor vehicle	$216	$208	$135	$54	$113	$104	$139
Ancillary Health	Na	$306	$161	$253	$182	$447	$152

Source *Data from State and Territories for which averages available on cost of providing concessions, based on expenditure and estimated number of users.*

The estimate of between $300 and $1,800 per year for the average range of value of pensioner fringe benefits reflects the comparison between pensioners whose use of concessional services is limited and those whose status as home owners or whose health service needs involve a higher level of concessional expenditure.[23]

16.28 The Joint Committee notes that there has been very little research which considers the likely monetary value of Federal, State and local government fringe benefits. There are only two recent studies of which the Joint Committee is aware. The first is a study by the Australian Bureau of Statistics entitled, **The Effects of Government Benefits and Taxes on Household Income** (1992) (the 'ABS Study') while the second is a study by the National Centre for Social and Economic Modelling entitled, **Inequality in Australia: The Effect of Non-cash Subsidies for Health and Housing** (1994).[24]

The ABS Study

16.29 The ABS study is based on the results of the 1988/89 Australian Bureau of Statistics Household Expenditure Survey (HES), supplemented by data from other sources. This study adjusted the income of each member of the 1988/89 HES population in order to calculate household measures of:

- private income;
- gross income;
- disposable income;
- disposable income plus indirect benefits; and
- final income.

23 DSS letter dated 7 July 1994

24 by John Landt, Richard Percival, Deborah Cox and David Wilson

Private Income

16.30 The ABS study defined private income to include income from:

- wages;
- salaries and own business;
- superannuation and annuities;
- investments including property; and
- other non-government sources (eg, alimony).

16.31 This was obtained directly from information collected in the HES and excluded any benefits received from government.

Gross Income

16.32 The ABS study defined gross income to be 'private income' plus Federal, State and Local Government cash benefits. This was also obtained directly from information collected in the HES.

Disposable Income

16.33 The ABS study defined disposable income to be 'gross income' minus direct taxes (including the Medicare levy) which were imputed for each person on the basis of their reported gross income. These taxes were calculated by applying 1988/89 tax scales and making allowances for those persons eligible to claim for tax exemptions, deductions, rebates and reduced payments of the Medicare levy in accordance with the eligibility criteria specified in tax legislation. Such persons were identified according to their income levels, family relationships and household characteristics.

Disposable Income Plus Indirect Benefits

16.34 Indirect benefits comprised goods and services provided free or at subsidised prices by the Government. In the ABS study, allocation of indirect benefits was restricted to those arising from the provision of education, health, housing, social security and welfare services. The value of indirect benefits from these services was expressed in terms of household income and allocated to households on the basis of data on their utilisation of the various government services and on the cost to government of providing those services. More specifically, the total value of indirect benefits was defined as Commonwealth, State and Local government outlays, net of intra-government transfers minus personal

benefit payments paid in cash to Australian residents and personal benefits to non-residents. Estimates of the costs, as measured by public finance figures, related to the total cost to Government of outlays, of both a current and capital nature, and did not necessarily reflect the market value of the benefit.

16.35 The indirect benefits included in each of the areas identified above were:

- education - included benefits from pre-school, primary, secondary and tertiary education as well as other education benefits such as student transportation;
- health - included hospital care, medical clinics and pharmaceutical benefits as well as other health benefits such as health research;
- social security and welfare - included free hearing aid services, telephone rental concession, postal redirection fee concession and a range of free pharmaceuticals. State and Local Government concessions were not included; and
- housing - included home purchase assistance and subsidised government rentals.

Final Income

16.36 The ABS study defined final income to be ‘disposable income plus indirect benefits’ minus indirect taxes such as sales tax, payroll tax, excise duties and import duties which were allocated to households on the basis of their expenditure on various goods and services. The imputation of indirect taxes assumed that indirect taxes were fully passed on to households in the prices of the goods and services they purchased.

Summary of Results

16.37 Table 16.2 shows that the cash benefits and indirect or non-cash benefits provided by Federal, State and Local Governments increased sole parent pensioner's final income to $378 per week or $19,656 per annum tax free. This is equivalent to a before tax income of approximately $24,000 per annum. This result demonstrates that these government benefits are not only real but also very substantial. It also raises the question of whether it is appropriate to continue to completely ignore their effect by setting the non custodial parent's self support component at the pension rate.

Table 16.2 Comparative Weekly Household Income

	Gross Income $	Final Income $	Household size	Fulltime employed Adults
All married couples with dependent children only	758	662	4.1	1.6
All sole parents	318	414	2.8	0.6
Sole parents on pensions	23.2	378	3.0	.02

Source *Tables 5 and 7 in The Effects of Government Benefits and Taxes on Household Income (ABS study, 1992)*

16.38 The Joint Committee notes that as the ABS Study was based on 1988/89 data the impact of increased child support payments under Stage 2 of the Child Support Scheme on the final income of sole parent pensioners would not have been taken into account. These Stage 2 child support payments would increase the final income for custodial parents who receive the sole parent pension because of the favourable treatment of child support under the maintenance income test and the fact that child support payments are not taxable. Furthermore, the final income amount under the ABS study excludes State and local government social security and welfare concessions. The inclusion of these fringe benefits would also increase the final income amount calculated by the ABS Study.

16.39 The Joint Committee considers that as education and health benefits are generally available to both non custodial as well as custodial parents, they should be excluded from the final income of sole parent pensioners calculated by the ABS Study. However, even if these benefits were deducted the resulting final income of sole parent pensioners under the ABS study would be $243 per week or $12,636 pa tax free. This is still substantially more than the non custodial parents' self support component ($158 per week or $8,221 pa for the 1994/95 child support year).

The National Centre for Social and Economic Modelling Study

16.40 This study examined the non-cash benefits received by Australians as a result of government expenditure on health and public housing. It estimated the current weekly value of these benefits and followed the broad methodology of the ABS Study except that it used imputed income data taken from the 1990 ABS Income Survey rather than recorded income amounts from the 1988-89 ABS Household Expenditure Survey. As a result the estimates of health and housing benefits are broadly comparable between the two studies.[25]

16.41 The results of this study in respect of sole parents were as follows:

1. the Australian average estimated per capita health benefits received by a sole parent were $19.00 per week ($988 per year); and

2. the Australian average estimated per capita rent subsidies received by a sole parent were $25.00 per week ($1,300 per year).

16.42 The Joint Committee notes that most of these non-cash health and housing benefits would also be available to low income non custodial parents. Nonetheless, the results of this study provide further evidence that the fringe benefits available to sole parent pensioners are substantial.

16.43 Whilst the Joint Committee acknowledges that it may be difficult to quantify the precise monetary value of all the fringe benefits provided to pensioners by all levels of government, any estimate of their effect on the disposable income of pensioners is likely to be substantial. Consequently, the exclusion of these fringe benefits from the income of sole parent pensioners means that the actual income of these parents is significantly understated. Accordingly, the Joint Committee considers it anomalous to ignore the impact of these fringe benefits altogether given that many of them are generally not available to working non custodial parents. Furthermore, given the Consultative Group's view that the pension level was the most appropriate benchmark for the non custodial parent self support component, the Joint Committee considers that, in the interests of equity, the value of these fringe benefits should be taken into account in the self support component.

25 The National Centre for Social and Economic Modelling, **Inequality in Australia**: **The Effect of Non-Cash Subsidies for Health and Housing** (1994), p 3

Conclusion

16.44 As highlighted above, the Joint Committee received numerous representations that the current level of the self support component is causing hardship to non custodial parents because it is too low. By setting it at the pension level the Consultative Group appears to have failed to recognise the additional costs associated with employment not incurred by a pensioner as well as the government concessions and benefits enjoyed by pensioners. The Joint Committee believes the self support component should be increased in recognition of these additional costs and benefits.

16.45 The Joint Committee requested DSS to provide extensive modelling of the impact on the relative disposable incomes of custodial and non custodial parents of a range of increases in the existing self support component. DSS provided this modelling in respect of eight increases in the self support component, ranging from 5 per cent to 60 per cent. This modelling shows that an increase in the self support component will generally result in a decrease in child support received by custodians, an increase in the disposable income of non custodial parents and an increase in government outlays on Additional Family Payment. The Joint Committee considers this necessary in order to address the imbalance in the outcomes of the current formula caused by a self support component which is too low.

16.46 The Joint Committee considers that the impact of an increase in the self support component cannot be viewed in isolation from the other components of the child support formula. It must be considered in view of the cumulative impact of the Joint Committee's recommendations in respect of each of the other major components of the child support formula. This cumulative impact is illustrated by the modelling provided by DSS which is considered later in this Chapter.

Custodial Parent Disregarded Income Level

Introduction

16.47 The custodial parent's disregarded income is equal to the latest estimate of the full time adult average weekly total earnings for persons in Australia published by the Australian Statistician before 1 January immediately before the child support year plus an extra amount representing child care costs for each child under 12 years of age. This extra amount is tied to a percentage of this average weekly earnings estimate (AWE) and varies according to the age of the child as follows:

- for the first and only child under six - 11.5 per cent of AWE;
- for each other child under six - 2.5 per cent of AWE; and
- for each child aged over six but under 12 - 5 per cent of AWE.

16.48 In the 1994-95 child support year the custodial parent's disregarded income level was:

- yearly AWE $33,259 pa plus
- for the first child under six $3,825 pa
  for each subsequent child under six $831 pa
  for each child six but under twelve $1,663 pa

16.49 Consequently, the minimum custodial parent disregard level in 1993-94 is $34,922 pa ($33,259 plus $1,663) if the child is six but under twelve and $37,084 pa ($33,259 plus $3,825) if the child is under six. Any income above a custodial parent's particular disregard income level is deducted from the income of the non custodial parent before the child support percentages are applied in order to determine the child support liability. However, any income of the custodial parent over the disregard level can only reduce the non custodial parent's child support liability to no less than 25 per cent of what would have been payable had the custodial parent had no income above the disregard level.

The Consultative Group's Approach

16.50 The issue of whether or not to include the custodial parent's income in the child support formula were considered at length by the Consultative Group who decided in favour of it after weighing up the:

> ... quite strong arguments for disregarding the income of the custodial parent against the view that in a minority of cases this would cause inequity and may lead to a public perception that the formula was not fair and even-handed for both parents.[26]

16.51 The Consultative Group also considered the level at which the custodial parent disregarded income level should be set. In reaching their decision the Consultative Group considered comparative data on the relative disposable income of custodial and non custodial parents after the payment of child support so that inequitable results could be identified.[27] In setting the disregard level at average weekly earnings the Consultative Group:

> ... was also concerned to protect the living standards of the child or children. The view was taken that children primarily reliant on a custodial parent income which is below average weekly earnings, required a full contribution from the non-custodial parent (according to his or her income), even if the non-custodial parent was a low income earner.
>
> The Group considered arguments that it was inequitable to establish a custodial parent disregard level significantly higher than the non-custodial parent's self support component. However the Group agreed that these two concepts are not comparable as they are designed to fulfil different functions. The self-support component is designed to ensure that the non-custodial parent has sufficient income to support him or herself and any other dependant children before child support is deducted. The custodial parent income disregard level is designed largely to avoid inequities in cases where a custodial parent is already receiving a relatively high income. It must be set at a significantly higher level than the self-support component because it must recognise the economic contribution already being made by the

26 CSCGR, op.cit. p 78

27 The Consultative Group did not publish any of this comparative data

> custodial parent and it must not seriously impair work force incentives for the custodial parent.[28]

Is the Current Disregarded Income Level Appropriate

16.52 The Joint Committee received many submissions which stated that the large difference between the liable parent's self support component and the custodial parent's disregarded income level is inequitable. One non custodial parent commented:

> If I am putting in 76 hours per week how can the C.S.A. only put my exempted income at $7958.60. If a person is out working how can the exempted income be put at that of a single person's pension. Is this giving the paying parent incentive to work or the incentive to go on the pension or leave work.
>
> At the same time the custodian's income amount is $32,063.00. Yes the custodian parent has the child / ren but how can there be such a vast difference - $25,000.00 in the amount of excepted income between the two parents - UNFAIR once again.[29]

16.53 Other submissions simply stated that the custodial parent's disregarded income level is too high:

> ... the custodian disregarded income of $35,750 is way to [sic] high, considering it is supposed to be a shared fiancial [sic] responsibilty [sic]. After all the average person with a Trade doesn't even earn that amount of money, yet the custodial parent is quite within her-his right to go and earn more money than the Liable parent and still get a high amount of maintenance. And the fact that the custodial parent can reside in a de-facto relationship or even to marry and still be able to receive the same amount of maintenance when in actual fact that child will be being supported by at least 3 people, them being the Non-custodial, the Custodial, and the de-facto.[30]

28 ibid. pp 81–82

29 Submission No 5358

30 Submission No 5941

16.54 On the other hand, a custodial parent submitted to the Joint Committee that her income should not reduce the non custodial parent's liability:

> One of my concerns with the child support scheme is the treatment of the custodial parent's income which can be calculated to alleviate the non-custodial parent of their financial responsibility. Why should any custodial parent who raises children and earns a higher than average income - probably against all odds and with child-care costs being incurred - be penalised by a reduction in the non-custodial parent's payment towards the children? Why should it be the non-custodial PARENT who benefits from the custodial parent's income?[31]

16.55 In its final report on the evaluation of the Scheme, the Child Support Evaluation Advisory Group (CSEAG) found it difficult to determine the appropriateness of the current custodial parent disregard level.[32] CSEAG approached this problem by undertaking a very limited distributional analysis which compared the disposable incomes of custodial and non custodial parents after the transfer of child support payments. This analysis assumed that the custodial parent was a sole parent with two children under 13 and that the non custodial parent was single with no new dependant children. It examined eight levels of non custodial parent taxable income, ranging from $10,000 pa to 50,000 pa (at $5,000 increments) and five levels of custodial parent income, all of which were below the custodial parent disregarded income level in most cases.[33] The disposable income of each parent after the payment of child support were then considered in the context of a report prepared for the United States Department of Health and Human Services[34] which found that in a one-parent family (with two children) the children are estimated to account for 52 to 78 per cent of expenditure. These percentages were then applied to the results of the limited distributional analysis:

> In all cases this expenditure exceeds the amount of child support payable and in most cases child support payments contribute less than half of that expenditure.
>
> The Advisory Group concludes that there is no reason to vary the level of exemption for the custodian's income.[35]

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31 Submission No 1710

32 CSEAG, **Child Support in Australia**, Vol 1, p 226

33 CSEAG, op.cit. p 227

34 Barnow et al. 1990

35 CSEAG, op.cit, p 228

16.56 The Joint Committee is disappointed by the limited scope of the distributional analysis conducted by CSEAG in its review of the custodial parent disregarded income level. This analysis considered only one family permutation for each parent over a limited income range and did not even consider modelling the impact of other disregarded income levels on each parent's disposable income. At best it appears cursory and adds to the Joint Committee's concern that CSEAG's evaluation of the Scheme may not have been truly independent.

16.57 The Family Court suggested the following modifications to the custodial parent disregarded income level:

> ... the integrity of the formula can be maintained and the perceived injustice can be overcome by halving the existing amount of custodian's exempt and then bringing it in at 50 cents in the dollar instead of dollar for dollar as it comes in ...[36]

16.58 The Family Court of Australia also suggested that the impact of such a change would not be great because the number of custodial parents earning greater than $15,000 is small and the 50 cents in the dollar reduction in the child support income base would create a gentler impact on the withdrawal of child support from the custodial parent.[37] However, DSS submitted the following in respect of this suggestion:

> DSS considers that such suggestions are based on a narrow view of the issues and ignore the broader social policy and equity implications.
>
> While it is true that there are currently few CPs with a taxable income of $15,000 or higher, that is hardly a reason for compounding their economic disadvantage by withdrawing child support.
>
> It also has no regard to the fact that the Government is investing over $50m a year through the JET [Jobs, Education and Training] program to ensure that more sole parents are encouraged into employment and to achieve financial independence.
>
> If the CP disregard were to be pulled down into the income range where sole parents were combining paid work and part pension then it would introduce significant poverty trap and workforce disincentive effects.[38]

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36 Transcript of Evidence, 20 January 1994, p 1232

37 ibid.

38 ibid.

Poverty Traps and Workforce Disincentives

16.59 A 'poverty trap' is a circumstance which makes it difficult or impossible for low income people to escape poverty or dependency on social security by increasing their earnings. These are two broad types of poverty traps - those which are related to income testing and those which are not. Income tests include social security and education payment income tests, taxation and the income testing of health cards, concessions, public rents, and child care fee relief. These income tests alone or in combination can lead to rapid decreases in payment or increasing charge as incomes rise and thus can produce a disincentive to increase earnings.[39]

16.60 The Joint Committee notes that the most frequently used indicator of the location of possible income test related poverty traps is the effective marginal tax rate. This measures what percentage of each additional dollar of earnings (or other private income) will effectively be taken as a 'tax'. The remaining percentage is the gain in disposable income from each dollar of increased private income. The Joint Committee also notes that high effective marginal tax rates indicate:

> ... income test points and interactions which may or may not lead people to restrain their earnings. Evidence of a behavioural response is necessary to confirm the existence of a real poverty trap as opposed to a theoretical problem.[40]

16.61 The Joint Committee notes that evidence of behavioural responses was provided by an interview survey of 214 sole parent pensioners and unemployment beneficiaries with income from earnings conducted by DSS in the Brisbane metropolitan area during December 1990, as part of that Department's review of poverty traps.[41] The objectives of this survey were to:

> ... determine costs associated with working, clients' understanding of the effects of income tests and the tax system on their DSS payments and to identify any barriers that people may face in returning to or remaining in work.[42]

---

39 Gallagher, P., Gunasekera, MI, and McDiarmid, A. (1991), **Poverty traps: Issues for Review**, in Social Security Journal, Autumn 1992

40 ibid.

41 The survey was a small exploratory study based in one geographic area and as such was not representative of sol parents and unemployment beneficiaries generally

42 Anne Puniard and Chris Harrington, **Working Through the Poverty Traps: Results of a Survey of Sole Parent Pensioners and Unemployment Beneficiaries**, *Social Security Journal*, Dec1993

16.62 The results of this survey showed that:

> ... for many respondents the decision to work had not been influenced significantly by the effect of earning additional income on their income support entitlement, and with little concern for the effect of the interaction of the income support and tax systems on their disposable incomes ...
>
> The survey results also confirm previous research and study findings (Crompton 1987, Colledge 1991) that report the importance of the significance attached to the parenting role as a barrier to labour force participation for sole parents. It is apparent that many sole parents in particular structure their working around this parenting role and the needs of their children. Some sole parents reported that child care problems are related to conflict between paid employment and the care of children, especially in times of illness. Most were in part-time work by choice.[43]

16.63 Those factors which may also be, or contribute to, poverty traps but which are not related to income testing include:

- lack of accessible jobs (in terms of availability, qualifications and distance);
- the costs and difficulties of child care;
- the desire for the certainty of a regular guaranteed income such as offered by social security;
- ill health of a person, their spouse, dependants or other relative for whom they are caring;
- the costs of employment (eg transport, clothes);
- poor access to training;
- misunderstanding of income tests leading to an exaggerated view of their financial or administrative effects;
- the value placed on caring for one's own children; and
- the value placed on home production or leisure.[44]

43 ibid. p 13

44 Gallagher et al, op.cit. p 29

16.64 DSS focused on those poverty traps related to income testing in its submission to the Joint Committee. In particular, DSS submitted that additional considerations in respect of the custodial parent disregarded income level were the interaction of this level with the cut-out points for the sole parent pension, Additional Family Payment and child care assistance.[45] These cut-off points will vary depending upon the number of children in the custodial parent's household and whether the custodial parent is eligible for Rent Assistance or Guardian Allowance. Table 16.3 sets out the level of each of these cut-off points for a custodial parent with one child under 13 and no eligibility for Rent Assistance or Guardian Allowance.

Table 16.3 Cut-off Points for the Sole Parent Pension, Additional Family Payment and Childcare Assistance[46]

Cut-Off Point	Income (pa)[47] $
Sole Parent Pension	19,723
Additional Family Payment	24,688.40
Childcare Assistance	58,604[48]

Source *DSS Rates, 20 March to 30 June 1994 and Childcare Assistance Ready Reckoner, 1 April 1994*

45 Submission No 5771, Vol 10, p 169

46 Custodial parent with one child under 13 and no eligibility for Rent Assistance and Guardian Allowance

47 Income includes taxable income, foreign income and certain employer provided benefits except in the case of Childcare Assistance which is determined on the basis of Assessed Family Income. Assessed Family Income is equal to gross weekly family income less $30 for each dependent child

48 Childcare Assistance starts to reduce when Assessed Family Income exceeds $445 per week ($23,140 pa). This aspect is discussed later in this Chapter

16.65 As highlighted above, the impact of each of these variables will depend on each custodial parent's particular circumstances. Where a custodial parent earns less than the sole parent pension cut-off point but more than the applicable pension income free area, each additional dollar earned by that parent will reduce the pension by 50 cents. Similarly, where a custodial parent earns less than the Additional Family Payment cut off point but more than the point where the Additional Family Payment income test first impacts ($21,350 pa for one child and $624 for each extra child), each additional dollar earned by that custodial parent will reduce Additional Family Payment by 50 cents. However, the impact of this taper on the custodial parents actual disposable income differs from the pension taper as eligibility for Additional Family Payment is based on historical income rather than current income. This means that a one dollar increase in a custodial parent's income above the point where the Additional Family Payment test first impacts but below the Additional Family Payment cut-off point will generally not (or not immediately) result in a reduction in the disposable income of the custodial parent because her/his entitlement to Additional Family Payment will not be affected. The following extract from Gallager et al (1991) explains that the impact of increases in custodial parent income in this income range is not likely to lead to poverty traps:

> Most analysis of poverty traps has focused on the pension and benefit (now allowance) income tests. Other social security income tests are not considered to be a serious poverty trap problem, although some are of interest as welfare traps. For example, the Family Allowance Supplement [now Additional Family Payment] income test is based on the previous financial year's income. This lowers current EMTRs [Effective Marginal Tax Rates] and is therefore thought to avoid potential poverty traps on changes in current earnings when increases are less than 25%. The family allowance [now Basic Family Payment] and child support income tests affect people who are not on low incomes and who are already working full-time. These are not considered likely to lead to poverty traps.[49]

49 Gallagher et al, op.cit. p 30

16.66 DSS also submitted that the cut-off points identified by Table 16.3 impact in very different ways upon a rise in income for non custodial and custodial parents. In particular, whilst taxation rates will have the same impact, other variables come into play for the custodial parent such as:

- the gradual withdrawal of social security assistance, usually in the form of family payments;
- rental charges will increase if the family is in public housing or rent assistance will be withdrawn if renting in the private market; and
- child care costs will grow as Childcare Assistance shades out.[50]

16.67 However, in evidence to the Joint Committee in response to the Chairman's statement that the impact of rises in income on custodial parents applies equally to non custodial parents in subsequent families, DSS contradicted this statement:

> I do think that there must be effects on both sides. It is a matter of degree and how people perceive the interaction of these tests. A lot of the problems about perception again, not necessarily the reality but what they perceive to be operating. We do have a particular concern in respect of our clients, who are predominantly the custodial parents, because we are looking at the child support scheme in the context of much broader issues about sole parents. We are seeking to ensure that there are incentives for sole parents to seek and obtain employment. It is a key interest in the department. ... Mr Chairman, clearly you are right. There can be situations where that second formed family can run into the same sorts of disincentives.[51]

16.68 The Joint Committee notes that the relatively high repartnering rates of non custodial parents indicates that the number of subsequent families will continue to grow. The income distribution of non custodial parents shows that most earn low incomes so rises in income will have similar effects. Furthermore, non custodial parents bear the responsibility of child support payments which are tax free in the hands of custodians. The Joint Committee considers that the virtual exclusion of the custodial parent's income by the existing disregarded income level is inequitable in these circumstances.

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50 Submission No 5771, Vol 10, p 172

51 Transcript of Evidence, 24 June 1994, p 1597

16.69 The Joint Committee considered the impact on the relative disposable incomes of both parents of setting the custodial parent disregarded income level at the pension cut-off point, the Additional Family Payment (AFP) cut-off point as well as a level 10 per cent below the existing disregarded income level (including the applicable child care components). Table 16.4 sets out each of these disregarded income levels for custodial parents with one or two children:

Table 16.4 Custodial Parent Disregarded Income Levels

	Existing Disregarded Income Level	Existing Disregarded Income Level minus 10%	AFP Cut-off Point	Pension Cut-off Point
1 child (under 6 years)	35,750	32,175	24,688.40	19,723.60
2 children (one aged under 6 and one aged 6–12)	37,353	33,617.70	28,650.80	20,347.60

Source *Department of Social Security*[52]

16.70 In the Joint Committee's view, the custodial parent disregarded income level should be reduced to the pension cut-off point as this level best reflects the fundamental principle of the Scheme that both parents contribute to the cost of supporting their children according to their capacity to pay. The Joint Committee considers that each of the other disregarded income levels set out in Table 16.4 make the level of the custodial parent's income less relevant to the calculation of child support than it should be.

16.71 The Joint Committee also considers that a disregarded income level set at the pension cut-off level should avoid the poverty trap and workforce disincentives identified by DSS and discussed above. The Joint Committee notes that the impact of this proposed change on the population of custodial parents will also be minimal as the percentage of Stage 2 custodial parents registered with the CSA for collection who earn $30,000 or over is 3 per cent while those earning $20,000 or over is only 9 per cent.[53]

52 per DSS and child support rates and levels that applied at 22 June 1994

53 Submission No 5085, Vol 1, p 72

16.72 The Joint Committee considers that the possibility of the proposed disregarded income level causing poverty traps and workforce disincentives for custodial parents could be further ameliorated by the adoption of the Family Court's suggestion that the withdrawal rate of child support from custodial parents with income above the disregarded income level be reduced to 50 cents in the dollar. This reduction in the withdrawal rate will, when compared to the effect of the existing withdrawal rate, halve the actual amount of child support withdrawn from the custodial parent for each dollar earned by the custodial parent above the disregarded income level. DSS also supported a reduction in this withdrawal rate:

> ... the withdrawal of child support from CPs with income above AWE irrespective of NCP income levels may contribute to the gender inequities in the current Australian work force. The current withdrawal rate could be amended to introduce a graduated or tapered effect so that the rate of withdrawal of child support is highest where NCP income is low and lowest where NCP income is very high.[54]

16.73 The Joint Committee also notes that the Federal, State and local government fringe benefits (discussed above) received by sole parent pensioners act to reduce their costs of living and therefore must positively impact upon the poverty traps experienced by the 90 per cent of custodial parents who are sole parent pensioners.

Conclusion

16.74 The Joint Committee is concerned that the current custodial parent's disregarded income level is too high especially when compared to the non custodial parent's self support component. At its current level it virtually excludes any consideration of the income of the vast majority of custodial parents. The Joint Committee considers this to be inequitable.

16.75 The Joint Committee considers that the custodial parent disregarded income level should be set at the applicable pension cut off point. The effect of this change on the population of custodial parents will be minimal due to the low percentage earning more than this amount. Whilst this percentage can be expected to grow over time, work force disincentives should be minimised by reducing the withdrawal rate of child support above the pension cut off point to 50 cents in the dollar.

54 Submission No 5771, Vol 10, p 172

16.76 The Joint Committee also considered DSS modelling of the effect of these changes on the disposable income of both custodial and non custodial parents. This modelling shows that a lower disregarded income level will generally lead to a decrease in child support received by custodial parents earning income above the pension cut off point, an increase in non custodial parent income and an increase in government outlays on Additional Family Payment. The Department of Social Security modelling is discussed at the end of this Chapter.

16.77 The Joint Committee recommends that:

Recommendation 118

the custodial parent's disregarded income level be reduced to the applicable pension cut off point (the current Department of Social Security cut off point is $19,723.60 which increases by $624 per annum for each additional child).

Recommendation 119

the current withdrawal rate of child support from custodial parents who earn more than the applicable pension cut off point be reduced to 50 cents in the dollar.

Gender Equity Issues

16.78 DSS submitted that it was necessary to appreciate the gender equity issues associated with the changing workforce participation of women and the barriers to such participation posed by the need to combine work with family responsibilities when considering the level of the custodial parent disregard as these barriers are most acute for sole parents.[55] These gender equity issues arise from a range of negative stereotypes which form a basis for indirect discrimination against women, especially the 'male breadwinner, female dependency' model of Australian families. The 1980 Report of the Joint Select Committee into the Family Law Act set aside this stereotype as the basis for the division of matrimonial property or awards for the financial support of children.[56] The Report of the Inquiry into Equal

55 Submission No 5771, Vol 10, p 169

56 ibid. p 170

Opportunities and Equal Status for Women in Australia, **Halfway to Equal**, systematically documents and analyses the impact of these stereotypes:

> Unlike men, the career pattern of women is substantially influenced by the assumption of parental responsibilities. The structure of the workforce makes little allowance for non-work responsibilities and is still based on a model of the family unit where one partner is in paid employment and the other has sole responsibility for the household.
>
> Such a unit no longer represents the majority of Australian families.[57]

16.79 **Halfway to Equal** also dealt with the comparative economic disadvantage of women and the feminisation of poverty:

> A gender break down of Australian wealth is not available but what is known is the income distribution between men and women. In 1989-90, of those women with taxable income, more than half earned less than $21 000 pa while two thirds of men had income greater than $21 000. Average female earnings are around 83 percent of average male earnings.
>
> The submissions identify a variety of reasons for the comparative economic disadvantage of women. These include systemic discrimination; lower wages; occupational and industrial segmentation of the labour force; greater likelihood of casual or part-time employment and unemployment, particularly hidden, amongst young women. Other factors include an interrupted work force pattern and subsequent reduced life-time earnings; lower levels of non-pension retirement income; predominance among social security recipients and lack of payment for economic duties carried out in the home, including child care.
>
> One of the most economically vulnerable groups are single parents, over 80 per cent of whom are women.[58]

57 House of Representatives Standing Committee on Legal and Constitutional Affairs, **Halfway to Equal**, April 1992, p 82

58 ibid. p 89–90

16.80 The Joint Committee is sensitive to these gender equity issues and has considered them, along with potential custodial parent poverty traps and workforce incentives, in formulating its recommendations in respect of the custodial parent disregarded income level. The Joint Committee considers the impact of the recommended reduction in the custodial parent disregarded income level will be minimal and should not undermine the Federal Government's Jobs Education and Training program for sole parent pensioners nor custodial parent workforce incentives generally. Furthermore, the recommended reduction in the child support withdrawal rate to 50 cents in the dollar should positively impact upon these custodial parent work incentives.

Child Care Component

16.81 The Consultative Group made the following comments in respect of a child care component in the custodial parent's disregarded income level:

> It was further argued that a custodial parent on an income of average weekly earnings with two children may well be struggling, particularly as most custodial parents in this situation may have significant child care costs. The Group concluded that an additional income disregard level to take account of actual child care costs would be more equitable than an across the board higher income disregard. Child care costs vary significantly from State to State, and within States, so that a universal additional disregard level for child care costs, even if confined only to those actually purchasing child care, would not be equitable.[59]

16.82 As a result the Consultative Group recommended that only actual child care costs should be included in the custodial parent's disregarded income and that there should be a ceiling on the amount allowed for child care costs. The Joint Committee notes that the subsequent legislation largely ignored these recommendations by imposing a uniform child care levy for children under 12 years of age which was tied to an arbitrary level of average weekly earnings.

59 CSCGR, op.cit. p 82

Government Childcare Assistance

16.83 The Joint Committee notes that fee relief for child care for low and middle income families has been provided by the Federal Government on a per child basis and according to a formula related to family income with a set fee 'ceiling' since 1986. This assistance, funded by the Federal Government, is provided through service (or centre) operators to families. This means a long day care centre director, for example, need charge a family only the balance of fees owing after childcare assistance has been deducted. Assessment of family income for childcare assistance purposes is done by DSS.

16.84 Childcare Assistance is means tested by reference to 'Assessed Family Income' which is equal to gross weekly family income less $30 for each dependent child. From 1 April 1994, families with an Assessed Family Income at or below $445 per week ($23,140 pa) receive the maximum Childcare Assistance (fee relief) benefit. This is $94 a week ($4,888 pa) for 50 hours of care where there is one child in care. Families must pay the first $16, and any balance if the service or centre charges more than the standard fee ceiling of $110. If a family has two dependent children in full time child care, the maximum childcare assistance is $202 per week ($10,504 pa) for 50 hours of care and the family must pay the first $18 and any excess fee over the ceiling fee.

16.85 Childcare assistance begins to reduce on a tapering scale when Assessed Family Income reaches $445 per week ($23,140 pa) and cuts out when Assessed Family Income reaches $1,127 per week ($58,604 pa) for a family with one child in child care, $1,341 per week ($69,732 pa) for two children and $1,830 per week ($95,160 pa)[60] for three children in child care.

16.86 The Joint Committee notes that under the Jobs, Education and Training (JET) Program, sole parent pensioners are given priority of access to child care services provided by the Department of Health, Housing, Local Government and Community Services. The Department of Social Security advised that:

> If a JET client continues to experience childcare difficulties funds are available when necessary to create a temporary add-on place in a child care service or family day care scheme.[61]

60 Childcare Assistance Ready Reckoner (From 1 April 1994)

61 Submission No 5085, Vol 1, p 173

Childcare Rebates

16.87 From 1 July 1994, the *Childcare Rebate Act 1993* introduced a cash rebate for formal or informal child care by a registered carer where 'each parental member' of the family has work, work-related, training or study commitments. The Joint Committee notes that the childcare rebate will be available to sole parent pensioners who meet this eligibility criteria.

16.88 The maximum rebate is available to families not in receipt of childcare assistance. Those in receipt of maximum childcare assistance are ineligible for the rebate. The maximum rebate is $28.20 per week ($1,466.40 pa) for one child and $61.20 ($3182.40 pa) for two children. Under both systems a family must pay the first $16 of the total fee. For purposes of the rebate, a child can belong to more than one family, for example if the child is dependent on two parents who live in different families, both paying for different periods of care.

16.89 Childcare rebates are payable through the Health Insurance Commission (HIC) upon presentation of receipts from registered carers. A child care centre, for example, as a registered carer would issue a receipt for the amount actually paid by the parents, that is, the centre fee minus childcare assistance. Then the parent would present this receipt to the HIC in person or by post, just as is done with Medicare receipts. The HIC would deduct an amount of $16 from the amount paid and calculate the rebate owing (30 per cent of the fee paid after deducting $16, to a ceiling of $110). Consequently, a parent with one child in child care would need to spend $110 per week to receive the maximum rebate of $28.20. Table 16.5 illustrates how childcare assistance and the childcare rebate interact.

Table 16.5 Combined Effect of Government Childcare Assistance and Childcare Rebate for a family with one Child in Child Care

Centre Full-Time Fee	Childcare Assistance Level Received	Family Pays Centre	Rebate Claimable	Family Childcare Costs
$120 pw	Maximum	$26 ($16 minimum fee+$10 gap fee)	$3 0.3x(26–16)	$23 (26–3)
	50%	$65 (50%x110+$10 gap fee)	$14.70 0.3x(65–16)	$50.30 (65–14.70)
	Nil	$120	$28.20 0.3x(110–16)	$91.80 (120–28.20)
$150 pw	Maximum	$56 ($16+$40 gap)	$12 0.3x(56–16)	$44 (56–12)
	50%	$95 (50%x110+$40 gap)	$23.70 0.3x(95–16)	$71.30 (150–28.20)
	Nil	$150	$28.20 0.3x(110–16)	$121.80 (150–28.20)

16.90 Table 16.5 shows that for a family with one child in child care, the higher the level of child care assistance the lower the final cost of child care to that family. This relationship also reflects the capacity to pay of the family as higher income families will be eligible for less childcare assistance but more of the childcare rebate resulting in a higher final childcare cost which they are presumably more able to afford.

16.91 Given that approximately 91 per cent under Stage 2 of the Scheme are eligible for maximum childcare assistance, the final child care cost should be minimised. In addition any workforce disincentives for custodians should also be minimised by the recommended disregarded income level ($19,723.60 pa for one child) as this is substantially below the level at which childcare assistance first begins to reduce ($24,700 pa for one child).[62] These workforce disincentives are further ameliorated by the recommended reduction in the current withdrawal rate of child support to 50 cents in the dollar and the Government assistance provided to sole parent pensioners through the JET program.

16.92 In light of the available childcare assistance and the recently introduced childcare rebate, the Joint Committee considers the existing child care component in the custodial parent's disregarded income level to be inequitable as its presence effectively counts the cost of child care a second time.

62 Based on gross family income per Childcare Assistance Ready Reckoner, 1 April 1994

16.93 The Joint Committee also notes that the recommended custodial parent disregarded income level is responsive to the additional costs associated with second and subsequent children as it increases by $624 per annum for each of these additional children. This feature further negates the need for a separate childcare component in the custodial parent's disregarded income level.

16.94 The Joint Committee recommends that:

Recommendation 120

the child care component of the custodial parent's disregarded income level be abolished.

Cap on Non custodial Parent Income

16.95 The current cap or maximum level on the non custodial parent's income is 2½ times average weekly earnings. In other words, any income which the non custodial parent earns above this amount is generally not taken into account when determining his or her child support liability.

16.96 The Consultative Group's rationale for setting a cap on the non custodial parent's income was as follows:

- this would give effect to evidence that while expenditure on children climbs in direct proportion to income, child rearing expenses do plateau at relatively high incomes;
- for high income families expenditure on children above the level of this plateau is often discretionary (e.g. luxurious items, overseas trips etc). It could therefore be argued that the non custodial parent should retain some capacity to control this discretionary expenditure and to contribute that form of support directly to the children rather than as part of a child support payment to the other parent;
- if there was no maximum on the income base then high levels of child support at high income levels would result. This would exceed the true expenditure levels at the plateau and could also be seen as a transfer of income to the ex-partner rather than child support; and

- it would reduce, to some extent, incentives for child support avoidance by high income non custodial parents together with possible work disincentives.[63]

16.97 The Consultative Group set the cap on the non custodial parents income after speaking with researchers about the level of parental income at which child rearing expenses as a percentage of income start to fall. The general consensus at the time indicated that this plateau effect took place at quite high levels of income (that is $50,000-$60,000 per annum). However, the Consultative Group was not able to access any definitive up-to-date Australian data in this area.[64] The maximum income base chosen was approximately $50,000 which at the time accorded with twice average weekly earnings. However, the ensuing legislation increased this cap to 2½ times average weekly earnings.[65]

16.98 It has been suggested that the whole idea of setting a cap on the non custodial parent's income runs contrary to a fundamental basis of the Child Support Scheme, namely, that children share in the improved living standards of the non custodial parent and that the non custodial parent supports his or her children according to his or her capacity to pay. A custodial parent made the following comments regarding the cap on the non custodial parent's income:

> We rely 100% on my ex-husband's child support money for our livelihood. My ex-husband earns approximately $140 000, but we are only entitled to 32% of $75 000 which is top of the Child Support Agency scale. I don't think that it is fair that four people live off $22 308 per year while my ex-husband and his defacto wife live off 68% of $75 000 and the whole of the remaining $65 000.[66]

16.99 The Joint Committee has received submissions which suggest that this cap has been set at too high a level and acts as a disincentive to work. One non custodial parent made the following comments:

> Child Support should be assessed by automatic formulae up to a maximum non-custodial parental income of average weekly earnings only. Currently the level is 2.5 times average weekly earnings, resulting in massive payments which invariably are not spent on the children but on the custodial parent. ...

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63 CSCGR, op.cit. p 83

64 ibid. p 84

65 s.42 *Child Support (Assessment) Act 1989*

66 Submission No 983, Vol 3, pp 7–8

> The supposed justification for assessing child support at a sliding amount up to 2.5 times average weekly earnings is so that children may live in the manner they may reasonably have expected if the non-custodial parent was still present. However, most of these items are readily identifiable: private health cover, private school fees, children's holiday costs and more expensive clothes and toys.[67]

16.100 DSS advised the Joint Committee that the Consultative Group's recommendation to set the maximum income base at twice average weekly earnings was not implemented for the following reasons:

> We understand that the decision that the maximum amount of child support be set at 2.5 times AWE was made by the Ministerial Committee at the time.
>
> The effect of setting the formula cut out point at 2.5 times average weekly earnings is to ensure that the circumstances of most families post separation are covered by the formula and to minimise the number of custodians who would be required to seek a departure from formula assessment under s. 117 (2) (c) where the NCP's income is above the formula cut out point.
>
> At the time that the formula was introduced custodians had to go to Court to seek a departure order. They now have access to the CSRO process.
>
> By way of context DSS notes that of Stage 2 cases registered with the CSA at 24 February 1994, there are 472 NCPs with taxable income over $70,000 where the custodian has income in the range $0-$7,000.[68]

16.101 The Joint Committee notes that two times average weekly earnings for the 1994-95 child support year amounts to $66,518 and that the number of liable Stage 2 parents earning more than this amount is very small. DSS quoted a figure of 472 with incomes over $70,000 while only two per cent of non custodial parents have an income in excess of $50,000.[69] Consequently the impact of reducing the maximum cap on non custodial parents income from 2.5 times average weekly earnings to the level recommended by the Consultative Group would be minimal.

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67 Submission No 236, Vol 3, pp 4 & 8

68 DSS letter dated 12 May 1994

69 Submission No 5085, Vol 1, p 70

16.102 The Joint Committee also notes that the other reasons put forward by DSS to explain the adoption of the higher 2.5 times average weekly earnings cap by the Government are no longer of concern due to the introduction of the no-cost administrative review of child support assessments by the Child Support Review Office (CSRO) and the fact that very few non custodial parents earn more than $66,518 per annum. The lowering of the current cap to twice average weekly earnings would also reduce the serious work disincentives experienced by liable parents as a result of the high combined marginal rates of taxation and child support which occur at these levels of income.

16.103 The Joint Committee recommends that:

Recommendation 121

the maximum cap on non custodial parent income be reduced to twice average weekly earnings.

Minimum Child Support Payment

16.104 The Joint Committee received some submissions which suggested that non custodial parents should pay a minimum amount of child support irrespective of their financial circumstances. One custodial parent submitted:

> Why can't the government at least make them pay by taking a small amount out of their dole into children stomachs or future. Why the innocent children have to suffer because of grown ups greed. $10-$15 pw out of their dole would certainly shed light into children's life as well as teach us grown ups that we have a responsibility that cannot be dumped just because we choose or we are on the dole.[70]

70 Submission No 2646

16.105 The Joint Committee considers the introduction of a minimum payment to be entirely consistent with the principal objective of the Child Support (Assessment) Act 1989, namely, that children receive a proper level of financial support from their parents.[71] It would also reinforce another fundamental principle of the Child Support Scheme that the parents of a child have the primary duty to maintain their children.[72]

16.106 A possible source of guidance for determining what might be an appropriate level for a minimum child support payment is the social security portfolio. The Joint Committee was advised by DSS that where a social security recipient owes money to DSS through overpayments or otherwise, it is DSS practice to deduct a repayment amount from that person's social security entitlement. The most common amount deducted is about 14 per cent of the basic benefit paid while the average amount deducted is about 15 per cent. There is no set minimum or maximum amount, rather this is a function of the debtor's capacity to pay.[73] The Joint Committee considers it preferable to set a fixed minimum child support liability as the maximum liability will vary in accordance with the liable parent's taxable income.

16.107 The Joint Committee notes that the minimum collectable amount under the *Child Support (Assessment) Act 1989* is $260 per annum or $5 per week, and for this reason considers this to be the appropriate level at which to set the minimum payment. The Joint Committee considers that this minimum amount should be payable by all liable parents including unemployed liable parents as the receipt of welfare benefits should not abrogate the responsibility of parents to support their children.

16.108 The Joint Committee notes that in the United Kingdom a minimum payment applies where the formula results in an amount less than this minimum. The minimum payment is set at 5 per cent of the income support personal allowance for someone 25 or over. This amounts to £2.20 per week and is generally payable by an absent parent who is on income support. However, the following people are exempt from this minimum payment:

- those receiving certain sickness and disability payments;
- those with the amount of the family premium in their protected level of income, in the calculation of their income support;

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71 s. 4(1) *Child Support (Assessment) Act 1989*

72 s. 3(1) *Child Support (Assessment) Act 1989*

73 DSS letter dated 12 May 1994

- prisoners;
- those under 16 receiving Income Support; and
- those under 16 years old, or under 19 and receiving full time non-advanced education.

16.109 The Joint Committee acknowledges that there will be special circumstances where it may be inequitable to apply the minimum payment to a liable parent. This may arise because of a liable parent's special needs in areas similar to those identified as exempt from the minimum payment in the United Kingdom. These special situations will be rare and could be dealt with by vesting the Child Support Registrar with the discretion to waive the minimum payment in these circumstances.

16.110 A minimum child support liability will also reduce the taxable income threshold at which a non custodial parent first starts to pay child support to the applicable self support component. Under the existing child support formula, the first dollar of non custodial parent's child support liability accrues at the existing self support component but is not required to be paid until that parent earns sufficient taxable income as to give rise to a child support liability of $260 or more per year. Consequently, the taxable income level at which a non custodial parent first pays child support under the existing child support formula is higher than the actual self support component. The Joint Committee considers this to be misleading and prefers the impact of the proposed minimum child support liability.

16.111 The requirement under the child support legislation that child support assessments of less than $260 per annum are deemed to be a nil liability also impacts upon the custodial parent taxable income point at which custodial parent earnings reduce the child support received by the custodial parent to 25 per cent of what would have been received if the custodial parent had no earnings above the disregard level. At low levels of non custodial parent taxable income the point at which custodial parent income reduces the non custodial parents child support liability to 25 per cent of what would otherwise have been the case can result in a child support liability of less than $260 pa and therefore a nil liability. The Joint Committee considers this result to be inequitable as the non custodial parent avoids his/her child support responsibilities completely. In these cases the proposed minimum child support liability will convert this nil liability into a $260 per annum child support liability.

16.112 The Joint Committee recommends that:

Recommendation 122

the child support legislation be amended to:

(a) introduce a minimum child support payment of $260 per annum where the formula results in an assessment less than this amount; and

(b) allow the Child Support Registrar to waive the minimum payment of $260 in special circumstances.

Department of Social Security Modelling

Introduction

16.113 The Committee requested DSS to provide extensive modelling of a comprehensive range of alternatives to the current child support formula. These alternatives focussed on modifying existing components of the child support formula rather than making wholesale changes to the formula or replacing it with a new mechanism for determining child support. This incremental approach reflects the Committee's view that the general principles underlying the current child support formula are appropriate but that the balance points which the formula represents, and the outcomes which it produces, need fine tuning.

16.114 The Committee acknowledges that any fine tuning of the existing child support formula will affect the existing balance points between separated and intact families; between children of first and subsequent families; between custodial and non custodial parents; and between parents and taxpayers generally. Any change will benefit either one or more of these groups at the expense of other groups. The outcomes of the modelling provided by DSS reflect this reality. In determining whether the existing balance points are appropriate, the Joint Committee has judged them against the objectives of the Scheme and the equity of the outcomes which they produce vis-a-vis the relative disposable incomes of custodial and non custodial parents. The Joint Committee also closely considered the impact of each modification to the child support formula on the cost to Government through increased outlays on Additional Family Payment.

Scope of Modelling

16.115 DSS provided the Joint Committee with assistance by modelling the impact of a wide range of modifications to the basic child support formula on:

- the disposable incomes of custodial and non custodial parents;
- the non custodial parent's child support liability; and
- any additional cost to taxpayers through outlays on Additional Family Payment.

16.116 This modelling considered the following family and taxable income permutations:

- custodial has one to three children;
- custodial parent taxable income ranging from $0 pa to $50,000 pa; and
- non custodial parent taxable income from $0 pa to $90,000 pa.

16.117 The modelling provided by DSS considered the impact of the following non custodial self support components:

- 1.05 times the single pension rate;
- 1.10 times the single pension rate;
- 1.15 times the single pension rate;
- 1.20 times the single pension rate;
- 1.30 times the single pension rate;
- 1.40 times the single pension rate;
- 1.50 times the single pension rate; and
- 1.60 times the single pension rate.

16.118 This modelling also considered the following custodial parent disregarded income levels:

- the existing custodial parent disregarded income level (including child care component) minus 10 per cent;
- the applicable Additional Family Payment cut-off point; and
- the applicable pension cut-off point.

16.119 DSS modelling considered the impact of reducing the maximum cap on non custodial parent income to two times the yearly equivalent of average weekly earnings. The impact of this modification was modelled across half the non custodial parent self support components and each of the custodial parent disregarded income levels listed above. The impact of a reduction in the child support withdrawal rate to 50 cents for each dollar earned by the custodial parent above the applicable disregarded income level was also modelled. This particular modification was common to every alternative child support formula modelled by DSS.

16.120 DSS also identified the following critical points in the modelling provided to the Joint Committee:

- the taxable income threshold at which a non custodial parent first starts to pay child support; and
- the custodial parent taxable income point at which custodial parent earnings reduce the child support received by the custodial parent to 25 per cent of what would have been received if the custodial parent had no earnings above the disregarded level.

16.121 Finally, the projected cost to Government of each of the proposed modifications to the child support formula was provided for the period 1994/95 to 1998/99. These projected costs are set out in Appendix 12.

16.122 The modelling provided by DSS took over six months to complete and ran to over 2,000 pages of graphical and tabular analysis. This modelling required a range of technical changes to DSS's computer model. In particular, a major enhancement of the Department's model was required in respect of each of the alternative custodial disregarded income levels as alternative disregarded income levels had not been previously modelled. The Joint Committee appreciates the Department's assistance in meeting its onerous modelling requests.

16.123 In addition to the modelling outlined above, the Joint Committee considered the comprehensive modelling analysis submitted by DSS in respect of the existing child support formula. Consequently, the Joint Committee has been provided with a wealth of information with which to evaluate the impact of the existing formula, and a comprehensive range of alternative formulas, on each of the parties affected by the Scheme.

Modifications to the Basic Child Support Formula

16.124 The Joint Committee recommended above that the custodial parent disregarded income level be reduced to the applicable pension cut-off point and the withdrawal rate of child support be reduced to 50 cents in the dollar. The rationale for these recommendations centred on the need to make the custodial parent's income more relevant in the formula without creating any poverty traps or adversely affecting custodial parent work incentives as a result. The remaining key component of the child support formula is the level of the basic formula's non custodial parent's self support component.

16.125 As discussed above, the Joint Committee considers it inappropriate to tie the basic formula non custodial parent self support component to the single pension rate as this does not recognise the additional costs of employment borne by employed non custodial parents nor the additional fringe benefits available to pensioners. As highlighted above, the Joint Committee closely considered eight different modifications to the existing self support component in order to assess at what level it should be set. DSS modelling of the impact of each of these self support components was critical in this assessment.

16.126 This modelling generally showed that the higher the self support component the lower the resulting child support liability. This translated into a lower custodial parent disposable income and a higher non custodial parent disposable income. A higher self support component also increased the cost to Government of Additional Family Payments to custodial parents. This is a result of the interaction of the maintenance income test with lower child support liabilities. These increased Government outlays on Additional Family Payment only occurred where custodial parent income was below the Additional Family Payment cut-off point. Beyond this cut-off point, any reduction in the non custodial parent child support liability impacted directly on custodial parent disposable income.

16.127 The Joint Committee notes that the modelling of the recommended modifications to the basic child support formula does not include the impact of the Joint Committee's recommendation that a minimum child support liability of $260 per annum be payable by all non custodial parents. This recommendation will increase each nil child support liability to $260 pa with a corresponding reduction in non custodial parent disposable income and an increase in custodial parent disposable income.

16.128 This minimum child support liability will also reduce the taxable income threshold at which a non custodial parent first starts to pay child support to the applicable self support component. Under the existing child support formula, the first dollar of non custodial parent's child support liability accrues at the existing self support component but is not required to be paid until that parent earns sufficient taxable income as to give rise to a child support liability of $260 or more per year. Consequently, the taxable income level at which a non custodial parent first pays child support under the existing child support formula is higher than the actual self support component.

16.129 The requirement under the child support legislation that child support assessments of less than $260 per annum are deemed to be a nil liability also impacts upon the DSS modelling provided in respect of the custodial parent taxable income point at which custodial parent earnings reduce the child support received by the custodial parent to 25 per cent of what would have been received if the custodial parent had no earnings above the disregard level. At low levels of non custodial parent taxable income the point at which custodial parent income reduces the non custodial parents child support liability to 25 per cent of what would otherwise have been the case can result in a child support liability of less than $260 pa and therefore a nil liability. In these cases the Joint Committee's recommended minimum child support liability will convert this nil liability into a $260 per annum child support liability.

16.130 As highlighted above, any amendment to the existing child support formula will potentially impact upon each party affected by the Scheme. This brings into play certain conflicts between the objectives of the Scheme. In particular, the Joint Committee considers that the objective that Commonwealth expenditure is limited to the minimum necessary to ensure the adequacy of child support to all children not living with both parents comes into conflict with the objective that non custodial parents share in the cost of child support according to their capacity to pay when large increases in the non custodial parent self support are considered. This conflict is illustrated by the tables in Appendix 12 which show that an increase in the self support component of 60 per cent is estimated to increase the cost of the Scheme by approximately $40 million per annum over the next four years. Given the substantial cost of the Scheme to date, the Joint Committee considers an additional cost of this magnitude to be untenable even if it could be argued that a 60 per cent increase in the non custodial parent's self support component was the most appropriate reflection of their capacity to pay. In the Joint Committee's view, this is not the case nor would a 60 per cent increase in the self support

component meet the objective of the Scheme that adequate support is available to all children not living with both parents.

16.131 The Joint Committee considers that an increase in the non custodial parent self support component of 20 per cent provides the best achievable balance between the objectives of the Scheme. The estimated cost of this increase in the self support component is approximately $14 million per annum for the next four years. Tables 1-3 of Appendix 13 set out the combined impact of the Joint Committee's recommended modifications to the basic child support formula on the relative disposable incomes of custodial and non custodial parents and the additional cost to the taxpayer for a wide range of family and income permutations. Appendix 14 sets out the custodial parent taxable income points at which custodial parent earnings reduce the child support received to 25 per cent of what would have been received if the custodial parent had no earnings above the disregard level. Appendix 15 sets out the effect of the Joint Committee's recommended modifications on the taxable income threshold at which a non custodial parent first starts to pay child support. As highlighted above, the tables in each of these appendices will be affected by the Joint Committee's recommendation that a minimum child support liability of $260 pa be payable by all non custodial parents.

16.132 In reaching this judgement the Joint Committee seriously considered increasing the self support component to 30 per cent or 40 per cent above its present level as the Joint Committee believed that an increase in excess of the recommended 20 per cent would have been a better reflection of the capacity to pay of non custodial parents. However, the projected cost of any increase in the self support component above 20 per cent and concerns in respect of the adequacy of the resulting child support payments to custodial parents at lower non custodial parent taxable income levels weighed heavily upon the Joint Committee in its final decision. As a result, the Joint Committee views the recommended 20 per cent increase in the non custodial parent's self support component, in combination with the recommended modifications to the custodial parent disregarded income level, child support withdrawal rate, maximum income base and minimum child support liability, as the minimum necessary to restore equity between the competing balance points of the Child Support Scheme.

16.133 The Joint Committee recommends that:

Recommendation 123

the non custodial parent's basic formula self support component be increased by 20 per cent, that is from $8,221.00 to $9,865.20 per annum.[74]

Summary of the Joint Committee's Recommended Modifications to the Basic Child Support Formula

16.134 Table 16.6 summarises each of the Joint Committee's recommended modifications to the major components of the basic child support formula

Table 16.6 Summary of Joint Committee's Recommended Modifications to the Basic Child Support Formula

	Current Formula Components	Recommended Modifications
Maximum Income Base	2.5xAWE $83,147.50	2xAWE $66,518
Basic Self Support Component	Single pension rate =$8,221	1.2xsingle pension rate =$9,865.20
Disregarded Income Level	AWE+childcare component 1 child=$34,992 or $37,084	Pension Cut Off Point 1 child=$19,723 2 children=$20,347 3 children=$20,971
Child Support Withdrawal Rate	Each $1 increase in CP income above disregarded income level reduces NCP child support income base by $1 until 25 per cent minimum level is reached	Each $1 increase in CP income above disregarded income level reduces NCP child support income base by $0.50 until 25 per cent minimum level is reached

Notes:

1 Table 16.6 is based on DSS rates for the 1994/95 child support year
2 AWE means the yearly equivalent of average weekly earnings.
3 CP means custodial parent and NCP means non custodial parent.

74 Based on Department of Social Security figures for the 1994/95 child support year

17

Formula related issues

Taxable Income or Net Income

17.1 The Child Support Consultative Group (Consultative Group) recommended that the formula should apply to taxable income, that is before tax income, rather than after tax, that is net income, for the following reasons:

- this approach would be consistent with the object of the Scheme of ensuring that non custodial parents share the cost of supporting their children according to their capacity to pay as it places child support obligations as a primary responsibility equivalent to paying taxes;
- before tax income is readily identifiable during the year while after tax income is not certain until the completion of the tax assessment. A before tax formula therefore allows non custodial parents to more easily predict their liability;
- a before tax base is more progressive than an after tax base because lower marginal tax rates apply at lower income levels. This means that the before tax base impacts less heavily on lower income earners;
- this will be simpler for the Registrar of Child Support, the Court, the parties and their advisers to calculate;
- difficulties which may be encountered in more complex cases involving self employed parents are not significant; and

- administrative assessment under a formula which takes into account a tax liability could not apply to recent years of income figures for provisional tax payers.[1]

17.2 The Child Support Evaluation Advisory Group (CSEAG) argued that if the formula was based on after tax income rather than before tax income then the relevant percentages would need to be increased to ensure that appropriate levels of maintenance liability were set. As a result CSEAG concluded that there was no reason to change from taxable income to after tax income as a base for the formula.[2]

17.3 The Joint Committee received 742 submissions stating that the current approach of applying the formula percentage to taxable income (that is, before tax income) rather than net income (that is, after tax income) is inequitable. This represents 12 per cent of the total number of submissions received by the Joint Committee.

17.4 The primary justification for preferring after tax income is that it is considered to represent the capacity to pay more closely since it constitutes the amount of income actually available to the liable parent for payment of personal obligations and living expenses. The Joint Committee received many submissions from non custodial parents supporting this approach. One representative submission stated:

> Husband leaves the home (by choice or other), leaves the car and all the furniture. Has to pay maintenance. Has to pay rent. Has to have a loan for a car which he needs to get to work and for week-end access. Has to find money to buy furniture, for himself and his children. Try these conservative figures:
>
> 27.0% maintenance
>
> 23.0% tax
>
> 23.0% rent
>
> 10.0% loan
>
> 1.5% medicare levy
>
> **=84.5%**
>
> This leaves 15.5% to pay bills, buy petrol, clothes, and food for himself. God forbid if he wishes to start another relationship and try to support another family.[3]

1 CSCGR, **Child Support: Formula for Australia**, p 90

2 CSEAG, **Child Support in Australia**, **Vol 1**, p 201

3 Submission No 3915

17.5 Similarly, another non custodial parent submitted:

> Whilst the percentage of Child Support is based on gross income and represents 27%, in actual fact the burden is more like 30% of disposable income.
>
> Using gross income as a base causes people to consider alternative lifestyles so as to minimise the impact of child support. This also disadvantages Australia as a whole because as more people become creative in earning money the Government loses tax revenue, people drop out of mainstream employment taking skills and knowledge with them at a time when Australia needs all the help it can get.[4]

17.6 The Joint Committee notes that the use of after tax income also takes into account the impact of changes in government policy. Any changes in the income tax rates or Medicare levy or the introduction of new initiatives such as the child care rebate directly impact on the liable parent's after tax income and therefore their capacity to pay. The use of before tax income (as is currently the case) completely ignores the impact of these changes.

17.7 A public accountant submitted to the Joint Committee that basing the formula on gross taxable income caused financial hardship to non custodial parents:

> Tax and Medicare levy which are compulsorily deducted from one's Salary and Wages should not be taken into consideration when calculating the amount an employee has to pay to the Child Support Agency. The tax amount is not something an employee has in his hands at the end of the week yet, the employee has to pay a percentage equal to what is applicable to his case (i.e. 18, 27 or 32%) to the Child Support Agency for something he didn't receive.[5]

17.8 An additional issue raised by the use of ‘taxable income’ as the income base for child support purposes is that because of the progressive nature of our income tax system the percentage of net income paid as child support increases at higher income levels due to the fact that the marginal rates of taxation are higher. The Joint Committee received 94 submissions identifying a strong disincentive to work on the part of liable parents created by the combination of high marginal rates of taxation and child support. One non custodial parent submission stated:

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4 Submission No 3697

5 Submission No 2806

> I can not begin to count how many people in my situation have been forced by the non arbitrary existence of current legislation to quit their job, putting a double drain on the social security system, instead of being a tax payer and paying an equitable amount for maintenance for the children. ... I cannot see how the payment can possibly be based on the gross income rather than the net as when marriage together, the income available to support the family was after tax.[6]

17.9 The Joint Committee also received submissions which support the current use of before tax income. In particular, the Department of Social Security (DSS) submitted to the Joint Committee:

> The formula percentages could be applied to either gross or net income. If they were based on net income they would be higher.
>
> However, a shift to net income would introduce a regressive effect, that is, low income earners would pay proportionally more of their income in child support than high income earners. This arises because tax and medicare charges represent a smaller component of a low income than a high income. Given the current information on the income distribution of NCPs registered for collection with the CSA such a move would see the majority of NCPs pay proportionally more of their income in child support.[7]

17.10 Similarly, the Family Law Section of the Law Council of Australia submitted:

> On balance, FLS [Family Law Section] proposes no change from using the NCP's taxable income as the basis for assessment of child support. There are two basic reasons for our attitude:
>
> (a) taxable income is the simplest approach and is the information most readily available as to income;
>
> (b) there is little point in changing the current situation because, to do so, would simply result in a change in the formula percentage.[8]

6 Submission No 246

7 Submission No 5085, Vol 1, p 82

8 Submission No 5086, Vol 2, p 264

17.11 The Joint Committee is sympathetic to the view that the use of after tax income rather than before tax income would result in a more realistic reflection of the actual amount of income available to a liable parent to meet a child support liability. However, the adoption of after tax income would mean the abandonment of 'taxable income' as the child support income base thereby requiring a reassessment of the formula percentages and the relative outcomes which they produce. This simply would not be possible without the results of the study into the costs of children in Australia recommended in Chapter 15. The Joint Committee is also concerned that any move away from using taxable income as the child support income base would significantly increase the complexity and administrative cost of the Scheme. Accordingly, the Joint Committee endorses the use of before tax income as the basis for determining the income base for child support purposes.

Non Custodial Parent Workforce Disincentives

17.12 The Joint Committee received 613 submissions which suggested that the Scheme creates strong workforce disincentives for non custodial parents. This represents approximately 10 per cent of the total number of submissions received by the Joint Committee. Some non custodial parents submitted that they are better off unemployed once the combined marginal rate of taxation and child support is taken into account:

> Also I used to shear a lot of sheep per day but now I have no incentive to shear big numbers because the more money I make means the more I have to pay to the child support agency so really there is not point in working hard because if I do I only pay it away in tax or pay it to the child support agency.[9]

17.13 Similarly, the Lone Fathers Association of Australia submitted to the Joint Committee that:

> The failure to take into account the higher rates of personal income tax obtaining in Australia compared with other comparable countries has led, under the present Australian scheme, to extremely high marginal rates of impost - i.e. income tax plus child support plus other compulsory payments such as superannuation - on non-custodial parents' income in certain ranges.

9 Submission No 1126

> The Australian scale of rates is, when compared with the scheme in force in other countries, very heavily biased against non-custodial parents in the range between one and two-and-a-half times average weekly earnings.[10]

17.14 These concerns about the effect of high combined marginal rates of taxation and child support on non custodial parent workforce incentives is illustrated by the following example:

> Assume a liable parent has a taxable income of $22,000 p.a in the 1994/95 financial year and pays child support for two children. If that parent was to increase his/her taxable income by just $1.00 then the following amount of tax, child support and Medicare would be deducted:

		Cents	Cents
Increase in Taxable Income			100.00
Less:	Taxation	34.0	
	Child Support	27.0	
	Medicare	1.4	62.4
Net income received by liable parent for a $1.00 increase in taxable income			**37.6**

17.15 The net income received by a liable parent for each dollar rise in taxable income will vary according to the number of children which that parent is required to support, the level of that parent's taxable income and other circumstances peculiar to that parent. If a liable parent has a taxable income over $50,000 p.a and pays child support for five children then the combined marginal rate of taxation, child support and Medicare levy for each dollar increase in taxable income would be 84.4 cents in the dollar. This means that parent would only receive 15.6 cents after these deductions were made. This take home amount would be even lower if, for example, the liable parent has a liability to the Higher Education Contribution Scheme or if that parent contributed a percentage of their taxable income to a superannuation scheme. The impact of employee superannuation contributions is discussed in Chapter 19.

10 Submission No 1202, Vol 4, pp 6–8

17.16 The Joint Committee notes that at lower income levels the workforce incentives for liable parent with subsequent families would also be adversely affected by the withdrawal rates of Government benefits such as Additional Family Payment and Childcare Assistance. The impact of the withdrawal of these benefits on the disposable income of liable parents with subsequent families is similar to that experienced by custodial parents and is discussed in detail in Chapter 18.

17.17 The Joint Committee also notes that these high combined marginal rates of taxation and child support have been partly alleviated by the personal income tax cuts announced by the Government in the 'One Nation' statement. Table 17.1 shows how the marginal tax rates have reduced over the last three years.

Table 17.1 Marginal Rates of Taxation 1992/93–1994/95

	Marginal rate (%)		
Income range ($ per annum)	**1992/93**	**Composite rate 1993/94**	**1994/95 onwards**
0–5, 400	0	0	0
5,401–20,700	20	20	20
20,701–36,000	38	35.5	34
36,001–38,000	46	38.5	34
38,001–50,000	46	44.125	43
Over 50,000	47	47	47

17.18 The Joint Committee notes that in November 1984 taxable income above $35,001 per annum was subject to a marginal tax rate of 60 per cent. At this time the Government acknowledged that:

> A major problem with the existing scale is the high marginal tax rates at relatively modest income levels, creating incentives to avoidance and evasion and disincentives to producing income.[11]

11 **Reform of the Australian Tax System**, Draft White Paper, June 1985

17.19 The vast majority of studies in the area of optimal systems of taxation and associated workforce effects confirm that high marginal rates of taxation tend to create workforce disincentives.[12] The Joint Committee is concerned that the high combined marginal rates of taxation and child support under the Scheme are adversely impacting upon non custodial parent work incentives. This is contrary to the objective of the Scheme that work incentives to participate in the labour force are not impaired. However, in these circumstances this objective conflicts with the primary objective of the Scheme that non custodial parents share in the cost of supporting their children according to the capacity to pay. The Joint Committee has taken this conflict into account in recommending modifications to the child support formula in Chapter 16 and Chapter 18. The Joint Committee considers that the outcomes under the recommended child support formula should act to enhance non custodial parent work incentives thereby improving the existing balance between these competing objectives.

Income from Second Jobs

17.20 The Joint Committee received some submissions which stated that income received from second jobs should be excluded from the child support income base to both enhance the work incentive for the liable parent and to provide them with more financial capacity to meet the high initial costs of establishing a separate household. One representative submission from a non custodial parent stated:

> If a non-custodial parent chooses to undertake additional work outside their normal employment (ie. a second job) they are heavily penalised as additional maintenance will be payable. A second job is usually undertaken to improve the financial position at the cost of leisure time etc. In the case of married parties both parties are impacted but consider the benefit worth the cost. In the case of separated parties the impost is on one party yet the other party derives the major benefit at no cost.[13]

12 For example see Masters & Garfinkel, **Estimating the Labor Supply Effects of Income Maintenance Alternatives** (1977) and Atkinson, **Social Justice and Public Policy** (1983)

13 Submission No 4594

17.21 The Joint Committee notes that income from a second job may be subject to taxation at the highest marginal rate of tax (that is, 47 per cent) thereby accentuating work disincentives for parents who are trying to improve their financial position. However, the Joint Committee notes that the taxation system provides relief for a parent in this position by allowing them to apply to the Commissioner of Taxation for a reduction in their weekly instalment of taxation so that it reflects the income level which they are likely to earn in that financial year.[14] Consequently, the additional workforce disincentives which would otherwise apply to income from second jobs are ameliorated by this avenue of relief.

17.22 The Joint Committee considers that the exclusion of second jobs from the child support income base would be problematic if applied to a liable parent who has two part time jobs as it raises the question of whether it would be fair to exclude the income from one of these jobs, and if so, which one? In addition, the income received by a parent from a second job increases that parent's capacity to pay child support but the inclusion of this income in the child support income base may act as a strong work disincentive in some situations. This reflects the conflict which exists in these circumstances between the objective of the Scheme that non custodial parents share in the cost of supporting their children according to their capacity to pay and the objective of the Scheme that work incentives to participate in the labour force are not impaired. As discussed in the preceding section, the Joint Committee has taken this conflict into account in the recommended modifications to the child support formula in Chapter 16 and Chapter 18. Accordingly, the Joint Committee concludes that income from second jobs should continue to be included in the child support income base.

14 s. 221D *Income Tax Assessment Act 1936*

Income from Overtime

17.23 The Joint Committee received 413 submissions which stated that the child support formula should not take income earned from overtime into account when calculating a liable parent's child support liability. These submissions represent 6.7 per cent of the total number of submissions received by the Joint Committee.

17.24 The Family Law Reform Association NSW Inc made the following comments regarding the calculation of child support payments and the subsequent disincentive for non custodial parents to work:

> Child support payments are calculated on the gross earnings of the non-custodial parent, which also includes monies earned through overtime, second jobs, bank interest, etc. plus an additional 7% inflation factor. The incentive to work overtime, etc. to re-establish their lives is quashed by the fact that after tax and extra child support payments are made, there is very little left. Work promotions are not being sought, as it will result in further court appearances for extra Child Support. This is non-productive. It has been argued that if the family unit were intact, the children would have the benefit of the extra income. The fact is that the family is NOT intact and cannot expect to live at the same standard as prior to the marriage breakdown.[15]

17.25 The Joint Committee heard evidence from a non custodial parent who felt that the overtime he worked should not be included in his child support calculation:

> ... I work at the mine at Gordonstone. At present I am on a fairly high wage. A lot of this is due to the overtime, bonuses and penalties that I receive. I am forced to work this overtime to make up for the amount of maintenance which is deducted from my wages each week. ...
>
> I feel that the overtime bonuses that I receive are for the work that I am actually doing. I could be killed down in that mine. ... the overtime, penalties and bonus I receive just keep pushing the maintenance up each year. It is getting to a point now that I know for a fact that next year when the new assessment is done that I

15 Submission No 1505, Vol 3, p 216

> will either have to walk away or give everything up, because I will not be able to afford it.[16]

17.26 The Joint Committee is concerned that the inclusion of overtime payments in the child support income base may act as a strong work disincentive for liable parents. Many submissions have raised this issue as well as the view that overtime should be excluded from the child support income base to give liable parents the opportunity to re-establish themselves. However, income from overtime also increases the liable parent's capacity to pay child support and consequently the Joint Committee considers that the same rationale for including income from second jobs in the child support income base must apply to include income earned from overtime as well.

17.27 The Joint Committee notes that some submissions stated that award components such as penalty rates and shift allowances which act to increase a liable parent's capacity to pay should also be excluded from the child support income base as their inclusion acts as a workforce disincentive. The Joint Committee considers that the same rationale for including income from second jobs and overtime in the child support income base also applies to these payments. The Joint Committee also notes that the trends towards enterprise agreements and workplace reform should act to reduce the workforce disincentives in this area over time.

Income Variations

17.28 Where a person estimates that his or her taxable income for the year will be no more than 85 per cent of the income amount used to calculate that person's current child support liability, that person may, by written notice to the Child Support Registrar, elect to use that estimate to recalculate his or her child support liability for the child support year.[17] If the estimate proves to be incorrect then an appropriate adjustment is made at the end of the child support year to reflect this. A penalty is also generally payable where the actual taxable income for the child support year exceeds the estimate by 10 per cent or more.[18]

16 Transcript of Evidence, 14 October 1993, p 680

17 s. 60 *Child Support (Assessment) Act 1989*

18 s. 64A *Child Support (Assessment) Act 1989*

17.29 This estimate mechanism caters for the situation where a person is currently earning significantly less income than was the case in the relevant year of income (generally two years previously) upon which their child support liability is based. This can occur when, for example, a liable parent becomes unemployed. The election allows a person to reduce the child support liability which would otherwise stand. As CSEAG noted:

> This is, in most cases, an appropriate outcome since the liable parent would not have the capacity to pay.[19]

17.30 The Joint Committee notes that the Child Support Agency (CSA) advised CSEAG of the following difficulties with the operation of the estimates provisions:

> These provisions do not always work in an efficient manner in that they do 'penalise' both parties in different ways in some circumstances.
>
> A liable parent who becomes unemployed late in the year is faced with a situation that total income [for the year] is not reduced by the required 15 per cent and, short of going to court to depart from the assessment, is required to pay the original amount assessed. Of even greater impact is the case where a liable parent is able reduce the income base during the year, but has been paying maintenance at a higher level for some months and, is entitled to a refund because more has been paid than should have because of the reassessment.
>
> The CSA should refund the amount but the custodian is left to suffer a break in payments for a 'variable' period because they have effectively been overpaid at the date of reassessment and must wait until the adjusted amount catches up.
>
> Both parties are losers in different situations because the law requires that the new income figure be the annual figure and is applied from the start of the year regardless of when the reassessment takes place.[20]

19 CSEAG, op.cit. p 202

20 ibid. p 246

17.31 As a result CSEAG recommended that estimates should be prospective only so as to overcome the problem of overpayments to the custodian and the difficulties associated with their recovery.[21] The Joint Committee considers that the same problems with overpayments still exist under the Scheme and endorses CSEAG's solution to this problem. The Joint Committee envisages that a reassessment of a person's child support liability on the basis of an estimated reduction in income should take effect from the month following the month in which that person applies for the reassessment, with the previous child support assessment applying up until this time. The Joint Committee considers this necessary to ensure that the time lag between an application for a reassessment on the basis of an estimated reduction in income and the issue of a reassessment by the CSA is minimised.

17.32 The Joint Committee recommends that:

Recommendation 124

the child support legislation be amended so that a reassessment of child support on the basis of a person's estimated reduction in income under section 60 of the *Child Support (Assessment) Act 1989* takes effect from the month following the person's application for reassessment.

17.33 The Joint Committee notes that the current estimates system does not adequately cater for the situation where an unemployed person rejoins the workforce. If that person was unemployed for the whole of the relevant year of income upon which their child support liability is based (or a substantial part of it), this may result in a nil (or low) child support assessment despite the fact that the person has found work. Whilst the custodial parent could seek a departure order from the administrative assessment in these circumstances,[22] in many cases the custodial parent would not be aware that the liable parent had resumed work.

21 ibid.

22 s. 98B *Child Support (Assessment) Act 1989*

17.34 Given that the time lag, caused by using the last income tax assessment to determine the child support income base is generally two years, a person may gain the benefit of the same low income twice thereby avoiding or minimising his/her child support liability. The Joint Committee received submissions from custodial parents which complained that this resulted in hardship to them and their children:

> 2 years ago my husband was unemployed for a period of 9 months. The financial year before being unemployed he was earning $34 400 (I therefore received $753 a month on this figure for my three children). When he found employment he earned (and continues to) $40 400 per annum. The effect this had on the children's maintenance was that as of this current financial year, the maintenance was dropped to $133 monthly -not withstanding that for the past 12 months, he has been earning $40,400 pa.[23]

17.35 The Joint Committee notes that the same problem also arises where a person increases their current year income to above the level of adjusted taxable income used to calculate their child support liability. This may occur as a result of a wage increase, access to overtime or from other income sources such as a second job. The Joint Committee considers that these outcomes are contrary to the Scheme's objective that non custodial parents share in the cost of supporting their children according to their capacity to pay.

17.36 CSEAG recommended that the estimates provisions should be made sensitive to rises in income in the following manner:

> In cases where:
>
> - a child support assessment is nil; or
> - the payer has elected under section 60 of the Child Support (Assessment) Act to use an estimate of taxable income for the child support year;
>
> and the payer's taxable income for child support purposes has subsequently increased by at least 15 per cent in the current year he or she should be required to notify the Child Support Registrar who should then reassess the liability for the remainder of the year.[24]

23 Submission No 1878

24 CSEAG, op.cit. pp 245–6

17.37 The Joint Committee also received submissions which pointed out that a parent is disadvantaged under the existing estimates system where he or she experiences a drop in income of less than 15 per cent. In this case an election to reduce the child support assessment on the basis of an estimate is not allowed and hardship for that parent may result. One non custodial parent submitted to the Joint Committee that:

> In my own case my 1990-91 income was about $34 500. The child support assessment for the 1992-93 year was $339 per fortnight. My 1991-92 income was around $39 000. Therefore the new child support assessment for the 1993-94 year was based upon that income and is $378 per fortnight. An increase of over ten percent. However, in changing employment at the beginning of 1993 my income dropped by nearly $4 000 or about 10% decrease. So I am in a situation of having a ten percent decrease in income, yet a ten percent increase in child support liability.[25]

17.38 Another non custodial parent commented on the difficulties in estimating income when work is seasonal:

> My base wage (38 hours) is $19 656 per year. I work as a process worker in a factory in which the work is very seasonal. Management expects that we do a certain amount of overtime. My wage totals around $30 000 pa. ... My wage fluctuates depending on the production schedule and there is no way of predicting what I will make in any given week or year... This last financial year I exceeded the predicted amount by $2500. The Child Support Agency expects me to pay 27% of this PLUS pay a penalty.[26]

17.39 Similarly, another non custodial parent submitted that basing taxable income on two years prior does not take into account the non custodial parent's ability to pay child support when it is due:

> My income has fluctuated between $21,000 and $125,000 per year since 1988. This had meant that when applied, the ready reckoner shows that you should pay $347.95 per week (based on maximum income) when you are only earning $403 per week.[27]

25 Submission No 674

26 Submission No 2233

27 Submission No 1861

17.40 The Joint Committee notes that the hardship illustrated in the submissions above may be alleviated by the liable parent applying for a departure from the administrative assessment under Section 98B of the *Child Support (Assessment) Act 1989*. However, the Joint Committee considers that the existing estimates mechanism could be improved by allowing either parent to lodge evidence of their current income as the means of varying their assessed income. A revised child support assessment could then be issued by the Registrar on a prospective basis meaning that it would apply for the remainder of the child support year rather than in respect of the whole of the year.

17.41 CSEAG also considered the use of current income as the basis for calculating child support liabilities:

> A number of other countries with administrative assessment of child support have not had to address this difficulty as they use current income. They obtain this information from the parties and through enquiries by child support officers. In the case of Australia, however, such an approach would run counter to the concept of taxable income as the basis of the Scheme. A change to using current income for the Australian Scheme would involve a substantial increase in ongoing workload. Further, as the Scheme has generally worked well on the existing basis the Group would be reluctant to recommend any change to this aspect.[28]

17.42 The use of current income on a prospective basis should alleviate the hardship which arises where, for example, a liable parent suffers a large fall in current income late in the year. The total income for the year of this liable parent may not be reduced by the required 15 per cent meaning that he/she is required to pay the original amount assessed despite the drastic reduction in their capacity to pay. Furthermore, even where the liable parent income is reduced by the required 15 per cent, he/she may still be paying more child support under the newly issued assessment than would have been the case if an assessment was issued on the basis of his/her current income. The Joint Committee notes that the liable parent could apply for an administrative review of the assessment on the grounds of reduced financial capacity but considers that the Registrar should make a decision of first instance by assessing the parent on his/her current monthly income rather than on an annual income basis. Table 17.2 illustrates the impact of a monthly income threshold ranging from 5 to 30 per cent on monthly variations in income.

28 CSEAG, op.cit. p 245

Table 17.2 Monthly Thresholds for Monthly Variations in Income

Yearly Income	Monthly Income	30% of MI	25% of MI	20% of MI	15% of MI	10% of MI	5% of MI
15,000	1,250	375	313	250	188	125	63
20,000	1,677	500	417	333	250	167	84
25,000	2,083	625	521	417	312	208	104
30,000	2,500	750	625	500	375	250	125

17.43 The Joint Committee considers that the existing threshold of 15 per cent which applies to annual income is an appropriate level to set the monthly threshold for a drop in monthly income. Any variation below this 15 per cent threshold would not be actionable except by way of an application to the Registrar for a departure from the formula assessment.

17.44 The Joint Committee notes that this 15 per cent threshold could also be applied to increases in income by requiring a parent to report an increase in income equal to or in excess of the 15 per cent threshold to the Child Support Registrar. This requirement should give a better indication of a parent's capacity to pay at any given point in time but may result in some parents applying for a number of variations both up and down over short periods of time due to fluctuations in their income. Consequently, this would be both intrusive and costly to administer.

17.45 An alternative approach is to only require a parent to report an increase in income where that parent either has a nil assessment or has applied to the Child Support Register for a revised assessment on the basis of evidence of lower current income. This is similar to the approach recommended by CSEAG and would draw in the unemployed who find work as well as parents who elect to apply for a revised assessment in a child support year but whose income subsequently increases by a significant amount in that year.

17.46 The Joint Committee notes that the *Child Support Assessment Act 1989* imposes the penalty of imprisonment for a period of not exceeding six months where a person knowingly makes, or omits any matter or thing from a statement which makes a statement false or misleading in a material particular.[29] However, there is no existing penalty for people who recklessly or inadvertently provide false or misleading information to the Child Support Registrar. The introduction of such a penalty would discourage a person from misstating their current income to the Child Support Registrar. Similarly, the Joint Committee considers that it would

29 s. 159 *Child Support (Assessment) Act 1989*

be appropriate to introduce a penalty where a person fails to inform the Child Support Registrar of a subsequent increase in their current income in the circumstances outlined above.

17.47 The Joint Committee recommends that:

Recommendation 125

the existing estimates system be abolished and replaced by an internal administrative variation of assessment within the Child Support Agency triggered by the receipt of appropriate evidence of current monthly taxable income from either parent which shows a reduction in monthly taxable income of 15 per cent or more from that recorded in that parent's child support assessment.

Recommendation 126

in cases where a child support assessment is nil, or a parent has applied to the Child Support Agency for a revised assessment on the basis of current monthly taxable income, and the parent's monthly taxable income has subsequently increased by at least 15 per cent in the current year, that parent be required to notify the Child Support Agency of the increase.

Recommendation 127

the Child Support Agency issues a revised assessment for the remainder of the child support year when notified of a variation in monthly taxable income of at least 15 per cent.

Recommendation 128

a financial penalty be introduced for persons who recklessly or inadvertently provide false or misleading information in respect of their current monthly taxable income to the Child Support Agency.

Recommendation 129

a financial penalty be introduced for persons who knowingly, recklessly or inadvertently fail to notify the Child Support Agency of an increase in their monthly taxable income of 15 per cent or more when required to do so.

The Indexation Factor

17.48 The indexation factor is intended to update taxable income as indicated in the most recent taxation notice of assessment, which generally lags two years behind the earliest date from which a child support assessment applies, to current dollar terms. For example, a 1994-95 child support assessment, which commences on 1 July 1994, uses 1992-93 taxable income updated by a factor of 1.02. This factor is based on the estimated increase in average weekly earnings (on a National Accounts basis) during 1993-94, as forecast in the 1993 Budget. The reason for using this factor is that at the time when assessments for 1994-95 were being carried out this was the best available estimate of increases in earnings over that period.

17.49 The Joint Committee has received 276 submissions complaining that the indexation factor is too high because it based on changes in average weekly earnings rather than the consumer price index. A non custodial parent submitted that:

> The 91/92 financial year's inflation rate was 1.2% (source Australian Bureau of Statistics) yet the CSA has set there [sic] inflation rate at 3.5 ... In the last 18 months my salary has risen 2%, the CSA reviewed my payment by 3.5% Effectively I feel I am 1.5% behind.[30]

17.50 The Law Council of Australia made the following comments regarding annual adjustments to child support:

> The CSA adjusts payments each year on the basis of the inflation factor. Most child support arrangements, however, prefer adjustments based on the CPI. The use of the CPI focuses more on the needs of the children whereas the inflation factor focuses more on the capacity of the payer to pay.

30 Submission No 1843

> The CPI varies depending on the part of Australian in which the CP resides. Thus, if one uses the CPI, it recognises that it costs more or less to live in some areas of Australia than it does in others.
>
> Because the current use of the inflation factor does not take account of local factors, FLS [Family Law Section] recommends that a more appropriate consideration should be the CPI.[31]

17.51 DSS undertook an analysis of the movement in the consumer price index and average weekly earnings which showed that:

> ... in the two preceding years trends in AWE followed the CPI closely and would have had a negligible effect on child support amounts.[32]

17.52 The Joint Committee also notes that CSEAG stated that the indexation factor was greater than the actual change in average weekly earnings in 1991-92 and concluded that:

> ... the current method of deriving the indexation factor is not satisfactory and does give cause for complaint. Alternative approaches to deriving the factor should be considered.[33]

17.53 An alternative measure of changes in earnings is the Award Rates of Pay Indexes published by the Australian Bureau of Statistics. This measures the change in award rates of pay over time but does not include above award wages or enterprise agreements. It represents wage fluctuations for approximately 200,000 employees only and will probably become less representative over time as a result of enterprise bargaining. Consequently, the Joint Committee considers it to be an inadequate measure of the fluctuations in wages over time.

17.54 Other possible alternative measures of changes in earnings include a number of permutations of average weekly earnings such as average weekly total earnings (all persons) or the 25th percentile of average weekly total earnings (all persons). The former is a historical measure of average weekly earnings which includes all earnings from both part time and full time employees, while the latter represents the historical change in earnings for the bottom 25 per cent of wage earners. Another measure of changes in earnings is the base rate of pay of full time adult employees which excludes part time employees but includes payments from

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31 Submission No 5086, Vol 2, p 274

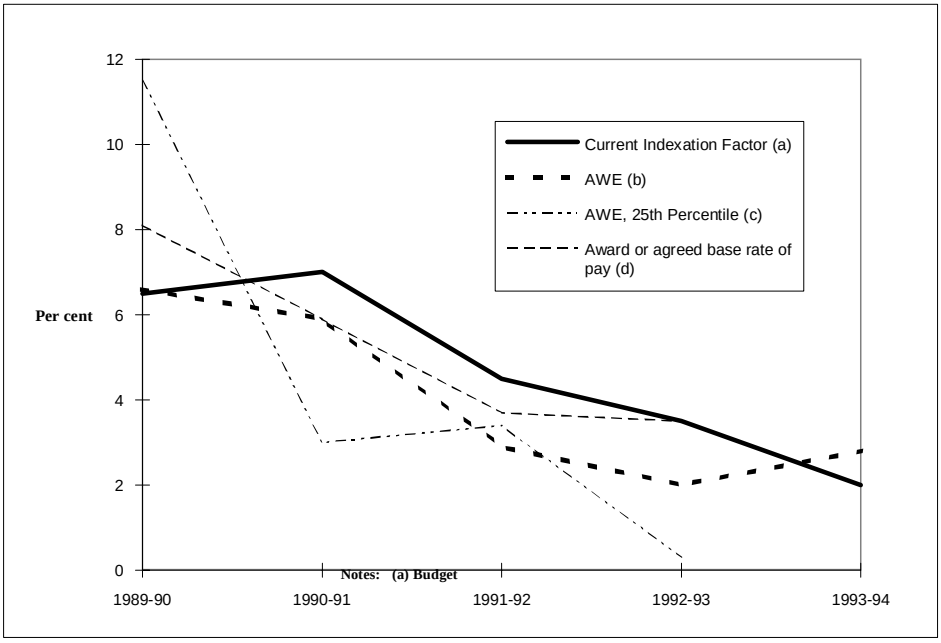
32 Submission No 5085, Vol 1, p 83

33 CSEAG, op.cit. p 204

enterprise bargaining awards and agreements. Figure 17.1 compares how these three measures have fluctuated over the last three to four financial years.

Figure 17.1: Measures of Changes in Average Annual Earnings – Percentage Change on Preceding Year – 1989–90 to 1993–94

	Current Indexation Factor (a)	AWE (b)	AWE, 25th Percentile (c)	Award or agreed base rate of pay (d)
1989-90	6.5	6.6	11.5	8.1
1990-91	7	5.9	3	5.9
1991-92	4.5	2.9	3.4	3.7
1992-93	3.5	2	0.3	3.5
1993-94	2	2.8		



Notes:

(a) Budget forecasts of annual average earnings (national accounts)
(b) Average weekly total earnings, all persons
(c) Average weekly total earnings, all persons – 25th percentile
(d) Base rate of pay of full-time employees

17.55 Figure 17.1 shows that each measure of changes in average annual earnings has decreased in a similar fashion over the last three to four financial years. The current indexation factor, that is, the budget forecast of annual average earnings on a national accounts basis, has generally decreased at a slower rate than the other measures. In particular, the annual increase in the 25th percentile of average weekly earnings, which arguably reflects the majority of non custodial parents under the Scheme, was significantly lower than the current indexation factor for the period from 1990-91 to 1992-93 but significantly higher in 1989-90. The Joint Committee considers that this example demonstrates the potential volatility of these measures and the need for continual monitoring of the

current indexation factor given that no measure is likely to be always representative.

17.56 The Joint Committee concludes that whilst the existing indexation factor is not ideal, its current application is satisfactory. However, it should be continually monitored and regularly compared to other measures of wage fluctuations in order to assess its continued suitability over time. Moreover, the Joint Committee considers that DSS and the CSA should report annually on the suitability of the indexation factor as a measure of wage fluctuations.

17.57 The Joint Committee recommends that:

Recommendation 130

the impact of the indexation factor be continually monitored and regularly compared to other measures of wage fluctuations.

Recommendation 131

the Department of Social Security and the Child Support Agency report annually on the suitability of the indexation factor as a measure of wage fluctuations.

Age of Dependency

17.58 Currently child support in relation to a child is terminated if, among other things:

- the child dies; or
- the child turns 18; or
- the child is adopted; or
- the child becomes a married person; or
- the custodial entitled to child support ceases to be an eligible custodian of the child; or
- all of the following sub-paragraphs apply in relation to the child;
- the child is not present in Australia;

- the child is not an Australian citizen;
- the child is not ordinarily resident in Australia.[34]

Independent Children Less Than 18 Years Old

17.59 The Joint Committee notes that section 5 of the *Child Support (Assessment) Act 1989* defines an eligible custodian as a person who:

- is the sole or principal provider of ongoing daily care for the child; or
- has major access to the child; or
- shares ongoing daily care of the child substantially equally with another person; or
- has substantial access to the child.

17.60 Consequently, where a child less than 18 years of age leaves the ongoing daily care of the custodian, the Child Support Agency is no longer able to collect child support for that child. The practical result of this is that either the custodial or liable parent would need to inform the Child Support Agency of this change of circumstances. If these parties disagreed then the Child Support Registrar must make a decision based on the information available to him. The Child Support Registrar's decision would then be subject to review through the recommended review process discussed in Chapter 12.

17.61 Among the changes announced by the Assistant Treasurer on 6 April 1994 was a provision to suspend the child support liability of court orders registered with the CSA for collection when a child leaves the care of the custodial parent. To enable the ongoing liability to be suspended, both parents must sign a statement declaring that the child is no longer in the care of the custodian. Children leaving the care of the custodian in situations like extended access visits, being boarded at school, or entering into an exchange program are excluded from this provision.

17.62 Whilst the 'independence' of a child less than 18 years of age is recognised as a child support terminating event, under the *Child Support (Assessment) Act 1989* the employment of such a child is not. However, paragraph 117(2)(c) of the *Child Support (Assessment) Act 1989* allows the child support review officer, or a court, to depart from an administrative assessment when the 'income, earning capacity, property and financial

34 s.12(1) *Child Support (Assessment) Act 1989*

resources of either parent or the child' make formula assessment unjust or inequitable.

17.63 Consequently the income earning capacity of a child affects the degree of support required by the child. When a child's income or property reach sufficient levels it may be determined that the child no longer requires further parental support. In other words the existence of a child's income does not of itself result in an end to further parental support.

17.64 Stage 1 cases registered with the CSA, however, do not share this flexibility because, unless there exists a clause in the court order ending the liability for child support when the child obtains employment, there is a need to return to court to have the order varied to reflect this change in the circumstances of the child.

17.65 The Joint Committee received a number of submissions stating that it is inequitable to require a non custodial parent to continue making child support payments when the child in question is employed and is less than 18 years of age.

17.66 A non custodial parent submitted to the Joint Committee that his son is employed yet he is still obliged to pay child support:

> My son is 16½ now and has just started full time employment. He is earning $228 per week, I am led to believe that I had to pay maintenance [sic] until my son is 18 years old. My point of view is that I should not have to pay at all now. He pays adequate board to his mother.[35]

17.67 However, a recent article by Peter McDonald, Deputy Director, Australian Institute of Family Studies, pointed out that children may still be partially dependent on their parents even when they have obtained full time employment:

> ... young people aged less than 20 have a high degree of dependency upon parents irrespective of their circumstances. Even the minority of young people who made financial contributions to their parents, mainly those in full time work, paid amounts which were well below levels that the child is likely to have cost the parents. On the other hand, both financial and non-financial transfers from parents to young people were the norm for those still in secondary school and very common for those who had left school. Young people who worked part-time, whether

35 Submission No 3364

they were still at school or had left school, were very likely not to contribute financially to the household.[36]

17.68 The Joint Committee notes that the dependency and resulting lower costs of children living at home is recognised by the lower Job Search Allowance, Newstart Allowance and Austudy rates of payment for these children.

Table 17.3 Jobsearch Allowance Newstart Allowance and Austudy Rates of Payment

Age	At Home Rated ($ per fortnight)	Independent or Homeless Rate ($ per fortnight)
16–17	132.30	218.30
18–20[37]	159.10	241.50

Source DSS Rates March to June 1994

17.69 Table 17.3 illustrates that the 'at home' allowances are about 40 to 45 per cent less than the independent rates. The Joint Committee considers that where a child under 18 is receiving Jobsearch Allowance, Newstart Allowance or Austudy and is living at home, the child support liability of the liable parent should reflect a similar degree of dependency. This could be achieved by reducing the applicable liability by 50 per cent in these circumstances. However, the Joint Committee considers that the same rationale does not apply to children who are in full time employment as this should provide them with the financial means to support themselves. Consequently, the Joint Committee considers that it is inequitable for the non custodial parent to continue to pay child support in these circumstances irrespective of whether or not the child is living at home.

36 **Depending on Parents**, *Family Matters*, No 35, August 1993, pp 30–31

37 Austudy has no age limit

17.70 The Joint Committee recommends that:

Recommendation 132

the *Child Support (Assessment) Act 1989* be amended so that:

(a) the full time employment of a child less than 18 years of age is a child support terminating event; and

(b) the receipt of Job Search Allowance, Newstart Allowance or Austudy by a child at the 'at home' or 'dependent' rate reduces the liable parent's child support liability by 50 per cent.

Dependant Children 18 Years and Over

17.71 As discussed above, a recent article by Peter McDonald, Deputy Director, Australian Institute of Family Studies, concluded that young people are remaining under the care of their parents longer. Even when young people obtain full employment, parents continue to provide significant financial and emotional support.

17.72 This research appears to support the extension of the age of dependency beyond 18. A number of submissions from custodial parents have suggested that this should be the case especially where the child in question undertakes tertiary education. One such custodial parent submitted:

> ... this is of some concern when you consider that many children will then be starting full-time tertiary or post compulsory study. The onus will then be placed back on the sole parent to support the child during these years of study. Most students obtain part time jobs, but this usually only provides pocket money (bus fares, lipstick, a movie). There are still daily living expenses that need to be met.[38]

38 Submission No 3758

17.73 Another custodial parent submitted:

> Is there also help for custodians beyond the age of 18 if children decide to go to University. After living on the pension it doesn't seem fair that the custodian has to support the children through this alone. I have been told I would have to go to court to have maintenance continue, and the cost involved makes that impossible.[39]

17.74 The Sunshine Coast branch of Dads Against Discrimination submitted to the Joint Committee that it is inequitable to require the non custodial parent to continue paying child support when the child is employed and independent or over 18 years of age:

> Child maintenance should cease, once a child has begun full time employment before he/she reaches eighteen years of age. Why should the non-custodial parent continue to pay maintenance if the child they are paying maintenance for is living a life of their own independence. We also believe that child support should cease at eighteen years of age regardless if the child is still going through the education system, it is too much to expect a non-custodial parent to continue to pay child support for an ADULT who would be quite capable of gaining employment to put themselves through university or whatever educational institute.[40]

17.75 The Joint Committee notes that whilst section 117 of the Child Support (Assessment) Act 1989 allows a departure from the administrative assessment where, in the special circumstances of the case, the costs of maintaining the child are significantly affected because the child is being educated or trained in the manner that was expected by his or her parents, this only applies to children under the age 18 years. This could be easily rectified by extending the departure provisions to allow for child support payments, or a component thereof, past the age of 18 years to reflect the continuing dependency of the child.

39 Submission No 3533

40 Submission No 953, Vol 3, p 132

17.76 Section 66H(1) of the *Family Law Act 1975* stipulates that:

> The court shall not make an order for the maintenance of a child who has attained 18 years of age unless the court is satisfied that the provision of the maintenance is necessary:
>
> (a) to enable the child to complete his or her education; or
>
> (b) because of a mental or physical disability of the child.

17.77 The Joint Committee considers this to be the most appropriate basis for seeking 'extended' maintenance.

17.78 The Joint Committee recommends that:

Recommendation 133

the provisions of section 66H of the *Family Law Act 1975*, allowing the court to make an order for maintenance when a child has attained 18 years of age, be incorporated into the *Child Support (Assessment) Act 1989*.

Recommendation 134

the Child Support Registrar be given the power to decide when the continued provision of maintenance is necessary.

Unplanned Parenthood

17.79 The Child Support Scheme is based upon biological parenthood and attributes responsibility for the payment of child support on this basis irrespective of the circumstances involved. In its earlier report on the Child Support Inquiry Hotline, the Joint Committee noted the concern over:

> ... the difficulty that arises where parenthood is unplanned or disputed, or where the relationship has been short-term and a pregnancy has resulted and the lack of recognition and the duress on the non-custodial parent, who may have had no say in the existence of the child but has acquired a long term financial

> viability for that child even where the custodial parent, in this case the mother, wants nothing to do with the non-custodial father ...[41]

17.80 DSS considered this remark in their submission to the Joint Committee, concluding that:

> ... the attitudes which underpin the above NCP remarks are sexist.
>
> It takes two people to conceive a child. The notion that if a man and a woman have a sexual relationship then contraception is a female partner's responsibility and, ergo, if a child is born it is her fault, is not an acceptable one.
>
> The Scheme was introduced to reform attitudes such as the one expressed in 11.14. Otherwise it is the mother and the taxpayer who are left holding the baby, one literally and the other figuratively.[42]

17.81 One non custodial parent submitted that he did not agree to have a baby but the custodial parent went ahead anyway:

> On one of her later visits I told her I'd thought it had gone on long enough. A month or so later she tells me she'd gone off the pill and she was having my baby. I told her I wasn't interested after I'd got over the initial shock, and her reply was "I'm having it with or without you." I visited her while she was pregnant but she knew and understood that I wasn't prepared to settle down and to be quite honest I didn't want a child in my life. She told me she got pregnant on purpose and she wanted to have my baby ... she wanted the full amount that Child Support worked out. That was about $157.00 dollars a fortnight. They garnisheed my wages and I have been paying it for about three months.[43]

41 Paragraph 11.14 of **Thanks for Listening**

42 Submission No 5085, Vol 1, p 89

43 Submission No 3774

17.82 Another non custodial gave evidence that he was trapped into the Scheme through a one night stand:

> I come here today to say to you that I never had any choice or knowledge of my situation. I was never given a choice. As I have outlined in my submission, I did all the so-called right things to avoid it, except perhaps to trust someone that maybe I should not have. I really feel that, under the current bounds of the scheme, I am not going to be given a fair deal. ... I never had any options pertaining to my situation; it was only the woman in question who, of course, I later found out desperately wanted a child. As a solicitor said to me, I just happened to be the meat in the sandwich. ... I was informed after the relationship broke up by her that there was a child in question. She actually told me that she was not going to pursue it. Naturally, I did not take it at that and I went to see three solicitors and they all told me that, being on social security as she is and has been for quite a long time, she has to pursue that aspect of it and there is nothing you can do. In fact, I asked him what my options were and he said, 'If you do not want to pay it, you have too. You can go on the dole or you can join the foreign legion'. What sort of an option is that? It is just ridiculous.[44]

17.83 Whilst the Joint Committee is sympathetic to the plight of non custodial parents who find themselves in this situation, the Joint Committee can see no justification for treating these cases in a special way as, whether accidental or deliberate, parenthood is the responsibility of both parents. The clear message from these unfortunate cases is the need for widespread education in schools and elsewhere so that people are fully aware of the consequences of their actions. This aspect is discussed in Chapter 7.

44 Transcript of Evidence, 1 December 1993, p 1058–9

Protected Earnings Rate

17.84 The protected earnings amount is the portion of the non custodial parent's wage or salary which is excluded, under the *Child Support (Registration and Collection) Act 1988*, from the collection of child support through automatic withholding. This means that the automatic withholding method of child support collection can only be used if the liable parent's wages or salary exceeds the protected earnings amount.[45] This amount is prescribed to be 1½ times the rate of unemployment benefit or sickness benefit in force on the 13 December immediately preceding the period in respect of which the protected earnings rate is to be ascertained.[46]

17.85 DSS advised the Joint Committee that:

> It is understood that the protected earnings rate was inserted in the legislation in response to concerns about automatic withholding and the effect it could have on the disposable incomes of low income liable parents, including the perceived work disincentive for low income earners if the majority of their wage was withheld to pay Child Support.[47]

17.86 The Joint Committee notes that the concerns raised by DSS in respect of perceived work disincentives for non custodial parents are similar to those raised by non custodial parents in submissions received by the Joint Committee stating that the self support component is too low. The Joint Committee's recommendation that the self support component be increased should alleviate the concerns raised by DSS in this area.

17.87 The minimum amount of child support which can be paid to a custodial parent is $1.00[48] while the minimum rate of child support is $260 per annum which translates into $5.00 per week.[49] This means that any child support liability less than $260 per year is deemed to be a nil assessment. However, if the child support liability was calculated to be $261 per annum then the full $261 would be collectable by the Child Support Agency.

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45 s. 46 *Child Support (Registration & Collection) Regulations*

46 r. 3 *Child Support (Registration & Collection) Regulations*

47 DSS letter dated 12 May 1994

48 s. 6 *Child Support (Registration & Collection) Regulations*

49 s. 66(1) *Child Support (Assessment) Act 1989*

17.88 The Family Court of Australia commented to the Joint Committee that the interaction of the protected earnings rate and minimum collectable amount creates an anomaly because:

> You get a point where there is an order that is running, say for $8.00 or $9.00 a week, which you cannot collect because the regulations do not permit you to collect it through the most efficient form of collection, namely garnishment [ie automatic withholding]. I think those two have to be brought into parallel.[50]

17.89 The Joint Committee considers that the option of using autowithholding should be available to the CSA for the collection of child support across the full range of liability. Accordingly, the Joint Committee considers that the protected earnings rate should be set at the non custodial parents' applicable self support component.

17.90 The Joint Committee recommends that:

Recommendation 135

the *Child Support (Assessment) Act 1989* and the regulations of the *Child Support (Registration and Collection) Act 1988* be amended so that the protected earnings rate is set at the non custodial parents' applicable self support component.

Costs of Access

17.91 The costs of access impacts upon the formula in the following two ways:

- high costs of access; and
- cost of substantial access.

50 Transcript of Evidence, 20 January 1994, pp 1230–31

High Costs of Access

17.92 This covers the situation where the non-custodial parent incurs substantial costs merely to effect access, that is, to actually see his or her children. The Family Court's decision in **Gyselman v Gyselman** (1992) FLC 92-279 interpreted the reference 'high costs' of access as supporting the view that it must be something more than the normal costs associated with access. In particular, the Court stated:

> In our view this provision refers to the commitments of the parent which were necessary to permit or allow the access to take place but would not, say in quite exceptional cases, refer to the expenses associated with the conducting or enjoying of the access itself.[51]

17.93 Therefore the high costs of travel, especially the high costs of interstate travel in Australia, accommodation and other costs such as additional expenses caused by the medical condition of the child would be included. The Family Court in **Gyselman v Gyselman** had the following comments in respect of the provision of accommodation:

> If a parent has overnight access, particularly to a number of children, implicit in that is that he must be able to provide reasonable accommodation for that to occur. It would be undignified to that parent and not in the interests of the children to require overnight access or extended periods of school holidays to be held in demeaning accommodation. However, such claims need to be examined carefully, in particular the cost, nature and duration of the accommodation and reasonable alternatives, and in the ultimate, compared with the impact that will have on the assessment and the priorities which the legislation emphasises.[52]

17.94 The non custodial parent may apply to the Child Support Review Office or the court for a departure from the administrative assessment because of the high costs of access. Section 117(3) of the *Child Support (Assessment) Act 1989* sets out that the costs of access are not high unless they exceed 5 per cent of the non custodial parent's child support income amount.

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51 **Gyselman v Gyselman** (1992) FLC 92, p 79,068

52 ibid.

17.95 The child support review officers submitted to the Joint Committee that:

> The threshold and calculation method seems to be somewhat arbitrary, in that it has no regard to the proportion of the non-custodial parent's income that is being paid in child support. It also has little regard to the fact that the basic living expenses of low income earners represent a greater proportion of their net income than high income earners....It is also difficult explaining the effects of Section 117(3)....and there is a view that this complication makes the Scheme appear unfair, inflexible, and unconcerned with the realities of life.[53]

17.96 The child support review officers concluded that Section 117(3) of the *Child Support (Assessment) Act 1989* should be repealed and replaced by a general discretion dependent on the circumstances.

17.97 The Consultative Group, in attempting to define the notion of 'high cost' considered a number of possible criteria such as distance to be travelled, mode of travel, reasonableness of the expense and expenditure above a fixed level.[54] Their final recommendation was that these high costs should be a ground of departure from the administrative assessment but they did not prescribe the existing threshold of 5 per cent. In this context, the Consultative Group stated:

> Clearly any criteria utilised will be arbitrary in its application, given the wide variety of possible circumstances involving financial and access arrangements.[55]

17.98 Presumably, the 5 per cent threshold was introduced in order to provide clear guidance as to what amounts to 'high costs' of access so that the benefits of administrative assessment would not be undermined by the ability of parties to make applications to the court for variations in circumstances other than those of a special nature.

17.99 It has also been suggested to the Joint Committee that child support payments to the custodial parent should cease for the period when the children are on an extended access visit with the non custodial parent. Parents Without Rights referred to these high costs of access:

> Fathers are also disadvantaged by the Child Support system in regard to access, particularly weekend and holiday access. ... They are forced to have to pay exorbitant legal fees in order to attempt

53 Submission No 5083, Vol 2, p 119

54 CSCGR, op.cit. p 130

55 ibid.

> to gain custody, and, failing to succeed, seek to have maximum access. ... Fathers find that the normal requirement of weekend and holiday access is that the children should have their own bed and bedroom. As it is, most working fathers are struggling to pay the Child Support payments and their own accommodation and other living expenses. It is not possible, in many cases, for fathers with high Child Support payments to be able to have overnight access with their children, simply because they cannot afford to pay higher rent for a two or three-bedroom flat or house.[56]

17.100 The Joint Committee notes that it is unclear what period of time constitutes an 'extended access visit' and, in any event, this situation appears to be covered by the 30 per cent substantial access threshold. The Joint Committee also notes that the Consultative Group included the impact of 'normal' access costs in arriving at its recommended formula percentages.[57] As a result the Joint Committee considers the current 5 per cent threshold for high access costs to be appropriate.

Cost of Substantial Access

17.101 The Consultative Group adopted the following approach in respect of substantial access:

> ... in so far as the parties are able to effect an access arrangement that allows the child to have substantial contact with the non-custodial parent, such arrangements should not be discouraged by financial disincentives. In such cases the non-custodial parent would almost inevitably incur costs additional to those incurred in what might be considered normal access situations, and the custodial parent may be relieved of some costs that would usually be incurred. It may then be necessary to make some allowance for those costs, when assessing child support obligations.[58]

56 Submission No 1534, Vol 4, p 130

57 CSCGR, op.cit. p 72

58 ibid. pp 132–33

17.102 The cost of substantial access impacts upon the formula in two ways. Firstly, where the non custodial parent has the care of the child for at least 40 per cent of the nights of the child support year, he or she is deemed to be sharing the ongoing daily care of the child substantially equally with the custodial parent.[59] The child is therefore treated as a 'shared custody child' for child support calculation purposes.[60] In this case the basic formula[61] is applied to each of the parents in turn, subject to the following modifications:

- the custodial parent's disregarded income amount is not applicable;
- each of the parents is to be taken to be a liable parent in relation to each of their children who are eligible for administrative assessment and for whom the other parent is an eligible custodian and the other parent is to be taken to be a custodian entitled to child support in relation to each such child;
- in determining in relation to either of the relevant parents the exempted income amount, any child who is a shared custody child is to be disregarded;
- the child support percentage applicable to each of the parents is calculated by reference to a modified table of child support percentages with the number attributed to each shared custody child taken to be 0.5 of a child;[62] and
- the resulting child support liabilities are offset against each other so that the parent who has the larger liability pays an amount equal to the difference between the two liabilities to the other parent.

17.103 Secondly, where the non custodial parent has the care of the child for at least 30 per cent, but less than 40 per cent, of the nights of the child support year then:

- the custodial parent is taken to have the care of the child for 65 per cent of those nights, and is referred to as having 'major access' to the child; and
- the non-custodial parent is taken to have the care of the child for 35 per cent of those nights, and is referred to as having 'substantial access' to

59 s. 8(1) *Child Support (Assessment) Act 1989*

60 s. 5 *Child Support (Assessment) Act 1989*

61 See Chapter 5

62 s. 48 *Child Support (Assessment) Act 1989*

the child.[63] In this case the formula is applied to each of the parents in turn in the same manner as for a shared custody child except that:

(a) in determining the exempted income amount of each parent, a child to whom the parent has substantial access is to be disregarded; and

(b) the child support percentage applicable to each parent is provided by a modified table of child support percentages, with the number attributed to each child to whom a parent has 'major access' taken to be 0.65 and the number attributed to each child to whom a parent has 'substantial access' taken to be 0.35 of a child.[64]

Cliff Effect of Substantial Access Threshold

17.104 The substantial access threshold of 30 per cent was introduced by the *Child Support Legislation Amendment Act (No. 2) 1992* in response to widespread criticism that the threshold of 40 per cent was too high. In particular, the Family Court of Australia in **Gyselman v Gyselman** criticised the 'cliff effect' of the 40 per cent threshold, preferring an approach under which the reduction for access is progressively shaded in over a range. The Court stated:

> Although this may be complex it caters for a wider range of the high access cases and does so in a way which avoids the 'cliff effect' of a marked variation only upon reaching a particular percentage.[65]

17.105 The Consultative Group considered this alternative to the 'cliff effect' and acknowledged that the 'shading-in' would prevent the sudden drop in financial contribution required while ensuring that the financial burden on the non custodial parent was not excessive. However, the Consultative Group favoured a threshold of 35 per cent noting that the 'shading-in' mechanism may be arbitrary and would introduce considerable complexity into the formula.[66]

63 s. 8(3) *Child Support (Assessment) Act 1989*

64 s. 48 *Child Support (Assessment) Act 1989*

65 **Gyselman v Gyselman** (1992) FLC 92, p 79,067

66 CSCGR, op.cit. p 133

17.106 In deciding on 35 per cent as its recommended threshold, the Consultative Group was trying to ensure that the incentive to increase access by a small amount in order to obtain a reduction in child support is, in practice, likely to have been removed.[67] In this context the Consultative Group noted that a low percentage would be attainable in a great number of cases and stressed that such a result was not intended by their recommendation.[68]

17.107 The Consultative Group also considered the option of allowing the non custodial parent to apply for a departure from the administrative assessment. Whilst this would have the advantage of flexibility it was rejected because of the likely costs involved and the fact that any administrative or court review would need to be provided with some guidance as to the meaning of 'substantial' to ensure that only special cases were successful. To do otherwise would have the effect of undermining the integrity of the formula.

Analysis of Submissions

17.108 The Joint Committee received 881 submissions which stated that the child support formula does not adequately recognise the costs of access. These submissions represented 14.2 per cent of the total number of submissions received by the Joint Committee. This issue was the second most popular issue for non custodial parents with 713 submissions, representing 21.7 per cent of all non custodial parent submissions, received by the Joint Committee.

17.109 The Dads Against Discrimination, NSW Branch, recommended the following in their submission to the Joint Committee:

> The "substantial access" and the existing "shared custody" provisions become one and the same and are immediately changed to 20%.
>
> Rationale:
>
> a Under stated guidelines of the Child Support Agency which was amended to 30% on 1 July 1993, that is 109 nights, this figure remains totally unrealistic, as under current Family Law agreements access is usually granted for two nights per fortnight, and half the school holidays, making a total of 72 nights or 20% of access per annum.

67 ibid. p 134

68 ibid.

b Non-custodial parents pay for 365 days per annum and are not credited for those days during which they have access of the children, which results in the overall annual payment equating to more than the set percentage figures, which increases the base percentage payments by 3% to 5%.[69]

17.110 Similarly, one non custodial parent submitted:

> I have my two children for a large amount of time during the year. I have to support myself, my two children when I have them plus pay maintenance. Not many fathers are lucky enough to have their children between 109 to 146 days of the year. As I look at this I find it hard to understand why it has been worked out like this.[70]

17.111 A number of submissions also suggested that the 30 per cent threshold (ie, 106 nights each year) for substantial access has resulted in the custodial parent manipulating the amount of access allowed to the non-custodial parent so that it does not breach this threshold thereby reducing the child support payments. One submission stated:

> Recently, my eldest son has been upset because he wants to spend more time with me. My fiancee and I have been trying, on several occasions, to arrange a meeting with his mother, her husband and a councillor to discuss this problem, but no sooner does my ex-wife agree to a meeting, than she rings up the next day to cancel it. My son has now developed hives on his forearms and hands, and I firmly believe it is due to the stress he is being placed under. I also believe my ex-wife is reluctant to agree to an increase in access time as this would constitute a substantial access case, thereby reducing the amount of maintenance she receives.[71]

17.112 The Joint Committee is concerned that the existing substantial access threshold may be creating a cliff effect in some cases but notes that the incidence of this is likely to be small due to the significant level of access which the threshold represents. The Joint Committee notes that this cliff effect could be ameliorated by progressively increasing the allowance for access over a range. However, this approach would significantly increase the complexity of calculating the formula assessment.

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69 Submission No 4674, Vol 6, p 45

70 Submission No 3199

71 Submission No 3757

17.113 The Joint Committee notes that the perceived inequity of the substantial access threshold has been addressed once already by reducing the threshold from 40 per cent to 30 per cent. However, the same concerns still exist in respect of the lower threshold. Given that access is such an emotive issue for the parties involved it is likely that problems will result wherever the threshold is placed or whatever changes are introduced. The Joint Committee considers the current approach to be adequate.

Link Between Access and Maintenance

17.114 Some submissions received by the Joint Committee have suggested that as a custodial parent is automatically entitled to child support through the child support legislation, the non custodial parent should be entitled to automatic access both under the *Family Law Act 1975* and practically through the enforcement of court orders in relation to access. In particular, the view has been expressed that where there is no access permitted the liability for child support should be reduced or waived completely until access is allowed in accordance with the relevant court order. A non custodial parent submitted:

> Many non-custodial parents deliberately withhold Child Support payments because of problems regarding access. The Child Support Agency states that access is an irrelevant regarding Child Support payments. This assessment is wrong and most non-custodial parents think it is most relevant [sic]. The Government enforces the custodial parents rights in a most rigid and uncompromising way, but will not give any support to non-custodial parents, even though they have court orders.
>
> Why is the law enforced for one parent and not the other? ... I submit that if non-custodial parents rights were upheld in the same manner as the custodial parent, the incidance [sic] of default on Child Support payments would decrease dramatically.[72]

72 Submission No 3733

17.115 However, DSS submitted to the Joint Committee that:

> The clear international consensus on this question is that the answer is 'no' because such a link [between access and maintenance] would not be in the interests of children and their general welfare.[73]

17.116 The question over whether access should be linked to maintenance and the problems of enforcing access were also considered in detail by the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act in its report tabled in November 1992. This report recommended that in proceedings related to non-compliance with access orders, the onus of establishing whether the denial of access was reasonable should lie with the custodian.[74]

17.117 The Government accepted the recommendation of the Joint Committee. The Family Law Reform Bill introduced in the Parliament in July 1994 has revised Part VII of the *Family Law Act 1975* which deals with children. The object of Part VII of the Act is to ensure that children receive adequate and proper parenting and to ensure that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children. This includes proper arrangements for access and compliance with those arrangements. 'Access' is now referred to as 'contact' orders. In particular clause 45(4) of the Bill relates to the non-compliance with contact orders and provides:

> (4) A person (the '**respondent'**) is taken to have had a reasonable excuse for contravening a contact order in a way that resulted in a person and a child being deprived of contact they were supposed to have under the order if:
>
> (a) the respondent believed on reasonable grounds that the deprivation of contact was necessary to protect the health or safety of a person (including the respondent or the child); and
>
> (b) the deprivation of contact was not for longer than was necessary to protect the health or safety of that person.

73 Submission No 5085, Vol 1, p 75

74 **The Family Law Act 1975, Aspects of its Operation and Interpretation**, p 173

17.118 The Joint Committee is of the view that compliance and enforcement of contact orders is an important issue requiring resolution. The proposed provision in the Family Law Reform Bill appears to implement the recommendation of the previous Joint Select Committee. In reversing the onus of establishing why a contact order has not been complied with may result in better compliance.

Conclusion

17.119 The Joint Committee is sympathetic to the position of all parties when access orders have not been complied with, particularly when child support is being paid. However, whilst it is imperative that there is compliance with access arrangements, the Joint Committee considers that this issue should not be linked to the payment of child support.

Departures from the Formula

17.120 Under Part 6A of the *Child Support (Assessment) Act 1989* a liable parent or custodian entitled to child support may at any time, when a Stage 2 formula assessment is in force in respect of a child, apply in writing to the Child Support Registrar[75] for a departure from the applicable formula assessment because of special circumstances. The special circumstances which qualify for a departure from the formula assessment are closely prescribed by section 117(2) of the *Child Support (Assessment) Act 1989*:

> (a) that, in the special circumstances of the case, the capacity of either parent to provide financial support for the child is significantly reduced because of:
>
> (i) the duty of the parent to maintain any other child or another person; or
>
> (ii) special needs of any other child or another person that the parent has a duty to maintain; or
>
> (iii) commitments of the parent necessary to enable the parent to support:
>
> - himself or herself; or
> - any other child or another person that the parent has a duty to maintain;

75 The Child Support Registrar's review powers are exercised by the Child Support Review Office

(iv) high costs involved in enabling a parent to have access to any other child or another person that the parent has a duty to maintain;

(b) that, in the special circumstances of the case, the costs of maintaining the child are significantly affected:

(i) because of:

(A) the high costs involved in enabling a parent to have access to the child; or

(B) special needs of the child; or

(ii) because the child is being cared for, educated or trained in the manner that was expected by his or her parents;

(c) that, in the special circumstances of the case, application in relation to the child of the provisions of this Act relating to administrative assessment of child support would result in an unjust and inequitable determination of the level of financial support to be provided by the liable parent for the child because of:

(i) the income, earning capacity, property and financial resources of either parent or the child; or

(ii) any payments, and any transfer or settlement of property, made or to be made (whether under this Act, the Family Law Act 1975 or otherwise) by the liable parent to the child, to the custodial parent entitled to child support or any other person for the benefit of the child.

17.121 These special circumstances apply equally to an application by a liable parent or custodian to a court for a departure from a formula assessment. Furthermore, in both circumstances, the Child Support Registrar or court must also be satisfied that it would be just and equitable as regards the child, the custodian entitled to child support and the liable parent and otherwise proper before they can make a decision to depart from the formula assessment.[76]

76 ss. 98F(b) and 117(1)(b)(ii) *Child Support (Assessment) Act 1989*

17.122 The Joint Committee has difficulties understanding the need for this additional step as the special circumstances for a departure specify the factors which the Child Support Registrar or court must consider in reaching a decision. For example, section 117(2)(c) states that where the specified special circumstances would result in an unjust and inequitable determination under the formula assessment then a ground of departure exists. Therefore, the Joint Committee fails to see why there is a need for the requirement specified by section 98F(b) and section 117(1)(b)(ii) of the *Child Support (Assessment) Act 1989* that the Child Support Registrar / court be satisfied again that a departure would be just and equitable as regards the children and the parties.

17.123 The Joint Committee notes that section 117(4) sets out the matters which the Child Support Registrar / court must have regard to in determining whether a decision would be just and equitable as regards the children and the parties. However, these matters would also be considered by the Child Support Registrar / court in deciding where the special circumstances for a departure exist. Consequently, this additional requirement appears to be unnecessary.

17.124 The second part of sections 98F(b) and 117(1)(b)(ii) requires the Child Support Registrar / court to be satisfied that the decision to grant a departure from the formula assessment is 'otherwise proper'. In determining whether the departure would be 'otherwise proper' the Child Support Registrar / court must have regard to:

(a) the nature of the duty of a parent to maintain a child (as stated in section 3) and, in particular, the fact that it is the parents of a child themselves who have the primary duty to maintain the child; and

(b) the effect that the making of the order would have on:

(i) any entitlement of the child, or the custodian entitled to child support, to an income tested pension allowance or benefit; or

(ii) the rate of any income tested pension, allowance or benefit payable to the child or the custodian entitled to child support.[77]

77 s. 117(5) *Child Support (Assessment) Act 1989*

17.125 In **Gyselman v Gyselman** (1992) the Full Court of the Family Court of Australia considered the interpretation of this section:

> Paragraph (b) is directed to the Court taking into account the effect the making of the order would have upon any income tested pension, allowance or benefit of the custodian or child. This is a reference to the maintenance income test already referred to. Where the custodian is on a pension or benefit the effect of a reduction in the assessment would not only be to reduce the overall amount which the custodian will receive for support of the children but will result in an increase in her pension or benefit. This case is a good example of that as any reduction will be 'shared' equally by the wife and by the community through an increased pension. In the context of the statement by the Legislature that parents have the 'primary duty to maintain the child', the Court is required to consider whether the proposed reduction is 'proper' within this context, that is, the public interest and increased welfare expenditure.[78]

17.126 The Joint Committee considers that this additional requirement serves little purpose except to make it more difficult for a parent to obtain a departure order. The Chief Justice of the Family Court expressed similar concerns in evidence to the Joint Committee:

> ... if one looks at section 117 or if one is in the unfortunate position, as I have been, of having to try and interpret it, it is an extraordinary piece of legislation ... . The end result is that anyone who can jump all of those hurdles does so at great cost in terms of preparation of a case to present to the court. I regard that section as unnecessarily complicated and unnecessarily difficult; it places hurdles in the path of people that just should not be there. It is partly a drafting problem but it is partly, I think, a section that has been designed to make it as difficult and as expensive as possible to convince a court to depart from the formula. Frankly, as a person who has to interpret it and apply it, I find it unfortunate.[79]

78 **Gyselman v Gyselman** (1992) FLC 92, p 79,080

79 Transcript of Evidence, 20 January 1994, pp 1242–3

17.127 The Joint Committee considers that the unnecessary complications and difficulties caused by the existing departure provisions could be largely overcome if the hurdle posed by section 98F(b) and section 117(1)(b)(ii) of the *Child Support (Assessment) Act 1989* was removed. This would mean that the Child Support Registrar or court would only need to be satisfied that the relevant special circumstances for a departure from the formula assessment exist rather than taking the additional step of also satisfying themselves that a departure would be just and equitable as regards the children and parties and otherwise proper.

17.128 The Joint Committee recommends that:

Recommendation 136

in order to overcome the unnecessary complications and difficulties in obtaining a departure order, the child support legislation be amended to repeal section 98F(b) and section 117(1)(b)(ii) of the *Child Support (Assessment) Act 1989*.

Additional Grounds for Departure

17.129 The Joint Committee has received submissions stating that the special circumstances which qualify for departure from the formula assessment should be expanded in order to introduce more flexibility and equity into their operation:

> The effect of these pre-conditions on the exercise of departure principles is to exclude a large number of applications where there is no doubt that injustice is made out, but 'special circumstances' are not made out, because the injustice suffered by the applicant is not significantly different from the circumstances of most applicants.
>
> The philosophical development of Section 117 was to discourage departure from the formula. However, in practice, this has caused injustices.
>
> FLS [Family Law Section of the Law Council of Australia] is of the view that the threshold hurdles for departure should be lowered and the grounds expanded to include such things as: -
>
> (a) joint debts being discharged by one of the parties;
>
> (b) the circumstances of the CP's cohabitation;

(c) the direct cost of access;

(d) the cost of maintaining stepchildren;

(e) non-agency payments made by the NCP from which the children benefit.[80]

17.130 In contrast, DSS consider that in general the current grounds of departure from formula assessment remain appropriate. DSS submitted to the Joint Committee that:

> These grounds are based on certain costs and are deliberately and closely prescribed. This is to ensure that the integrity of the formula is preserved and that there is not a reversion to a highly discretionary process for determining child support amounts based on the view and values of an individual Judge or an individual Child Support Review Officer.[81]

17.131 DSS also submitted that the grounds of departure are important in protecting fiscal savings and the taxpayers' interests and any suggestions for broadening them should be tested against the scope that this may provide for avoidance and collusive behaviour between some non custodial and custodial parents.

Conclusion

17.132 The Joint Committee considers that the grounds of departure should be closely prescribed in order to ensure the integrity of the child support formula but is concerned that the existing grounds of departure are too restrictive and inflexible. The Joint Committee has recommended extensions to the existing grounds of departure in a number of sections of its report in order to overcome the injustices caused by these limitations.

80 Submission No 5086, Vol 2, p 266

81 Submission No 5085, Vol 1, p 77

18

Subsequent family issues

Introduction

18.1 The formation of a subsequent family by a non custodial parent following the breakdown of a relationship may impact upon his/her child support liability. The extent of this impact (if any) depends in part upon the composition of the subsequent family. A subsequent family will generally be composed of a new spouse and either new natural or adopted children, children from the liable parent's spouse's previous family or a combination of both. As a result a non custodial parent may be contributing to the support of children of several relationships. This raises complex issues such as:

- priorities between families;
- the treatment of the income of new spouses;
- the treatment of dependant spouses and children; and
- the impact and interaction of child support, family law, taxation and social security legislation.

18.2 The Joint Committee endorses the Child Support Evaluation Advisory Group's (CSEAG's) view that dealing fairly with such situations is a key element of any child support formula that aims to deal adequately with the generality of cases.[1]

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1 CSEAG, **Child Support in Australia**, Vol 1, p 204

Operation of the Subsequent Family Formula

18.3 The subsequent family formula applies where the non custodial parent re-partners and has further children or adopts further children. It does not apply to any step or defacto children which may be brought into the subsequent family by the non custodial parent's new partner. The subsequent family formula is the same as the basic formula except that the self support component of the non custodial parent increases so as to provide the non custodial parent with a basic amount upon which his or her new family can survive in the manner set out below:[2]

- the self support component increases from the single pension rate ($8,221 pa) to the pensioner couple rate ($13,712 pa),

plus additional exempted income for each new natural or adopted child:

- child under 13 - Additional Family Payment rate (AFP) ($1,669 pa);
- child over 13 but under 16 - AFP rate ($2,356 pa);
- child 16 or over but under 18 - 25 per cent of pensioner couple rate ($3,428 pa).

18.4 The Joint Committee notes that a number of variations of the child support formula also deal with other subsequent family situations such as where the parents have shared custody of the children or the liable parent has substantial access to the children. These and other variations are discussed in Chapter 5 and Chapter 17.

Overview of the Second and Subsequent Family Population

18.5 The Australian Bureau of Statistics (ABS) defines a 'family' to exist where two or more persons usually live in the same household and are related to each other by blood, marriage (including de facto marriage), fostering or adoption. As Table 18.1 shows, there were 4,708,700 families in Australia in June 1994. Of these, 85 per cent or 3,998,000 were couple families and 13.3 per cent or 627,300 were one-parent families. An estimated 24.5 per cent of all families had no family member employed, 27.7 per cent had one

2 DSS rates for the period 20 March to 30 June 1994

family member employed and a further 47.8 per cent had two or more family members employed.[3]

Table 18.1 Types of Families, Australia, June 1994

Type of family	With Dependent Children		Without Dependent Children		All families	
	No.	Prop. of total	No.	Prop. of total	No.	Prop. of total
	('000)	(%)	('000)	(%)	('000)	(%)
Couple families						
Both spouses ILF	1,145.6	24.3	893.0	19.0	2,038.6	43.3
Husband ILF, Wife NILF	685.3	14.6	337.2	7.2	1,022.5	21.7
Husband NILF, Wife ILF	43.5	0.9	72.9	1.5	116.4	2.5
Both spouses NILF	85.6	1.8	734.9	15.6	820.5	17.4
Sole parent families						
Parent in labour force	231.1	4.9	78.1	1.7	309.2	6.6
Parent not in labour force	192.4	4.1	125.7	2.7	318.1	6.8
Other families	-	-	83.3	1.7	83.3	1.8
TOTAL	2,383.6	50.6	2,325.1	49.4	4,708.7	100.0

Source *ABS, Labour Force Status and Other Characteristics of Families, Australia, Catalogue No 6224.0, June 1994*[4]

ILF — in the labour force (could be either employed or unemployed);
NILF — not in the labour force (neither employed nor unemployed).

kOne Parent Families

18.6 Of all families with dependent children, 17.8 per cent were one parent families. In 87 per cent of these families the parent was female while in 46 per cent the parent was employed. Some 23 per cent of female parents were employed full time and 20 per cent were employed part time. Of

3 Statistician – Social Policy, Parliamentary Research Service

4 In Table 18.1, 'couple families' include couples whose marriage is 'registered' as well as those whose marriage is 'de facto', and in both cases partners may have been in a registered or de facto marriage previously. Therefore, in many cases any dependent child(ren) present is(are) the natural child(ren) of only one of the couple partners. Thus, the proportion of families which are 'traditional', that is a couple in a registered (first) marriage who are both the natural parents 'traditional', that is a couple in a registered (first) marriage who are both the natural parents of all dependent children present, and where the 'husband' is the 'breadwinner' while the 'wife' stays at home to look after the household / children would be considerably less than the 14.6 per cent shown above, and most likely well under 10 per cent of all families

male parents 59 per cent were employed full time and 6 per cent were employed part time. The percentage of one parent families with the parent employed increased as the age of the youngest dependant increased.[5]

18.7 In 51 per cent of one parent families the parent was not in the labour force. Of these families:

- 28 per cent had one dependant present;
- 20 per cent had two dependants present; and
- 13 per cent had three or more dependants present.[6]

18.8 In June 1993, an estimated 351,000 dependent children aged 0 to 14 years were in one parent families where the parent was either unemployed or not in the labour force. In June 1994 this figure had risen to approximately 363,000.[7]

Couple Families

18.9 The ABS defines a 'couple' as two usual residents, both aged at least 15 years, who are either married to each other or living in a de facto marriage with each other (excluding homosexual couples).[8] From Table 18.1 above, 51 per cent of couple families had both partners in the labour force and 28.5 per cent had only one partner in the labour force. Of the couple families with dependants present, 58.4 per cent had both partners in the labour force. Of the couple families with only one partner in the labour force, that person was the husband in 94 per cent of families with dependants present and 82 per cent of families without dependants present.[9]

18.10 In June 1994, one or both partners in couple families were employed in 88 per cent of families with dependants present and 61 per cent of families without dependants present. Of the couple families with dependants present, the husband was employed full time in 83 per cent of families and the wife was employed full time in 24 per cent of families. The percentage of couple families with the wife employed full time increased as the age of the youngest dependant present increased. In couple families without

5 Statistician – Social Policy, Parliamentary Research Service

6 ibid.

7 ibid.

8 ABS, **Labour Force Status and Other Characteristics of Families**, Catalogue No 6224.0, p 50

9 Statistician, Social Policy, Parliamentary Research Service

dependants present, the husband was employed full time in 52 per cent of families and the wife was employed full time in 30 per cent of families.[10]

18.11 The proportion of couples in de facto relationships is increasing. The 1982 Families Survey conducted by the Australian Bureau of Statistics found that 5 per cent of couples were de facto. In the 1992 ABS Survey of Families in Australia this figure had risen to 8 per cent. In 1992, 51 per cent of registered married couples had dependent children compared to 36 per cent of de facto couples. Reflecting their younger age profile, a high proportion of people living in de facto relationships had never been married. In 1992, 65 per cent of people in de facto relationships had never been married and 26 per cent had been divorced. In 1975, 16 per cent of all couples who married had lived together before marriage. Of couples who married in 1992, 56 per cent had cohabited before their marriage.[11]

Blended and Step Families

18.12 The ABS defines a blended family as a couple family containing two or more children, of whom at least one is the natural or adopted or foster child of both members of the couple and at least one is the step child of at least one member of the couple. A step family is defined as a couple family containing one or more children, not one of whom is the natural adopted or foster child of both members of the couple, and at least one of whom is the step child of either member of the couple.[12] Given that the definition of a couple family includes married and de facto couples, the children in a step family also includes both step and step de facto children. The categorisation of these children in this way is dependent upon whether the spouses in this family are married.[13]

18.13 Of couples with dependent children registered married couples were considerably more likely than de facto couples to have only natural children. However, the proportion of de facto couples who are choosing to start a family is increasing. People may also choose to live in de facto relationships after separation or divorce. This is reflected in the 29 per cent of de facto couples with step de facto children only, and the further 11 per cent with both step de facto children and natural children in 1991.[14]

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10 ibid.

11 ABS, **Australian Social Trends 1994**, Catalogue No 4102.0, p 38

12 ABS, **Australian Families**, Catalogue No 4418.0, pp 40–41

13 The distinction between step and step defacto children is necessary as the ABS definition of a step parent differs from the definition under the *family Law Act 1975*. This aspect is discussed further below.

14 ABS, **Australia on Profile**, Catalogue No 2821.0, p 34

18.14 Families formed by a de facto relationship had a much higher proportion of step de facto children present than families formed by a registered married relationship. Whereas of all registered married couple families with children only 6 per cent had a step child, 50 per cent of all de facto couple families with children had a step de facto child.[15]

18.15 The chance of living with both parents decreases as a child gets older. As couples separate and move into new relationships, the likelihood of a child living in a blended family increases. In 1991, 25 per cent of families with dependent children included children who were not living with both natural parents, compared to 20 per cent in 1986. One parent families were a subset of these figures, comprising 16 per cent in 1991 and 14 per cent in 1986. Overall, 3 per cent of families with dependent children in 1991 were blended families, 4 per cent were step / de facto families, and 4 per cent contained other combinations of children (with 89 per cent containing natural children only).[16]

18.16 Table 18.2 shows that in 1992, an estimated 202,900 families contained step or step de facto children. This number comprised 8 per cent of couple families containing a child and 5 per cent of all couple families.[17] An estimated 87,000 families were blended families, that is, they contained both a step or step de facto child and a natural, adopted or foster child. There were 115,900 step families, that is, families which contained a step or step de facto child but not a natural, adopted or foster child. Almost 450,000 dependent and non-dependent children lived in step and blended families. This constituted 7 per cent of all children living in household families.[18]

15 The Committee notes that it is possible for a married couple to have defacto children as the act of registering a marriage automatically converts all step defacto children into step children for the purposes of the *Family Law Act 1975*.

16 ABS, **Australian Social Trends 1994**, Catalogue No 4102.0, pp 38–39

17 ABS, **Australia's Families**, Catalogue No 4418.0, p 5

18 ibid.

Table 18.2 Step and Blended Families: Family Blending by Couple Family Type, Australia 1992

Family Blending	Couple with dependent children	Couple with non-dependent children	Total
		---'000---	
Blended	87.0	-	87.0
Step	85.6	30.4	115.9
Total	172.5	30.4	202.9
		---Per cent---	
Blended	100.0	-	100.0
Step	73.8	26.2	100.0
Total	85.0	15.0	100.0

*Source ABS, **Australian Families**, Catalogue No 4418.0*

18.17 Consequently, the number of blended and step families represent a significant proportion of the second and subsequent families in the general population. The remaining second and subsequent families in the general population are those which have only new natural children. However, the Australian Bureau of Statistics does not usually separate this group in its statistics on couple families generally, meaning that the total number of second and subsequent families in the general population is currently unavailable.

18.18 The Joint Committee notes that the number of custodial and non custodial parents who are directly affected by the subsequent family formula is relatively small. As at August 1993 there were 2,030 non custodial parents with subsequent families who had been issued a child support assessment by the CSA. This represents less than 2 per cent of all non custodial parents with assessments issued by the CSA.[19] However, this figure understates the number of subsequent families under the Scheme as it excludes those non custodial parents with step or defacto children in their subsequent family as these children are not counted as dependent children by the child support formula. Given that step and blended families represent 8 per cent of couple families containing a child in the general population, the actual number of second and subsequent families under the Scheme is likely to be much greater than 2 per cent. This is especially so due to the fact that the Scheme deals with the consequences of relationship breakdown.

19 Submission No 5085, Vol 1, p 183

18.19 The number of child support assessments issued by the CSA also excludes those parents who collect child support privately pursuant to an informal agreement and those Stage 1 parents who have received court orders since the Family Court's decision in **Beck v Sliwka** (1992) FLC 92-296 which permits courts to consider the relative outcome under the formula assessment when considering the adequacy of court orders.[20] Consequently, the number of parents who are affected either directly or indirectly by the subsequent family formula is likely to be significantly more than two per cent of the relevant population.

18.20 The Joint Committee also notes that the Child Support Scheme is still in its early stages and the number of non custodial parents forming subsequent families can be expected to continue to grow as non custodial parents separate and repartner over time. The Department of Social Security (DSS) submitted that:

> There is a prospect of numbers of non custodial parents with third families in the next three to five years and a small number with four families within eight to ten years.[21]

Divorce Rates

18.21 The 1993 crude divorce rate in Australia was 2.7 divorces per 1000 population. It is usually said that one third of all marriages in Australia will end in divorce, although an Australian Institute of Family Studies (AIFS) study in 1983 predicted that 40 per cent of marriages contracted in the 1970s and 1980s will end in divorce.[22] From ABS surveys an AIFS study claimed that 41 per cent of all divorces involved couples without dependent children, half of whom have been married for fewer than six years.[23] In 1993 there were 48,324 divorces granted in Australia, involving 48,055 dependent children aged under 18 years.[24]

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20 See Chapter 20

21 Submission No 5085, Vol 1, p 225

22 MacDonald, p, **Can the Family Survive?**, Discussion Paper No 11, Institute of Family Studies 1983, quoted in Funder, K, Harrison, M, and Weston, R, **Settling Down, Pathways of Parents After Divorce**, AIFS Monograph, 1993

23 Funder, K, Harrison, M, and Weston, R, p 23

24 ABS, **Divorces Australia 1992**, Catalogue No 3307.0

Repartnering Rates

18.22 The DSS advised the Joint Committee that statistics on the repartnering rates of custodial and non custodial parents are not available.[25] However, the ABS publishes marriage statistics based on marriages registered by the Registrar[26] in each State and Territory[27]. They include, among other things, intervals to remarriage for divorced men and women repartnering and the intervals between remarriage with and without children and in 1993 showed that:

- 21.7 per cent of marriages involved divorced men and 20.3 per cent involved divorced women; and
- 2.8 years median interval before remarriage for men and 3.2 years for women.
- median interval to remarriage:
  - ⇒ for divorced men is 2.8 years;[28]
  - ⇒ for divorced men without children is 3.1 years;[29]
  - ⇒ for divorced men with children is 2.3 years;[30]
  - ⇒ for divorced women is 3.2 years;[31]
  - ⇒ for divorced women without children is 3.7 years;[32]
  - ⇒ for divorced women with children is 2.5 years.[33]

18.23 These statistics indicate that the presence of children has an effect on repartnering. In particular, divorced men and women with children remarry earlier than those without children. Divorced men with children also remarry slightly earlier than divorced women with children.

18.24 The AIFS conducted a longitudinal study of divorced couples with children which included information on repartnering. AIFS surveys were conducted in 1984 and 1987, with the results published in **Settling Up** (1986) and **Settling Down** (1993). These surveys indicated that:

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25 DSS letter dated 11 April 1994
26 That is, the Births, Deaths and Marriages Registrar
27 ABS, **Mariages Australia 1992**,published annually catalogue No 3306.0
28 ABS **Marriages Australia 1993**, Catalogue No 3306.0
29 DSS letter dated 11 April 1994
30 ibid.
31 ABS **Marriages Australia 1993**, op.cit.
32 DSS Letter dated
33 ibid.

- 71 per cent of men and 52 per cent of women AIFS surveyed had repartnered at the time of the second survey in 1987;
- about 50 per cent of younger men had remarried within three years of divorce in the 1984 AIFS survey compared with around 45 per cent of all men in the 1987 survey; and
- about 35 per cent of women had remarried within 3 years in both the 1984 and 1987 surveys.

18.25 The AIFS results indicate that by the time of the second survey in 1987, 51 per cent of men had repartnered and were then living with children. The comparable figure for women was 50 per cent.

Department of Social Security Modelling

18.26 The DSS submitted the results of extensive modelling of the effects of the subsequent family formula on the disposable incomes of non custodial parents, custodians and intact families incorporating the effect of child support payments, taxation and social security benefits. DSS stated that the following conclusions can be drawn from this modelling:

- in general, non custodial parents are left better off financially than custodians and their children after application of the formula;
- at all income ranges non custodial parents with subsequent families are financially better off on a per capita basis than an intact family with the same number of children as the non custodial parent has, combined, in the first and subsequent families;
- the subsequent family formula generally widens the gap between the disposable income of non custodial parents and custodians;
- the additional disposable income for non custodial parents resulting from the reduced child support liability is intended for the additional child(ren) in the subsequent family; and
- the child support by itself cannot sufficiently improve the financial circumstances of sole parents and their children to enable them to become economically independent.[34]

34 Submission No 5085, Vol 1, pp 7–8

18.27 DSS gave evidence to the Joint Committee that this modelling has the following effect :

> What is left as a disposable income at the end of the process is itself a reality, and that is what we are trying to portray, as opposed to the emotive arguments that people like to put forward about their personal circumstances. That may be influenced by a multitude of factors that do not relate to other individuals.[35]

18.28 DSS also submitted to the Joint Committee that:

> If the fairness of the formula as an instrument of social policy is to be tested, then it is necessary to step back from the individual perspectives and look at the 'macro' picture. This involves assessing the economic impacts of the formula on NCPs and custodians, and then comparing these outcomes with the financial circumstances of intact families.
>
> Having regard to the empirical evidence available, DSS does not consider that there is persuasive argument for re-weighting the formula so that the financial advantage already given to NCPs vis a vis custodians and intact families should be increased further.
>
> DSS considers that if the second family formula is to be opened up there are as many grounds for reassessing whether the sharpness of the withdrawal rate of child support from the first family and the associated cost transfers to taxpayers remain appropriate.[36]

18.29 This modelling is based on the same premises concerning subsequent families as the child support formula, namely:

- the dependency of step or de facto children upon a non custodial parent is not recognised;
- the income of a new spouse of either a custodial or non custodial parent is not relevant; and
- the dependency of a new spouse upon a non custodial parent is not recognised if there are no subsequent family children.

35 Transcript of Evidence, 21 January 1994, p 1269

36 Submission No 5085, Vol 1, pp 91 and 94

18.30 The Joint Committee received many submissions which indicated that one or more of these premises caused inequities and/or hardship to non custodial parent subsequent families. In particular, the Joint Committee received 727 submissions which criticised the child support formula on the basis that it failed to recognise other family obligations sufficiently. These submissions represented 11.7 per cent of the total submissions received by the Joint Committee. Many of these submissions were critical of the premises upon which the child support formula and DSS modelling are based. Each of these premises will be considered below in order to assess their suitability.

Recognition of Dependent Children

18.31 As highlighted above, a child in a non custodial parent's subsequent family will generally be either a new natural child of the non custodial parent and his/her new spouse, a child from the non custodial's parent's spouse's previous family or a combination of both. Other possibilities include children who have been legally adopted by the non custodial parent and his/her spouse and foster children. In addition, the Family Law Act 1975 divides children from the non custodial parent's spouse's previous family into step and non step children. A non custodial parent will be a step parent of a child is he/she:

- is not a parent of the child;
- is or has been married to a parent of the child; and
- treats, or at any time during the marriage treated, the child as a member of the family formed with the parent.[37]

18.32 If the non custodial parent does not marry his/her new spouse then the children which the new spouse brought into the non custodial parent's subsequent family will, for the purposes of the following discussion, be called step de facto children so as to differentiate these children from any new natural children of this de facto subsequent family. As a result the term 'new natural children' refers to the new natural children from both married and de facto non custodial parent subsequent families.

37 s. 60 *Family Law Act 1975*

18.33 The child support formula only recognises new natural or adopted children by an increase in the non custodial parent's self support component. Consequently, any step children or step de facto children of the subsequent family are generally ignored.

Step children

18.34 The exclusion of step children from any consideration under the child support formula originates from section 66G of the *Family Law Act 1975* which states:

- the step parent of a child has, subject to this Division, the duty of maintaining the child only if:
  - ⇒ the step parent:
    - is a guardian of the child; or
    - has custody of the child under an order of a Court (whether or not made under this Act and whether made before or after the commencement of this section); or
    - a Court having jurisdiction under this Part by order, determines it is proper for the step parent to have that duty.

18.35 Accordingly, a step parent has no duty to maintain his or her step children unless the Family Court orders this to be the case. This only happens in rare cases which means that the non custodial parent will generally be unable to vary his or her child support liability in these circumstances. Furthermore, the cost of applying to the Family Court for guardianship or custody is likely to be beyond the financial capacity of most subsequent families under the Scheme.[38]

18.36 Alternatively, the step parent could of course adopt the step child thereby increasing his or her self support component as adopted children are recognised by the formula. However, the adoption of a child usually requires the consent of that child's biological parents which is often not forthcoming. Accordingly, this is generally not a feasible solution to the problem.

38 Family Court letter dated 6 October 1994

Analysis of Submissions

18.37 The Joint Committee received many submissions which stated that the exclusion of step children from any recognition under the formula leads to the impoverishment of the non custodial parent's subsequent family. The following submission from a non custodial parent's second wife who is, with her children, dependant upon the non custodial parent is representative of the submissions received by the Joint Committee in this area:

> When we were married my widows pension was taken off me, because my husband became responsible for me and my two children or step children in the legislation of the Department of Social Security. We totally except [sic] this. But on the other hand the Child Support Agency doesn't see him as been responsible for a wife and two step children. Where does this leave me and my children. Surely we count. Because of this my children and I are suffering. By the time tax and a high percentage of maintenance is taken out of my husbands pay there is very little money left to pay for food and accounts. My husband, myself and the children have had to give up most sports, hobbies and entertainment just to survive. I find it very hard to except [sic] that some childrens needs are put before other childrens needs. It should be balanced and fair for all children, they are all equals.[39]

18.38 Another submission from the second spouse of a non custodial parent stated:

> Peter and I are unemployed, unable to find work, yet this system still demands support payments to his first wife. I also have a 7 year old son that CSS won't recognise as being supported by Peter. Mark doesn't receive child support, because the dept deemed it detrimental to our well being... One of my biggest concerns with this system is, "How can they discriminate between children?" "How can one child be considered less of a person and in less of a need than another child?"... "How can the CSS grant one child a future and simultaneously take away another childs future?". It's unethical and Immoral.[40]

39 Submission No 3924

40 Submission No 3601

18.39 A submission from a non custodial parent stated:

> I see my family living below the poverty line with little chance of ever improving our living conditions and the child support scheme is the major reason for this. Something needs to be done to make the system fairer. ...
>
> The Child Support Scheme should give credit or a higher threshold to people supporting spouses and step-children. ...
>
> The non-custodial parent should be given some chance for a future and so should subsequent families at the moment with the current system there is none they are the forgotten Australians.
>
> I have 2 questions I would like to ask you which were asked to the child support agency 18 months ago but no answer has been received they are; If the child support agency does not recognise me as supporting my step-child who does support him? No maintenance is received for him as both he and his mother were victims of domestic violence and it is in their best interests of their own safety [sic] not to persue [sic] the issue. Does my step child get forgotten and through [sic] on the scrape heap because he was a victim of domestic violence?
>
> The second question is why is one child more important than another. My first daughter has all the rights my second hardly any and my step-son has none, is he to be forgotten or just through [sic] on the scrap heap because he was a victim of domestic violence.[41]

18.40 The Joint Committee is concerned that the current Scheme effectively denies a step parent any departure from a Stage 2 formula assessment on the basis of dependent step children as this departure relies on a Court order which creates a duty to maintain that child. The reality is that such an order is extremely rare and costly to obtain meaning that it would be likely to be beyond the resources of low income step parents who are the group most affected by the Scheme.

41 Submission No 2496

18.41 The Joint Committee believes that the Scheme's failure to recognise step-children is not only unrealistic but also causes hardship to families with step-children. This could be done by:

- recognising the dependency of step children in the formula through an increase in the non custodial parent's self support component; or
- introducing a further departure from the formula to recognise the dependency of step children.

Recognition of Step children in the Formula

18.42 DSS submitted to the Joint Committee that step children are excluded from the formula because of the generally established principle of Australian family law that it is the natural (or adoptive) parents' duty to support their own children. This principle is also reflected in the comments of the Consultative Group and CSEAG who could find no reason to suggest that step children should be taken into account in the child support formula.[42]

18.43 DSS also submitted to the Joint Committee that the inclusion of step children in the formula would raise the following issues:

- the spouse of the non-custodial parent may be entitled to additional family payment or basic family payment in respect of those children;
- the spouse of the non-custodial parent may be receiving child support payments for those children;
- the inclusion of step children would have a substantial impact on the savings of the Scheme;
- the statistics on family breakdown indicate that at least one in two second marriages / de facto relationships will breakdown. If step children were to be included in the formula who would then be liable for child support - the step parent or the natural parent? Can a child have two non-custodial parents?; and
- in DSS's experience most non custodial parent representatives argue that step children should be included in the formula for the purpose of reducing their liabilities but do not wish to consider the corollary of an ongoing obligation should the relationship breakdown.[43]

42 Submission No 5085, Vol 1, p 85

43 ibid.

18.44 On the basis of the above issues DSS concluded in their submission that:

> Having regard to the issues of principle, equity and practicality outlined above, DSS considers that the current exclusion of step children remains appropriate.[44]

18.45 The Joint Committee notes that most jurisdictions in the United States which have adopted a child support formula also exclude step children when calculating child support liabilities.[45] However, New Zealand takes step children into account in the liable parent's living allowance component while the United Kingdom recognises step children by setting aside a 'protected level of income' to ensure that a liable parent retains enough income after paying child support to meet his or her day to day needs and that of any subsequent family.[46]

18.46 AIFS submitted to the Joint Committee that their **Economic Consequences of Marriage Breakdown** study (ECMB) indicated that:

> The ECMB study indicates that parents generally find step parents willing and active parents, though less willing to pay for children's education expenses. Children in the study appear to arrive at varied but generally satisfactory relationships with stepfathers. The important thing for them seems to be that the relationship is negotiated and not forced by set expectations. From the point of view of both parents and children it seems unwise to mandate step parent roles in newly-formed families.
>
> We also conclude that children's identity is generally still linked to that of the non-resident father after divorce and that continuing links appear important to the child. Since the CSS should always act in the interests of children, we consider that ongoing financial and other responsibility for the child remain with both biological parents. Parents, however, need information and advice about how to be parents after separation, and perhaps particularly when the child lives with a step parent.[47]

44 ibid.

45 See Appendix 9 and DSS letter dated 14 January 1994

46 See Appendix 9

47 Submission No 4895, Vol 6, p 100

18.47 The Joint Committee notes that a custodial parent who forms a second relationship with a non custodial parent will be entitled to child support from the biological parent. However, this chain of payment is often broken because the biological parent may not have sufficient income to be liable for child support, may be dead or in jail or may simply be refusing to pay. Given that approximately 90 per cent of Stage 2 custodial parents are sole parent pensioners and that 6 out of 10 sole parent pensioners do not receive any child support[48] the non-receipt of child support is the norm rather than the exception. Consequently a non custodial parent may find him / herself in the situation where he / she pays child support for his / her biological children but the custodial parent in that family unit receives no child support in respect of his / her step children. Similarly, far less child support may be received for the step or defacto children than is paid by the non custodial parent for his or her biological children. In both cases hardship may result for the subsequent family.

18.48 One possible way of dealing with this problem is to harmonise the costs of step children with the receipt and payment of child support between 'related' families by recognising the dependency of step children in the non custodial parent's self support component. The self support component could be increased to recognise the dependency of step children in the same way as new natural and adopted children are recognised with any child support received by the non custodial parent's spouse being credited against this self support component. If this relationship subsequently broke down then the non custodial parent's self support component could be reduced to reflect this change in circumstances.

18.49 In this way the primacy of the biological parents responsibility to pay child support could be maintained, the realities of step children dependency could be acknowledged and the problem of continuing responsibility on the part of the non custodial parent could be overcome. However, these changes would significantly increase the administration costs and complexity of the Scheme as additional payments would need to be tracked and reconciled before each non custodial parent's child support obligation could be calculated. Consequently, the Joint Committee considers this option to be impractical.

48 Submission No 5085, Vol 1, p 10

18.50 In addition the Joint Committee considers that any explicit recognition of step children in the formula through an increase in the self support component would contradict the generally established principle of Australian family law that it is the biological (or adoptive) parents' duty to support their own children. The recognition of step children in the formula could also lead to the situation where both the step parent and natural parent may be liable for child support in respect of the same child should the subsequent family breakdown. Consequently, the Joint Committee considers that, despite the reality of step child dependency, it would be inappropriate to recognise the dependency of step children through an adjustment to the child support formula.

Recognition of Step Children as a Ground of Departure

18.51 The introduction of a departure from the formula where step children are present in the non custodial parents subsequent family was raised by a number of submissions including the South Australian Council of Community Legal Services Incorporated who submitted the following proposal which dealt with the non-recognition of de facto spouses and dependent children generally:

> We propose that there be legislation to enable the Child Support Review Officer to exercise the discretion in special circumstances to take into account a NCP's moral obligation to financially support his / her defacto and any children the liable parent's defacto may have in his / her care who require financial support.
>
> We consider that the special circumstances which would be fair to apply under this legislation would be cases where the biological father or mother of children in this subsequent family is unable to pay child support because he / she is genuinely unemployed, has a whereabouts which is unknown, is in prison or is deceased.
>
> We stress that we are not proposing that there be an automatic reduction in a liable parent's child support if she / he has a defacto spouse and children to support. Such legislation would leave gap for exploiting the system.[49]

49 Submission No 4908, Vol 9, p 36

18.52 Similarly, the Office of the Commonwealth Ombudsman submitted:

> There is a need to take into account the support of those step-children who reside with Stage 2 liable parents and who have no other means of financial support. It may be sufficient if the grounds for departing from an assessment, as set out in section 117 of the Assessment Act, are clarified, to ensure that the needs of these children are taken into account, where their own parents are unable to provide financial support (for example, because they are dead, untraceable or unemployed).[50]

18.53 As highlighted above the custodian's family will be disadvantaged where no child support is received especially if the non custodial parent in that family unit also has a child support liability. The Joint Committee is concerned that the current treatment of step children under the Scheme fails to reflect the reality of step children dependency thereby causing hardship to these families. However, the Joint Committee is also concerned that there should be no automatic reduction in a non custodial parent's child support liability because of the presence of step children as this would undermine the integrity of the existing formula and potentially open the Scheme to exploitation.

18.54 The Joint Committee seriously considered the option of creating a ground of departure from the formula assessment in those circumstances where the spouse of a non custodial parent is not receiving child support in respect of that non custodial parent's step children. This ground of departure would affect a number of 'related' families due to the 'child support chain' which connects these families. A liable parent who obtains a reduction in his / her child support assessment on the basis of non receipt of child support for step children in his / her current family will improve his / her family circumstances at the expense of his / her former family. Whilst this would recognise the dependency of step children, the Joint Committee considers it to be untenable as it contradicts the generally established principle of Australian family law that it is the biological (or adoptive) parents' duty to support their own children. Consequently, the Joint Committee endorses the existing treatment of step children under the child support formula departure provisions.

50 Submission No 1928, Vol 2, p 173

De facto Children

18.55 The Joint Committee notes that whilst a step parent may be able to take the unusual step of applying to the court for an order that he or she has a duty to maintain a step child, this procedure is not available for a de facto parent in the case of a de facto child. Accordingly, a de facto parent can never have a duty to support his or her de facto child unless he or she adopts that child or marries his/her new spouse thereby making the child a step child. Given the difficulties of obtaining a departure from the formula in the case of a step child, this effectively prevents any departure from the administrative assessment on the basis of a dependant de facto child.

18.56 The Joint Committee is concerned that the Scheme's failure to recognise the dependency of de facto children is unrealistic in many cases thereby causing hardship to affected families. However, any recognition of the dependency of de facto children in the child support formula or as a ground of departure from the formula would reduce the amount of child support payable by non custodial parents to their biological children. For the reasons discussed above in relation to step children, the Joint Committee considers this to be untenable.

Recognition of Spousal Income

18.57 The Joint Committee received some submissions which suggested that the total income of a family should be considered by the formula:

> When entering a defacto relationship with children, you also accept the partner's child along with their costs & emotional ties. A relationship will not last if this does not occur.
>
> In some cases of de facto families, the parent receiving payment has an abundance of disposable income & the paying parent is finding it difficult to supply their basic needs.
>
> My former spouse is in a relationship with a defacto whose earning capacity is as much as mine. They own two cars, less than 3 years old, also buying land & building a house to a value of $180 000. I was forced to make property settlement for 60% in her favour & settle the dept's [sic] of the former estate. I am now in mortgage for a house at half the value of my former spouse,

> driving a ute of 12 years old & struggling to provide the basics for my new family.
>
> I realise that every parent has a financial obligation to their children but do I HAVE to support a rather opulent lifestyle of my former spouse when one of our own children living with me lives a very austere life because the total income of a family is not considered.[51]

18.58 Similarly, another non custodial parent submitted:

> A friend of mine had three children at the time of his divorce. He earned approximately $26 000 a year. His ex-spouse was at the time earning $32 000 a year. She subsequently re-married to a man earning $45 000. The combined income of the ex-spouse was then in the vicinity of $77 000 a year. The non-custodial parent living on $22 000 a year was then requested to pay $270 a fortnight. This man had previously given the family home to his ex-spouse because he felt guilty about leaving the relationship. He was then financially impoverished and could only begin to live a normal life-style once he re-partnered and his new partner could contribute to his life-style.[52]

18.59 The Joint Committee notes that the exclusion of spousal income from the application of the child support formula also runs contrary to the treatment of income and assets in parts of the social security portfolio. One example of this is the income test for the pension and family payments which focuses on the income of both parents rather than the income of the parent who is the primary care-giver. This acknowledges that the total income of both parents, that is the household income, is the best measure of resources for that particular household. This differing treatment of families under the social security and child support legislation is discussed below.

18.60 The child support review officers submitted that the current practice of excluding spousal income can lead to inequity where there are a number of children in different families with a common non custodial parent and the income of the custodians varies greatly. As a result children with a common non custodial parent can have vastly different standards of living.[53]

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51 Submission No 3765

52 Submission No 253, Vol 3, p 18

53 Submission No 5083, Vol 2, p 120

18.61 The Australian Institute of Family Studies submitted to the Joint Committee that their Economic Consequences of Marriage Breakdown study pointed to the conclusion that the economic basis of the step-family was integral to the general functioning and stability of that unit, and thus to the well being of the child.[54] In particular, in the context of custodial parents, AIFS stated that:

> ... their new partners were willing and did contribute to all manner of parenting that we asked about. They contributed financially, they contributed in terms of emotional support and they contributed in terms of care giving.[55]

18.62 AIFS concluded in their submission to the Joint Committee that, from the point of view of both parents and children, it seemed unwise to mandate step parent roles in newly formed families as this may be a destabilising influence.[56]

18.63 The Joint Committee notes that the Consultative Group recommended that the incomes of the new partners of either parent should be disregarded completely except in the following two scenarios:

- where the special needs of a spouse amount to hardship; and
- where income splitting operates to avoid child support obligations[57]

18.64 The exclusion of the incomes of new partners of either parent in determining the child support liability of those parents was strongly supported by public submissions to the Consultative Group and is consistent with the present legal position under the *Family Law Act 1975*. This assumes that natural and adoptive parents have the primary liability for the support of their children with step parents having a liability that is only secondary to that of those parents.[58] This secondary duty of a step parent to maintain a child only arises under the *Family Law Act 1975* if the step parent is a guardian of the child or has custody of the child under an order of a court or a court having jurisdiction under the Act, by order, determines that it is proper for the step parent to have that duty.[59]

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54 Submission No 4895, Vol 6, p 99

55 Transcript of Evidence, 20 January 1994, p 1189

56 Submission No 4895, Vol 6, p 100

57 CSCGR, op.cit. p 63

58 s. 66G(3) *Family Law Act 1975*

59 s. 66G(1) *Family Law Act 1975*

18.65 The Joint Committee also notes that section 66E(4) of the Family Law Act 1975 specifically excludes any consideration of the income, earning capacity, property and financial resources of any person who does not have a duty to maintain the child, unless, in the special circumstances of the case, the Court considers it appropriate to have regard to them when determining the financial contribution that should be made by a party to the proceedings.

18.66 The Joint Committee is concerned that the inclusion of spousal income would tend to equalise the living standards of the respective households irrespective of their decisions or actions. It would also mean that the new spouses would be economically linked until all the children of their partner's former relationship had attained the age of 18 years thereby sharing the full impact of decisions over which they have no control. The Joint Committee considers this to be unacceptable and as a result considers the current exclusion of spousal income by the formula to be appropriate. This treatment of spousal income is also consistent with the *Family Law Act 1975* and the general principle of the Scheme that biological parents have the primary responsibility for the support of their children. The inclusion of spousal income in the formula would also significantly increase the complexity and administrative cost of the Scheme.

Recognition of Dependant Spouses

18.67 The Joint Committee notes that the boost in the non custodial parent's self support component from the pensioner single rate to the pensioner couple rate only occurs where the non custodial parent has or adopts a further child. In other words, the self support component does not increase to recognise a dependant spouse if there are no new or adopted subsequent family children.

18.68 The arguments in favour of increasing the self support component to take account of a dependant spouse were recognised by the Consultative Group. Whilst the Consultative Group acknowledged that when a non custodial parent repartners with a financially dependent spouse his or her disposable income is reduced as a result of sharing income with that spouse, they took the view that:

> ... it would be inequitable to give a current dependent spouse priority over the custodial parent's obligations to the children of his or her first family except in cases where the spouse's dependency was due to the presence of children in the second

> family. As such the spouse's dependency is more appropriately addressed in the context of a higher first child component.[60]

18.69 The Joint Committee agrees with the Consultative Group's view that it would be inequitable to give a current dependent spouse priority over the non custodial parent's obligations to the children of his or her first family except where that spouse's dependency is due to the presence of children in the subsequent family. Accordingly, the Joint Committee considers that the current formula should not be amended to recognise the dependency of a non custodial parent's current spouse. The Joint Committee notes that this approach is also consistent with the exclusion of spousal income from the liable parent's child support assessable amount under the formula.

18.70 However, it is possible for a parent to obtain a departure from the administrative assessment of child support where, in the special circumstances of a family situation, the capacity of that parent to provide support is significantly reduced because of:

- a duty to maintain another child or another person; or
- special needs of another child or person that the parent has a duty to maintain.[61]

18.71 This means that a departure from the formula assessment on the ground that the parent's capacity to support has been significantly reduced because of a dependant spouse is only possible where the parent in question has a legal duty to maintain that spouse. The *Family Law Act 1975* prescribes the situations where such a legal duty arises, differentiating between married and de facto spouses.

18.72 Under section 72 of the *Family Law Act 1975*, when a non custodial parent repartners and marries his or her new spouse, that non custodial parent assumes a legal duty to maintain that spouse. Therefore a departure from the formula assessment is possible where special circumstances exist. However, where a liable parent re-partners but does not marry his or her new spouse that parent has no legal duty to maintain that spouse under the provisions of the *Family Law Act 1975* and therefore no ground can exist for a departure from the administrative assessment.[62]

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60 CSCGR, op.cit. p 75

61 s. 117(2) *Child Support (Assessment) Act 1989*

62 i.e. the spouse is a defacto spouse

18.73 The child support review officers submitted to the Joint Committee that:

> A large number of applications for review are made by liable parents requesting reductions in their child support on the basis of commitments they have to supporting prior or subsequent children, and to supporting their new spouse (whether married or de facto).[63]

18.74 The Joint Committee considers this different treatment of de facto spouses and married spouses to be inequitable as the *Child Support (Assessment) Act 1989* allows an application for departure from the formula assessment for a married spouse but not for a de facto spouse. The Joint Committee considers that the dependency of a de facto spouse should be recognised on the same basis as currently applies to a married spouse.

18.75 The Joint Committee notes that the recognition of de facto spouses raises a threshold question of what constitutes a de facto relationship. The Joint Committee considers the Social Security Act concept of a 'marriage-like relationship' to be the appropriate benchmark.

18.76 The Joint Committee recommends that:

Recommendation 137

the child support legislation be amended to allow a liable parent who has a de facto spouse the same right of departure from the formula assessment as presently exists for married spouses.

63 Submission No 5083, Vol 2, p 122

Recommendation 138

the child support legislation be amended to require the Child Support Registrar to adopt the social security legislation concept of 'marriage like relationships' when determining the standing of a de facto parent in a departure application.

Subsequent Family Self Support Component

18.77 The Joint Committee notes that its recommendations in respect of the basic child support formula in Chapter 16 and Chapter 17 will have a flow-on effect in respect of the subsequent family formula. In particular, the recommended modifications to the custodial parent disregarded income level, child support withdrawal rate, maximum non custodial child support income base and minimum child support liability will equally apply to the subsequent family formula. The Joint Committee's analysis in respect of DSS's modelling of the basic child support formula in Chapter 16 also equally applies to the subsequent family formula, subject to the necessary changes being made.

18.78 The Joint Committee also considered the appropriateness of setting the basic non custodial parents' self support component at the pension level in detail in Chapter 16. The Joint Committee is similarly concerned that the current subsequent family self support component is causing hardship to non custodial parents because it is too low. By setting it at the married pension level the Consultative Group appears to have failed to recognise the additional costs associated with employment not incurred by a pensioner as well as the government concessions and benefits enjoyed by pensioners.

18.79 The Joint Committee requested DSS to model the impact of increasing the subsequent family self support component so that the existing ratio between the single and pension rates was preserved for a 5 per cent, 10 per cent, 15 per cent and 20 per cent increase in the basic self support component. In addition, the modifications to the custodial parent disregarded income level, child support withdrawal rate and maximum non custodial parent income base were modelled without any increase in the subsequent family self support component. This enabled the Joint Committee to better assess the impact of increasing the subsequent family self support component on the relative disposable incomes of each parent

and government outlays on Additional Family Payments to custodial parents.

18.80 The Joint Committee considers that the DSS modelling of the subsequent family formula is constrained by the fact that it, like the Child Support Scheme, is based on the following premises (discussed above) which are not a true reflection of reality in many cases:

- the dependency of step or de facto children upon a non custodial parent is not recognised;
- the income of a new spouse of either a custodial or non custodial parent is not relevant; and
- the dependency of a new spouse upon a non custodial parent is not recognised if there are no subsequent family children.

18.81 As a result, the modelling provided by DSS is likely to misrepresent each parent's capacity to pay child support except in those situations where each of these premises apply. Even where this was the case, the modelling results would still understate the disposable incomes of low income non custodial parents and the vast majority of custodial parents as the modelling does not take into account the substantial fringe benefits provided by Government to sole parent pensioners and other social security recipients. Given that over 90 per cent of custodial parents under the Scheme are sole parent pensioners, this is a crucial omission.

18.82 However, in the final analysis the Joint Committee considers that the operation and effectiveness of the subsequent family formula must be judged against the objectives of the Scheme and by the equity of the outcomes it produces vis-a-vis the relative disposable incomes of custodial and non custodial parents. This is essentially a question of balancing the competing interests of children, custodial, non custodial parents and the taxpayer. The modelling of the existing and recommended subsequent family formulae by DSS was, despite its stated limitations, critical to the Joint Committee's deliberations as it demonstrated the net effect of the proposed changes on each of the affected parties.

18.83 The Joint Committee considers that the best achievable balance between the interests of each of the affected parties under the Scheme is provided by increasing the subsequent family self support component in proportion to the recommended increase in the basic formula self support component so that the existing ratio between the married and single rate of pension is preserved. This would recognise the existing relationship between these two levels of pension and conveniently tie both self support components to any changes in the level of pension.

18.84 The Joint Committee also considers that the current additional component for each new natural or adopted child in the non custodial parents' subsequent family self support component, which is also linked to social security rates, should continue to apply on top of this increase in the married rate of pension in order to provide a basic amount for the support of these children. The Joint Committee notes that a similar allowance for step and defacto children will only be available as a departure from the relevant formula assessment where the spouse of the liable parent is not receiving child support in respect of that liable parent's step / de facto children.

18.85 The Joint Committee also acknowledges that any changes to the subsequent family formula will affect more than one set of parents. They will also impact on other sets of parents due to the repartnering of both parents with each set linked by the payment or receipt of child support in respect of the children of each family. Consequently, any break in this 'child support chain' has the potential to create inequities under the Scheme. The Joint Committee has taken these flow on effects into account in its deliberations.

18.86 Tables 4-12 of Appendix 13 set out the combined impact of the Joint Committee's recommended modifications to the subsequent family child support formula on the relative disposable incomes of custodial and non custodial parents and the additional cost to the taxpayer for a wide range of family and income permutations. Appendix 12 estimates the cost of the modifications to the basic and subsequent family child support formula to be approximately $14 million per annum for the next four years. As discussed in Chapter 16, the Joint Committee considers that these modifications provide the best achievable balance between the objectives of the Scheme.

18.87 The Joint Committee recommends that:

Recommendation 139

the non custodial parents' subsequent family formula self support component be increased so that the relativity between the single and married rate of pension is reflected in the basic and subsequent family self support component.

Summary of Joint Committee's Recommended Modifications to the Subsequent Family Child Support Formula

18.88 Table 18.3 summarises the Joint Committee's recommended modifications to each of the major components of the subsequent family child support formula.

Table 18.3 Summary of Joint Committee's Recommended Modifications to the Subsequent family Child Support Formula

	Current Formula Components	Recommended Modifications
Maximum Income Base	2.5 x AWE $83,147.50	2 x AWE $66,518
Subsequent Family self Support Component	Married rate of pension = $13,721 + child component	Increased so that relatively between single and married rate of pension is reflected in the basic and subsequent family self support component = $16,454.40 + child component
Disregarded Income Level	AWE + childcare component 1 child = $34,992 or $37,084	Pension Cut Off Point 1 child $19,723 2 children = $20,347 3 children = $20,971
Child Support Withdrawal Rate	Each $1 increase in CP income above disregarded income level reduces NCP child support income base by $1 until 25 per cent minimum level is reached	Each $1 increase in CP income above disregarded income level reduces NCP child support income base by $0.50 until 25 per cent minimum level is reached

Notes:

1 Table 18.3 is based on DSS rates for the 1994/95 child support year.
2 AWE means the yearly equivalent of average weekly earnings.
3 Child component means the additional exempted income for each new natural or adopted child.
4 CP means custodial parent and NCP means non custodial parent.

Shared Custody Self Support Component

18.89 The child support review officers submitted to the Joint Committee that there is a great disparity between the self support component allowed for a parent with shared custody and that allowed for a parent with split custody. For a working parent with shared custody the self support component is the single rate of pension which also applies to parents who have no children in their care. Consequently, there is no recognition of the contribution of that parent to the cost of caring for the child. This contrasts with the split custody situation which recognises this contribution by using the subsequent family self support component.

18.90 This use of the single rate of pension as the self support component for shared custody situations may create inequity where the other parent is not working as the working parent may bear a high proportion of the costs of caring for and educating the child (because the other parent has a low income) as well as paying child support at the same rate as a parent with

no children in their care. The Joint Committee notes that this inequity may not be noticeable if both parents are earning approximately the same income because each is assessed to contribute towards the care of the child and neither parent receives any allowance for children in their care.[64]

18.91 The Joint Committee heard evidence from a parent who has the care of three children of a former marriage who pays $387.00 per month in child support to his ex-wife while his ex-wife has the care of one child:

> I think it should be seen to be fair in the situation where these children are all of the same marriage. The children and I would think it was fairer if it was calculated and divided evenly between the four ...[65]

18.92 One father referred to the inequities in a shared custody arrangement:

> My personal circumstances are quite different from this. I have custody of my three year old son, my ex-wife has custody of my twenty-one month old daughter. Even though she has a car (loan-free), which I paid for, a house full of furniture, rent assistance, phone bill discount, car registration discount, public transport discount, entertainment discount, pharmaceutical discount, medical free! ... I, on the other hand have to [pay] full price for everything, buy furniture, have a car loan and yet I still have to pay 18% maintenance.[66]

18.93 The Joint Committee is concerned that a working parent with shared custody may bear a disproportional amount of the costs of caring for the children of the prior relationship because the other parent has a low income. This arises because the current formula allocates the single pension rate as the self support component for each shared custody parent thereby ignoring the fact that each of these parents contribute to supporting the children in their care. The Joint Committee considers that this inequity should be eliminated by increasing the self support component for each parent with shared custody to the same level as that which applies for parents with split custody.

64 Submission No 5083, Vol 2, p 113–14

65 Transcript of Evidence, 1 October 1993, p 488

66 Submission No 3915

18.94 The Joint Committee recommends that:

Recommendation 140

the self support component for each parent with shared custody be increased to the subsequent family formula self support component.

The Treatment of Children in Related Families

Introduction

18.95 The Joint Committee has received submissions stating that the formula discriminates against new natural and adopted subsequent family children as they are taken into account by increasing the liable parent's self support component by a fixed amount linked to Additional Family Payment whilst the first family children receive a payment linked to the liable parent's residual income (that is, gross income less the self support component). This generally leads to different amounts being 'allocated' for the children of each family, a situation which many liable parents find inequitable.

18.96 At low income levels this treatment will generally result in a reduction in child support payments to the first family while at higher income levels the first family will receive more in child support payments than is 'allocated' for the subsequent family children. Some submissions argue that this treatment is inequitable and that the formula should be amended so that the children of each family are treated equally.

18.97 DSS commented to the Joint Committee that a comparison of amounts allowed for children in first and subsequent families is like:

> ... comparing 'apples' with 'oranges' because the amount of financial support available to the child in the second family is the allowance (equivalent to AFP [Additional Family Payment]) in the self support component plus a share of the non custodial parent's remaining disposable income. This amount is substantially greater than the child support amounts paid to the NCP's child(ren) in the first family.
>
> This, combined with the fact that the second family formula makes allowances for children of the second family before setting child support amounts for children of the first family, means that this variation of the formula is weighted towards children in NCP second families.[67]

18.98 The Joint Committee notes that a number of alternative formulas have been put forward which purport to treat all children equally irrespective of which family they belong to. These alternative formulas are discussed in detail below.

Justice Kay's Subsequent Family Formula

18.99 Justice Kay of the Family Court of Australia submitted to the Joint Committee that the children of each family should be treated equally by amending the current formula so that the child support liability was calculated on a pro rata basis with no increase in the liable parent's self support component for any children of the subsequent family. The percentage used would be that applicable for all the non custodial children (that is, for both the children in the first and subsequent family) with the non custodial parent being required to pay the proportion of the liability calculated which is attributable to the children in the previous family. The result is that each natural or adopted child of a non custodial parent will be allocated exactly the same share of the non custodial

67 Submission No 5085, Vol 1, p 86

parent's income regardless of whether they are in the first or subsequent family.

18.100 DSS provided the Joint Committee with the following example of how Justice Kay's formula works:

> Example for a NCP with child support income of $30,000 [taxable income multiplied by the indexation factor], one new child under 13 living with them and paying child support for two children under 13:
>
> > the basic self support exemption ($7,958.60) is subtracted from the child support income leaving an adjusted income of $22,041.40. This is multiplied by 32% (the formula percentage for three children) and then multiplied by two-thirds (the applicable pro-rating factor) to produce a child support liability of $4,702.16.[68]

18.101 By contrast, under the existing formula the same non custodial parent would have a self support exemption of $14,885 (the couple rate of pension plus additional pension for a child under 13) and an adjusted income of $15,115. This would be multiplied by 27 per cent (the formula percentage for two children) to produce a child support liability of $4,081.05.[69]

CSEAG's Findings

18.102 CSEAG identified the following advantages of Justice Kay's formula:

- in all cases each dependent child is allocated exactly the same share of the non custodial parent's income regardless of whether the child lives with the non custodial parent or not. This would address the frequently expressed concerns of those who feel that the current formula discriminates against those with subsequent families, or inhibits the formation of new families;
- it addresses the difficulty that under the current formula, those on lower incomes generally seem to pay too little in relation to the costs of children while those on high incomes pay more relative to the cost of their children. Justice Kay's formula requires higher payments at low incomes and lower payments at high incomes than is currently the case;

68 ibid. p 227

69 ibid.

- it addresses to some extent the concerns of those who feel the current formula acts as a disincentive for the non custodial parent to increase his or her income because the shift in the balance between low income and high income non custodial parents (referred to directly above) means that it would be more advantageous for the non custodial parent to increase income than is currently the case. In addition, a substantial proportion of any increase in income will go to the support of the children of his / her new relationship as well as the children of the previous relationship.[70]

18.103 These advantages apply only in the case of a non custodial parent with a second or subsequent family. The Justice Kay formula makes no change whatsoever to the amounts of child support payable in other cases.

18.104 CSEAG concluded that:

> ... as Justice Kay's proposal has clear merits and no apparent disadvantages, careful consideration of the proposal by the Government is justified.[71]

DSS Analysis of Justice Kay's Formula

18.105 DSS have submitted an extensive analysis of the effect of Justice Kay's formula to the Joint Committee and have made the following comments based on this analysis:

- the Justice Kay formula results in higher child support liabilities for low income non custodial parents and lower child support liabilities for higher income non custodial parents than under the existing formula;
- more non custodial parents would pay child support under Justice Kay's formula than under the existing formula as a result of the higher self support component under the existing formula;
- the taxable income at which a non custodial parent changes from paying more child support under Justice Kay's formula than under the existing formula to less child support than under the existing formula (that is the ‘turning points’) are shown in the following table:

70 CSEAG, op.cit. pp. 222–23

71 ibid. p 223

Table 18.4 Turning Points Under Justice Kay's Formula

NCP first family children	Non custodial parent (NCP) subsequent family children			
	1	2	3	4
1	$35,662	$28,910	$27,180	$27,548
2	$40,962	$31,005	$29,698	$29,123
3	$42,059	$34,222	$31,146	$30,655
4	$53,247	$36,979	$33,645	$32,935

- the further the non custodial parent's taxable income moves above and below a turning point, the wider is the gap between the amount of child support liable under Justice Kay's formula and what is liable under the existing formula;
- as at August 1993 there were 2,030 non custodial parent with subsequent families who had been issued a child support assessment by the CSA. The CSA has obtained income details for 1,960 of the subsequent family non custodial parents which show that approximately 17 per cent have taxable incomes of less than $10,000 pa, 49 per cent have taxable incomes of less than $20,000 pa and 76 per cent have taxable incomes of less than $30,000 pa. Approximately 790 (40 per cent) are not liable to pay child support under the existing formula due to their low income. Comparison of income turning points and child support liabilities reveals that Justice Kay's formula would have the following effects:
  - ⇒ approximately 68 per cent of the 1,960 CSA assessed subsequent family non custodial parents would pay more child support than they do under the existing formula;
  - ⇒ approximately 15 per cent of these non custodial parents would pay less child support than they do under the existing formula;
  - ⇒ approximately 17 per cent of these non custodial parents would not be affected because they do not have enough taxable income to pay child support under either formula;
  - ⇒ approximately 23 per cent of these non custodial parents who currently do not have a child support liability, would have a child support liability under Justice Kay's formula;

- the Justice Kay formula would have the following effects on the disposable incomes of custodial and non custodial parents:
  - ⇒ with regard to distributional effects, by comparison with the existing formula, it would markedly sharpen the impact on low income non custodial parents and moderate the impact on higher income non custodial parents. The Justice Kay formula is regressive for custodial parents where non custodial parents have a higher income and beneficial to custodial parents where non custodial parent's have low incomes; and
  - ⇒ with regard to relativities between the disposable incomes of custodial and non custodial parents, compared to the existing formula, Justice Kay's formula would widen the gap where there is a high non custodial parent income and a low custodial parent income, and narrow the gap at other levels of non custodial parent income.
- custodial parents would not experience a drop in their disposable incomes when non custodial parent children turned 13 and 16 as is currently the case;
- non custodial parent's would not experience an increase in their self support component and consequently their disposable incomes when their subsequent family children turned 13 and 16 respectively.[72]

18.106 Justice Kay's formula is consistent with the current treatment of children of a liable parent where that liable parent is liable to two or more custodial parents for the payment of child support. In this case the formula is also applied on a pro rata basis. However, Justice Kay's formula does not allow any increase in the liable parent's self support component for, what would be in this case, third family children whilst the current formula would allow this increase.

18.107 The adoption of Justice Kay's formula in all second and subsequent family situations would correct the current inconsistency between the basic subsequent family formula and the modified formula which applies where a non custodial parent is liable to two or more custodial parents. It would also be a simple matter to include step children and de facto children in the application of Justice Kay's formula. It would also be possible to incorporate the impact of a dependant spouse by increasing the liable parent's self support component to the married rate of pension. This modified version of Justice Kay's formula is considered below.

72 Submission No 5085, vol 1, pp 231–4

Modified Version of Justice Kay's Formula

18.108 This version modifies the existing formula in the same manner as proposed by Justice Kay except that it makes the self support component equivalent to the pensioner couple rate rather than the basic single rate of pension.

18.109 DSS have submitted a detailed analysis of the effect of the modified Justice Kay formula to the Joint Committee and have made the following comments based on this analysis:

- the modified Justice Kay formula outcomes follow the same general pattern as the original Justice Kay formula except that the non custodial parent child support liabilities are much reduced and income turning points consistently occur at much lower levels of non custodial parent taxable income;
- child support liabilities under the modified Justice Kay formula are marginally higher than under the existing formula for low income non custodial parents and considerably lower than under the existing formula for higher income non custodial parents;
- more non custodial parents would pay child support under the modified Justice Kay formula than under the existing formula, though not as many more as under the Justice Kay formula;
- the non custodial parent income turning points under the modified Justice Kay formula for a range of first and subsequent family scenarios are shown in the following table:

Table 18.5 Turning Point Under Modified Version of Justice Kay's Formula

NCP first family children	Non custodial parent (NCP) subsequent family children			
	1	2	3	4
1	$19,712	$21,178	$22,423	$24,005
2	$20,943	$21,967	$23,620	$24,860
3	$21,200	$23,178	$24,312	$25,688
4	$23,800	$24,214	$25,455	$26,954

- in the great majority of first and subsequent family scenarios the non custodial parent would only have to have a taxable income of up to $24,000 before they were 'better off' under the modified Justice Kay formula than under the current formula;

- the modified Justice Kay formula (like the Justice Kay formula) is more 'advantageous' to non custodial parents who have a greater proportion of subsequent family to first family children than it is to other non custodial parents;
- comparison of income turning points and child support liabilities under the two formulas reveals that the modified Justice Kay formula would result in:
  - ⇒ approximately 17 per cent of subsequent family non custodial parents with child support assessments issued by the CSA paying more child support than they do under the existing formula;
  - ⇒ approximately 49 per cent would pay less child support than they do under the existing formula;
  - ⇒ approximately 34 per cent would not be affected because they do not have enough taxable income to be liable to pay child support under either formula;
  - ⇒ approximately 6 per cent of subsequent family non custodial parents who currently do not have a child support liability would have a child support liability under the modified Justice Kay formula;

  the effect of the modified Justice Kay formula on the disposable incomes of non custodial and custodial parents is similar to that of the original Justice Kay formula except that it is more advantageous to non custodial parents;
- custodial parents would experience a drop in their disposable incomes when non custodial parents children turned 13 and 16 as is currently the case; and
- non custodial parents would not experience an increase in their self support component and consequently their incomes when non custodial parent children turned 13 and 16 respectively.[73]

73 ibid. pp 241–4

The Child Equalisation Formula

18.110 This formula attempts to equalise the treatment of non custodial parent children in first and subsequent families by avoiding putting either set of children first in the calculation process. It uses the same child support percentages as the current formula, but in a different way. Where the non custodial parent has new natural or adopted children, the child equalisation formula:

- grants the non custodial parent a self support component equivalent to the pensioner couple rate but does not provide any additional exemption for subsequent family children; and
- recognises that there is a first child in each family and allocates an 18 per cent share of the non custodial parents residual taxable income to both of these first children. If there is a second child in either or both families a further 9 per cent (the difference between 27 per cent and 18 per cent) of the non custodial parent's remaining income is allocated to each. If there is a third child in the first or subsequent family a further 5 per cent (the difference between 32 per cent and 27 per cent) of the non custodial parent's remaining income is allocated, and so on.[74] Appendix 16 contains an example of how this formula works.

18.111 DSS have submitted a detailed analysis of the effect of the child equalisation formula and have made the following comments based on this analysis:

- for common combinations of first and subsequent family non custodial parent children, from the point of arrival of the first non custodial parent child in the subsequent family, child support liabilities remain constant and are not reduced by the birth or adoption of further non custodial parent children in the subsequent family;
- the only circumstances where the birth or adoption of a second non-second child in the second non custodial parent family does reduce the child support being paid to first family children is where there are three or more non custodial parent children in the first family. This arises from the formula's system of allocating percentages of the non custodial parent's income to first and subsequent family non custodial parent children simultaneously from the balance of the non custodial parent's income remaining after the previous allocations. In overall terms, this reduction in the level of child support is very small;

74 ibid. p 245

- by comparison with the existing formula, the child equalisation formula would increase the amount of child support paid to low income custodial parents;
- in terms of distributional effects, by comparison with the existing formula, the child equalisation formula would sharpen the impact on most low to middle income non custodial parents, and is beneficial to most low income custodial parents at low to middle non custodial income levels, though not as beneficial as the Justice Kay formula; and
- with regard to relativities between the disposable incomes of custodial and non custodial parents compared to the existing formula, the child equalisation formula mostly narrows the gap where the custodial parent has a low income and the non custodial parent has a low to middle income. The formula has variable effects where non custodial parents have higher than average incomes.[75]

Conclusion

18.112 Whilst the Justice Kay formula, the Modified Justice Kay formula and the Income Equalisation formula all start from the premise that children of the first and subsequent families are treated equally, the Joint Committee considers that the outcomes produced by the recommended subsequent family formula are more appropriate especially as a share of the non custodial parent's income, after the payment of child support, remains with the subsequent family.

75 ibid. p 247–52

Conflict between Child Support and Social Security Legislation

18.113 The Joint Committee notes that the Social Security Act 1991 draws no distinction between de facto and married spouses in the sole parent pension area. Under this Act, the sole parent pension is not payable to persons who are members of a couple. A member of a couple is defined to be:

- a person who is living in a marriage-like relationship with a person of the opposite sex to whom he or she is not legally married; or
- a person legally married who is not separated and apart from the spouse on a permanent basis (section 4(2) of the *Social Security Act 1991*).

18.114 In forming an opinion as to whether the relationship between two people is 'marriage-like' the *Social Security Act 1991* has regard to all the circumstances of the relationship including the:

- financial aspects of the relationship;
- nature of the household;
- social aspects of the relationship;
- sexual relationship between the people; and
- nature of the people's commitment to each other.[76]

18.115 The child support legislation does not generally treat subsequent family married or de facto spouses and step or de facto children of a non custodial parent as dependents but the social security legislation does. The child support review officers submitted to the Joint Committee that certain anomalies occur as a result of these different notions of dependency under the child support and social security legislation.

18.116 An anomaly occurs in respect of the eligibility for family payments where a liable parent remarries or enters into a 'marriage-like' relationship which has dependent children.[77] Where the spouse has no independent income, his or her eligibility will solely depend on the income of the liable parent. The liable parent's child support payments are not deducted from his/her

76 s 4(3) *Social Security Act 1991*

77 Submission No 5083, Vol 2, p 120

income for the purpose of determining his/her family's (the 'paying family's') eligibility for family payments. The child support review officers submitted that this situation could be improved by deducting the child support paid by the liable parent from the income amount used to determine the paying family's eligibility for family payments.[78]

18.117 The receipt of child support is taken into account in determining the 'recipient family's' eligibility for Additional Family Payment through the maintenance income test.[79] The Joint Committee considers that it would be consistent to allow the paying family to deduct the child support paid from the income amount used to determine that family's eligibility for Additional Family Payment given that the receipt of that child support is taken into account in determining the 'recipient family's' eligibility for Additional Family Payment. The Joint Committee notes that this rationale would not apply to other family payments as the receipt of child support does not impact upon the eligibility for these payments.

18.118 The Joint Committee recommends that:

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the social security legislation be amended so that the child support paid by a family is deducted from the income amount used to determine that family's eligibility for Additional Family Payment.

18.119 Another anomaly highlighted above occurs when a non custodial parent enters into a 'marriage-like' relationship with a sole parent pensioner. The social security legislation considers the new spouse to be dependent upon the non custodial parent and so discontinues the sole parent pension but the child support legislation recognises no dependency for the purpose of calculating the non custodial parent's child support liability to the previous family. The Joint Committee notes that the recommendations above recognise the dependency of both married and de facto spouses and should help to alleviate the inconsistencies in this area.

78 ibid. p 121

79 See Chapter 3

18.120 Another anomaly occurs where an unemployed liable parent enters into a de facto relationship with a sole parent pensioner who has two dependent children. The sole parent pensioner immediately forfeits entitlement to the pension while the liable parent is paid the job search allowance at the 'married rate' from the date of cohabitation with the sole parent pensioner. Consequently, the additional allowance paid for this new de facto spouse forms part of the liable parent's taxable income which may exceed the child support exempt income amount as neither the dependent defacto spouse or her children are taken into account in determining this amount. The final result is that the liable parent may be liable to pay child support for his prior children even though he is still unemployed and has taken on further responsibilities in the form of his new defacto spouse and her dependent children.

18.121 The Joint Committee notes that this situation may also apply to a married spouse with children given the possible inconsistent treatment of departure applications by the child support review officers. Whilst it is possible for an aggrieved party to apply to the Family Court for a review of a child support review officer's decision this, as discussed previously, is a costly exercise beyond the financial resources of many parties.

18.122 This anomaly could be rectified by amending the manner in which payments are made to beneficiaries by DSS so that, in the above example, the de facto spouse personally receives the allowance paid to the liable parent for her. This would result in the liable parent's income falling below the exempt income amount for the purpose of the assessment of his child support liability. This is precisely the approach adopted by the Government in its White Paper, **Working Nation** presented to the House of Representatives by the Prime Minister on 4 May 1994 which states:

> ... from 1 July 1995 most spouses will no longer receive an entitlement to a Social Security payment on the basis that they are married to a person who receives an income support payment. Rather, they will need to establish a personal entitlement to one of the following payments:
>
> - JSA / NSA (Job Search Allowance / New Start Allowance) for those who are unemployed ...
> - Parenting Allowance for those whose primary activity is looking after dependent children below the age of 16, and
> - Partner Allowance for those spouses who are aged over 40 years as at 1 July 1995 and who have little or no recent labour market experience.[80]

80 Keating, **Working Nation**, 4 May 1994, p 147

Non Custodial Parents with Stage 1 and 2 Liabilities

18.123 The Joint Committee received submissions which stated that no allowance is made for any existing Stage 1 liability when calculating a child support liability under Stage 2 of the Scheme. The Joint Committee notes that these submissions fail to recognise that it is possible to apply for a departure from the formula assessment in these circumstances. DSS submitted to the Joint Committee that the Attorney-General's Department had advised them that a liability under Stage 1 would be sufficient grounds for the grant of a departure from a Stage 2 formula assessment.[81] DSS also stated that:

> It is understood that inclusion of the means to assist liable non custodial parents in these circumstances in the departure provisions of the Child Support (Assessment) Act rather that in the basic formula reflects the expectation that relatively few cases of this nature would arise and that the numbers would reduce over time as Stage 2 becomes predominant. It also reflects an objective to keep the formula simple and easily understood. Providing for exceptions of this type in the formula would substantially increase complexity.[82]

18.124 The Joint Committee considers that the use of departure provisions to assist liable parents who have both a Stage 1 and Stage 2 child support liability is the most appropriate response for the reasons outlined by the DSS above.

81 Submission No 6057, Vol 10, p 214

82 Submission No 6057, Vol 10, p 215

Work Disincentives

18.125 Some submissions received by the Joint Committee state that the Scheme's interaction with social security and taxation legislation creates anomalies which may result in strong work disincentives for non custodial parents. CSEAG identified an anomaly which is best illustrated by way of the following example. Assume a non custodial parent pays child support for two children (both under 13 years of age) of a previous relationship, has formed a subsequent family which has one dependant child (under 13 years of age) and earns a taxable income of $22,000 per annum. The combined impact of the child support, social security and taxation legislation upon each dollar increase in the non custodial parent's taxable income is as follows:

- 27 cents is paid in child support to the first family;
- the subsequent family loses 50 cents in Additional Family Payment (AFP) (the AFP threshold is $21,350 for one child, above which AFP is reduced by 50 cents in the dollar);[83]
- 34 cents is paid in taxation to the Government;[84] and
- 1.4 cents is paid to the Government by way of the Medicare levy.

18.126 The combined effect of the child support payments, loss of income support payments, marginal tax rate and medicare levy for the subsequent family is a loss of $1.12 for each additional dollar of income earned. This means that an increase in income for this family appears to result in it being worse off. The income range over which this anomaly occurs is $21,574 - $24,688.40, where there is one dependent child, at which time Additional Family Payment cuts out altogether.[85] This income range will be higher if the non custodial parent has more than one dependent child in his/her subsequent family or if his/her subsequent family is eligible for Rent Assistance or Guardian Allowance.

83 Based on DSS Rates, 20 March to 30 June 1994

84 The tax rate for 1994–95 for income in the range of $20,701 – $38,000 is 34 per cent

85 Based on DSS Rates, 20 March to 30 June 1994

18.127 The Joint Committee notes that this anomaly may be more imaginary than real given that a family's entitlement to Additional Family Payment is based on historical taxable income while the deduction of tax through the PAYE system is based on the amount of income actually received in each pay period. This means that a one dollar increase in a subsequent family's current taxable income should not (or not immediately) result in a reduction in its disposable income because that family's entitlement to Additional Family Payment will not be affected. Therefore, whether this anomaly actually arises, and the magnitude of the problem when it does, depends upon the relationship between the subsequent family's historical income and current income.[86]

18.128 The Joint Committee also notes that the combined impact of the child support, marginal rates of taxation and social security eligibility on increases in a subsequent family's income may result in workforce disincentives for the non custodial parent.[87] A similar workforce disincentive may also apply to rises in custodial parent income at similar income levels with the exception that custodial parents would not be subject to a child support liability. This issue is discussed in the context of custodial parent poverty traps in Chapter 16.

18.129 CSEAG suggested the following possible solutions to this anomaly:

- increase the exemption amount allowed for dependant children. To eliminate the problem, this would have to be increased to the point where no child support becomes payable, which means until income exceeded the Additional Family Payment cut-out point which is $21,574 for one child under 13 years of age. CSEAG rejected this course of action for the following reasons:
  - ⇒ it will decrease the amount of child support payable by those non custodial parents on higher incomes unless a mechanism to withdraw the extra exemption amount was introduced (for example, something similar to the current procedure for the withdrawal of some tax rebates);
  - ⇒ it might act as an incentive to some non custodial parents to form a new family;
  - ⇒ it might disadvantage many children of separated parents; and
  - ⇒ it will decrease or eliminate any reductions in Government outlays on pensions for custodial parents.

86 CSEAG, op.cit. p 218

87 See Chapter 17 for detailed discussion of non custodial parent workforce disincentives

- decrease the child support formula percentages so that the combined effects of the marginal tax rate, child support payments, lose of income support payments and medicare levy are in all cases below 100 per cent. CSEAG rejected this course of action because it would be impractical as it would require a significant - even drastic - reduction in child support percentages which would disadvantage custodial parents and lead to increased Government outlays in this area; or
- changes to the Additional Family Payment entitlement or the tax system could be introduced to overcome this anomaly. CSEAG rejected this solution because it would affect large numbers of people who have no involvement with child support.[88]

18.130 CSEAG also noted that this anomaly may fall within the present guidelines for departure from the administrative assessment. In addition:

> Even if an appeal is lodged, the anomaly may not be apparent when the individual circumstances of the appellant are considered. It is only by comparing appellant's situation with that of others that the fact of an anomaly, and the extent of it can be determined. It would therefore be incumbent on the Government to provide those hearing such appeals with detailed analysis of the kinds of circumstances in which such anomalies arise, the nature and the extent of them and, possibly, the extent to which such circumstances should be taken into account in reassessing the child support liability.[89]

18.131 The Joint Committee considers that the existence of an income range where a rise in non custodial parent taxable income causes a fall in that parent's subsequent family's disposable income is more imaginary than real as the entitlement to Additional Family Payment is based on historical taxable income rather than current taxable income. However, there may be special circumstances where this anomaly arises, although this is likely to be rare. Consequently, the Joint Committee considers that the use of the existing departure provisions is the most appropriate way of dealing with these special circumstances. The Joint Committee notes that this approach is also consistent with the approach adopted for custodial parent poverty traps and workforce disincentives discussed in Chapter 7.

88 ibid. pp 219–19

89 ibid. p 219

Incentive for Separation

18.132 The anomalies identified by CSEAG may also create a financial incentive as well as pressure for both first and subsequent families to separate. This can be demonstrated by considering the benefits which a non-working custodial parent would receive upon separation:

- sole parent pension of $8,221 pa;[90]
- child support which will vary according to the number of children and the non custodial parents' taxable income;
- Additional Family Payment, without any deduction;
- other social security income support benefits such as Rent Assistance and Pharmaceutical Allowance; and
- a range of other concessions available to social security recipients under Federal, State and Local Government legislation such as a Health Benefits Card, Housing Assistance, Rate, Electricity and Gas Rebates.[91]

18.133 These additional benefits also compare favourably to the 'allowance' made for subsequent family children under the liable parent's self support component (that is, $1,609 p.a. for a child under 13). This may well act as a further incentive for the subsequent family custodial parent and liable parent to separate.

18.134 The Joint Committee has received a number of submissions stating that the Child Support Scheme has caused subsequent families to separate. One non custodial parent with a subsequent family submitted the following to the Joint Committee:

> I am now separated from my second wife due to economic reasons and the fact that there is no future with the current Child Support Scheme the way it is for us. This is not a separation we want but the Child Support Agency has succeeded in destroying another family by taking away any chance for a future and all hope. I want to be with my family and it breaks my heart every time I walk out the door hearing my daughter screaming and crying because her dad is going away again for reasons she can't understand. How do you explain it to a twenty month old child.

90 DSS rates for 1994/95 child support year

91 See Chapter 16

> Your Committee and the changes you can make are the last chance for giving me and my subsequent family a chance.[92]

18.135 One non custodial parent submitted that the current system simply makes it too easy for custodial parents:

> Its now easier and women know that if things are not going their way, they can just throw the towel in and be given everything on a platter made up of large shares in property settlements, maintenance orders, pensions, cheap housing, free legal aid and more; then to have another man move in later, oh what a life![93]

18.136 Similarly, another non custodial parent submitted:

> The entire system including the Australian Taxation Office, the Child Support Agency, the Family Court, the Department of Social Security and the State Government Department of Emergency Housing almost appears to encourage the breakdown of marriages in this country. A woman has only to apply for the Sole Supporting Pension and it is granted. No checks, no enquiries are made and no preventative measures are taken to salvage marriages. In my own case, my wife has left me several times over the years having claimed the SS pension each time and to this day not once have I been interviewed to verify the legitimacy of the claim. It would be a simple matter to claim this benefit whilst using a friend's address, a situation that I am sure occurs all too frequently. The State Government has on several occasions provided funding for my wife to move out and in one case provided funding for her furniture and other personal effects to be sent to Brisbane from Adelaide and return when she came back six weeks later. The ease with which the funding is granted ensures that any hope of reconciliation is dashed or at least reduced. With Housing cheap and easily available in a small city like Adelaide and the SS pension easily available, a woman often takes the easy way out in a domestic situation without making any effort to resolve matters at home first. Compulsory counselling should be made a requirement in an attempt to save a percentage of the marriage breakdowns and thereby save all involved especially children from a lot of misery not to mention a saving of resources.[94]

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92 Submission No 2496

93 Submission No 3259

94 Submission No 3955

18.137 The Joint Committee also notes the Australian Bureau of Statistics Study, **The Effects of Government Benefits and Taxes on Household Income (1992)**, which used the 1988/89 Household Expenditure Survey to examine the net transfers from Government to groups of taxpayers. The results of this study were analysed in an article by Alan Tapper, **Supporting Mothers, Twenty Years On**[95] to critically examine the annual value of transfer payments. Tapper noted that in 1988/89, on average, sole parent families were subsidised by $11,648 while sole parent families for whom the pension was their principal source of income were subsidised by $18,096. However, two parent families were on average net losers from all government transfers by $3,224 while two-parent families for whom earnings were their primary income 'lost' $5,096. The net effect of this analysis is that working married or de facto parents contemplating separation and life for one on the pension stand to gain from the government a 'social wage' of approximately $15,650 per annum. This calculation is shown in Table 18.6:

Table 18.6 Net Benefits Before and After Separation

	Per Week	Per Annum
Before separation		
Combined private income	$770	$40,040
Total government benefits	$171	$ 8,900
Total taxes direct & indirect	$269	$14,000
Net benefits	- $ 98	- $ 5,100
After separation – Non custodial father		
Private income	$520	$27,000
Total government benefits	$ 30	$ 1,560
Total taxes direct & indirect	$175	$ 9,100
Net benefits	- $145	- $ 7,540
After separation – Custodial mother		
Private income	$ 30	$ 1,560
Total government benefits	$377	$19,600
Total taxes direct & indirect	$ 28	$ 1,450
Net benefits	$348	$18,096
Combined net benefits after separation	$203	$10,556
Combined net benefits before separation	- $ 98	- $ 5,100
Difference	$ 301	$15,650

Source Tapper, Supporting Mother, Twenty Years On, Policy, Summer Edition, 1993–94, p 26

95 *Policy*, Summer edition, 1993–94, pp 24–26

18.138 The analysis in Table 18.6 identifies a subsidy available to all couples who separate, not simply to sole parents. As this study was based on 1988/89 data the effect of increased child support payments under Stage 2 of the Child Support Scheme would not have been included in the final income figures. Child support payments would increase the final income for custodial parents because of the favourable treatment of child support under the maintenance income test and the fact that child support payments are not taxable.

18.139 The Joint Committee also notes that this subsidy may equally act as a strong work disincentive for sole parent pensioners as well as a disincentive for that parent to form a subsequent family as a sole parent pensioner would have to sacrifice the vast majority of his/her social security benefits if he/she entered the workforce or formed a subsequent family. The actual magnitude of this disincentive will of course vary with individual circumstances.

18.140 The Joint Committee is very concerned that the interaction of the social security, child support, family law and taxation legislation may be creating serious work disincentives for both custodial and non custodial parents, putting intolerable pressure on existing relationships and discouraging the formation of new relationships. The high divorce rates, especially for subsequent families, may be indicative of these pressures. However, the Joint Committee is not able to make a proper assessment in respect of the impact of the interaction of this broad range of legislation due to the lack of detailed research in this crucial area. This aspect is discussed further in Chapter 22.

19

Repairing the child support income base

Introduction

19.1 The child support income base for each parent is equal to each parent's 'taxable income', as defined by the Income *Tax Assessment Act 1936,* from two years prior to the child support year multiplied by the indexation factor. In the case of the non custodial parent this is the amount against which the applicable child support formula percentage is applied (after deducting that parent's applicable self support component) to calculate that parent's child support liability. Generally, the higher the level of a non custodial parent's applicable taxable income, the higher that parents child support income base and in turn the higher that parent's child support liability and vice versa. In the case of the custodial parent, the level of taxable income is irrelevant unless the custodial parent earns more than the applicable custodial parent disregarded income level. Where this is the case then each dollar of taxable income earned by the custodial parent over this level in the relevant year of income reduces the non custodial parent's child support income base by a dollar until the non custodial parent's child support formula assessment is reduced to 20 per cent of what it would have been if the custodial parent had not earned more than this level.

19.2 A parent's taxable income is the amount against which the tax rates are applied and is generally defined as assessable income (that is before tax income plus all other items specifically made assessable under the *Income Tax Assessment Act 1936*) minus all deductions allowed under the *Income Tax Assessment Act 1936*.[1] It does not include credits such as foreign taxes or rebates which are deducted from the computed tax to determine the final tax payable.

19.3 The Child Support Consultative Group (Consultative Group) made a range of recommendations concerning the income base for formula assessment in its report, **Child Support: Formula for Australia** (1988). In particular, the Consultative Group was of the view that whilst 'taxable income' as defined by the Income *Tax Assessment Act 1936* was, with slight modifications, a suitable income base for those whose main source of income was salary or wages, it was not suitable for those whose income was derived from business and investments. The Consultative Group's extensive recommendations in this area were ignored by the subsequent legislation which adopted taxable income as the child support income base for all parents.

Analysis of Submissions

19.4 The Joint Committee received 262 submissions raising concerns about the suitability of the current child support income base and, in particular, that self employed non custodial parents can easily avoid their child support obligations. These submissions represented 4.2 per cent of the total number of submissions received by the Joint Committee. Of these submissions, 206 were received from custodial parents. This represented 10.4 per cent of the total number of custodial parent submissions received by the Joint Committee.

19.5 Some of the difficulties in this area were identified by the Legal Aid Commission of NSW who submitted:

> Particular difficulties can be experienced by custodial parents who apply for an assessment of child support where the liable parent is self employed or is an executive in receipt of a 'salary package'. In these cases, the liable parent's taxable income is usually not a true indication of his / her ability to pay child support.

1 s. 6(1) *Income Tax Assessment Act 1936*

> It is true that custodial parents in these cases have a right to apply to the Child Support Review Office to have the assessment reviewed. However, the custodial parents in these circumstances often do not have sufficient information about the liable parents' financial circumstances to be successful in such an application.[2]

19.6 Similarly, the Council for Single Mothers and their Children submitted to the Joint Committee:

> The main area of complaint and inquiry we received at CSMC [Council for Single Mothers and their Children] is in relation to the situation of a father declaring he is income poor, particularly if he is self employed. Countless custodial women ring claiming that these men constantly under declare their real incomes, the women know it but the Child Support Agency does not have any mechanisms to actively investigate these situations. In many cases these fathers are actually asset rich as well as income rich.
>
> Such men under declare their incomes to the extent that they pay little or no maintenance, but the poor impoverished souls drive around in large comfortable cars, manage to pay the mortgage on their houses, go on holidays, play golf etc and indulge in other recreational activities, whilst their children and former partner struggle to make ends meet.[3]

19.7 The Joint Committee heard evidence from a custodial parent who stated:

> But the biggest problem was that he is self-employed, had his own business, knows how to wangle the books, has nothing in his name, has no assets, but he lives quite comfortably; it is all in his common law wife's name. And there lies the problem: he is self-employed, nobody can touch him, he does what he wants, when he wants and how he wants. So I have just had to persevere.[4]

2 Submission No 2349, Vol 5, p 145

3 Submission No 5025, Vol 9, p 85

4 Transcripts of Evidence, 10 November 1993, p 878

19.8 Similarly, another custodial parent made the following submission to the Joint Committee:

> I feel the only way to explain my view is to go into my own situation. My husband and I were involved in a small business and subsequent to our separation and divorce this business no longer exists. My ex-husband has now managed to become involved in a second business with partners, details of which are all veiled in secrecy under the code of 'silent partner'. As there is no real evidence of his involvement, the child support agency has only his word on how much income he is receiving. Although I cannot produce proof of his actual income, his lifestyle and expenditure does not reflect on his claimed income.
>
> My own feelings would be that stronger guidelines need to be enforced by the Child Support Scheme whereby, and I speak mainly of business people working for themselves, an income level must be seen. It should be assessed not only by income claimable, but through business expenses put through companies ledgers as 'loan account'. These loan accounts I believe cannot be classified as income at the present time. ...
>
> Another area of concern is where, and I have seen it happen not only in my own case but in many instances, the husband has remarried and placed monies in accounts in the new spouse's name or children's names, accounts which he can operate and use but which cannot be used to by the Child Support Agency to retrieve child maintenance owing. Again I feel that this area, and that of property transferred to the new spouse, should be looked into more carefully.[5]

19.9 The Joint Committee received few submissions from non custodial parents in respect of this issue. However, one non custodial self employed parent gave the following evidence:

> There are a number of ways that a self-employed person could step around the system as I see it now. Perhaps I do not know it as intimately as I could because I have not sought to do that. I suppose that the ultimate solution would be for a self-employed person not to work, to reduce his or her hours or have a holiday for three months of the year. If that person's sole motivation was to reduce his or her gross income, that would be a way of doing it. ...

5 Submission No 2858

> Heaps of income could be diverted into a superannuation fund to minimise taxable income to one of the directors. I do not believe it is fair for that to be allowed to happen. So, again, this could be one of the variables that could be factored into the various assessments that are made. I do not have a problem with that. I can see how it could be prostituted in a sense. ...
>
> The reason that these devices are used may be to get around the inequities in the existing system. If people do not feel that there are inequities, they perhaps do not look as hard for ways of beating the system.[6]

19.10 The Joint Committee notes that the results of the survey commissioned by the Child Support Evaluation Advisory Group (CSEAG) indicated that the incidence of child support minimisation under the Scheme was significant:

> ... 26 per cent of all custodial parents, and 42 per cent of those in stage two, considered that their former partner was understating income for child support purposes. ...
>
> While these figures could be discounted to some extent, partly because custodians may not be aware of relevant tax laws and so believe that income is being understated when in fact it is not, and possibly partly because they may have a jaundiced view of the non-custodial parent generally, the fact remains that they are still of concern, not only for the Child Support Scheme but more generally.[7]

19.11 The Child Support Agency (CSA) was not able to advise the Joint Committee of the actual number of self employed parents, that is parents in receipt of business or investment income under the Scheme, nor was the CSA able to indicate the overall extent to which these parents are avoiding or minimising their child support liabilities.

19.12 As highlighted by some of the submissions above, a self employed person may conduct their business either under their own name (as a sole trader), in partnership with someone else, or the business may be owned by a trust or a private company which that person controls. Table 19.1 sets out the number of these business structures in the general population in 1991-92:

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6 Transcript of Evidence, 30 March 1994, pp 1511–12

7 CSEAG, **Child Support in Australia**, Vol 1, p 387

Table 19.1 Number of Sole Traders, Partnerships, Trusts and Private Companies in 1991–92

Sole traders	734,929
Partnerships	539,993
Trusts	300,320
Private Companies	364,540
TOTAL	1,939,782

Source Australian Taxation Office, ***Taxation Statistics 1991–92***

19.13 The total number of these business structures (1,939,782) represents approximately 20 per cent of the total number of taxpayers in Australia in 1991-92.[8] A similar percentage of these business structures could be expected in the CSA's caseload under the Child Support Scheme. The Joint Committee considers that the CSA should undertake research to identify the precise number of parents under the Scheme who receive income from each of these business structures and the extent of child support minimisation by these parents. Only then will the CSA be in a position to develop strategies which can efficiently respond to child support minimisation by parents who receive business and investment income. This aspect is discussed in detail later in this Chapter.

19.14 The Joint Committee recommends that:

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the Child Support Agency undertakes research to identify the number of parents under the Child Support Scheme who receive business or investment income and the extent to which these parents minimise their child support liabilities.

8 The total number of taxpayers in Australia in 1991–92 was 9,288,826 per Table 1.12, in Australian Taxation Office, **Taxation Statistics 1991–92**.

The Consultative Group's Guiding Principles

19.15 The Consultative Group formed the view that the stated objectives of the Scheme[9] dictated the following principles for the determination of the appropriate income base for child support purposes:

- in applying the formula regard should be had to the income and recurrent financial resources of the parties;
- there should be a discretion to depart from the formula where it would be inequitable not to do so by reason of the financial resources of the parties not accounted for as income and recurrent financial resources;
- the formula should apply to income without deduction of income tax;
- for administrative assessment purposes the legislative definition of income should be detailed and comprehensive;
- that definition should be based on the definition of 'taxable income'. The definition should be reviewed in light in any future modification of that concept. In particular, any changes to the income tax law that leads to a more comprehensive business tax base should be included in the definition of income for administrative assessment purposes; and
- that definition will need to be modified for child support purposes particularly in regard to income derived from business or investments so that:

  (a) administrative assessment is commensurate with the level of recurrent financial resources in fact available to a parent to provide support to children; and

  (b) in those classes of cases where the level of recurrent financial resources of a parent is likely to be contentious, it is the parent whose financial resources are in question, who has the onus of challenging the administrative assessment.[10]

9 See Chapter 4

10 CSCGR, **Child Support: Formula for Australia**, p 94

19.16 The Joint Committee notes that whilst amendments have occurred to the definition of 'taxable income' under the *Income Tax Assessment Act 1936* since the Consultative Group's report, its recommendations concerning the modification of this definition for child support purposes[11] are still generally applicable today. These recommendations are discussed below.

The Consultative Group's Recommendations

Capital Gains

19.17 The Consultative Group recommended that capital gains should be taken into account for child support purposes on the same basis as for income tax purposes. The income tax legislation includes capital gains as income only when they are realised with the gain included in the year in which this realisation occurred. In addition, capital losses are only deductable against capital gains.

19.18 The Consultative Group considered the option of taking capital gains into account as they accrued. The advantage of this approach was that it would achieve 'an accurate measure of a parent's capacity to support children in many cases because a parent could realise the gain or borrow against the asset to support children'.[12] However, the Consultative Group rejected this option on the basis that its advantages would be outweighed by its complexity and intrusiveness as it would impose very extensive record keeping requirements on parents in addition to those already required for tax purposes and would require annual valuations of property.

19.19 The Joint Committee agrees with the Consultative Group's view that the current taxation treatment of capital gains and losses is satisfactory for the purposes of determining the child support income base.

11 ibid. Chapter 16

12 ibid. p 97

Exempt Income

19.20 The Consultative Group recommended that exempt income under the *Income Tax Assessment Act 1936* should be included in the definition of the child support income base and the expenses incurred in deriving that income should be deductable in the same way as expenses occurred in deriving assessable income, subject to the following exclusions:

- Family Allowance and Child Disability Allowance; and
- where no allowance is made in the non custodial parent's self support component for his or her support obligations to a step child, Family Allowance Supplement and the child component of other income tested pensions and benefits received for the support of that child.[13]

19.21 The Consultative Group noted that Family Allowance (now Basic Family Payment) and Child Disability Allowance are recognised as being a contribution towards the additional costs borne by families supporting children and that their purpose is to accord some horizontal equity in the tax transfer system. Accordingly, inclusion of such payments in the definition of income for child support purposes would effectively redistribute those funds and undermine the objective of their payment.[14] However, Family Allowance Supplement (now Additional Family Payment) and the child component of other income tested pensions and benefits are paid to provide for the day to day needs of the children in the care and control of the recipient and his or her partner. Accordingly, to exclude these payments from the income base for child support purposes would effectively provide for the support of these dependants a second time as the existing formula already provides that an allowance be made for the self support needs of the non custodial parent and his or her dependants prior to application of child support.[15]

19.22 The Consultative Group's general rationale for including all exempt income was that, regardless of its source, it increases the capacity of a parent to support children. Consequently, 'the policy reasons for exempting most exempt income from tax do not apply to child support'.[16] However, this view was rejected in the subsequent child support legislation so that income exempt under the *Income Tax Assessment Act*

13 ibid. p 99
14 ibid.
15 ibid.
16 ibid.

1936 retained its exempt status for child support purposes. These exempt income items are summarised in Appendix 17.

19.23 The Joint Committee is concerned that the inclusion of exempt income in the child support income base would introduce significant administrative costs within the CSA and the Australian Taxation Office and would also dramatically increase the complexity of determining the liable parent's child support income base. Accordingly, the Joint Committee disagrees with the Consultative Group's approach and considers that income exempt under the *Income Tax Assessment Act 1936* should continue to be excluded from the child support income base.

Fringe Benefits

19.24 The Consultative Group recommended that fringe benefits should not be included in the definition of income for formula assessment purposes despite its view that fringe benefits would generally enhance the capacity of a parent to support children and therefore should, in principle, be included. The reason for this was that the Australian Taxation Office advised the Consultative Group that it could see no practical way of taking fringe benefits into account for child support purposes.[17]

19.25 However, the Consultative Group also recommended that particular regard should be had to the level of avoidance of child support obligations by the use of fringe benefits in monitoring the effect of the introduction of the formula. It also noted that avoidance of formula assessment by the self employed may occur if this recommendation was adopted without implementation of the Consultative Group's recommendations with regard to income splitting.[18] Given that the Consultative Group's recommendations in regard to income splitting have not been implemented, the Joint Committee is concerned that self employed parents may be purposefully or inadvertently minimising their child support liability through the use of fringe benefits. The submissions referred to above indicate that this is a problem under the Scheme.

19.26 In addition, recruitment is often on the basis of a salary package rather than a cash amount represented by the salary only. Salary packaging provides cost benefits for both employers and employees when compared to the receipt of the full salary package in cash only despite the Government's recent action to remove this incentive through amendments to the fringe benefits tax legislation. Consequently, a parent who chooses

17 ibid. p 100

18 ibid. p 101

to increase the fringe benefit component of their salary package for whatever reason will reduce their child support liability. The Joint Committee is concerned that parents may be purposefully or inadvertently avoiding their child support obligations in this manner.

19.27 One custodial parent submitted the following to the Joint Committee:

> Income to include fringe benefits
>
> - why doesn't the formula take his entire salary package into account? His salary is about $67,000; his package is worth $96,000. That free car is worth a lot. I have to pay for mine. He has much more disposable income in effect as he has virtually no car expenses.[19]

19.28 The avoidance or minimisation of child support liabilities through the use of fringe benefits could be overcome by simply adding any fringe benefits back to the child support income base. However, there are a number of potential problems with this approach. The CSA advised the Joint Committee that the Australian Taxation Office only requires employers to provide aggregated information on the fringe benefits paid by them to their employees. While employers may retain records from which they can attribute fringe benefits to individual employees, they are not currently required to account for the amount of fringe benefits received by individual employees. To universally add back fringe benefits received by parents into their child support income would require the CSA to contact the employers of each client to obtain the value of fringe benefits they receive. Employers would then be required either to introduce new record keeping and accounting systems to account for fringe benefits on an individual employee basis, or examine all fringe benefit records on a case by case basis. This would introduce significant administrative costs for both the CSA and employers.

19.29 There may also be additional equity problems associated with adding back fringe benefits into the child support income base. A large number of employees receive some form of fringe benefit, but not all employees have control over how much fringe benefit they receive or in what form they receive it. In addition, because fringe benefits tax is a tax borne by employers, it can be recognised as a business expense with the employer receiving benefits which may be in excess of the costs incurred. Consequently, the amount of an employer's fringe benefits tax liability is not necessarily the same as the amount of benefit received by an employee. Furthermore, the receipt of fringe benefits from an employer

19 Submission No 4899

may also place an employee under a financial obligation which may significantly reduce the value of benefits to that employee.

19.30 An additional problem with universally adding back fringe benefits is that it assumes that fringe benefits provide an increased capacity to pay child support which may not always be the case. Even employees who have arranged salary packages with employers may not be free to re-negotiate an agreed employment contract. Changing the basis of assessment to include fringe benefits received in a previously negotiated salary package could potentially leave a parent without sufficient means of self support because it assumes that parent has money available from the benefit received which, in reality, may not be the case.

19.31 There are some alternatives to requiring the CSA to obtain details of fringe benefits received from employers for child support assessment purposes. One option is to allow a person to apply to the Child Support Review Office (CSRO) for a departure from the formula assessment on the basis that a parent's actual capacity to pay is either larger or smaller due to the presence of fringe benefits. The CSA advised the Joint Committee that fringe benefits are currently considered in this manner by the child support review office:

> A review officer will determine, given the circumstances of each case, whether such packaging [of salaries] results in an unjust or inequitable determination of the level of financial support to be provided by the liable parent. In appropriate cases a review officer could therefore "add back" the value of fringe benefits to the liable parent, and thus increase the child support income of the parent to a level which is regarded as just and equitable given that parent's real capacity to pay.[20]

19.32 The Joint Committee is concerned that many parents who benefit from significant fringe benefits through reduced child support liabilities may not be the subject of departure applications. This may occur for a range of reasons including the situation where the disadvantaged parent is simply unaware of the existence of the fringe benefits. Consequently, the Joint Committee considers that there should be a more direct way of including fringe benefits in the child support income base and that this should be in addition to the review possible under the existing departure provisions.

20 CSA letter dated 13 May 1994

19.33 A direct way of including fringe benefits in the child support income base is to request parents to provide full particulars of fringe benefits received to the CSA. The Joint Committee notes that fringe benefits are currently taken into account in this manner in income tests to determine a person's eligibility for Austudy and Family Payments. In the case of Austudy,[21] the application form requires the value of fringe benefits from cars, housing, low interest loans, school fees and private health insurance to be included if their combined value exceeds $1,000 per annum. Similarly, the social security application form for Family Payments[22] requires the value of fringe benefits to be specified. However, unlike Austudy and Family Payments, each parent is currently not required to provide the CSA with any fringe benefits information. Therefore, this case information would have to be requested by the CSA. The Joint Committee considers that this information would need to be provided quickly, preferably within a set period, by both parents so that a formula assessment is not unduly delayed.

19.34 The Joint Committee also notes that problems will arise in verifying whether the fringe benefits information provided by a person is correct as fringe benefits tax is a tax paid by employers and it is they, not the employees, who would have details of the value of the fringe benefits. Similar problems apply for both Austudy and Family Payments applications. The reliability of the information provided could be verified by spot checks or through the recommended audit based administrative process discussed below. The Child Support Registrar could also exercise his power to request information from employers where appropriate.

19.35 The Joint Committee recommends that:

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fringe benefits be added to the existing child support income base for both parents.

21 Introduced from 1 January 1994 by Statutory Rules No 367 of 1993 pursuant to the *Student Assistance Act 1973*

22 Introduced from 1 January 1994 by the *Social Security Legislation Amendment Act (No 2) 1993*

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both parents be required, within a set period, to provide the Child Support Agency with full details of all fringe benefits received from an employer.

Superannuation Contributions

19.36 The Consultative Group recommended that superannuation contributions be allowed as deductions for child support purposes to the same extent as they are allowed as deductions for income tax purposes. The Joint Committee considers that this recommendation is still generally applicable under the current superannuation regime but is concerned that potential exists for a parent to minimise his/her child support liability by making excessive superannuation contributions. The ability of a parent to minimise his/her child support liability in this way will vary according to whether that parent is an employee with employer superannuation support, an employee without employer superannuation support or self employed.

Employees with Employer Superannuation Support

19.37 One way in which employees may minimise their child support liability is by sacrificing their salary in favour of employer financed superannuation contributions. This mechanism involves a parent requesting their employer to divert a percentage of his/her income to a superannuation fund before the imposition of income tax. In other words these employer financed superannuation contributions do not form part of that parent's taxable income and therefore do not form part of that parent's existing child support income base.

19.38 The *Superannuation Guarantee (Administration) Act 1992* requires employers to contribute a prescribed minimum percentage of their employees salaries to a complying superannuation fund. It applies to all employers in respect of their full-time, part-time and casual employees, subject to certain restricted exceptions. If an employer fails to fully contribute the required minimum percentage then that employer is liable to pay the superannuation guarantee charge which is equal to the amount of the shortfall plus an interest component and an administrative fee. The shortfall component of the superannuation guarantee charge is then redistributed by the Australian Taxation Office to a complying superannuation fund for the benefit of those employees in respect of

whom the charge was paid. However, the superannuation guarantee charge is not tax deductable while employer contributions to a complying superannuation fund for the benefit of employees are generally tax deductable. In this way the superannuation guarantee charge acts as a penalty for non complying employers.

19.39 The prescribed levels of superannuation guarantee charge contributions over the next ten years are set out in Table 19.2:

Table 19.2 Prescribed Superannuation Guarantee Charge[23]

	Employer's Payroll $1m or Less Per cent	Employer's Payroll More than $1m Per cent
1993–1994	3	5
1994–1995	4	5
1995–1996	5	6
1996–1997	6	6
1997–1998	6	6
1998–1999	7	7
1999–2000	7	7
2000–2001	8	8
2001–2002	8	8
2002–2003 and subsequent years	9	9

19.40 From 1994/95, the total amount of deductions available to an employer for contributions to a superannuation fund for the benefit of an employee will be limited according to the age of the employee. The age-based employee deduction limits for 1994/95 are set out in Table 19.3:

Table 19.3 Age Based Superannuation Deduction Limits 1994/95

Age of Employee in Years	Deduction Limit $
Under 35	9,000
35 to 49	25,000
50 & over	62,000

23 *Superannuation Guarantee (Administration) Act 1992*

19.41 These age based limits are indexed for subsequent years. Furthermore, an employer who employs 10 or more employees during an income year may instead elect to use a standard contribution limit for all employees. The standard contribution limit for 1994/95 is $25,000 (indexed for subsequent years) multiplied by the number of 'full-year employee positions' of the employer. Consequently, an employee may be able to divert significantly more of his/her salary towards superannuation than the required percentage under the superannuation guarantee charge (set out in Table 19.2) thereby further avoiding or minimising his/her child support liability.

19.42 The problem of parents avoiding or minimising their child support liabilities by making excessive superannuation contributions may be dealt with by:

- adding back all superannuation contributions to the income base for child support purposes; or
- setting a maximum limit for some or all superannuation contributions so that any amounts contributed over that threshold would be added back to the child support income base.

19.43 The Joint Committee notes that superannuation contributions made by employers for employees use a range of income bases for determining the level of these contributions. The contribution base for employees may be specified in award, through a trust deed, or in the *Superannuation Guarantee Charge Act 1992*. In almost all cases, the basis for contributions does not relate directly to the income earned by an individual employee and commonly exclude a number of items included in taxable income. Other contribution bases relate to some global measure of profitability, identified classes of employees, or to some other unrelated item which was negotiated as an acceptable basis for superannuation contributions in industry agreements.

19.44 To complicate this issue further, there are two main types of superannuation fund - an accumulation fund and a defined benefit fund. Accumulation funds require that specified amounts be contributed for the benefit of individual fund members. Employers contributing towards an accumulation fund typically contribute a certain percentage of a contribution base for each specified member. Defined benefit funds require an employer to meet its obligation to pay a defined benefit upon retirement, or some other event.

19.45 Consequently, employers do not contribute into defined benefit funds for individual employees, but maintain an actuarially determined benefit for groups of employees within the company. Furthermore, employers are not necessarily required to contribute anything towards a defined benefit fund unless the resources available within a particular fund are insufficient to provide the defined benefit for all members. The amount contributed by an employer in any one year also depends upon the performance of that fund in previous years. Therefore, in any one period, employers may not contribute anything towards defined benefits funds while, potentially, the benefits available in that fund may increase. The Joint Committee considers that this would make the option of adding back superannuation contributions problematic.

19.46 An additional complicating factor with defined benefit funds is that, during periods of economic growth, large surpluses may accumulate within these funds because of fund performance and staff leaving employment without meeting defined minimum employment periods for obtaining benefits from the fund. Whether any benefits are available to employees from surpluses in defined benefits funds will depend upon the trust deed and/or the actions of the employer. Many employers have been known to make use of these surpluses for re-investment in the company while others have used these surpluses to increase the defined benefits for their employees. This action could provide substantial notional benefits to employees which would also be difficult to quantify for add back purposes.

19.47 The CSA advised the Joint Committee that the CSRO may, when dealing with an application for a departure from a formula assessment, vary the formula assessment where the effect of significant superannuation contributions made by an employer on behalf of a liable parent is to reduce the child support liability to an unjust or inequitable level. In making decisions about departures from formula assessments, review officers deal with each case on its own merits within the bounds of the *Child Support Assessment (Act) 1989* and subject to the guidance provided by reported and unreported decisions of the Family Court.[24] However, no explicit threshold or benchmark exists which determines when employer financed superannuation contributions should be considered excessive by review officers.

24 CSA letter dated 13 May 1994

19.48 The Joint Committee considers that a specific threshold should be introduced so that any superannuation contributions in excess of this threshold are deemed to be excessive. However, given the potential problems in estimating superannuation contributions in certain funds, the Joint Committee considers that the level of superannuation contributions should continue to be dealt with on an individual basis as a departure from the formula assessment rather than as an add back to the child support income base at the formula assessment stage.

19.49 The Joint Committee considers that an appropriate threshold for employer financed superannuation contributions is the Government's 9 per cent superannuation guarantee charge target. Consequently, any employer financed superannuation contributions in excess of 9 per cent of a parent's taxable income should be treated as excessive and added back to that parent's child support income base in any review of that parent's child support liability by the CSRO.

19.50 The Joint Committee notes that employees who receive any form of employer superannuation support and who also make their own contributions to a complying superannuation fund, do so from their after tax income rather than their before tax income. These employee contributions are not tax deductible but the employee is entitled to a tax rebate of up to $100.00 for personal contributions made to a complying superannuation fund, provided the employee's assessable income (not taxable income) does not exceed $31,000 per annum. This means that these superannuation contributions do not affect a parent's taxable income. Therefore a parent cannot reduce their child support liability by making excessive employee superannuation contributions in these circumstances.

19.51 Consequently, the Joint Committee considers that it would be inequitable to apply this 9 per cent threshold to employee superannuation contributions where the employees also receive any form of employer superannuation support. The Joint Committee notes that this may need to be reassessed if the Government introduces compulsory employee contributions in the future.

19.52 The Joint Committee recommends that:

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employer financed superannuation contributions in excess of 9 per cent of a parent's taxable income be added back to that parent's child support income base in any review of that parent's child support liability by the Child Support Registrar.

Employees Without Employer Superannuation Support and the Self Employed

19.53 Those employees who receive no employer superannuation support are specified by the *Superannuation Guarantee (Administration) Act 1992* as exceptions to the application of the superannuation guarantee charge. They are:

- employees aged 65 and over;[25]
- non-resident employees paid for work done outside Australia;[26]
- resident employees employed by non-resident employers for work done outside Australia;[27]
- employees holding a class 413 (executive (overseas)) visa or entry permit under the *Migration (1993) Regulations*;[28]
- employees receiving salary or wages under the Commonwealth Government Community Development Employment Program;[29]
- employees receiving salary or wages of less than $450 in a month (determined on the basis of salary or wages actually paid to the employee in the month);[30] and
- part-time employees under 18 years of age.[31]

25 s. 27(1)(a) *Superannuation Guarantee (Administration) Act 1992*
26 s. 27(1)(b) *Superannuation Guarantee (Administration) Act 1992*
27 s. 27(1)(c) *Superannuation Guarantee (Administration) Act 1992*
28 s. 27(1)(d) *Superannuation Guarantee (Administration) Act 1992*
29 s. 27(1)(e) *Superannuation Guarantee (Administration) Act 1992*
30 s. 27(2)(a) *Superannuation Guarantee (Administration) Act 1992*
31 s. 28 *Superannuation Guarantee (Administration) Act 1992*

19.54 The number of employees without employer superannuation support is likely to be very small. They are in the same position as self employed persons in so far as the treatment of their superannuation contributions is concerned. Where self employed persons and employees without any employer superannuation support make contributions to superannuation funds, these contributions are from after tax income rather than before tax income which is the case for employer financed contributions. Both self employed persons and employees without any employer superannuation support are entitled to a tax deduction for their contributions to a complying superannuation fund under section 82AAT of the *Income Tax Assessment Act 1936*. From 1994/95, a tax deduction is allowed for contributions of up to $3,000 plus 75 per cent of the excess of contributions over $3,000, up to that person's age based limit as set out in Table 19.3 above.

19.55 A person who receives only small amounts of employer superannuation support may also be eligible for the same deduction as a wholly self employed person for personal superannuation contributions if he or she comes within the meaning of 'substantially self employed person'. To qualify, the person's assessable income from employment in respect of which employer financed superannuation support is provided must be less than 10 per cent of the person's total assessable income (not taxable income).

19.56 The Joint Committee notes that tax deductions reduce a person's taxable income by the amount of the deduction. Consequently, the potential exists for a parent who is either an employee without employer superannuation support, substantially self employed or self employed to obtain substantial tax deductions by making substantial contributions to a superannuation fund thereby avoiding or minimising their child support liability. The Joint Committee considers that the 9 per cent threshold recommended for employees with employer superannuation support should apply in these circumstances so that any superannuation contributions in excess of 9 per cent of a parents' taxable income are added back to that parent's taxable income to determine the relevant child support income base. The Joint Committee considers that, for the reasons outlined above, this should only occur in a review of that parent's child support liability by the CSRO.

19.57 The Joint Committee recommends that:

Recommendation 146

any superannuation contributions by a parent, who is either an employee without any employer superannuation support, substantially self employed or self employed, which exceed 9 per cent of that parent's taxable income be added back to that parent's child support income base in any review of that parent's child support liability by the Child Support Registrar.

Termination Payments

19.58 Termination payments are treated separately within the income tax system as eligible termination payments or non-eligible termination payments. The first category includes:

- a payment from a superannuation fund other than pension payments and certain other exceptions;
- a payment in commutation of a pension or annuity to a lump sum;
- a payment under an employment contract or other severance payment; and
- a payment for unused sick leave.

19.59 The Consultative Group recommended that these eligible termination payments should be generally included as income for administrative assessment purposes to the extent that they are included as assessable income for tax purposes.[32]

19.60 The second category, non-eligible termination payments, includes:

- annuities;
- payments in lieu of accumulated annual and long service leave;
- most capital compensation payments for personal injury;
- capital sums paid under a legally enforceable restraint of trade contract; and
- some superannuation payments.

32 CSCGR, op.cit. p 104

19.61 The Consultative Group recommended that each of these payments be treated in the same fashion as for income tax purposes except payments made in lieu of accumulated long service leave. Currently long service leave payments are subject to varying levels of taxation depending upon which period they relate to as a result of historical factors and transitional problems following changes in the taxation system. The Consultative Group recommended that the whole of the payment in lieu of long service leave be included in the income base for child support purposes as this best reflects the parents capacity to pay due to the fact that employers already keep records that make inclusion of the whole payment feasible. This recommendation was not implemented by the Government. The Joint Committee agrees with the Government's response and considers that the current taxation treatment of termination payments is satisfactory for child support income base calculation purposes.

Income Splitting

19.62 Under Division 6 of the *Family Law Act 1975* the Court, in determining the financial contribution or respective financial contributions towards the maintenance of a child that should be made by a party or parties to proceedings, must take into account (in addition to the general statement of objectives and duties of parents to maintain their children specified in sections 66A and 66B of the *Family Law Act 1975*) the following matters only:

- the income, earning capacity, property and financial resources of the party or each of those parties;
- the commitments of the party or each of those parties that are necessary to enable the party to support:

  (a) himself or herself;

  (b) any other child or another person that the person has a duty to maintain;

- the direct and indirect costs incurred by the parent or other person who has the custody of the child in providing care for the child; and
- any special circumstances which, if not taken into account in the particular case, will result in injustice or undue hardship to any person.[33]

33 s. 66E(1) *Family Law Act 1975*

19.63 Furthermore, in taking into account the income, earning capacity, property and financial resources of a party to the proceedings, the Court shall have regard to the capacity of the party to earn and derive income, including any assets, under the control of or held for the benefit of the party that do not produce but are capable of producing income.[34] The Joint Committee considers it anomalous that in a Stage 1 Court proceeding is required to take these matters into account but a Stage 2 formula assessment ignores these matters.

19.64 The Consultative Group also identified this problem and recommended that special modifications to taxable income be introduced to deal with:

- trusts;
- private companies;
- partnerships; and
- assignments of income.[35]

19.65 The Consultative Group stated that special rules are required in this area because:

- under the income tax system each person and entity that receives split income is liable to tax on it (often at the top marginal rate). Under administrative assessment of child support only the income, however defined, of each parent of a child will be relevant. Thus income splitting will often be ineffective or have only a marginal effect in reducing the total incidence of taxation. On the other hand without special rules income splitting could prevent administrative assessment taking into account almost all income derived from business or investments;
- in the context of child support there will often be strong emotional incentives to avoid effective administrative assessment. For example, a non-custodial parent might choose to establish a trust to conduct his or her business and to distribute the profits of it to his or her current spouse and children rather than continue to receive the income and thereby be liable to contribute part of that money to support the children of a previous relationship; and

34 s. 66E(2) *Family Law Act 1975*

35 CSCGR, op.cit. p 106

- it is not possible to construct a set of rules with which to modify the concept of 'taxable income' which will accurately distinguish in every case between those income splitting arrangements that are genuine commercial transactions and those which in fact leave the parent whose income is split with access to a higher level of financial resources than his or her 'income'. It is desirable in those classes of case where the rules of administrative assessment will not accurately distinguish genuine commercial transactions from others in all cases, that the parent whose income appears to have been split should have the onus of challenging the administrative assessment in court.[36]

Trusts

19.66 The Consultative Group recommended that where a trust effectively controlled by a parent derives income from a business and / or investments and the beneficiaries of that trust include that parent, immediate family members of that parent and / or charity:

- the income of the trust and the expenditures of the trust should be imputed to the parent as his or her income and expenditures for administrative assessment purposes; and
- income received by the spouse and immediate family members of the parent, by way of salary or wages from the trust, should be imputed to the parent as his or her income.[37]

19.67 The Consultative Group noted that this treatment of trust income mirrors as closely as possible the income tax treatment of trusts.[38] In general terms, the *Income Tax Assessment Act 1936* taxes the beneficiaries who are ultimately entitled to receive the trust income. The trustee is generally taxed only on the balance (if any) to which, for a variety of reasons no beneficiary is immediately entitled, or to which a beneficiary is immediately entitled but cannot immediately receive because of some legal incapacity such as infancy or insanity. Special anti-avoidance provisions also apply to ensure that this taxation treatment is often at the top marginal rate of tax. However, because the taxable income of the parents only will be relevant to the calculation of the child support liability, the Consultative Group concluded that it was necessary to modify taxable income in the manner suggested to obtain 'as

36 ibid.
37 ibid. p 107
38 ibid. p 108

comprehensive a treatment of trust income for administrative assessment purposes as is achieved for tax purposes'.[39]

19.68 The Consultative Group noted that this approach would place the onus of challenging the assessment on the parent who effectively controls the trust. Accordingly, in those cases of genuine commercial transactions or where the full amount of the trust income derived is in fact not available to the parent controlling the trust, the circumstances are open to review at the election of that parent. This onus reflects the reality that the full facts in any particular case will generally only be within the knowledge of the parent in control of the trust.

Private Companies

19.69 The Consultative Group recommended that where a company could be effectively controlled by a parent whether alone or in concert with other members of his or her immediate family:

- the income and expenditures of that company should be imputed to such a parent as income and expenditures in the same proportion as the distribution of dividends that parent could achieve to him or her self and immediate family members bears to the total dividends of the company that might be distributed; and
- the income received by the parent's spouse or immediate family members by way of salary, wages or directors' fees from such a company should be imputed to the parent as his or her income.[40]

19.70 The Consultative Group noted that:

> Companies which a parent and his or her immediate family are capable of controlling are in a analogous position to trusts. It will be more likely than not that income of such a company will be available to the parent for the support of children. It is also an area in which the income tax system attempts to achieve a comprehensive taxation of income whether it is retained by the company or distributed by way of dividends, director's fees or salaries.[41]

39 ibid.

40 ibid. p 109

41 ibid.

19.71 The Consultative Group also recommended that in determining the distribution of dividends that the parent could achieve it should be assumed that the parent will act in concert with his or her immediate family members.[42] If this resulted in an inappropriate measure of the financial resources available to the parent in control of the company, that parent would have the onus of challenging the assessment rather than the other parent. The Consultative Group believed that this onus reflected reality as the full facts in any particular case will generally only be within the knowledge of the parent in control of the company.

Partnerships

19.72 The Consultative Group recommended that where a parent is in partnership with a current spouse the partnership income and expenditure should be imputed to the parent as his or her income. Whilst acknowledging that there are numerous genuine business partnerships between spouses, the Consultative Group concluded that it was necessary that administrative assessment should operate to place the onus of commencing court proceedings in these cases on the parent who asserts that the partnership is real as it will often be only that parent who knows the true position. In those circumstances where the partnership does have a genuine commercial basis then the review process should rectify this injustice.[43]

Assignments

19.73 The Consultative Group recommended that assignments of income by a parent should be disregarded where:

- the assignment is not made for adequate valuable consideration which will be received by the parent within the period that the child support liability or entitlement is likely to remain; or
- the assignment is for the benefit of the parent or a current spouse of the parent.[44]

42 ibid.

43 ibid. p 110

44 ibid. p 111

19.74 The Consultative Group's rationale for this recommendation was that, in the absence of any modification to the definition of taxable income, such assignments of income would be completely effective in avoiding inclusion in the parent's child support income base. Consequently, the resulting child support formula assessment would not take these assignments of income into account.[45]

Expenditures and Liabilities

19.75 The Consultative Group noted that the fundamental principle of child support set out in section 66B(2) of the *Family Law Act 1975* namely, that the liability to support children takes priority over all commitments of the parent other than commitments necessary to enable the parent to support himself or herself and any other children or another person that the parent has a duty to maintain, is relevant but problematic when determining the level of financial resources available to a parent to support children.[46] Whilst it is clear that in family law not every expenditure or liability of a business nature that qualifies as a deduction for income tax purposes will be committed as a 'deduction' in determining a parent's income, the decision as to whether or not 'a particular deduction of a business nature ought to be admitted in the family law context will often be a matter of fine judgement and degree'.[47]

19.76 Furthermore, this approach must also be capable of application by officers of the CSA. As a result the Consultative Group recommended that expenditure incurred in the derivation (by the parent or by an entity whose income is imputed to the parent) of income which is included in the income of the parent for administrative assessment purposes should be deductable in the same way as under income tax law subject to the following limited qualifications:

- capital investment expenditures;
- expenditures of an incentive or private nature;
- superannuation contributions;
- depreciation, expenses of leasing and interest payments;
- prior year losses;
- capital losses; and

45 ibid.
46 ibid. p 113
47 ibid.

- losses generated by business or investments.

Capital Investment Expenditures and Expenditures of an Incentive or Private Nature

19.77 The Consultative Group identified a number of special deductions of expenditure of a capital nature available under the *Income Tax Assessment Act 1936*[48] which should not be permitted for child support purposes because the duty to support children must take priority over a parent's enhancement of the worth of his or her business.[49] The only exception to this rule is where this expenditure would have qualified as a deduction under the other rules set out directly below (for example limited depreciation on capital equipment).

19.78 Furthermore, the taxation system allows some deductions as an incentive to make particular types of investment or donations. For example, donations to charities are tax deductable.[50] The Consultative Group considered such expenditures to be of a lower priority than the duty to support children and should therefore be excluded for child support purposes.[51]

Superannuation Contributions

19.79 The Consultative Group's treatment of superannuation contributions has been dealt with earlier in this Chapter.

Depreciation, Expenses of Leasing and Interest Payments

19.80 The Consultative Group recommended that the definition of the child support income base should include restrictions upon the deduction of expenses associated with the capitalisation of a business and investments as the level of these expenses is discretionary. The rationale behind this recommendation was to avoid creating an incentive for a parent to capitalise a business during the years of child support liability thereby enhancing that parent's future wealth at the expense of the level of child support paid to that parent's children.[52]

48 ibid. pp 122–23
49 ibid. p 114
50 ibid. p 124
51 ibid. p 114
52 ibid. p 115

19.81 The Consultative Group stated that it had 'neither the resources or expertise to advise on the precise rules to apply in this area'[53] but suggested a limitation on capitalisation expenses could be set as a percentage of the income of that parent, that business or from the relevant investments taken into account for administrative purposes. The Consultative Group suggested that the percentage could be set either as a norm of deductions of this nature in this industry of which the income is derived or as an arbitrary figure applying for all parents affected by the Scheme.[54]

19.82 The Consultative Group noted that such rules would have the effect of:

- avoiding blatant avoidance of administrative assessment;
- achieving a reasonably accurate measure of the capacity of each parent to support children, given the priority of child support obligations; and
- in those cases where there are good commercial reasons for a parent to have, for example, geared his or her business or investments more highly than the norm, placing the onus on that parent to commence court proceedings on the matter.[55]

19.83 The Consultative Group noted that if no limitations existed in this area then the result would be to place the obligation to support children lower in priority than to capitalise a business.[56]

19.84 The CSA advised the Joint Committee that this option, whilst conceptually simple, is administratively complex. In particular, it may not be possible to derive rate of return benchmarks on an industry specific basis which would accurately reflect the likely situation facing any one parent because:

- investment cycles are not identical for all businesses within an industry;
- identical activities can be conducted by two businesses, one activity may be essential for the efficient conduct of that business, while elsewhere the same activity could be conducted solely on the basis of minimising income. Consequently, it would not be possible to find a formulaic method of differentiation between valid business activities and activities attributable to income minimisation;
- in practice, rates of return will be affected by the accounting procedures used in a particular business. There are a number of accounting

53 ibid. p 116
54 ibid.
55 ibid.
56 ibid.

standards which can be adopted by businesses and, for this measure to be effective, it may require businesses to adopt a particular standard for child support purposes which differs significantly from the current practice used for taxation purposes. This could impose significant burdens on legitimate business enterprises;

- rates of return are affected by a number of external and internal factors which do not apply universally across a particular industry - for example, they are affected by demographic and management related influences; and
- many businesses do not operate solely within any one industry, unless this industry is defined at a very aggregated level, and rates of return will differ for each of the business activities conducted - as an example, many wool producers also manage cattle or others produce to protect themselves from fluctuating returns from wool production.[57]

19.85 These difficulties are complicated when a new partner brings his or her own assets into a relationship and these are integrated into business activity. If benchmarks for industry specific rates of return cannot be accurately determined, this could also result in the large majority of parents with business or investment income applying each year for a review of their assessment thereby creating additional administrative workloads for the CSA.

Prior Year Losses

19.86 The Consultative Group recommended that the deduction of prior year losses should not be allowed in determining income for administrative assessment purposes.[58] Under the Income *Tax Assessment Act 1936* the opposite applies.

Capital Losses

19.87 The Consultative Group recommended that the deduction of capital losses should be limited to deduction from capital gains only.[59] This is also the current practice under the Income *Tax Assessment Act 1936.*

57 Record of meeting with CSA on 28 April 1994

58 CSCGR, op.cit. p 116

59 ibid.

Losses Generated by Business or Investments

19.88 The Consultative Group recommended that the deduction of losses incurred in any field of investment or business for taxation purposes should not be permitted for child support income base purposes.[60] The Consultative Group's rational for this recommendation was to eliminate the:

> ... significant incentive to minimise their income for child support purposes by negatively gearing businesses or investments. To permit this would not give adequate priority to child support obligations.[61]

19.89 The effect of negative gearing is best illustrated by way of a simple example. Take two non custodial parents earning identical incomes and with identical family situations. If one negatively gears an investment property then his/her taxable income is reduced by the difference between the interest cost and the income received from renting the property. As a result, his/her child support liability drops compared with that of the other non custodial parent.

19.90 The Joint Committee notes that there are often significant ongoing costs involved for a parent who negatively gears business or investments to reduce taxable income. Parents who currently negatively gear businesses or investments have legally entered into these arrangements in the knowledge that their current income is able to support the costs of the negatively geared investments and their assessed levels of child support. Adding back losses from negative gearing into their child support income could cause hardship to these parents, particularly for parents who have negatively geared liquid assets such as investment properties. If a parent does not have sufficient capacity to continue to negatively gear these investments and provide increased child support, significant costs could be incurred in the disposal of these assets.

60 ibid. p 117

61 ibid.

Problems with the Consultative Group's Approach

Amendments to the Income Tax Assessment Act 1936

19.91 The Joint Committee notes that there have been many amendments to the *Income Tax Assessment Act 1936* since the Consultative Group's report which may affect a liable parent's capacity to pay. Consequently, if the Consultative Group's rigorous approach was to be adopted the effect of each of these amendments on a liable parent's capacity to pay would also need to be assessed.

19.92 An example of how amendments to the *Income Tax Assessment Act 1936* impact upon a liable parent's capacity to pay is provided by the imputation system of company taxation introduced on 1 July 1987. This system applies to dividends paid by Australian resident companies to resident individual shareholders. The effect of this system is that tax paid at the company level will be imputed, or allocated, to such shareholders by means of imputation credits attached to dividends they receive. The amount of the imputation credit attached to a dividend is included, together with the dividend itself, in the assessable income of the individual who is then entitled to a rebate of tax equal to the amount included in their income.

19.93 This 'grossing-up' of the individuals dividend artificially inflates his or her taxable income. If the shareholder was a liable parent then his or her child support liability would also be artificially inflated because there is no compensating adjustment as 'taxable income' does not recognise rebates which impact upon on a later stage of the income taxation assessment system. Whilst this could be recognised by modifying the definition of 'taxable income' for child support purposes by excluding this 'grossing-up' factor such a change would introduce further complexity into the calculation of the income base for child support purposes and may further complicate its application by officers of the CSA. Furthermore, the likely impact of this change in terms of increased child support payments would in most cases be minimal and must be balanced against the increased administrative costs which would result.

19.94 The Consultative Group's approach would also require continuous monitoring of future amendments to the Income *Tax Assessment Act 1936.* A pertinent example is the recently announced childcare cash rebate due to start on 1 July 1994. The likely result of this approach is that the calculation of the child support income base would become more complex

and arguably more arbitrary as time progressed. The administration of the Scheme by the CSA would also become more difficult as a result.

19.95 However, the Joint Committee notes that CSEAG in its December 1991 report entitled, **Child Support in Australia**, concluded that the difficulties identified by the Consultative Group with the use of taxable income as the child support income base still remain and that further consideration should be given to broadening the child support income base beyond taxable income, notwithstanding the additional administrative burden that might result.[62] The child support income base for parents who are pay as you earn taxpayers and parents in receipt of business and investment income are dealt with separately below.

Pay as You Earn Taxpayers

19.96 The Joint Committee agrees with the Consultative Group's view that, subject to slight modifications, the use of taxable income as the child support income base is satisfactory for pay as you earn taxpayers. As discussed above, the Joint Committee considers that the inclusion of fringe benefits in the child support income base is a modification which is necessary for pay as you earn taxpayers. The Joint Committee also considers that superannuation contributions in excess of a certain threshold should also be added back to the income base but only in a review of a formula assessment by a child support review officer.

19.97 The Joint Committee concedes that these modifications will make the calculation of the child support income base slightly more complex but considers this necessary in order to ensure that the potential for avoidance of child support is minimised so that parents who are pay as you earn taxpayers contribute to the support of their children according to their capacity to pay.

62 CSEAG, op.cit. pp 199–200

Parents with Business or Investment Income

19.98 Whilst the use of taxable income as the child support income base is, subject to the above modifications, satisfactory for parents who are pay as you earn taxpayers, the Joint Committee considers that taxable income does not adequately deal with taxpayers who are in receipt of business and investment income. The Consultative Group expressed a similar view:

> ... in relation to income derived from business and investments 'taxable income' without modification would not be an adequate income base. This is because of the fundamental difference between the functions of the tax income base and a child support income base. Where income from a business or investment can be derived by companies, trusts or other family members rather than by the individual who in fact has the benefit of it, different policy responses are called for in the areas of tax and child support. In the area of tax a comprehensive income base is achieved when the incidence of tax is the same regardless of who or what derives the income, as it would be if the income was derived solely by the person who, in fact, obtains the benefit of it. Child support liability however is imposed only on an individual parent. The level of that individual's liability must as far as practicable be commensurate with the level of income of which he or she in fact derives the benefit.[63]

19.99 This distinction between the treatment of income earned by a parent and income earned by a trust or company for taxation and child support purposes is best illustrated by way of a simple example. A self employed person may choose to conduct his or her business through a proprietary company of which he or she is effectively the sole beneficial owner. For income tax purposes it is not of major significance whether this person leaves the profits of the business nominally with the company or has the company distribute those profits, by way of wages, directors fees or dividends to the person. In either case tax will be collected from the company, or the person, or partially from each. In the assessment of child support however, liability will only be imposed on the parent and it will be the 'income' of the parent only which will be considered under the formula. Thus the parent in this example could legally avoid consideration of the income from the business (which is clearly part of the recurrent financial resources of that parent available for the support of

63 CSCGR, op.cit. pp 93–94

children) by leaving the profits of the business with the company unless there is a mechanism for including the company's 'income' as part of the parent's 'income' for child support purposes. The Consultative Group considered this mechanism essential in order to ensure that the primary objectives of the Scheme were met.[64]

19.100 However, the Joint Committee has serious concerns regarding the Consultative Group's recommendations in respect of parents who receive business or investment income due to the lack of discrimination between legitimate business arrangements and arrangements entered into specifically to minimise income. The mere fact that income is derived by members of a non custodial parent's immediate family from a business jointly operated by this family does not indicate minimisation or avoidance. Both people entering second relationships may enter this relationship with assets which, over time, become joint assets. The fact that these assets become jointly owned may merely reflect the fact that the risks and benefits of the activities of both parties are shared.

19.101 Similarly, wages earned from a business by members of a parent's family may be for the performance of essential business functions, and often the wages earned by members of the immediate family may be less than would be paid if an unrelated person was employed to perform the same task. Furthermore, dividends received by members of an immediate family may reflect a wider merging of assets within the new family, where the assets of the other partner have been integrated to assist in shared business activity.

19.102 The Consultative Group's approach could be expected to result in initial assessments for child support which are inequitable. This would lead to a large number of departure applications by the affected parents. Placing the onus of proof on these parents would create significant objection and appeal costs for many parents conducting legitimate business activities. It would also increase the administrative cost of the Scheme for the CSA. Furthermore, if a review of a formula assessment results in a reduction in the formula assessment the CSA would be required to recover substantial sums of overpaid child support from the custodial parent thereby causing additional hardship. Consequently, this approach may not result in a regular stream of financial support being made available to the children of these relationships.

64 ibid. p 92

19.103 Furthermore, the Consultative Group's approach of imputing all relevant business and investment income and expenses to each parent may result in the imputed capacity to pay being substantially greater than the actual capacity to pay of these parents. This may result in hardship for these parents and could threaten the long term level of support available to the parent's children by requiring short term borrowing to meet the immediate child support liability. In the worst case, this imputation could require the parent to sell income producing assets to cover this immediate child support liability, thereby also undermining longer term levels of child support.

19.104 Given that the CSA has been unable to provide the Joint Committee with any quantitative information which indicates the extent to which parents in receipt of business and investment income may be avoiding or minimising their child support liabilities, the Joint Committee is extremely reluctant to recommend measures similar to those recommended by the Consultative Group as this would dramatically increase the administrative cost and complexity of the Scheme and create large compliance costs for all of these parents when the size of the problem is not known. For these reasons the Joint Committee considers the Consultative Group's approach as not only draconian but also unworkable.

Assessing the Capacity to Pay of Parents with Business or Investment Income

Introduction

19.105 The Joint Committee considers that taxable income as defined by the *Income Tax Assessment Act 1936* should, subject to the modifications recommended above, be the starting point for assessing the capacity to pay of parents in receipt of business or investment income. In addition to this the Joint Committee considers that the Child Support Registrar should be given the power to separately assess parents with business or investment income where the capacity to pay of these parents is greater than that indicated by their taxable income. This could be achieved by:

- requiring all parents with business or investment income to lodge with the Child Support Registrar an annual statement of the income, expenses and assets of all businesses in which they hold a partial or controlling share. The Child Support Registrar could then make an assessment of child support on the basis of this annual statement; or

- implementing an administrative process within the CSA which reviewed selected parents' income, expenses and assets and, where it was found that a parent received benefits from his or her businesses or investments which were not reflected in their formula assessment, the Child Support Registrar could vary the formula assessment accordingly.

Annual Statement of Income

19.106 The option of requiring all parents with business or investment income to lodge an annual child support return with the Child Support Registrar would result in substantial compliance costs for these parents. Given that no information is currently available from the CSA on the extent to which these parents minimise their child support liabilities, the introduction of an annual return could impose significant compliance costs for many of these parents without necessarily increasing the level of child support from these parents. The CSA's administrative costs would also increase as it would have to perform the additional task of processing these annual returns. For these reasons the Joint Committee considers the introduction of annual returns for parents in receipt of business and investment income to be both too intrusive and too costly.

Child Support Agency Administrative Process

19.107 This approach would require the Child Support Registrar to exercise a wide discretionary power to make a determination to vary a child support assessment where he considers that either parent:

- obtains financial benefits from his or her employment, business and investment, or other activities which are not reflected in that parent's taxable income and are likely to provide a higher capacity to pay child support; or
- organises his or her employment, business and investment, or personal affairs to minimise current income, thereby minimising their child support liability.

19.108 The Joint Committee envisages that the implementation of this discretionary administrative approach would require the CSA to implement a targeted audit program of CSA clients (both custodial and non custodial parents) with business or investment income. This would involve the establishment of clearly defined benchmarks for comparing income and investment for a particular parent against current industry averages as a guide in assessing trust, company, partnership and other

structures for possible minimisation of income. The CSA has advised the Joint Committee that the Australian Taxation Office currently maintains this information for industries, but, at present, the reliability of this information varies. Those industries which have been recent targets of the Australian Taxation Office project-based audits have clearly defined characteristics which could be used to guide decision making.

19.109 The Joint Committee considers that a targeted, audit driven approach also addresses concerns raised over the custodian's inability to know if the non custodial parent's capacity to pay has changed due to insufficient information as the Registrar could pro-actively exercise his power to amend an assessment identified by the audit process as being an inappropriate measure of the non custodial parent's capacity to pay. The Child Support Registrar's discretionary power could also be exercised upon the request of either parent where appropriate evidence is submitted to the Child Support Registrar which shows that the parent in question has a greater capacity to pay. The Child Support Registrar could, as a preliminary step, assess the evidence against appropriate benchmarks and exercise his discretion as to whether or not a comprehensive audit of the parent is required.

19.110 This option of a selective review would minimise compliance costs within the community but at the risk of overlooking some parents on the basis of the income, expenditure and assets of their businesses. Nonetheless, the Joint Committee favours this approach as it provides a feasible mechanism to catch those parents who conduct their businesses in such a way as to minimise their child support liability (either purposefully or inadvertently) whilst minimising the impact upon those parents whose child support liabilities adequately reflect their capacities to pay. In addition, this targeted approach could be augmented by allowing the Child Support Registrar to commence a full review on a random basis. This measure should act as a further deterrent against parents structuring their financial affairs to minimise their child support liability.

Effect of Child Support Registrar's Determination

19.111 The Joint Committee envisages that a determination of the Child Support Registrar would be effective until a further determination is made by the Child Support Registrar, or a departure from an assessment is granted by the CSRO or a court operating under jurisdiction of the *Family Law Act 1975*. The determination could be increased each year by the same indexation factor used to increase taxable income for pay as you earn taxpayers.

19.112 Where the Child Support Registrar determines that a parent's child support assessment does not adequately reflect that parent's capacity to pay, the Child Support Registrar could be given the power to make a determination varying previous assessments for child support, back to a maximum of four years prior to the current assessment, or the date on which the assessment first became enforceable, whichever is the most recent, to reflect this capacity to pay. Where the Child Support Registrar makes a determination varying previous years' assessments because of the failure of a parent to accurately disclose all of the income, expenditure and assets in which he or she has a controlling or partial interest, the Child Support Registrar could be given the power to vary assessments back to a maximum of seven years prior to the current assessment. These powers are consistent with the powers of the Commissioner of Taxation for making an assessment of income tax. To avoid retrospective legislation, the Registrar could be limited to backdating the determination to the date of effect of this amendment.

19.113 When the Child Support Registrar makes a determination to vary previous years' assessments, interest could be charged on the difference between the original, or last amended, child support assessment and the varied assessment for each year at a rate equivalent to the medium term rate for Treasury bonds. The Joint Committee considers that this interest should be payable to the other parent or custodian (as appropriate) and the Child Support Registrar should be given the discretion to remit part or all of this interest if, in his opinion, it would create undue hardship for that parent. The Joint Committee considers that a satisfactory payment record should also be a relevant factor in the exercise of this discretion.

19.114 The Joint Committee considers that the introduction of this measure should not impinge upon the right of a parent to organise his or her business and investment affairs. The Child Support Registrar should be required, upon request from a parent with business or investment activities, to issue, as soon as possible, a determination varying the child support assessment for this person to enable them to conduct their future activities in an environment where they are fully aware of the extent of their future obligations to their children.

19.115 The Joint Committee wishes to emphasise that the rationale behind the targeted audit approach to the problem of assessing the capacity to pay of all parents with business or investment income is, at the end of the day, to encourage voluntary compliance by these parents. It is envisaged that the establishment of this audit mechanism, which can be triggered by either parent or the Child Support Registrar, will act as a deterrent against non-compliance by these parents. An important element in encouraging

voluntary compliance is the widespread education of what constitutes non-compliance and the consequences which result from non-compliance. The Joint Committee considers that the Child Support Registrar should adopt measures such as a system of public rulings to inform parents and their advisers of the Child Support Registrar's practice in assessing a parent's capacity to pay.

19.116 The Joint Committee recommends that:

Recommendation 147

the Child Support Registrar be given the power to make a determination varying a formula assessment for child support upon request of either parent, or of the Child Support Registrar's own initiative, where the Child Support Registrar considers that either parent:

(a) obtains financial benefits from his or her employment, business and investment, or other activities which are not reflected in that parent's taxable income; or

(b) organises his or her employment, business and investment, or personal affairs to minimise taxable income, in order to minimise their child support liability.

Recommendation 148

the child support legislation be amended to:

(a) allow the Child Support Registrar to issue a determination varying the child support assessment to reflect the capacity to pay of a parent in receipt of business or investment income upon the application of that parent;

(b) allow the Child Support Registrar to issue a determination varying previous child support assessments for a period of up to 4 years prior to the current assessment, or up to the date on which the assessment first became enforceable, whichever is the most recent, to reflect the capacity to pay of a parent in receipt of business or investment income;

(c) allow the Child Support Registrar to issue a determination varying previous child support assessments for a period of up to 7 years prior to the current assessment, or the date on which the assessment first became enforceable, whichever is the most recent, in circumstances where a parent fails to disclose accurately all income, expenditure and assets in which he or she has an interest;

(d) to avoid retrospectivity, limit the backdating of any determination by the Child Support Registrar to the date of effect of the proposed amendments to the child support legislation;

(e) allow the Child Support Registrar to charge interest on the difference between the original, or last amended, child support assessment and the assessment varied pursuant to a determination of the Child Support Registrar for each year, or part year, at a rate equal to the prevailing medium term rate for Treasury bonds; and

(f) require the Child Support Registrar to pay any interest charged under (e) above to the other parent

Recommendation 149

the Child Support Agency implements:

(a) a targeted audit program in respect of parents who receive business or investment income;

(b) a random system of auditing parents who receive business or investment income; and

(c) a system of public rulings and other appropriate measures to inform parents and their advisers of the Child Support Registrar's practice in the assessment of a parent's capacity to pay.

Parents with Non Income Producing Assets

19.117 The Joint Committee received submissions which complained that non custodial parents in particular are able to minimise their child support liability by investing their wealth in personal, non-liquid assets, while earning only a small taxable income. An extreme example of this ability to minimise child support obligations would be where a non custodial parent resides in a house worth $2 million while earning only $15,000 to $20,000 per year.

19.118 One custodial parent summed up the inequity which can result from the exclusion of assets from the determination of a parent's capacity to pay in the following way:

> My husband has also had his taxable income reduced as a result of a negative-geared property which we owned last year and as a result, this reduces his maintenance payments. ...
>
> So many husbands have expensive assets which are written off on businesses and maintenance is assessed on taxable income which can often be totally deceiving. Why should their children live on a meagre income whilst these males have the lifestyle of a king?[65]

65 Submission No 3475

19.119 Another custodial parent submitted the following in respect of asset rich non custodial parents:

> First, assets are wealth. Most government policies concerned with economic well-being recognise that assets can be converted to income. Thus the Department of Social Security uses an assets test to determine eligibility for a range of payments. The Australian Tax Office reserves the right to raise a "betterment tax", where a taxpayer arranges their finances so as to declare taxable income that is inconsistent with their lifestyle and asset accumulation.[66]

19.120 Similarly the Family Law Council submitted:

> The ability to maintain children depends not on income levels but on financial capacity. In both tax and social security areas capital assets are given deemed income values. It may be worthwhile exploring the feasibility of importing similar concepts into the legislation, especially where there are obvious trappings of wealth but little or no taxable income.[67]

19.121 The audit based administrative process discussed above will allow the Child Support Registrar to include income from assets owned or controlled by a parent when determining that parent's capacity to pay child support. Therefore the Child Support Registrar would be able to take non income producing assets into account when determining a parent's capacity to pay through this administrative process. Similarly, the CSRO is currently able to take the income, earning capacity, property and financial resources of a parent or child into account when reviewing a child support assessment.[68] However, in both cases there is no specific guide which determines how non income producing assets should be taken into account. The Joint Committee considers that a specific mechanism is required to assess non income producing assets so that the capacity to pay of those parents who own or control substantial non income producing assets can be taken into account in a consistent and transparent manner.

66 Submission No 3680

67 Submission No 5096, Vol 2, p 238

68 s. 117(2)(c)(i) *Child Support Assessment Act 1989*

19.122 A possible guide in this area is the assets test which currently applies for Additional Family Payment. This is not payable if a family's assets are more than $370,500, not including the family home.[69] Alternatively, the assets test used to determine eligibility for the pension may be of assistance. This varies depending on whether or not the pensioner is married or owns his or her own home. The assets test free area is as follows:

- single home owner: $112,750
- married home owner (combined): $160,500
- single non-home owner: $193,250
- married non-home owner (combined): $241,000.[70]

19.123 Any assets over these amounts reduce the pension by $3.00 per fortnight for every $1,000 above the limit (single and married). The current asset level at which no pension is payable is as follows:

- single home owner: $220,750
- married home owner (combined): $339,500
- single non-home owner: $301,250
- married non-home owner (combined): $420,000.[71]

19.124 The Joint Committee considers that further analysis will be required to formulate an appropriate test for non-income producing assets in the child support area. The Joint Committee prefers a test based on a minimum threshold which applies to both custodial and non custodial parents so that an ‘average’ level of asset accumulation is exempted. Where a parent's non-income producing assets exceed this threshold, income on the excess could be deemed at a benchmark interest rate and added to that parent's child support income base.

19.125 The Joint Committee notes that income producing assets such as businesses or rural properties would by definition be excluded from this assets test. However, the level of income produced by these assets would be reviewable by the Child Support Registrar through the recommended audit based administrative process discussed above.

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69 DSS rates for the period 20 March to 30 June 1994

70 ibid.

71 ibid.

19.126 The Joint Committee recommends that:

Recommendation 150

the Child Support Registrar, when making an initial formula assessment or a determination to vary an existing formula assessment for child support shall:

(a) disregard the value of non income producing assets of each parent where the value of these assets is equal to or less than a threshold amount;

(b) where the non income producing assets of the parent exceed a threshold amount, deem the income on the excess at a rate equivalent to the prevailing medium term Treasury bond rate; and

(c) add back the deemed income to that parent's child support income base.

Anti-avoidance Provision

19.127 A court may, of its own volition or on application by the Child Support Registrar set aside an instrument or disposition that has been made or is to be made by or on behalf of or by direction or in the interest of a liable parent where the court is satisfied that the instrument or disposition has been made or is proposed to be made to reduce or defeat the liable parent's ability to pay child support or to meet any arrears due to the custodial parent.[72] This means that the Child Support Registrar does not have the power to make a decision in the first instance as to the nature of a transaction. Furthermore, this anti-avoidance provision also requires the Child Support Registrar to prove that the intent of the transaction was to defeat a child support liability. This aspect is often difficult to legally prove.

72 s. 72C(2) *Child Support (Registration and Collection) Act 1988*

19.128 Where parents actively seek to avoid their child support liabilities, they may transfer ownership of their personal assets to people or corporate entities to which they may or may not have a legal connection. To prevent the avoidance of child support through the transfer of ownership of assets, the Joint Committee considers that the Child Support Registrar should have the power to deem an asset assessable for child support purposes where the transfer of ownership or control of that asset has the effect of avoiding or minimising a parent's child support liability. This will enable the Child Support Registrar to effectively disregard the transfer of an asset which has this effect without first having to apply to the court and without needing to prove that this was the intention of the transaction. This new power should act as a further deterrent to parents who seek to avoid or minimise their child support liabilities in this manner.

19.129 The Joint Committee recommends that:

Recommendation 151

the Child Support Registrar be given the power to deem an asset assessable for child support purposes where the transfer of ownership or control of that asset has the effect of avoiding or minimising a parent's child support liability.

20

Stage 2 extension considerations

Introduction

20.1 Stage 1 of the Child Support Scheme was established by the *Child Support Act 1988*[1] which came into operation on 1 June 1988. It established the position of the Child Support Registrar and enabled maintenance orders and court registered maintenance agreements to be registered with the Child Support Registrar. The *Child Support (Registration and Collection) Act 1988* initially restricted the population of parents eligible to use collection through the Child Support Registrar. These restrictions were removed on 15 April 1989, thereby making Stage 1 universal from this date.

20.2 Stage 2 of the Child Support Scheme was established by the *Child Support (Assessment) Act 1989* which came into operation on 1 October 1989. This introduced the administrative assessment of child support by the Child Support Agency (CSA) through the application of a formula. Stage 2 is confined to children who were born on or after 1 October 1989 (or siblings of such children) or whose parents separated after this date. This means a two stage scheme currently exists, with different rules applying under each stage. A further major difference was the introduction of administrative review by the Child Support Registrar, in the form of the Child Support Review Office (CSRO), from July 1992. This allows an aggrieved party to apply to the Child Support Review Office for a departure from the formula at no cost rather than applying to the court. Stage 1 parties do not have the benefit of this change so must incur the cost of applying to the court for a departure.

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1 Since 1 October 1989 called the *Child Support (Registration and Collection) Act*

20.3 The Joint Committee notes that since the inception of the Child Support Scheme there has been debate over the desirability of a two tiered scheme due to perceptions that such an approach would create inequities. In response to these concerns, a number of evaluations of the Scheme have been commissioned since the Child Support Consultative Group's watershed report, **Child Support: Formula for Australia** (1988), which sanctioned the two scheme approach. The findings of these evaluations are considered below.

The Child Support Consultative Group's Approach

20.4 The Child Support Consultative Group (Consultative Group) considered the coverage of the population for Stage 2 of the Scheme to be an important issue which could be dealt with in one of the following ways:

(1) retrospective application of formula assessment to existing maintenance cases;

(2) application of formula assessment to existing cases for variation at the discretion of the courts which would have regard to previous arrangements or settlement between the parties; and

(3) exclusion of existing maintenance cases from eligibility for formula assessment.[2]

20.5 The Consultative Group had regard to the strong opposition to retrospectivity expressed by non custodial parent groups and also with the predisposition against retrospectivity expressed by the Government. The Consultative Group formed the view that in many cases retrospective application of formula assessment would create injustice. In many cases of divorce, for example, settlements involve closely intertwined maintenance and property orders which have been made on the basis of existing law and where the intended child maintenance component may not always be clear. Parties may have reorganised their affairs (by remarrying or undertaking new obligations) on the basis of an understanding of the parameters of their likely ongoing obligations to their previous family. In view of this the Consultative Group rejected retrospective administrative assessment by formula noting that such a move would be likely to be widely perceived in the community as unfair.[3]

2 CSCGR, **Child Support: Formula for Australia**, p 34

3 ibid. p 35

20.6 The Consultative Group was concerned that the people who fell within Stage 1 should not be left indefinitely with the existing legal structures for resolution of child support obligations and thereby be excluded from the benefits of the new Scheme. Indeed, the Consultative Group noted that a system of two parallel structures, in all likelihood producing quite different results, would be increasingly unsatisfactory as time progressed.[4] The Consultative Group identified two separate groups of the pre-Scheme population, namely:

> ... those who have previous orders or agreements for child support, and those who do not. In the latter category the arguments against applying the formula have less strength, although it is possible that circumstances may exist other than prior financial arrangements that would make application of the formula unsuitable.[5]

20.7 The Consultative Group balanced these conflicting arguments by recommending that the court have the power in Stage 1 cases to apply the formula to the extent appropriate having regard to the circumstances of the particular case. In this way the inequities would be avoided but the two systems would be allowed to blend over time.[6]

20.8 The Consultative Group's concerns over the creation of a system of two parallel structures producing quite different results were echoed in the Senate during its consideration of the legislation that established Stage 2 of the Scheme. This resulted in the inclusion of the following specific term of reference for the Child Support Evaluation Advisory Group (CSEAG), appointed by the Minister for Social Security on 6 September 1989 to monitor the conduct of the evaluation of the Child Support Scheme:

> Following undertakings made by the Government to the Senate the Group will particularly:
>
> - monitor the level of orders being made by or, registered with the courts for the maintenance of those children excluded from the assessment process under Stage 2 of the CSS;
> - compare maintenance levels set by, or registered with, the courts with the level of support obtainable under the Stage 2 formula in comparable circumstances; and
> - monitor procedures to:

4 ibid.

5 ibid.

6 ibid.

(i) maximise the coverage of child support received by the sole parent pensioner population; and

(ii) ensure that the level of child support received by sole parent pensioners is adequate.[7]

The Child Support Evaluation Advisory Group's Findings

20.9 The Child Support Evaluation Advisory Group reported on this term of reference in its August 1990 Report entitled **The Child Support Scheme: Adequacy of Child Support and Coverage of the Sole Parent Pensioner Population** (CSEAG Coverage Report). CSEAG's findings included:

> ... as a result of the Child Support Scheme - and, in particular, the changes to the Family Law Act 1975 introduced as part of the Scheme, the average level of court orders has increased substantially. The increase is above and beyond what could reasonably have been expected without these changes. This is a significant and welcome outcome.
>
> However, the increase is not, on average, sufficient to make the amounts comparable with what would be obtained under stage two. ... Moreover, the amount of maintenance specified in court orders / agreements is, in most cases, fixed in money terms. Thus the real value of the maintenance declines from year to year unless a variation is obtained, which seems to occur infrequently. In contrast, the administrative formula provides automatic updating to keep pace with the non custodial parent's income. There remains a large number of custodial parents whose maintenance levels were set some time ago and who will have dependent children for some years to come. They will suffer from having lower levels of maintenance set and the declining real value of those amounts.[8] ...
>
> ... there is a large population of sole parent pensioners (and other custodial parents) with no order or agreement and who separated before stage two commenced. Current procedures can only

7 Term of Reference No 4 in CSEAG Coverage Report, **The Child Support Scheme: Adequacy of Child Support and Coverage of the Sole Parent Pensioner Population**, 1990, p 11

8 ibid. p 3

encourage these parents to seek an order; there is no opportunity for them to benefit from stage two of the Scheme.[9]

20.10 In light of these findings, CSEAG considered the following options for change:

(1) leave the situation as it is. CSEAG considered this to be unsatisfactory in light of the inequities they had identified;

(2) provide for complete coverage of all cases by Stage 2. This would involve the automatic application of the administrative formula and could create many cases of hardship where prior financial or other arrangements have been made or where the parties are content with existing arrangements;

(3) automatic transfer of all sole parent pensioners to Stage 2. CSEAG noted that this option could be seen as discriminatory to two groups, namely, pensioners and those non-pensioners who would wish to have access to Stage 2 and may also lead to hardship in situations similar to those outlined in option 2 above;

(4) permit pensioners only to apply to the court for an order transferring them to Stage 2. CSEAG noted that this option would introduce legal costs and the difficulties of obtaining legal aid so should be avoided. It would also discriminate against those non-pensioners who would wish to have access to Stage 2;

(5) have the courts apply the formula where appropriate on application for child maintenance or variation of maintenance. Again this would involve legal processes and associated costs. Furthermore, whilst it would deal fairly with new cases and variations for the short term, it would not help those who have difficulty in obtaining a variation nor would it provide for annual re-assessment except by way of a further application to the court for variation in each case;

9 ibid. p 4

(6) on application to the court to do so, or on application for child maintenance or variation of maintenance, the court could direct a Stage 1 case to be transferred to Stage 2 if there were no reasons in the individual case for not doing so. This would place the onus on the custodial parent to apply to the court and would thereby introduce legal costs and the associated difficulties of obtaining legal aid. This option was recommended by the Child Support Consultative Group;[10] or

(7) provide that all custodial parents, whatever the date of separation, could, on application to the Child Support Agency, be admitted to Stage 2 subject to the right of the non custodial parent to object on specific grounds, such as that this would be unfair.[11]

20.11 The final option above was favoured by CSEAG for the following reasons:

(1) the custodial parent does not have to apply to the court, thereby avoiding the associated expense and delay;

(2) the rights of the non custodial parent are protected by granting them the right to object on specific grounds. CSEAG noted that it was fairer to place this onus on the non custodial parent as in most cases the material facts would be in the particular knowledge of the non custodial parent and there would be far fewer applications for departures than if the custodial parent was obliged to apply in every case;

(3) this option was by way of a voluntary application rather than a compulsory transfer. CSEAG considered this to be fairer as pre-Stage 2 population includes people with orders well over ten years old and it was felt that it may be unfair and cause hardship to force this group to take action years after contact with the non custodial parent had ceased and when, in many cases, non custodial parents could have established their own lives and second families on the basis of a particular arrangement with a custodial parent;

10 CSCGR, **Child Support: Formula for Australia**, 1988

11 CSEAG Coverage Report, op.cit. pp 72–73

(4) it would benefit the maximum number of sole parent families by granting them the opportunity to obtain an administrative assessment with the regular updating of amounts built into that mechanism; and

(5) it would provide some further reduction in Government outlays on sole parent pension.[12]

20.12 As a result, CSEAG made the following recommendations:

> **THAT** the Government widen the eligibility provisions of the Child Support (Assessment) Act 1989 to include all children, not just those born on or after the commencing day of that legislation or whose parents separate on or after that day;
>
> **THAT** for the additional cases included by this widening of eligibility, application for administrative assessment under the Act be optional at the discretion of the custodial parent; and
>
> **THAT** the non custodial parent be entitled to object to administrative assessment and that grounds for objection include unfairness having regard to prior financial arrangements made between the non custodial parent and the custodial parent or child or children, present obligations to other persons and other relevant matters. Such objections should be dealt with by the courts.[13]

20.13 CSEAG stated that these recommendations would benefit the maximum number of sole-parent families (including pensioners) as it would afford them the opportunity to obtain an administrative assessment with the regular updating of amounts built in to that mechanism. It would also allow custodial parents access to the simpler and more effective procedures of Stage 2 whilst providing appropriate safeguards for non custodial parents.[14]

12 ibid. pp 73–74

13 ibid. pp 74–75

14 ibid. p 74

Australian Institute of Family Studies Evaluation

20.14 CSEAG's recommendations were repeated in the Australian Institute of Family Studies (AIFS) evaluation of Stage 1 and Stage 2 of the Scheme entitled, **Paying for the Children** (1991). This evaluation examined the Child Support Agency's registration data as at the 17 December 1990 and data provided by a total of 15,260 respondents to mail questionnaires in 1988, 1989 and 1990. It found that Stage 1 maintenance entitlements set by the courts in 1990 were approximately $8.50 less per week per child and $18.00 per week in total when compared to Stage 2 determinations for the same period.[15]

Analysis of Submissions

20.15 The Joint Committee received 280 submissions which stated that the current Scheme disadvantaged Stage 1 parties as they must return to court in order to seek any variation of their maintenance liability or entitlement. These submissions represented 4.5 per cent of the total number of submissions received by the Joint Committee.

20.16 The Council of Single Mothers and Their Children submitted to the Joint Committee that Stage 2 of the Scheme should be extended to all Stage 1 children for the following reasons:

> Firstly the mothers of children who are classified in the stage 1 category face an enormous financial and emotional burden as a result of having to initiate court proceedings as a means of obtaining any maintenance payments and registering with the Child Support Agency as a collection agency. Typically it is the female custodial parent who though choose or as a result of coercion from the Department of Social Security, who initiates the court action. Such action very often results in the custodial parent getting into debt because of the legal costs, a debt they ill afford.

15 AIFS, **Paying for the Children**, 1991, p 8

> Secondly consideration is the administered and wages costs to the legal system overall as a result of the courts having to deal with maintenance matters. Surely it would be far more cost efficient both to the legal system and the Child Support Agency to streamline the whole maintenance process.
>
> "Imagine one agency dealing with the lot. how efficient"![16]

20.17 Similarly, the Brotherhood of St Laurence submitted to the Joint Committee that:

> ... those eligible under Stage 1 should be subject to administrative assessment of their child support liability as under Stage 2, so that all child support payments are determined consistently and approach adequate levels.[17]

20.18 The Joint Committee also received submissions which suggested that the existence of a two stage Scheme creates confusion amongst its clients. In particular, the Office of the Commonwealth Ombudsman submitted that:

> The two stage nature of the current scheme is a source of confusion to both payers and payees who complain to the Ombudsman. Stage 1 clients resent the fact that they have to apply to a court whenever they wish to vary or discharge the payers' liability, with the attendant delays and expense.[18]

20.19 Similarly, the Australian Council of Social Service submitted that:

> The Scheme's complexity is exacerbated by the clumsy two tiered system. This is a primary source of much wrong information. There are separate procedures for each stage which affects different population groups of sole parents.
>
> The resulting confusion and provision of wrong information and advice would be overcome if the Government adopted the recommendation of the Child Support Evaluation Advisory Group report and allowed all sole parents to apply for administrative assessment under the formula. The right to appeal by the non custodial parent on the grounds of prior property settlement would need to be protected.[19]

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16 Submission No 5025, Vol 9, p 83
17 Submission No 5342, Vol 9, p 139
18 Submission No 1928, Vol 2, p 173–4
19 Submission No 5082, Vol 6, p 167

20.20 A custodial parent who separated from her husband in September 1988 submitted the following in respect of the Scheme:

> I am currently seeking a maintenance increase through a community legal service, I have no rights to the advantages of the child support scheme because I separated before 1989. ...
>
> I am particularly anxious because my maintenance claim will be heard in the next few months in the Port Adelaide Magistrates Court. I have no faith in the legal system based on previous experiences and my husband has at his disposal ample resources to hire a 'flashy' Barrister. The whole court scenario seems more like a dramatic performance for the solicitor's and their egos, rather than a real life drama which can scar our lives for ever. I feel that the current legislation is a step in the right direction, as it makes Custodial Parents particularly women know that they do count and that children are not disposable commodities but people who deserve at least minimal consideration. ... My children have been extremely financially disadvantaged because their parents separated and because I am a women and have less education, less advancement and earning capacity and also choose to stay at home and parent my children when they were very young, thereby foregoing job security and income. ...
>
> In conclusion I would like to say that I feel cheated because my children do not benefit from the child support scheme.[20]

20.21 Another custodial parent stated:

> I would like to see some changes though, as it is now the Child Support Agency can only do an assessment if the couple separated after a certain date, I would like to see this abolished. The agency should be able to do an assessment regardless the date of separation. In my case my husband refused to pay child support for our two children, we separated in 1986, he also lost his job and said that now he could not afford to pay anyway as I am on a pension myself I had to take certain action to try to obtain support. In 1990 we went to court and he was ordered to pay $10 per week for each of our children which was the minimum at the time because he was on unemployment benefit, which also meant that he was on a protected income and still did not have to pay child support. He has since commenced work, now only paying the $20

20 Submission No 3681

> per week, if I want this reviewed we would have to go back to court but I cannot afford to take this action.[21]

20.22 The Joint Committee also received a number of submissions from non custodial parents complaining of the costs associated with having to return to court to seek changes in maintenance orders each time their financial situation changed. One non custodial parent submitted to the Joint Committee that:

> There should be provisions within the Child Support Agency to adjust payments where and when needed. It is a costly and awkward exercise to keep going to courts just to say I've lost my job and I can't afford to pay maintenance until I find work.
>
> Then when and if I do become employed I will have to go court to get the whatever % of my new wage deducted.
>
> Now because I have maintenance areas [sic] I have to get a separate court order to quash my areas since being unemployed. Very messy, very costly and I also believe very unnecessary.[22]

20.23 The recent report of the Access to Justice Advisory Committee, Access to Justice, An Action Plan (1994), commented on access to justice issues under the Scheme:

> ... equality before the law was one of three key themes of access to justice. It follows that we favour, in principle, the widening of the eligibility criteria for the assessment scheme to include all children in need of support, rather than just those born after a specified date or whose parents separated after that date. However, we recognise that there are a range of countervailing arguments to this view. In particular, we recognise that there is force in the argument that the broadening of the criteria would have an effect akin to retrospective legislation, reopening settled arrangements (possibly with the effect of increasing payments for children generally but also possibly with detrimental effects on new and stable family relationships). In addition, the Scheme is arranged so the number of people eligible will continue to increase until, eventually, there will be 100% coverage. We also understand that when the Scheme was introduced the Government made an undertaking that it would not broaden it in any retrospective way and that it has rejected past proposals to this effect. In light of the complex and conflicting considerations and because the matter is

21 Submission No 3031

22 Submission No 3787

> currently the subject of a detailed investigation by the Joint Select Committee [Joint Select Committee on Certain Family Law Issues], we do not propose to make a specific recommendation on this particular issue.[23]

20.24 In the Joint Committee's view, the arguments supporting the extension of Stage 2 must also be balanced against the following considerations:

(1) the likely effect of such a change on the declining population of pre-Scheme parents;

(2) the relative amounts of child support under each stage of the Scheme; and

(3) the likely impact of the extension of Stage 2 on the Child Support Agency.

Pre-Scheme Population

20.25 The Department of Social Security advised the Joint Committee that the number of pre-Scheme sole parent pensioners has declined over time from 128,080 as at June 1990 to 76,107 as at December 1992. In the same period the number of Stage 1 sole parent pensioners registered under the Scheme has fallen from 63,035 to 31,788. This decline contrasts with the increase in the number of Stage 2 sole parent pensioners from 57,657 as at June 1990 to 189,028 by December 1992.[24]

20.26 Table 20.1 shows that the CSA's active Stage 1 case load has increased at a decreasing rate while the active Stage 2 caseload has increased at an increasing rate since the inception of the Scheme.

23 Access to Justice Advisory Committee, **Access to Justice, An Action Plan**, 1994, p 343

24 Submission No 5085, Vol 1, p 109

Table 20.1 Annual Increase in the Stage 1 and Stage 2 Active Caseload of the Child Support Agency

	1988–89	1990–91	1991–92	1992–93	1993–94 (to 31.5.94)	Total
Active Stage 1 Caseload	41,904	10,326	6,840	1,316	636	61,022
Active Stage 2 Caseload	15,954	24,394	28,517	68,897	76,434	214,196

Source Child Support Agency

20.27 Table 20.1 shows that only 636 new cases were registered under Stage 1 of the Scheme in 1993-94 compared to 76,434 cases registered under Stage 2. The CSA advised the Committee that with the passing of time the CSA expects few new applications from Stage 1 parents.[25] Furthermore, the number of pre-Scheme custodial parents can be expected to decline over time until they completely phase out on 1 October 2007 when the last child turns eighteen (subject to no court order to the contrary).

20.28 The Joint Committee notes that the number of custodial parents who are not sole parent pensioners and have not registered a court order or agreement under the Scheme are unknown. Notwithstanding this, the trends evident from the above analysis of the pre-Scheme sole parent pensioner population and the CSA's active case load are generally applicable to the whole pre-Stage 2 custodian population which should also decline over time.

Relative Outcomes Under Stage 1 and Stage 2 of the Scheme

20.29 As highlighted above, the Joint Committee received many submissions which criticised the levels of maintenance being ordered under Stage 1 by the courts as inadequate when compared to the child support formula assessment which would have applied in the same circumstances. The Joint Committee has been advised by the Family Court that no information is available which allows for a direct comparison of Stage 1 court ordered maintenance and Stage 2 child support administrative assessments.[26] However, the Family Court has judicially considered whether or not the Stage 2 child support assessment has any relevance in

25 Submission No 6194

26 Family Court letter dated 6 October 1994

relation to the court's discretion in determining the level of maintenance for Stage 1 children.

20.30 In **Vic v Hartcher** (1991) FLC 92-262, the Full Family Court comprising Fogarty, Nygh and Bully JJ stated:

> Although the Child Support (Assessment) Act 1989 does not apply in this case, it is instructive to compare the result with what would have been achieved if the formula used under that legislation had been applied. It at least gives us an indication what, in the opinion of the Parliament, is a just result.

20.31 Similarly, in **Beck v Sliwka** (1992) FLC 92-296 Nicholson CJ and Fogarty J stated:

> It is not, in our view, open to this Court to conclude that the stage 2 formula can be directly applied to a stage 1 case. Although in cases of this sort the distinction between pre and post 1 October 1989 may appear artificial, the fact is that the stage 2 legislation is prospective only in its operation. .... Whilst it may be emphasised that under the Family Law Act the Court is required to consider the facts of the individual case in accordance with the structure of division 6, nevertheless in the sort of case with which we are concerned now, and which is not untypical of many cases litigated both in this Court and the Magistrates' Courts, and where the issue is the capacity of the non-custodian to make an equitable contribution to the cost of children, it seems not unreasonable to at least pay regard to the formula in determining the amount of the stage 1 Order. While the two separate stages established by Parliament must continue to be recognised, nevertheless, many cases falling either of side of the line have virtually identical features and in those cases assistance may usefully be obtained in stage 1 cases by reference to stage 2 outcome.

20.32 Justice Moore, dissented from the majority view outlined above, stated:

> I am unable to agree, however, with the views expressed by their Honours as to the relevance of the stage 2 formula to stage 1 cases. There is no basis at law for regard to be paid to the formula in any of the steps for determining a stage 1 case. Further, the structural differences are so vast that no practical or analogous assistance may be obtained. That being my view, I am unable to agree that an exception can be made in cases of modest dimension such as this and where the issue is the capacity of the non-custodian to make an equitable contribution to the costs of children.

20.33 The Joint Committee notes that the majority Family Court view expressed in **Beck v Sliwka** is the most recent authoritative statement on the relevance of a Stage 2 formula assessment in an assessment of what is a fair level of child support for Stage 1 children. In this regard, the Family Law Council submitted to the Joint Committee that:

> ... to expect or require custodial parents to bring proceedings in the Family Court in order to receive amounts which are similar to those whose child support entitlements are assessed automatically would be most unacceptable. Nevertheless, the decision has meant that Judges dealing with variation applications for Stage 1 children can have regard to the Stage 2 formula in assessing a fair level of child support. The situation does however need legislative clarification.[27]

20.34 The Joint Committee also notes that the Family Court's decisions in **Beck v Sliwka** and **Vic v Hartcher** arguably amount to a partial de facto adoption of the Consultative Group's original recommendation that the Court should apply the formula to Stage 1 cases but with a general discretion to depart from it having regard to the circumstances of the particular case.[28] Over time these decisions should act to reduce the gap identified by the CSEAG and the AIFS between the level of child support ordered by a court under Stage 1 and the child support available under a Stage 2 formula assessment in the same circumstances.

27 Submission No 5096, Vol 2, p 247

28 CSCGR, op.cit. p 33

Impact of the Extension of Stage 2

Introduction

20.35 The most obvious impact of extending Stage 2 will be that the population eligible under the Child Support Scheme will increase significantly. The Australian Taxation Office (ATO) examined the implications of extending Stage 2 in accordance with the recommendations of the CSEAG's Coverage Report[29] in a report entitled, **Report of the Program Evaluation of the Child Support Agency** (May 1991) ('ATO Report'). This report stated that two questions are relevant in this regard, namely:

(1) how many custodial parents currently registered under Stage 1 will want to convert to formula assessment?

(2) how many custodial parents who have not yet registered with the Child Support Agency will do so after they become eligible for formula assessment.[30]

Stage 1 Conversions

20.36 The ATO Report made the following comments in respect of the likely number of Stage 1 conversions:

> It would be logical to assume that those few custodial parents who would be financially better off under the terms of their court order or agreement will not apply for formula assessment. It does not automatically follow, however, that all of those custodial parents who would be better off under formula assessment will convert. Apathy, an unwillingness to "rock the boat", ignorance etc. will limit the number of conversions.
>
> Without an extensive market research survey of client intent (and even these are often inaccurate when it comes to predicting actual outcomes), it is difficult to tell how many Stage 1 cases will have to be converted to formula assessment. If we assume an upper limit of 80%, there could be as many as 40,000 potential conversions at

29 ATO, **Report of the Evaluation of the Child Support Agency**, May 1991, p 17

30 ibid. p 82

June 1992. If we assume a lower limit of 20%, there may only be 10,000.[31]

20.37 The Committee notes that the above Stage 1 conversion rates are based on a Stage 1 population of 50,000. This is significantly lower than the CSA's active Stage 1 caseload of 61,022 as at 31 May 1994. Therefore, the estimated number of Stage 1 conversions may be understated in the above analysis.

New Registrations

20.38 New registrations attributable to the extension of formula assessment would be expected to come from the population of custodial parents who are notionally under Stage 1 but do not have a court order or a court registered agreement. The ATO report estimated this population to be 212,000 in 1992 but conceded that not every one of these custodial parents will want to register with the CSA as some will not want maintenance or may have a private arrangement which they want to continue. The ATO report calculated the possible volume of new registrations as follows:

Newly eligible population	212,000
Maintenance not required	-96,000
Satisfactory private arrangement	36,000
Possible volume of new registrations	80,000

20.39 These figures were based on findings of the AIFS that 24 per cent of the total custodial parent population had never sought maintenance and that 12 per cent of the total custodial parent population received maintenance through a private agreement. As a result the ATO report inferred that 24 per cent of the projected 1992 pre-October 1989 custodial parent population (401,500) would fall into this former category while 75 per cent of those custodial parents with a private agreement would be satisfied with that arrangement.

31 ibid.

20.40 The ATO report considered the figure of 80,000 to be the probable minimum number of new registrations attributable to the extension of formula assessment. However, the report noted that if custodial parents registered in the same proportion to the eligible population as has been experienced under Stage 2 of the Scheme (around 65 per cent), then up to 140,000 new registrations may be received.[32] Consequently, the likely number of new registrations ranges from 80,000 to 140,000 based on the above assumptions. The Joint Committee considers that this would have a dramatic impact on the existing workload of the CSA.

Likely Impact on Child Support Agency Workloads

20.41 Stage 1 conversions and new registrations will present the CSA with greater on-going work loads as well as one-off work loads of processing the conversion applications and objections to administrative assessments. The ATO report identified these as:

- more assessments to update annually;
- more enquires and correspondence specifically related to the extension of formula assessment; and
- more elections to vary assessments.[33]

20.42 Furthermore the ATO report stated that:

> A central issue in determining the impact of these additional workloads will be the rate at which applications come into the Agency. If there is a deluge of applications all at the one time significant processing backlogs could result. Experience with the introduction of Stages 1 and 2, however, suggests that applications will come in at an incremental rate over an extended period.[34]

20.43 The CSA made the following resource estimate for the extension of formula assessment based on a population of 80,000 new registrations over a three year period commencing in July 1992:

32 ibid.

33 ibid.

34 ibid. pp 83–84

Table 20.2 Estimated Effect of Extension of Stage 2

Type	1992/93	1993/94	1994/95	Total
	$'000	$'000	$'000	$'000
Salary – Direct	3.355	5,225	7,178	16,368
Salary – Indirect	368	575	789	1,799
Admin	1,328	713	979	4,888
MCE	671	374	391	1,436
POE Current	732	1,140	1,566	3,682
POE Capital	476	497	112	1,939
TOTAL	**6,930**	**8,524**	**11,015**	**30,112**
ASL	122	190	261	

Source *Australian Taxation Office,* ***Report of the Evaluation of the Child Support Agency****, May 1991, p 84*

Note:

MCE = Minor Capital Equipment
POE = Property Operating Expenses
ASL = Average Staffing Level

20.44 The Joint Committee notes that an increase in the number of registrations brought about by the extension of formula assessment will also result in increased collections by the Child Support Agency. Similarly, the conversion of Stage 1 cases to formula assessment will also increase collections since in most cases the administrative assessment will be larger than the existing court order or the private agreement. The ATO Report stated that the estimation of these additional collections is difficult and was only possible after making the following assumptions:

(1) that in real terms the current average value of administrative assessments per child per month ($45.85) will remain constant;

(2) that the current differential between court orders and assessment entitlements (approximately $15.00 per month per child) will remain constant; and

(3) that each case will involve an average 1.6 children[35] [being the average number of children in one-parent families according to the Australian Bureau of Statistics, **Australia's Children 1989 - A Statistical Profile**].[36]

35 ibid. pp 84–85

36 Catalogue No 4119.0, p 7

20.45 Based on these assumptions, and a further assumption that 70 per cent of payments will be collected in these cases, collections could increase by between $51.2 million and $94.4 million in a full year, depending upon whether the low or high estimate of the number of conversions and new registrations outlined above is used.[37]

20.46 The ATO Report noted that additional workloads brought about by the extension of formula assessment to Stage 1 parents could be more than the CSA staff are able to cope with. Furthermore, if it is accepted that staff are already being adversely affected by heavy workloads, it will be essential to ensure that sufficient resources are available to deal with the additional workloads as they arise.[38] The report concluded that the exact extent of this impact depends on two imponderables:

(1) the number of custodians who will take up the opportunity to have maintenance formula assessed and collected; and

(2) the time frame within which these cases apply for registration with the Agency.[39]

20.47 Given the assumptions underlying the estimates made by the ATO Report and the diverse range of possible outcomes, the report recommended that the Child Support Agency undertake a survey of potential clients in order to estimate the number of new registrations and registration conversions which will be received as a result of the extension of formula assessment. In this context, the Joint Committee notes the Report's comment that an extensive market research survey of client intent is often inaccurate when it comes to predicting actual outcomes.[40] The ATO Report also recommended that the Agency be provided with sufficient time and resources to gear up for the extension of formula assessment so that resources, systems and processes are put in place and the necessary staff training and client education programs are undertaken.[41]

37 ATO, op.cit. p 85
38 ibid.
39 ibid. p 86
40 ibid. p 82
41 ibid. p 87

Conclusion

20.48 The Joint Committee is concerned that the current two stage scheme is unfairly producing different results for sets of parents whose financial circumstances are largely similar. However, the Joint Committee believes that an extension of Stage 2 to Stage 1 parties through a retrospective application of the formula on whatever basis may create greater inequity than that already existing under the current system. Such a step would be very intrusive as it would re-open divorce settlements agreed in good faith within the parameters of the law in force at that time.

20.49 The net benefits of such a step, in terms of increased child support, are also doubtful due to recent decisions of the Family Court of Australia which allow reference to the Stage 2 formula when determining the adequacy of Stage 1 child maintenance orders. The Joint Committee believes that this will tend to equalise the level of child support available under each stage of the Scheme over time. In addition, the pre-Scheme population which can be expected to benefit from an extension of Stage 2 is declining quickly and will generally not even exist by the year 2007.

20.50 The projected cost of extending Stage 2 to Stage 1 parties was also of major concern to the Joint Committee. The CSA is struggling in its administration of the Scheme for the existing Stage 2 population and the Joint Committee considers that any extension of Stage 2 would have serious resource implications for the CSA. This fiscal reality must be balanced against the likelihood that an extension of Stage 2 may result in only modest gains for the pre-Scheme population. For these reasons, the Joint Committee concludes that Stage 1 and Stage 2 of the Scheme should continue to remain separate.

Access to Justice Considerations

20.51 When a Stage 1 parent wants to vary an existing maintenance order or agreement they are required to obtain a court order or a registered agreement. The majority of parents in this group may require the assistance of a private solicitor or legal aid. Where agreement cannot be reached a parent must make an application for the variation of maintenance to a court exercising jurisdiction under the Family Law Act 1975. Section 66N(2) of that Act provides that a court must not vary a maintenance order by either increasing or decreasing the amount to be paid unless it is satisfied various circumstances have changed (such as, a

change in the financial status of one of the parents or a change in the needs of the child), the cost of living has changed, the original order was not proper or adequate, or where material facts were withheld in the initial application. As it is mandatory for the court to be satisfied about these matters, lengthy and costly legal proceedings requiring substantial evidence may be necessary to obtain the variation of the maintenance order.

20.52 The procedure for an application for a variation of a maintenance order under Stage 1 is the same as that for applying for the initial order. A person will need to take the following steps:

- obtain advice;
- file an application and supporting affidavits in the court;
- serve the application on the respondent;
- attend to the respondent's answer or cross application;
- attend conference;
- attend directions hearing;
- attend compulsory conference pursuant to order 24;
- attend pre-hearing conference when all documents are to be ready; and
- attend trial if the matter is not settled.

20.53 This procedure is far more complex than obtaining an administrative assessment under the Child Support Scheme and may discourage parents from applying for a variation of maintenance. There may be many parents who do not want to return to court after their previous experience and the cost and complexity of these proceedings may well have been a deterrent to many parents unless legal aid was available to them.

20.54 The Joint Committee notes the recent changes to the Scheme announced by the Assistant Treasurer on 6 April 1994 will improve a Stage 1 parent's access to justice in restricted circumstances. These changes will allow the CSA, in Stage 1 cases, to cease collection of child support when a non custodial parent becomes unemployed, or the child leaves the care of the custodian. Previously, a Stage 1 parent would have had to incur the expense of applying to the court to change the order or be faced with an escalating arrears liability.

20.55 In the interests of better equity and justice to improve a Stage 1 parent's access to justice the Joint Committee believes the Family Court should examine its procedures for a variation of a maintenance order. The Joint Committee acknowledges that the Family Court advocates that the *Family Law Act 1975* should be amended to allow orders of all courts exercising jurisdiction under the Act to be varied, suspended or discharged by an agreement of the parties which is in writing and registered in a court. This should include a maintenance order under Stage 1 where the parties may agree to increase or decrease the amount originally ordered. This streamlined procedure will ensure better access to the courts, and obviate the need to file an application in court to commence litigation using the consent order procedures.

20.56 The Joint Committee is of the view that there is an inadequate amount of funds available for legal aid in the wide range of child support matters. Some people do not have sufficient access to the courts or the law and are therefore unable to enforce their rights. The level of availability of legal aid prevents some Stage 1 parents from obtaining a variation of maintenance. The Joint Committee notes that as part of a package in improving access to justice, the Attorney-General announced on 26 September 1994 that the Government is committed to using its grants to State and Territory legal aid commissions to force them to allocate more funding to family law matters instead of directing funds to criminal matters. The Joint Committee strongly believes adequate funds must be made available to custodial parents under Stage 1 to ensure better access for the variation of maintenance orders.

20.57 The Joint Committee recommends that:

Recommendation 152

the *Family Law Act 1975* be amended to allow a maintenance order to be amended by an agreement of the parties which is in writing and registered in a court.

21

Child support liability and property settlements

Introduction

21.1 Many submissions have raised the issue of property settlements vis-a-vis the non custodial parent's child support liability. An important issue which has arisen is whether or not a non custodial parent's child support liability is taken into account in property settlements. The submissions received by the Joint Committee point to a strong perception that when there is a property settlement in excess of a 50/50 division, there is an allowance for child support. This perception is compounded by the courts not specifying whether or not an allowance has been made for child support.

21.2 For the purposes of discussion, the term ‘property’ includes personal chattels and realty together with assets and liabilities as after separation many families are faced with the problem of apportioning debts rather than assets. It is important to bear in mind that the value of any assets may be dissipated by accrued debts. The Joint Committee also recognises that after a separation it is impossible to establish two households at the same standard of living as prior to the separation. Even if the household is maintained at the same standard of living, this may be at the expense and detriment of the other former partner.

Interaction Between Child Support and Property Settlements

21.3 Section 79(4)(g) of the *Family Law Act 1975* provides that in considering what order should be made in proceedings in respect of any property of the parties, the court shall take into account, amongst other things, any child support under the *Child Support (Assessment) Act 1989* that a party to the marriage has provided, or is to provide, for a child of a marriage. An issue to be considered is whether this matter is in fact being taken into account by the Family Court or by parties in settling their property disputes and what weight is being given to this factor in property settlements. The Family Court advised[1] that there has only been one reported case which discusses this matter.[2] There are no statistics of unreported cases.

21.4 The extent to which child support obligations and family property are connected should not be ignored in the settlement of family difficulties. Initially both maintenance and property orders were made in accordance with the provisions of Part VII of the *Family Law Act 1975*. The importance of the inter-relationship of the factors to be taken into account in relation to maintenance and property were recognised in the previous Joint Select Committee report on the *Family Law Act 1975*. That Committee recommended that the *Family Law Act 1975* be amended to combine the relevant matters to be taken into account under section 75(2) and section 79(4) for the purposes of the alteration of property interests. That Committee noted that there were problems with the inter-relationship of the two sections as there was no guidance given to the relative weight to be accorded to the matters listed in the sections and concluded that there would be benefit in a more specific legislative scheme being developed which gives appropriate guidance to the courts in the resolution of disputes. This issue is particularly relevant to the weight to be accorded to the child support liability of the non custodial parent. The Joint Committee notes that the recommendation of the previous Joint Select Committee report has been accepted by the Government.

1 Submission No 5328, Vol 7, p 181

2 see **Borg v Borg** in this Chapter

21.5 The inter-relationship of property and child support has also been recognised by the courts in making orders which may make some form of compensation in recognition of a future liability to pay child support. A practical difficulty with these types of orders is identifying the property component as distinct from the child support component of that order. A further difficulty which may arise is when a party may wish to vary a maintenance liability under Stage 1 of the Child Support Scheme. In order to overcome this difficulty section 77(A) was inserted in the *Family Law Act 1975* in the 1987 amendments. That section provides:

> **77A(1) [Court order]** Where:
>
> (a) a court makes an order under this Act (whether or not the order is made in proceedings in relation to the maintenance of a party to a marriage, is made by consent or varies an earlier order), and the order has the effect of requiring:
>
> (i) payment of a lump sum, whether in one amount or by instalments; or
>
> (ii) the transfer or settlement of property; and
>
> (b) the purpose, or one of the purposes, of the payment, transfer or settlement is to make provision for the maintenance of a party to a marriage;
>
> the court shall:
>
> (c) express the order to be an order to which this section applies; and
>
> (d) specify the portion of the payment, or the value of the portion of the property, attributable to the provision of maintenance for the party.
>
> **77A(2) [Effect of non-compliance]** Where:
>
> (a) a court makes an order of a kind referred to in paragraph (1)(a); and
>
> (b) the order:
>
> (i) is not expressed to be an order to which this section applies; or
>
> (ii) is expressed to be an order to which this section applies, but does not comply with paragraph (1)(d);

> any payment, transfer or settlement of a kind referred to in paragraph (1)(a), that the order has the effect of requiring, shall be taken not to make provision for the maintenance of a party to the relevant marriage.

21.6 The difficulty in categorising a particular financial order as a maintenance or property order was recognised by Finlay, Bradbrook and Bailey-Harris.[3] They suggested that a useful starting point could be found in the case of **Sanders v Sanders**[4] where the High Court gave consideration to similar maintenance provisions under the now repealed *Matrimonial Causes Act 1959*. In that case Windeyer J stated:

> The power ... to make an order for maintenance, and the power ... to order a settlement are not mutually exclusive. They overlap and may be exercised separately or in combination to produce a total result which in the circumstances of the case is just and equitable.[5]

21.7 More recently the full court of the Family Court of Australia considered the relationship between maintenance and property in the case of **Branchflower v Branchflower**. The full court stated:

> When maintenance is considered as a broad concept it is clear that it includes not only the means or income of the person concerned but also the purposes for which those means are required, such as food, shelter and clothing. (See Acworth v Acworth [1942] 2 All ER 704 at p. 706).
>
> Such a wide definition of maintenance would include provision of accommodation. The *Family Law Act*, however, draws the distinction between maintenance which is affected by means of settling property or altering interests in property and other forms of maintenance. The latter kind of maintenance is given effect to by orders under sec. 74 which can be varied or modified under sec. 83. The former kind of maintenance is given effect to by orders under sec. 79 which cannot be varied.

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3 **Family Law Cases, Material and Commentary**, 1993, p 529

4 **Sanders v Sanders** (1967) 116 CLR 366

5 ibid. p 379

> The distinction between these two kinds of orders is often difficult to make, even though it is important.[6]

21.8 Accordingly, both statute and case law have recognised the importance of the inter-relationship between maintenance, or child support, and property. It is important that child support liabilities are not dealt with in isolation from other family law issues. It is also important to recognise that the term property includes all assets and debts. Many debts may be ongoing after a property settlement, such as when a non custodial parent may agree to continue to pay mortgage repayments on a house in which the custodial is residing. There is no provision to take into account ongoing debts incurred from the previous relationship, although it may be a ground for departure under section 117 of the *Child Support (Assessment) Act 1989*. Otherwise, liability for ongoing debts continues with child support liability. This appears to be an area where people may be unaware of their rights to have any payments and any transfer of property to be taken into account in an application for a review of their child support assessment.

21.9 The Joint Committee notes that section 119 of the *Child Support (Assessment) Act 1989* provides that the Child Support Registrar must immediately take such action as is necessary to give effect to court orders which impact upon the amount of child support payable by the liable parent under a formula assessment.

Submissions and Evidence

21.10 The Joint Committee received 707 submissions which stated that property settlements should be taken into account in the calculation of child support liabilities. These submissions represented 11.4 per cent of the total number of submissions received by the Joint Committee. Of these submissions, 586 were received from non custodial parents. This issue rated as the fifth most common non custodial parent complaint representing 17.8 per cent of the total non custodial parent submissions received by the Joint Committee.

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6 **Branchflower v Branchflower** (1980) FLC 90–857, p 75,446

21.11 Many of these submissions stated that the level of child support payments should be reduced to reflect the capacity of the non custodial parent to pay following a property settlement. One submission stated:

> Surely, in a case like this where the property settlement has been extra generous, the Child Support should be allowed to be cut back if need be. After all isn't the father entitled to something after being the breadwinner and then coming out with nothing? The father is placed in a terrible position, at nearly 40 years of age and has to begin all over again with nothing, and losing $100 out of his pay before he starts. It is very hard to start again and think about a new family, it seems that simply because he was a partner in a bad relationship, that he must pay and pay dearly for the rest of his life, forgoing any thoughts of a fresh start because he usually can't afford it, where the ex wife sits back and receives pensions, Child Support, Austudy, Child Endowment, Family Allowance etc. etc. etc., plus every discount known to man! The father, in most cases, has to turn around and rebuild his life, and try to get back on his feet. It is hard enough today to get along in the world, without twice having to save for a house, car & any time of future for yourself, and a new family if it is the case, whilst the wife sits back, having had all those things provided for her and is set for life, just because she is the mother of the children.[7]

21.12 Similarly, another submission stated:

> Most responsible parents would acknowledge the need to ensure our children are financially supported in the event of a breakdown in a marriage.
>
> The scheme however is decidedly weighted in the favour of the custodial parent and on many occasions leaves the non-custodial parent in the most difficult of circumstances.
>
> It is my opinion that the inequity of the scheme actually commences in the decisions made by the Family Court in the property and custody settlements. ...

7 Submission No 1917

> I was furthermore advised that as a result of the mother being granted custody the best I could hope for in terms of a property settlement was between 30% and 35% of the combined assets of the marriage.
>
> This resulted in my ex-wife being provided with a cash settlement and my assigning over the rights to the matrimonial home plus over 80% of all the goods and chattels.
>
> The Child support scheme takes no account of this type of settlement in the assessment of the non-custodial parent.[8]

21.13 In commenting on the issue of whether the formula should take account of the distribution of assets in a property settlement, Dr Peter McDonald of the Australian Institute of Family Studies responded:

> The answer to that is no. ... our view has always been that property and maintenance should be regarded as separate issues, and that property should be regarded as almost a kind of joint enterprise between husband and wife and should be divided on that basis; and then you look at maintenance. You say that so much maintenance should be paid after that business enterprise between the husband and the wife has been divided.[9]

21.14 This view contradicts the bulk of the evidence received by the Joint Committee which emphasises that child support needs to be dealt with in the context of the other family law issues of custody, access and property settlements. One submission stated:

> Firstly, let me commence by stating that I do not believe that you can compartmentalise settlement of marriage into property, maintenance [sic] and access areas. These areas are not mutually exclusive - the settlement package should be viewed as being total, as division between areas is often blurred.[10]

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8 Submission No 4658

9 Transcript of Evidence, 20 January 1994

10 Submission No 2879

21.15 This view was endorsed in evidence to the Joint Committee by the Assistant Director of the Legal Services Division of Legal Aid in Western Australia:

> The point I was making is that child support - and, as it was previously known, maintenance of children - was always just one aspect of family law matters and, before the introduction of the child support scheme, it was always dealt with as part of the package of family law issues: custody, guardianship, maintenance, property settlement, injunctive relief if necessary, and so forth. In the development of the child support scheme, there tended to be a tremendous focus on the child support aspect of those issues and there was a separation, if you like, of the consequences those issues from the other concerns.
>
> At Legal Aid, we are very mindful of the fact that, if people are having to deal with just the maintenance issue, it raises issues of custody, access and so forth, which also need to be considered. Apart from all that, a lot of problems have arisen in relation to the fact that property settlements are often entered into at the same time that negotiations are under way for lump sum child support payment. There is often detriment suffered by the liable parent in that situation, as well. So our view is that the parties who are involved in the scheme should also be aware of the implications for their other family law matters.[11]

21.16 A non custodial parent may agree to a property settlement which includes the provision for the custodial parent and the children to remain in the family home or to acquire a new home and then discover at a later date that they (the non custodial parent) are responsible for a substantial child support liability which arguably includes a component for housing. This is illustrated by submissions to the Joint Committee which refer to this phenomenon as 'double-dipping'. One submission stated:

> I would like to be able to start a new life with some new person but people like your selves are making it virtually impossible for me to do that. My wife is doing very well for herself with a house full of furniture and a new partner. My

11 Transcript of Evidence, 11 November 1993, p 933

> daughter and myself are living well below the level we were used too [sic].
>
> The fact that my ex-wife is also able to double dip - collect child support, some assistance from my eldest daughters Aus Study [sic], as well as her new partner, seems to be a bit one sided don't you think.[12]

21.17 Another submission criticised the Child Support Scheme as being seriously unbalanced, stating:

> [There is a] ... tendency of the courts to agree to requests from the female partner to be allowed not merely to "double dip" but even in some cases "triple dip" allegedly on behalf of the children, by receiving financial benefits in respect of
>
> - child support payments, and
> - larger property settlements, particularly in relation to the share of the family home, going to the female partner, allegedly to make provision for the children, and in some cases
> - spousal maintenance ... [13]

21.18 There is a perception amongst many non custodial parents that the custodial parent receives everything after a property settlement and there is confusion about what has actually been taken into account by the court in reaching its decision. Many non custodial parents perceive that an allowance for child support has been made in their property settlement when this may not be the case. Consequently, they cannot understand why this allowance is not taken into account by the CSA in the calculation of their child support formula assessment. The following submission reflects the perceptions contained in many submissions to the Joint Committee on this issue:

> Despite a divorce property settlement that awarded most of my belongings including superannuation and $800-00 per month maintenance to my wife, the CSA formula assumes she has nothing. The divorce property settlement swung heavily in my ex-wife's favour supposedly in recognition of the need for my ten year old son to be properly looked after, yet the CSA formula assumes he has nothing and demands

12 Submission No 2880

13 Submission No 1202, Vol 4, pp 11–12

> that I pay a further $350-00 per month to my ex wife making my maintenance payments $1150-00 per month.[14]

21.19 The following submission succinctly summarised these non custodial parent perceptions:

> Most mothers receive quite a considerable payout as in a property settlement, this should be taken into account when an assessment is undertaken. ie the more payout, the less Child support.[15]

21.20 The Family Court's submission stated that anecdotal reports from the legal profession indicated that the child support formula, and the Scheme in general, has had little if any impact on levels of property adjustment.[16] The Joint Committee requested information from the Family Court on the interrelationship between child support and property settlements[17]. Information was sought about current general trends in the settlement of property disputes; the extent to which child support liability is taken into account in property settlements; how many matters in Stage 2 include a child support component in the property settlement and if these matters are readily identifiable on the face of the court order. The Court was unable to provide this information. The Court advised that it is difficult to know the influence of a child support liability on the percentage distributions of property without further research. Child support liability was not one of the main factors taken into account in the past surveys of the Court.[18]

21.21 The Joint Committee received substantial evidence which suggested that despite the specific requirement of section 79(4)(g) of the *Family Law Act 1975* that existing and expected child support liabilities under the *Child Support (Assessment) Act 1989* must be taken into account in property settlements, the legal profession and the judiciary may not have fully adjusted to the impact of the Child Support Scheme on property settlements. Michael Watt from the Law Council of Australia stated that:

> It is probably not just the court, it is probably the profession as well. We have all been so ingrained over the entire

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14 Submission No 3944

15 Submission No 3645

16 Submission No 5328, Vol 7, p 184

17 Letter from Chairman, 7 March 1994

18 Letter from Family Court, 10 June 1994

> duration of the Family Law Act's history, which is not a short time now, to thinking that the custodial parent starts with an extra 10 per cent and the question is whether she gets any more than that. As Michael [Taussig] was saying when you were asking the question, someone has got to argue it and I do not think the profession has been arguing as assiduously as it should be. There has been a major change here. This father is now paying $200 a week, whereas perhaps even only three or four years ago he would have been paying only $75 or something like that.
>
> ... there is undoubtedly a lag in the recognition by the judicial and legal culture of the structural change which the Child Support Assessment Act has brought into the whole process. At all relevant times, the property settlement section of the act - section 79 - has directed the court's attention to what is being paid either in child maintenance or child support. But in former times that was never an influential factor unless none was being paid, in which case the custodial parent might well have got significantly more. Not enough weight, I would venture, is being given at the moment to the fact that in many cases a proper contribution is now being made to the day-to-day costs of the child, and that does not need to be reflected so much in the property settlement as was formerly the case.[19]

21.22 In response to a question as to whether any change in the level of property settlements has been noticed since the inception of the Child Support Scheme, the Chief Justice of the Family Court responded:

> I do not think there is any discernible effect on the level of property settlements as a result of this legislation. I have not been able to detect any and that, in most cases, is because there is not enough money there anyway. As someone pointed out, it is only when there is a lot of assets that it really could become a significant matter.[20]

19 Transcript of Evidence, 29 October 1993, pp 781–2

20 Transcript of Evidence, 20 January 1994, p 1245

21.23 In response to a question as to whether there is a relationship between the child support assessment and the property settlement, Justice Kay, representing the Family Law Council, responded:

> There does not seem to be yet any evidence that the child support scheme has made the slightest difference to the outcome of property cases, but the coincidence of the recession and the diminution of property occurred at the same time as the child support scheme. So there is less property to go around now, in any event, than there was when the scheme was first envisaged, but there does not yet appear to be any evidence that child support has made any difference to property, certainly not in the reported cases and not in the marketplace research ... [21]

21.24 Adding to this John Faulks, Chairman of the Family Law Council, continued:

> It is not really surprising that is so if you look at the broad features of people who are under the child support scheme at the present time. When you consider that such a large proportion are social security pensioners, it does not automatically follow but it is a fairly reasonable bet that a large proportion of them did not have very much property to divide in any event. If the total equity in the family home, for example, was $50,000 or less, which would be a reasonable assumption in the equation, then $25,000 is not going to be enough for either of them to re-establish himself or herself. If, as was customarily the case before the Act came into existence, there was a split between custodial and non-custodial parent of 60 per cent to 40 per cent as a rule of thumb - there was no legislative justification - even a 30 per cent - 20 per cent division of that property would not enable either to accommodate themselves.[22]

21 Transcript of Evidence, 1 October 1993, p 429

22 ibid. p 430

21.25 The difficulties in the inter-relationship between child support liability and property were succinctly summarised in evidence by John Faulks, Chairman of the Family Law Council:

> The problem of division of property and its inter-relationship with the Act is a very complex one. The division of property is based upon ... a multiplicity of issues under sections 79(4) and 75(2) [of the *Family Law Act 1975*] which the court is obliged to take into account when dividing property. Therefore, it is very hard to draw any direct conclusions about how child support fits into it except to say that, obviously, if a custodial parent is receiving proper and adequate assistance for the children then she - usually she though not necessarily she - will not necessarily need any further adjustment of property to enable that to happen. But the best evidence we have at the present time, and I cannot see a way in which we could get any absolute evidence, is that there has been very little change to habits of people settling property because of the inception of the child support scheme. Whether that is a good thing or a bad thing I am not quite sure, but I think the fact is that people do not appear to have regarded it, either as non custodial parents or otherwise, as being a significant reason for not making adjustments for property in favour of a custodial parent.[23]

21.26 The case of **Borg v Borg** (1991) FLC 92-215 demonstrated the extent to which a non custodial parent's child support liability can be taken into account in property settlements if it is requested by practitioners. In this case the Family Court was asked to divide assets worth $135,000 between an unemployed labourer with a bad back and his unemployed wife who had custody of children aged 10, 2 and 18 months. The Court allocated 65 per cent of the assets to the wife and 35 per cent to the husband. This resulted in the wife retaining the home upon payment of $14,500 to the husband. The Court then ordered the husband to pay the wife $4,500 lump sum child support, thus reducing her lump sum payment to the husband to $10,000. The $4,500 was to be credited against future child support liabilities should the husband regain employment. The case is illustrative of how potential child support liability and the property settlement may be offset.

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23 Transcript of Evidence, 1 October 1993, p 430

21.27 In Borg's case the court identified difficulties with the inter-relationship between section 79(4)(g) of the *Family Law Act 1975* (taking into account future child support liability when making property orders) and the *Child Support (Assessment) Act 1989.* The problem is to what extent should there be any increase or decrease in the parent's share in property as a result of taking into account a future liability for child support. Section 124(5) of the *Child Support (Assessment) Act 1989* in effect enables a court to take into account a coexistent property order where a portion of the property to be transferred is identified as a payment of child support in substitution for periodic child support payments. The capitalised amount is then credited against the liable parent's liability under the formula assessment in accordance with section 125 of the *Child Support (Assessment) Act 1989.* The court must state whether child support is to be credited against a liable parent's liability under a formula assessment.

21.28 The Joint Committee is of the view there is a need for more consistency and certainty in the interrelationship of child support liability and property settlements. This includes both the redistribution of assets between the parties and the division of responsibility for ongoing debts incurred in the previous relationship. The Joint Committee notes the Government has accepted the recommendation of the previous Joint Select Committee that equality of sharing should be the starting point in the allocation of matrimonial property. The Government also accepted that Committee's recommendation that courts should have a discretion to depart from the equality of sharing principle to take account of several circumstances, one of which is the obligations incurred under the child support legislation. The Government stated in its response[24] that changes will be effected by amendments to the *Family Law Act 1975.*

21.29 It is imperative that in coming to an agreement or making a decision about distribution of property and future child support liability, proper advice is available and given to parents. Where a voluntary agreement is entered into it is incumbent upon those advising the parties that they are fully aware of the consequences of their agreement. This is an area where some of the legal profession have dismally failed. Where it is a court imposed decision, judges must pay full regard to future liabilities for child support when

24 **Family Law Act 1975 – Directions for Amendment**, December 1993, pp 40–41

determining property disputes. As discussed above, the judiciary and the legal profession have undoubtedly lagged behind in their recognition of the structural change which the Child Support Scheme has brought into the whole process of family law. Larger amounts of child support are now being paid under Stage 2 than under Stage 1, however, there appears to be little recognition of this by the Family Court in property matters. The Family Court and legal profession should recognise that a proper contribution is now being made to the day-to-day costs of children and ensure that proper weight is given to this in property settlements as required by section 79(4)(g) of the *Family Law Act 1975*.

21.30 The Joint Committee recommends that:

Recommendation 153

where a court makes an allowance for child support liability by capitalising child support in a property order it must clearly specify the effect the order may have on future liability for child support consistent with the decision of *Borg v Borg*.

Recommendation 154

where a court makes a property order and no allowance is made for liability for future child support the court must specify no allowance has been made.

21.31 As highlighted above, section 119 of the *Child Support (Assessment) Act 1989* provides that the Child Support Registrar must immediately take such action as is necessary to give effect to court orders which impact upon the amount of child support payable by the liable parent under a formula assessment. However, there is no prescription of what type of action is to be taken or how the Child Support Registrar is to give effect to court orders. To avoid confusion and to provide direction, the Joint Committee considers that where a court specifies a lump sum allowance for a future child support liability in a property order, the Child Support Agency should reduce the child support liability which would have otherwise applied under the formula assessment by apportioning the lump sum amount, on a pro rata basis, over the

period from the date of the court order until the child turns 18 years of age. This will apportion the lump sum allowance made by the court over the full period during which the non custodial parent is liable to pay child support under the *Child Support (Assessment) Act 1989*.

21.32 The Joint Committee recommends that:

Recommendation 155

where a court specifies in a property order that there is an allowance for future child support liability, the Child Support Agency calculates on a pro rata basis the amount by which child support is to be reduced until the child turns 18 years of age.

21.33 The Law Council of Australia submitted to the Joint Committee that non custodial parents may encounter the following difficulties in not being able to apply to the Child Support Agency for a formula assessment in property proceedings:

> Where there are property proceedings before the Family Court, and there is no child support assessment, the NCP has no way of obtaining an assessment so that the Family Court can take his / her liability for child support into account in determining what is a just and equitable property settlement under Section 79 of the FLA.
>
> This situation arises quite frequently where the NCP is making voluntary payments for the benefit of the child and the CP is not therefore motivated to obtain an assessment. After the property proceedings have been determined, the CP can apply for an assessment which could include substantial arrears which the Court did not take into account in the property proceedings.[25]

21.34 To rectify this anomaly the Joint Committee considers that the non custodial parent should have the right to apply to the CSA for a child support formula assessment. This would facilitate the court to take into account future child support liabilities when determining property settlements.

25 Submission No 5086, Vol 2, pp 273–4

21.35 The Joint Committee recommends that:

Recommendation 156

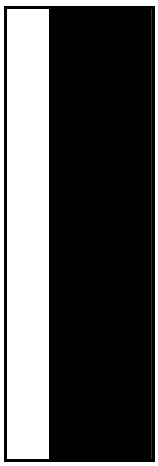
the non custodial parent be given the right to apply to the Child Support Agency for an assessment.

21.36 The Joint Committee is of the view that more accreditation of specialised legal practitioners in family law would improve the adequacy of advice, reduce delays in settling matters and remove unnecessary litigation. The Joint Committee acknowledges that responsibility for formal accreditation schemes is a matter for the States and Territories. However, to ensure consistency in standards there is a need for a national system of accreditation. Consequently, the Joint Committee considers that it may be appropriate for the Attorney-General to approach the Law Council of Australia to consider the issue of accreditation of legal practitioners practising in family law.

21.37 The Joint Committee recommends that:

Recommendation 157

the Attorney-General consults with the Law Council of Australia to examine the issue of accreditation of legal practitioners practising in family law to ensure the best and most accurate advice is available to the public.



PART III—Child support assessment considerations

22

Future evaluations of the child support scheme

Introduction

22.1 The Joint Committee has stated its concern in respect of the impartiality of past evaluations of the Child Support Scheme in previous Chapters of its report. In particular, given that the membership of the main body responsible for the evaluation of the performance of the Scheme, the Child Support Evaluation Advisory Group (CSEAG), was exclusively drawn from the membership of the Consultative Group whose report, **Child Support, Formula for Australia** (1988), was critical in the establishment of formula assessment under Stage 2 of the Scheme, the Joint Committee was immediately concerned over the impartiality of CSEAG's findings. Upon examination of CSEAG's evaluation reports, these concerns unhappily proved to be well founded. The Joint Committee discovered that the only major survey which evaluated the impact of the Scheme virtually overlooked the financial situation of non custodial parents and subsequent families. Furthermore, CSEAG's analysis in respect of key components of the child support formula such as the custodial parent disregarded income level was grossly inadequate. This Chapter sets out the Joint Committee's view in respect of how future evaluations of the Scheme should be conducted.

Future Evaluations of the Scheme

22.2 The Joint Committee considers it critical that a comprehensive evaluation of the impact of the Scheme on custodial parents, non custodial parents and their families be commissioned by the Government urgently. This evaluation should examine the financial impact of the Scheme on its clients including an analysis of the relative household income, debt and asset levels of custodial and non custodial parents.

22.3 In Chapter 18 the Joint Committee considered the wider social impact of the interaction of the social security, child support, family law and taxation legislation on the behaviour of custodial and non custodial parents both within and outside the Scheme. In particular, the Joint Committee is concerned that the interaction of this broad range of legislation may be creating serious work disincentives for both custodial and non custodial parents, putting intolerable pressure on existing relationships and discouraging the formation of new relationships generally. However, the Joint Committee is not able to make a proper assessment of the impact of this broad range of legislation due to the lack of detailed research in this crucial area.

22.4 The Joint Committee considers that the next evaluation of the Child Support Scheme should incorporate an empirical study to consider the combined effect of this broad range of legislation on work disincentives for both custodial and non custodial parents, incentives for the separation of existing families and disincentives for the formation of subsequent families. At the same time the relevant departmental representatives should meet to critically analyse ways of better integrating this legislation.

22.5 Any future evaluation of the Child Support Scheme must be seen to be truly independent and outside the influence of the departments with policy responsibility for the Scheme, as well as any other parties who have played a significant role in the establishment of the Scheme or in any past evaluation of it. In this way any future evaluations of the Scheme will be publicly seen as truly independent thereby ensuring public confidence in the results of these evaluations and the Scheme generally is enhanced.

22.6 The Joint Committee notes that the Department of Social Security (DSS) dominates the policy aspects of the Scheme whilst the Australian Institute of Family Studies (AIFS) has been the major body assisting with the evaluations of the Scheme. Neither DSS or the AIFS could be considered to be at 'arms length' to the Scheme and the Joint Committee considers that any future evaluation should be conducted at arms length from both organisations. This could be achieved by excluding the AIFS from

carrying out the research evaluation and by creating an independent supervisory committee of three persons possessing appropriate statistical, social science and legal skills to oversee the evaluation of the Scheme by an independent research organisation. The Joint Committee envisages that this independent supervisory committee would oversee future evaluations of the Scheme by firstly participating in drawing up the terms of reference, engaging consultants to do the research, and consulting with the departments and agencies with responsibility for the Scheme.

22.7 The Joint Committee strongly recommends that:

Recommendation 158

the Government, as a matter of priority, commissions the next evaluation of the Child Support Scheme to be carried out by an independent research organisation under the guidance of a three person supervisory committee.

Recommendation 159

the next evaluation of the Child Support Scheme comprehensively examines the Child Support Scheme's financial impact on its clients including an analysis of relative household income, debt and asset levels.

Recommendation 160

the next evaluation of the Child Support Scheme incorporates a comprehensive analytical study and empirical evaluation of the combined effect of the social security, child support, family law and taxation legislation on:

(a) work disincentives for both custodial and non custodial parents;

(b) incentives for the separation of existing families; and

(c) disincentives for the formation of subsequent families.

22.8 Over the 6½ years that the Child Support Scheme has been in existence, there have been five evaluation reports which have examined its impact. These reports have led to some fine tuning of both the legislation for, and the administration of, the Scheme. The Joint Committee considers it imperative that this evaluation process is continued on a regular basis in the future.

22.9 The Joint Committee recommends that:

Recommendation 161

impact of the Child Support Scheme be regularly evaluated over time.

Modelling of the Impact of the Scheme

22.10 In Chapter 16 and Chapter 18 the Joint Committee considered the modelling provided by DSS in respect of outcomes under the existing child support formula and the Joint Committee's recommended modifications to this formula. This modelling estimated the disposable income of custodial and non custodial parents after tax and Medicare contributions had been deducted and after child support had been distributed. This included the effects of any Basic Family Payment, Additional Family Payment or Guardian Allowance for which the custodial or non custodial parent were eligible. However, the estimates of disposable income did not include the effect of any Rent Assistance or other fringe benefits available to social security recipients.

22.11 These fringe benefits increase the disposable incomes of custodial and non custodial parents who are social security recipients as they provide free or subsidised access to goods and services. The Joint Committee notes that whilst it may be difficult to quantify the precise monetary value of these fringe benefits, any estimate of their effect on the disposable incomes of custodial and non custodial parents who are social security beneficiaries is likely to be substantial. Accordingly, the exclusion of an estimate of the value of these fringe benefits on the disposable incomes of these parents in the modelling provided by DSS means that the disposable incomes of these parents calculated by this modelling are significantly understated. The Joint Committee considers that an estimate of the value of these fringe benefits should be included in the disposable incomes of custodial and non custodial parents in any future modelling of the impact of the Scheme

in order to ensure that the relative disposable incomes produced by this modelling are a better reflection of each parent's actual capacity to pay.

22.12 The Joint Committee recommends that:

Recommendation 162

any future modelling of the impact of the Child Support Scheme on the relative disposable incomes of custodial and non custodial parents includes an estimate of the value of fringe benefits provided by all levels of Government to those parents who are social security recipients.

22.13 The Joint Committee notes that the modelling of the impact of the Child Support Scheme is monopolised by DSS. As highlighted in Chapter 4, DSS has a direct financial interest in the Scheme and consequently is far from disinterested in the outcomes produced by its modelling of the impact of the Scheme. This potential conflict of interest is exacerbated by the fact that the clients of DSS under the Scheme are sole parent pensioners who represent over 90 per cent of custodial parents under the Scheme. Consequently, the Joint Committee considers that the public confidence in the Scheme can be best served by DSS commissioning an independent party to conduct all future modelling of the impact of the Scheme on the relative disposable incomes of both parents.

22.14 The Joint Committee recommends that:

Recommendation 163

all future modelling of the impact of the Child Support Scheme be conducted by an independent party.

Hon ROGER PRICE M.P.

Chairman

November 1994

Dissenting Report—Senator Belinda Neal

1. I must begin this report by stating quite clearly that, even though there are some issues in the Joint Committee report that I cannot agree with, I believe that the majority of the matters raised and the recommendations set out within that report will be of great benefit to the Child Support Scheme and to those whose lives are affected by the operation of the Scheme.

SCOPE OF INQUIRY

2. The scope of the Joint Committee's inquiry has been extensive to say the least. Substantial research and preparation was carried out by the committee members, both on their own behalf and as a result of the numerous submissions received. Attempts were made not only to gain an extensive overview of what had taken place in the initial enactment of the legislation but what reform had been put forward since. The Joint Committee also heard in great detail from the Child Support Agency, as well as the Department of Social Security which has the responsibility in the most part for the policy program under which the Child Support Agency operates. In terms of public input, I would venture to say that the Joint Committee received more submissions from members of the community than any other committee before it.

3. In the course of this dissenting report, I would like to address a number of issues that were raised in committee discussions, as well as put forward three recommendations that are at variance with the Joint Committee's report.

TREATMENT OF CUSTODIAL VS NON CUSTODIAL PARENTS

4. Both custodial and non custodial parents have expressed strong dissatisfaction with the administration of the Scheme. There was concern at the lack of sensitivity with which the Child Support Agency (and, indirectly, the Department of Social Security) dealt with the delicate issues involved. This view was most strongly expressed by non custodial parents, who were often unnecessarily cast as defaulting debtors or criminals.

5. While I acknowledge the sincerity of non custodial parents in expressing this view, it is my impression that the Child Support Agency did not adequately deal with the concerns of custodial parents either. Custodial parents raised fewer concerns with the administration and procedures of the Agency largely because they were more willing to put up with the flaws in its operation in return for the tangible financial support that they were receiving.

6. Many of the issues relating to this aspect of the procedures of the Agency have been addressed by the Joint Committee report in Chapters six (6) through twelve (12), and I strongly endorse the views and recommendations expressed therein.

THE AGENCY AS A MECHANISM FOR PROVIDING FINANCIAL SUPPORT

7. Some 1976 submissions were received from custodial parents, of which 433 endorsed the Agency as an effective mechanism for providing child support from non custodial parents, notwithstanding other concerns raised with the Agency's operations.

8. On the strength of the contents of these submissions and the Joint Committee's own investigations, it is my view that there has been a noticeable improvement in the provision of financial support by non custodial parents for their children. This is best illustrated by examining the percentage of non custodial parents who met their child support obligations prior to the commencement of the Scheme (30%), and the percentage of child support collected by the Agency five years later (73%).

9. The average dollar value of this maintenance has also increased significantly over the period of the Scheme's operation, reaching an average of $46.34 per week payable under the Scheme, and an average $40.00 per week payable as a result of court orders for maintenance.

10. This would tend to indicate that the first priority of the Scheme, that is 'adequate support is available to all children not living with both parents' is, or has been, more effectively carried out by the Scheme than it was prior to the Scheme and continues to be improved upon.

11. The Child Support Scheme was enacted to assist those children whose parents separated after 1 October 1989, those born on or after that date, or those with siblings born on or after that date. All children who did not fall into these categories were forced to rely solely upon the collection of maintenance monies from court orders made pursuant to the Family Law Act 1975. The path of collection of maintenance for Stage I custodial parents has never been easy or effective. A study by the Australian Institute of Family Studies, which is discussed in Chapter 1 of the Joint Committee's report, indicated that approximately 60% of all children received no support whatever. Only about one third of children are covered by the Child Support Scheme. Of these, 73% receive child support. This shows that a child covered by the Scheme is almost twice as likely to receive child support than a child of separated parents who is not covered by the Scheme. The Scheme, despite other problems with its operations, must be credited with providing a better avenue for child support payments than the entirely judicial structure that existed previously.

12. The Child Support Advisory Council (also known as the Fogarty Committee) strongly recommended that the Child Support Scheme should be extended to all children and not merely those that fell within the above parameters. This recommendation has not been taken up by the Government, although the opportunity remains for changing circumstances to lead to a different conclusion.

13. There is strong evidence to suggest that the level of maintenance being awarded pursuant to court orders under the Family Law Act 1975 is being determined by reference to the formula set out in the Child Support (Assessment) Act 1989. It can also be seen that the marked increase in the average level of maintenance payable pursuant to the Family Law Act 1975 has increased markedly since the inception of the Child Support Scheme, from $26.00 per week in 1988 to $42.00 per week in 1992/93, bringing it almost on par with the average weekly payments under the Scheme. The Child Support Agency, in its submission to the Joint Committee, put its belief that had the Scheme not been initiated, the average value of maintenance from court orders issued under the Family Law Act 1975 would have remained closer to $31.00 per week.

14. This would indicate an indirect benefit of the operation of the Child Support Scheme, for those children who are not eligible to receive direct benefits from it. The decision of the Family Court in Beck and Sliwka (1992 - FLC 92-296) indicated that the Court did not think it improper to take the

Child Support (Assessment) Act formula into account when determining the details of court orders where the issue was the capacity of a non custodial parent to make an equitable contribution to the cost of child maintenance.

15. There is also extensive anecdotal evidence that in the local court where the majority of maintenance orders are made, that magistrates are very much reliant on the formula to give an indication of a reasonable range for maintenance orders.

16. Those custodial parents still relying on court orders to obtain a reasonable level of child maintenance for their children find that the difficulty, emotional stress and cost of legal proceedings to increase their level of maintenance from usually the time of separation is not an undertaking they are prepared to enter into.

17. There is also a greater cost of legal proceedings which is transferred to the community through grants of legal aid. This dual system is clearly unnecessary, as there is a clear alternative system of assessing financial contributions to child support payable through appropriate legislative changes.

18. In light of this situation it is my view that the Child Support (Assessment) Act 1989 should be extended to all children of separated parents.

RECOMMENDATION 1

That the Child Support (Assessment) Act 1989 be extended to all children of separated parents.

AMENDMENT TO THE FORMULA

19. The financial position of families headed by sole parents is generally that of the poorest section of our community. By example, 91% of those custodial parents registered with the Child Support Agency for collection have an income of less than $19,000 per annum. Seventy six per cent have an income of less than $10,000.

20. The financial position of the non custodial parent, though, still compares favourably with the financial position of the custodial parent. They also do not have the additional expenses of the child within the household and the financial responsibility so incurred. This responsibility extends beyond the

simple payment of monies for groceries, clothes, transport, school fees and so on, and includes the provision of time for parenting, and other obligations which can reduce the earning capacity of custodial parents.

21. The financial position of the non custodial parent within the Scheme is also not affluent. Approximately 68% of non custodial parents registered at the Child Support Agency for collection have an income of less than $20,000 and 31% have an income of less than $10,000.

22. Professor Anne Harding of the National Centre Association Economic Modelling, who recently conducted research into poverty in Australia, concluded that sole parents are the group most likely to be in poverty. Sole parents were more likely to suffer from unemployment as a result of their personal situations, and to remain out of the work force for long periods.

23. There can be little argument, therefore, that sole parents are among the most disadvantaged and vulnerable groups in our society. The obvious difficulties created by low levels of income are exacerbated in families that are supporting one or more children. The unemployed parent then has difficulty providing the example and skills for their children to pursue employment in the future.

24. The lack of role models and the relegation to at least semi-permanent poverty must in time create an entire generation of sole parent children with limited employment futures and no particular job skills. This generation will be required to face the prospect of having potentially less skills with which to obtain work, and will be required to deal with the attendant personal and emotional difficulties of being unable to take a full part in society.

25. It is essential, then, that consideration is given to methods of assistance to avoid this outcome. One possibility would be the wider application of the child support formula to give greater financial assistance to those families in need, and also to consider the possibility of providing a wider range of non financial assistance to increase the likelihood of employment for sole parents and their offspring.

26. There has been considerable data and a substantial number of submissions received in relation to the perceived unfairness of the non custodial parent's excluded income presently at a level of $7,959.00 as compared to the custodial parent's present disregarded income level of $32,063.00, plus an allowance for each child at an amount depending on their age.

27. The temptation to compare the two figures is obvious. But the fact is that these two figures do not in fact measure the same values.

28. The excluded income component provided to the non custodial parent is in essence a living allowance which is deducted from their taxable income before the percentage payable for child support is calculated.

29. By contrast the disregarded income amount applied to the custodial parent is an amount which recognises the contribution of the custodial parent to the financial support of their children. This disregarded income amount takes into account the cost of the parenting to the parent with whom the child lives, including child care costs, and at the lost opportunities in employment which the parents with the day to day care of children often suffer.

30. Because of this misunderstanding relating to the equivalence of these amounts there is a general tendency within the community and in particular among those affected by the Scheme to consider it fairer that these two figures are closer in value. This fallacy has been embraced by the majority of the Joint Committee in recommendation 118 which recommends a reduction of the custodial parent's disregarded income level to $19,723.60.

31. In my view this does not appreciate the different issues embraced in the custodial parent's disregarded income which relates to the costs associated with having the care of the children, and the excluded income component which preserves a portion of the non custodial parent's income for their own use before the application of a percentage.

32. The effect of the recommendations will be largely academic, in that 90% of custodial parents earn less than $10,000.00. Therefore, very few custodial parents will actually suffer a cut in child support, as they earn less than the disregarded income amount in any case. The recommendations will have an indirectly detrimental effect on both custodial and non custodial parents, in that they will act as a disincentive to seeking employment.

33. As earlier indicated the unemployment rate for sole parents is one of the highest in the community. The effect of decreasing the disregarded income level to the cut off point of the Sole Parent's Pension can only exacerbate this tendency. Sole parents when re-entering the work force must overcome the usual financial and practical difficulties of establishing transport and proper presentation and skills for new jobs, as well as providing alternate care for their children often at great costs. These financial difficulties coupled with emotional challenges presented by going back to work after some time out of the work force are immense. The Joint Committee's recommendation regarding the lowering of the disregarded income level can only make things worse. It provides a negative effect on the financial position of the custodial parent by acting as a barrier to escape from social security dependence. This leads to a continued reliance on the

community through Social Security payments and the non custodial parent through child support. In addition a family in which there is no role model provided for employment will often lead to a situation where the children themselves have difficulty obtaining employment.

34. I believe that there can be no advantage in the carriage of recommendation 118, and no long term benefit for either the Government or the parents concerned.

RECOMMENDATION 2

That the custodial parent's disregarded income level not be reduced below its present level.

35. The Joint Committee in recommendation 121 recommends that the maximum cap of the non custodial income be reduced to twice average weekly earnings.

36. The present cap for the non custodial parents income is 2.5 times average weekly earnings. The effect of this recommendation would be to discount the amount of Child Support payable by a non custodial parent in the income bracket between $63,518.00 and $83,147.50. When you compare this to the custodial parent income group which is, as previously stated, 91% of them are in the income level below $20,000.00 then this is plainly inequitable.

37. The Joint Committee's report argues that this recommendation is to reduce the disincentive of the non custodial parent to increase their income. This allegation was raised on many occasions, particularly from non custodial parents, but is not in my view substantiated by statistics. The statistical reality is that the custodial parent is much more likely to be unemployed than the non custodial parent. Further, that very few non custodial parents have work, except where there is some other substantial reason, particularly at that income level.

38. The argument for the reduction of this figure is largely based on the view that the amount of income paid on supporting a child is of a preset amount notwithstanding the current income of the parent. It is my view that the amount of money spent on a child is almost entirely dependent on what the available disposable incomes of the parents are. Thus much as a person's financial responsibilities and expectations increases their income increases so does the financial demands and expectations of the children in the family increase.

RECOMMENDATION 3

That the maximum cap on the non custodial parent's income not be reduced.

CONCLUSION

39. Notwithstanding my disagreement on these matters, I again state my support for the balance of the recommendations of the Joint Committee report. I would like to express my pleasure in working with such a dedicated Committee and extremely diligent Secretariat, and to thank all those who otherwise assisted in the Joint Committee's deliberations.

Senator Belinda Neal

November 1994

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Appendix 1

List of public submissions

Submission Number	Author
1	Mr B Wilson
2	Mr G Jobling
3	Mrs S Kerr
4	Mr J W H Phillips
6	Ms J M Picton
7	Mr T F Gaffney
8	Mr A Breese
9	Ms B Holmes
11	Miss G Underwood
12	Mr P D M Thomson
14	Mr R Luke
15	Patterson, Byfield & Bryen
17	Ms B Wellesley
19	Mr R Leerson
20	Mr M Mussig
22	Mrs D Hughes
23	Mr W Kelly
24	Ms M H Goodin
26	Mr W J Wright
28	Mr J Arms
29	Miss C M Hutton
32	Ms S Carr
33	Mr S Henderson
34	Mr D Harvey
35	Mr M S Johnstone
36	Mrs J Smith
39	Mr Chris Boal
40	Ms M Lawton
43	Mr P Lee
44	Mr G A Coleman

46	Mr A R Warren
48	Ms D Gagliardi
49	Mrs D Falland
50	Mrs C P McNamara
51	Mr B Griffin
54	Mr J Mulvey
56	Mr P Guido
57	The Geelong Brush Co
58	Mr G Bradley
59	Ms E Casale
60	Mrs S E Forsyth-Grant
61	Mr J Halloran
62	Mr D Johns
63	Mr R Olive
64	Mr C George
65	Mr/Ms J H Paddick
68	Ms C Auld
69	Mr S M Duffield
71	Ms P J Girdlestone
72	Ms M Colman
73	Mr C Sultana
75	Mr R S Ford
78	Mr W L Lockley
79	Mr K Robshaw
80	Mrs S Mitchell
81	Mr B N Fraser
82	Mr M Stewart
84	Mr R M Gaudry
86	Mr B Gook
87	Ms D Jefferies
89	Mr J Patrikis
90	Ms B Newman
92	Ms J Colman
93	Mr G Thompson
94	Ms G Vidler
95	Mr M M Anderson
96	Mr Abbas Adam
99	Ms C Murphy
100	Ms S Dellatare
101	Mr D Atkinson
104	Mr K J Lewis
105	Ms A J Burns
107	Mr P A Fleming
108	Mr R J White
109	Mr J Daly
110	Mr T Mackay
112	Mr G J Daley
113	Mr P R Jackson
114	Ms R Rogerson
115	Mr G Jones
116	Ms T R Tindale
117	Ms P Mills
118	Mr W D Day
119	Mr W R Deane
121	Ms Mariola Jackson
122	Mr Paul Thorsby
123	Mr G H Trickett
124	Mr G A Cooper
125	Mr J McCormack

126	Mr S & Mrs L Barbour
127	Mr John Hansen
128	Ms Helen MacBeath
129	Mr C Gray
130	Mr John Boshier
132	Mr Stephen Herd
133	Mr N Kallenberg
134	Ms K Sidebottom
135	Fox and Thomas
136	Mr Peter Fox
137	Mr W G Burns
138	Ms J Kretschmer
140	Ms P Ryan
141	Mr/Ms T Kalinowski
142	Mr D Hutt
143	Mr Steven Burrows
147	Mr Gene Kinch
150	Ms J Riley
151	Mr G G Challen
152	Peter Smyth, Burnett & Co
153	Mr Iain Adams
154	Mr & Mrs B G McCallum
155	Mr Michael Austin
156	Miss Heather Stringer
157	Ms B Eggleston
158	Mr Jason Mundy
159	Mr Greg McClaren
160	Mr S Zoneff
161	Mr B G Newlands
162	Mr/Ms A McGuire
164	Mr A Holker
165	Mr J Winterflood
166	Ms D Hayward
167	Ms Diana Apps
168	Mr B Small
170	Mr G Sinclair
172	Mr L S Lotockyj
173	Ms Irene Brown
174	Mr T R Headon
175	Mr M J Clifford
176	The Single Mother's Support Group
177	Mr G Childs
178	Mr Howard Hill
179	Ms Bernadette Davis
180	Mr G Curtis
181	Mr Geoff Murray
183	Mr Antonin Koudelka
184	Mr Barry Yeomans
185	Mr Patrick McInnes
187	Mr Hans Pynenberg
189	Mr A F Kneebone
191	Mr Matthew Sawyer
193	Mr Brian Nelson
194	Mr Daryl Teale
195	Mr G Bryson
196	Mr James Gibbs
198	Mr G D Bell
199	Ms Anne Murray
201	Mr L A Fleetwood

202	Mr Colin Cashman
203	Mr Greg Oxley
205	Ms Barbara Young
206	Mr Neville Kennedy
208	Mrs K Hill
209	Ms L A Russell
210	Mrs Barbara Park
211	Mr M E Lawrie
212	Ms Carolyn Harvey
213	Mr Vincent Whiting
215	Mr Norman O'Neill
216	Mr Ian Virgen
217	Mr Paul Cleeman
218	Ms B J Berryman
219	Mrs E Duffield
220	Mr B Sais
221	Mr Michael Brumfit
222	Mrs G Beattie
223	Mr B S Hemer
225	Mr R J T Allan
226	Mrs G Kennedy
227	Ms Kim Walpole
229	Mr Michael Tancredi
232	Ms C Ponsford
233	Mr P G Friedlos
234	Mr R B Duncombe
235	Mr S A Spencer
236	Mr Clive Astle
237	Mr J R Bennett
239	Mrs Julie McClaren
240	Mr Barry Clark
241	Mr Jeff Crichton
243	Mr A J Pavey
244	Mr Malcolm Klingner
245	Mr A Babidge
246	Mr Gavin Goddard
247	Mrs S Burgess
248	Ms C Johnson
249	Ms H Agnew
251	Mr Cliff Johnson
252	Ms L Cresp
253	Mr Barry O'Donohue
254	Mr Paul Hensley
255	Hon John Moore, MP
256	Mr Garry Parmenter
257	Mr Wayne Parker
258	Mr Gregory O'Brien
259	Ms Janette Rowe
260	Mr P J Aldred
261	Mr T J Short
262	Mr B & Mrs P Cornish
263	Mr J Ventnor
264	Mr A J Wigg
265	Mr Greg Lowe
266	Mr J W Williams
267	Mrs C Farquhar
268	Mr Paul Watts
269	Mr S J Stephens
270	Mr R J Phillips

271	Mr A J Long
272	Ms J K Pryor
273	Mr Keith Ryan
274	Mr John Wrightson
276	Mrs Judith Curnoe
277	Mr G Pratt
278	Mr G L Coles
279	Mr T A Graham
281	Mr M W Davies
282	Mr M J Smith
285	Mr David Carus
288	Mr Peter Hutchinson
289	Mr T P Fisher
291	Mr W H Long
292	Ms C A Gibson
293	Mr N T J Wyatt
294	Ms J A Brookfield
296	Ms Alison Clark
297	Mrs M Johnson
298	Mr G J McEwan
299	Ms Tracy Bagics
300	Mr Malcolm Park
301	Mr B W Mason
302	Ms E D Allis
303	Mr R R Furlonger
304	Mr R W Death
305	Mr Hugh Goodwin
306	Mr David Green
307	Mr K L Thompson
308	Ms E I Goodman
309	Mr M M Pettigrew
310	Mr K Scowen
311	Mr Robert Baxter
312	Mr A W Barkley
314	Mr C Nicholson
315	Mr T W J Gunning
317	Mr S D Swan
318	Mr B J Penney
319	Mr John Dawson
320	Mr Ken Brown
321	Mr Larry Murcutt
322	Ms C S Mushansky
323	Mrs P Price
324	Mr T Burton
326	Mr D T White
327	Mr N A Williams
328	Mr Michael Robinson
329	Mr Glen Wade
330	Mr R D McPharlin
331	Mr G B Beasley
332	Mrs M McFerran
333	Ms A M Morgan
334	Ms Margaret Grant
335	Mr Alex Proudfoot
336	Mr Darrell Smith
337	Mr N Highfield
338	Mr John Langley
339	Mr Mark Gemmell
341	Mr D Jagger

342	Mr R Ferguson
344	Mr L Cook
345	Miss T MacDonald
346	Mr Bruce Perceval
347	Mrs Joan Broome
348	Mr Lyall Naylor
352	Mr Rocco Agnese
353	Mrs Donna Newby
354	Mr Garry Huon
355	Mr Dean Skinner
356	Mr John Kolence
357	Ms Deborah Allen
358	Mr D Hanssen
359	Ms H J Whitfield
360	Ms Christine Robinson
361	Mr Dean Hughes
363	Mr Warwick Cox
364	Mr/Ms R Cashin
366	Mrs Deborah Cruddas
367	Mr R K Smith
369	Mr Terry Panitz
370	Mr Mark Lester
372	Mr Louis Jessen
373	The Marriage and Family Centre
375	Ms T R O'Neill
376	Mr/Ms M K Clarke
377	Mrs L Taylor
378	Ms Fiona Simpson, MLA
379	Mr Robert Rucker
380	Mr Shane Dean
381	Major B McGurgan (Rtd)
382	Ms Heather Frost-Drury
383	Mr S J Connell
385	Ms Sheree Weate
386	Mr K L Doughty
387	Ms Belinda Exton
388	Mrs F J Quin
390	Mrs Sue Bennetts
391	Mr S J Schafer, JP
392	Ms Lesley Gates
397	Mr Douglas Williams
398	Mr R Dawson
400	Mr John Ooi
401	Mr S R Doudle
403	Ms Vickie Forbes
405	Ms Irene Ziolkowski
407	Glenn Mellross & Associates
409	Ms E Whalen
410	Mr H Anderson
411	Mr Mark Corner
412	Miss Valeria Albert
413	Mr Rod Burkhalter
414	Mrs M S Lane
415	Ms I C Steven
416	Ms Delwyn Frame
418	Mr Peter Giudes
419	Mr Peter Stephens
420	Mr Fintan Hamilton
421	Mr Gerard Hunter

422	Mr W J McMahon
425	Mr & Ms S D & J M Teale
426	Mr S Gleeson
427	Mr G Longdon
428	Mr/Ms S Roughley, JP
429	Ms Helen Court
430	Mrs J Coe
431	Ms Jane Carpenter
432	Mr P S Illman
434	Ms Sharon Higgins
436	Mr Colin Barrs
439	Mr Garry Holland
440	Mr David Eade
442	Mrs Daphne Lockwood
443	Ms Amanda Field
444	Mr Andrew Mackinnon
446	Mr Thomas Melvin
447	Mr Tony Walker
449	Mr D Perkovic
450	Mr Peter Stephens
451	Ms Lorraine Schmitzer
452	Ms Elizabeth Foley
454	Mrs Neita Burkill
455	Ms P J Armstrong
456	Ms Stephanie Parker
457	Coulter & Burke Lawyers & Consultants
458	Mr R Langler
459	Mr I A Glasson
460	Mr A N Smith
462	Mr G W Rose
463	Mr Paul Gill
464	Ms Karen Barker
465	Mrs Margaret Bassett
466	Ms Anne Cottrell
467	Mr K M Robson
468	Marriage Guidance Australia Inc
469	Ms Karen Williams
470	Creswell & Hewitt
471	Mr Brad Larkey
472	Mr Graeme Chidgzey
473	Ms Shirley Everison
474	Ms Vicky Burrows
475	Mr I J Skokandic
476	Mr Mark Money
477	Ms Robyn Heikkila
478	Mr John Hillman
479	Mr/Ms D G Longhorn
480	Mrs Cheryl Frank
481	Ms Jean Throssell
482	Mr Ross Gibb
483	Ms Rhonda Monro
484	Mr V Prodanov
485	Mr R A Willey
486	Mr G S Smyth
487	Mr Roderick Poole
488	Mr S F Arnold
489	Mr Peter Stabler
490	Ms Teresa Mollross
491	Mr Paul Smith

492	Mr J Vuillemain
493	Mr Malcolm Mercer
494	Mr M J Seagrim
496	Ms Jenni Lear
497	Mr Ross Bradbury
498	Mr Gavin Rogerson
499	Mr Paul McNamara
500	Mr Simon Fairs
501	Mr R J Green
502	Mr Lindsay Geddes
503	Mr K M Carney
506	Mr Greg Smith
507	Mr Joseph Borg
508	Ms Katherine Collier
509	Ms Cheryl French
510	Mr G Cartwright
511	Mr Paul McKendrick
513	Ms Heather Shufflebotham
514	Mr Dave Beard
515	Mr/Ms E W Palmer
516	Ms Janine Tibbett
517	Mr Richard Somers
518	Ms Carolyn Worthy
519	Mr Phil Belcher
521	Mr John Figiel
523	Mr Stephen Double
525	Mrs Norma McTaggart
526	Mr Esteban Do Santos
528	Family Law Injustice Group
529	Mr Roy Patching
530	Mr Frank Thain
531	Mr Terry Wilkinson
532	Ms Kathleen Vaughan
533	Mr Len Hulbert
534	Mr Greg Pemberton
535	Ms T M Grigg
536	Mr W Aston
537	Mr Norman Van Brakel
538	Mr K J Forsstrom
540	Mr Laurie Lowe
541	Mr Wilfred Kelvin
542	Mr Robert Giles
543	Ms P M Coyle
544	Mr John Hudson
545	Mr T J Hamnett
546	Mr Glen Daly
547	Ms Jennie Newton
548	Mr Paul De Groot
550	Mr Phillip Burrows
551	Mr A W Gillespie
552	Mr Michael Banks
553	Mr William Bebbington
554	Mr Larry Butler
555	Mr K H Mills
556	Mr Paul Scully
558	Mr Lindsay Meredith
559	Women's Electoral Lobby Australia Inc
561	Ms Judith Mott
562	Mr Brendan Kurtze

563	Ms L Egan
564	Mr G M Styles
565	Mr Robert Logue
566	Mr Phillip McNellie
568	Ms C E McNellie
569	Parents Without Partners Australia Inc
571	Mr Mark Dean
572	Mr Robert Harris
573	Mr Peter Auston
574	Mrs Jo-Anne Austin
575	Mr Malcolm Jones and Ms Katherine Michell
577	Mr Robert Kelso
578	Mr Graeme Herbert
579	Mr David Green
581	Mr Andrew Woolard
582	Mr Frank Fiume
583	Mr G L Gregg
584	Mr Richard Lane
585	Ms Catherine Stewart
586	Ms Leanne Peake
587	Ms Irene Posadas
588	Mr & Mrs P Frohloff
589	Mr Ken Orr
590	Ms Lori Farquhar
591	Mr Ivor Paech
593	Credit Line Financial Services
596	Mr Peter Bansagi
598	Mr Graeme Campbell, MP
599	Ms Karan Smith
600	Mr John Brants
601	Ms Jane Martin
602	Mr Mark Lowe
603	Mr Robin Rogers
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612	Mr P J Grummitt
613	Mr Garth Howard
614	Ms Betty Nicholson
615	Mr Ted Cichon
616	Mr Anthony Walton
617	Mr R D Hardy
618	Mr Trevor Lowe
619	Mr T Harris and Ms R Hourigan
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623	Ms Anne Rogers
624	Mr Anthony Gray
625	Mr Michael Miller
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635	Mr Stephen Archbold

637 Mr Ian Beyer
638 Mr Kevin Whicker
640 Ms Julie Daniels
641 Mr Steven Howard
644 Mr P Adamson
645 Ms Frances Walker
646 Ms S Sedgwick
650 Ms Patricia Phelps
651 Ms Barbara Gwinnim
652 Ms Michelle Raymond
653 Ms Rebecca Hagen
654 Ms Wendy Lawrie
655 Ms Noreen Kennedy
656 Ms Carol Hoskins
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658 Ms Mandy Spacek
659 Ms Maxine McDonald
660 Ms Kerrie Pulley
661 Mr Doug Hayes
662 Mrs Tracy Cruse
663 Non-Custodial Parents Reform Group
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666 Mrs Jennifer McCarthy
667 Mr Trevor Bowen
668 Ms Pamela Wade
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670 Mr R W Armstrong
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672 Ms Jacqueline Arakiel
673 Mr Jack Pennington
674 Mr Douglas Wilkie
675 Mr Craig Townsing
676 Mr Paul Fregosi
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679 Mr Richard Morton
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681 Mr R J Meredith
682 Mr Mark Gribble
683 Ms Judith Coles
684 Ms Lynette Scott
685 Mrs Enid Miles
686 Ms Cheryl Jiear
687 Mr Alastair Kane, JP
688 Mr S Frankland
689 Mr Grahame Abbott
690 Mr/Ms J P Smith
691 Ms Larissa Kovalenko
692 Mr Peter Drayton
694 Mr Colin Lock
695 Ms Rhonda De Costa
696 Ms A E Ashley
698 Mr Pat Leech
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703 Ms Kay Ferrington
704 Ms Debbie Coleclough
706 Ms Diane Riddle
707 Mr Alan Hovak
708 Mr Neal Kruger
710 Ms Fran White

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761	Mr & Ms Colin & Una Bull
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765	Ms Joyce Milroy
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768	Mr Jeff Hetherington
770	Ms Julie Byerley
771	Ms Mia Virtue
772	Mrs Anne Moncrieff
773	Ms Bev Warn
776	Ms Kath Stonier
777	Ms Lorena Pearce
778	Ms Beryle Crawford
779	Ms Lynette Brown
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781	Ms Colleen O'Loughlin
782	Ms Gitta Green
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786	Ms Cheryl Cox
792	Mr/Ms K J Williams
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794	Mrs Ronda Smith
797	Ms Patricia Giles
799	Mr Peter Cox
800	Ms Cheryl Brown
801	Ms S V Owen
804	Mrs Lesley Thomas
805	Mr P L Della-Vedova
806	Ms S Grant
807	Ms J Woodman
808	Ms Babette Bates
809	Ms Helen Harris

810	Mr E J Niesler
812	Ms K C Creswell
813	Mr Alan Danzey
814	Mr/Ms K Wilson
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817	Ms Kim McIlmurray
818	Miss Kerry Irwin
820	Ms Hazel Koch
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823	Mr/Ms K A Troy
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826	Ms Julie Jaeger
827	Ms Jo Dunlop
828	Ms Karen Mohapp
829	Miss Megan Cameron
832	Mrs M Sawatzki
833	Mr W J Scoborio
834	Ms Stella Holt
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838	Ms Ngaire Martin
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854	Mrs Sue Fraser
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862	Ms S F Morante
863	Mr Darren Keogh
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866	Mr Colin Kippax
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871	Mr David Tisdall
872	Mr J W Murray
873	Mrs E Luff
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875	Ms Lynn Olsen
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877	Mr Des Young
878	Mrs Rose Pary
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881	Mr Timothy Dagg
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886	Mr Harry Williams
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895	Ms Elizabeth Townsend
896	Mrs Cassandra Gibson

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910	Ms Joanne Hemers
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938	Ms Leonie Garcia
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945	Ms Sue Mitchell
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949	Ms Roslyn Schliebs
951	Mrs Tracey Ward
952	Mrs Frances Lindsay
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956	Mr Raymond Dorman
959	Mrs Donna Warren
960	Mr Stuart Brogden
961	Mr Michael Smith
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965	Mr Brian Briggs
966	Mrs Leslee Hughes
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977	Mr Alan Bassingthwaighte

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994	Mr & Mrs G & V Cole
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1005	Ms L Sandford
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1019	Ms Suzanne Wilson
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1021	Ms Maria Leigh
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1036	Ms Elaine Clements
1037	Mrs Jenny Peel
1038	Ms Christine Gabriel
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1107	Mr S N Smith
1108	Mr Norm Sendon
1110	Mr Matthew Werner
1111	Ms Wendy Cato
1113	Mr G Tomkinson
1114	Mrs M Hampton
1115	Mr Peter McCubbin
1116	Lone Fathers Association Australia, Newcastle-Hunter Region Branch
1118	Mr Graham Watson
1120	Mr Bertold Groos
1123	Mr Jeff Canning
1124	Ms Hazel Ireson
1125	Mrs Mellie Welsh
1126	Mr Raymond Croker
1127	Ms Elizabeth Birrell
1128	Mr R W Leckie

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1135	Mr Joe Stapleton
1136	Ms Maureen Rundell
1137	Mr Peter McLean
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1189	Mrs Monina Viloria
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1195	Ms Barbara Dormer
1197	Mr Alan Ralph
1199	Mr Larry Morris
1200	Mr Nadir Tchier
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1207	Mr Michael Jessup
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1213	Mr T Fletcher
1216	Ms K Roberts
1217	Mrs Wendy Koenig
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1392	Ms Loretta Consolati
1393	Ms J Maypole
1394	Ms Robyn Wilson
1395	Ms Penelope Hetherington
1397	Ms Teresa Godfrey
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1407	Mr Keith Hawley
1408	Ms Anne Pollock
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1411	Ms Melinda Stratton
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1426	Mr Neil Preston
1427	Mr Stephen Clancy
1428	Mr Ian Cavanagh
1429	Mr Terrance Creighton
1430	Ms Jillian Badge
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1436	Mr Harry Yardley
1437	Ms Julie Taylor
1438	Mrs Kay Robshaw

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1442	Mr Jeffrey Fisher
1443	Mr C S Magor
1445	Mr Paul Gunning
1446	Ms Frances Slegers
1447	Mr Robert McGregor
1448	Mr Warwick Atkinson
1449	Mr Clive Booth
1450	Ms Suzanne Lee
1452	Mr John Burke
1453	Mrs Deni Chambers
1454	Mr Geoffrey Evers
1455	Mr T D Haultain
1456	Mrs Alicia Patterson
1458	Ms Sandra Wilson
1459	Mrs Yvette Cook
1461	Mr Rob Folland
1462	Ms Natalie Harris
1463	Ms Susan Leslie
1465	Mr Paul Hodgson
1466	Mr Trevor Satour
1468	Ms Robyn Wilkinson
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1474	Mr Lloyd Bain
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1476	Mr Allan Burdett
1477	Mrs L Miller
1478	Mr Christopher Begley
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1481	Mrs Michelle Milzewski
1483	Mr Rodney Daniel
1484	Mrs Victoria Hay/Dawson, JP
1485	Dr Michael Wooldridge, MP
1486	Mr Michael Condon
1487	Mrs Lesley Barnes
1488	Mr Karl Loibl
1489	Mr W van Brakel
1493	Mr Geoff Daniels
1494	Dale Street Women's Health Centre
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1496	Mr Mike Dransfield
1498	Mrs Norma Boyd
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1503	Ms Marilyn Knight
1505	Family Law Reform Assn NSW Inc
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1508	Mr & Mrs Edward Clark
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1517	Mr Paul McCamley
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1521	Mrs Marianne Sorrenson

1522	Ms Wilma Thomson
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1525	Mr William Dengate
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1530	Ms Susan Hackwell
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1533	Mr Barry Thomas
1534	Parent Without Rights
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1537	Mr Max Henry
1538	Ms Jennifer Burt
1539	Mr Lindsay Beaver
1540	Mr P J Weber
1543	Ms Julie Cleary
1544	Ms Rhonda Mills
1545	Ms Cathy Mills
1546	Ms Maxine Menyweather
1547	Ms Lesley Bayley
1548	Mr David Neylon
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1589	Mr Michael Pankhurst
1590	Mr Allen Pring
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1593	Mr David Archibald
1594	Mr Mark Monticone

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1599	Ms Joanne Madeleine
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1602	Mr M J McGrath
1603	Mr Roderick Quinn
1604	Mr G D Vulich
1605	Mr Richard Grant
1606	Mr W D Cloutman
1607	Mr Dixon Callender
1609	Mr Kevin Hope
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1612	Mr Leonard Gilchrist
1613	Mr R J Warren
1614	Mr Ian Cumming
1615	Mr R Hyland
1616	Ms Barbara Wilson
1617	Mrs Gisela Neylon
1620	Ms Leeanne Dove
1622	Mr Graham Brown
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1624	Mr G Cordova
1625	Mr Jeffrey Brookes
1627	Mr Ray Spendelove
1629	Mr Michael King
1630	Mr Robert McLellan
1632	Ms Madonna Allen
1633	Mr Dick Adams, MP
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1646	Mr Sam Ramondetta
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1648	Ms Melinda Johnstone
1649	Mr Brian Smith
1651	Mr Robert Bartlett
1652	Ms Glynda Hurley
1654	Ms Christine Marshall
1656	Mr Bernard Gunning
1657	Mr Grant Cherry
1658	Mr G R Watt
1659	Ms Gina Blume
1661	Mr Martin Stanway
1662	Ms B A White
1663	Mr Peter Rozvaczy
1664	Mr J E Bishop
1666	Mr Eoin Cameron, MP
1668	Mr Peter McCarthy
1669	The Illoura Centre
1671	Ms Melinda Walker
1672	Mr Paul Neeson
1675	Ms Jeanne Myles
1676	Wallsend Family Support Service
1677	Ms Marie Coleman

1678	Ms Indra Sekharan
1679	Mr Brenton Minge
1680	Mr Ron Hall
1681	Mr David Bloomfield
1682	Mr Anthony Castle
1683	Mr & Mrs R J Pomroy
1684	Mr Dean Gall
1686	Ms Laraine Dumsday
1687	Mr Peter Mennie
1688	Mr V J Walker
1689	Ms Jennifer Henderson
1692	Mrs Germaine Colness
1693	Ms Gabriella Plutino
1695	Mr Kristen Ovenden
1696	Mr A R Biddle
1697	Mr Sam Denton
1700	Mr Greg Bunn
1702	Mr Tony Newman
1703	Mr Steven Lovell
1707	Ms Robyn Williams
1708	Ms Debbie O'Calleghan
1712	Ms Brenda Vogt
1713	Miss Sonya Oskam
1714	Mr Glenn Summerhayes
1715	Ms Rhonda Scovell
1716	Mr Glen McPhee
1717	Mr Fred Boreham
1718	Mr Brendan Wolff
1719	Mr Peter Sagner
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1721	Mr James Moy
1723	Ms Michelle Murrowood
1726	Ms Monika Gardner
1727	Ms Gail Humphries
1728	Ms Suellen Normoyle
1729	Mr Jim Robson
1730	Mr A R McNaughton
1732	Hill & Rummery
1733	Ms Karen Ledgerwood
1734	Mr Kevin Bruce
1735	Ms Lynette Ford
1737	Ms Lyn Blomeley
1738	Ms Gillian Scougall
1739	Mr/Ms I L Prosser
1740	Mr Anthony Foran
1743	Mr Peter Drennan
1744	Mr Mick Barnett
1745	Ms Louise McKinnon
1746	Mr Lynn Moseley
1747	Ms Edwina Brown
1748	Mr Donald Lester
1750	Ms Janice Axford-Brooks
1751	Mr Brian Unwin
1752	Mr J McEwen
1753	Mr S Warn
1754	Citizens Advice Bureau of WA (Inc)
1755	Mr Lance Ryan
1756	Ms Karen Fairhurst
1757	Mrs Rosalyn Willis

1758	Ms Patricia Hanson
1759	Mr John Purcell
1761	Mrs Dominique Griffiths
1762	Mr Robert Hartnell
1763	Mr Peter Timmerman
1765	Mr John Robinson
1766	Mr David Willis
1768	Mr Peter Muench
1769	Mr Michael Wong
1770	Mrs Lynette Schoene
1772	Miss Rachael Belcher
1773	Ms Leonie Braithwaite
1775	Mrs K Bellchambers
1778	Ms Gail Mellor
1779	Mrs S Francis
1780	Mr Glen Ingram
1781	Ms C Murray
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1784	Ms Janice Lawrence
1787	Mr B R Knight
1788	Mr John Peel
1790	Ms J Mabbott
1791	Ms Michelle Foster
1793	Mr Alan Weick
1795	Ms Jenifer Humm
1796	Mr Greg Chapman
1797	Mr Gerard Crawford
1798	Mr Warren Heald
1799	Mr R N McEwen
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2255	Ms Helen Lake
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3069	Mr B J Adams
3072	Mr J Warner
3073	Ms Pauleen Mittra
3074	Mr Terry Evans
3075	Mr G Mendlik
3076	Mr Barry Wilson
3077	Mr K Dekruif
3078	Ms Julie McDeed
3080	Mr Gerald Schembri
3082	Mr Trevor Heffernan
3083	Ms Alyson Reynolds
3084	Mr Desmond Hardy
3085	Mr Mark Mansfield
3086	Mr Colin Thomas
3088	Mr Steven Fry
3089	Ms Karen Slee
3090	Mr Kenneth Allan
3093	Mr David Allen
3095	Mrs Stephanie Stach
3097	Mr Michael Sedgman
3098	Mr T Walasek
3101	Mr Eric Terry
3102	Mr Robert Francis
3103	Mr Eric Weymouth
3104	Mr Robert Cox
3105	Ms Diane Short
3106	Mr & Mrs T Jones
3110	Mr/Ms T D Sellick
3111	Mr Norman Mitchell
3114	Ms Mary Taylor
3115	Mr Laurie Lutovac
3116	Mr Darrel Hanna
3117	Mr John Kicsis
3118	Mr S Taylor
3119	Mr Robin Causby
3120	Mr Dikar Ruba
3121	Queensland Transport

3122	Mr Ian Probst
3124	Mr Lloyd Warner
3127	Mr Stuart Instone
3129	Mr John Shaw
3130	Mr Kenneth Fox
3131	Mr P J Sorensen
3133	Mr Chester Smith
3135	Mr Richard Mittra
3136	Ms Debbie Martin
3138	Mr Geoff Parsons
3140	Ms Roberta Hall
3141	Ms D Shephard
3142	Mr/Ms W A J Van Der Bosch
3144	Mr Paul Duggan
3145	Heidelberg Repatriation Hospital
3146	Mr Kim Peters
3147	Mr M Gregory
3148	Ms Carmel Radnedge
3150	Ms Sharon Lawn
3154	Lt Col B D Goodwin (Retd)
3157	Mr Ron Ballard
3158	Ms Ann Hill
3159	Mr Greg Callander
3160	Ms Mariette Ovens
3161	Ms Gail Webb
3162	Ms Angela Gallagher
3163	Mr Richard Beeman
3165	Mr Jeff McDonnell
3167	Child Support Action Group Inc
3169	Ms Adreana Jones
3170	Mr Bryan Medhurst
3171	Ms Naseem Constance
3172	Ms Karyn Balukea
3174	Ms Yvette Dowell
3175	Ms Ashlyn Farrelly
3176	Ms Nicola Foxworthy
3178	Mr David Senecky
3179	Mr David Ogg
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3184	Mr Yorick Lewis
3185	Mr Mark Warren
3186	Mr Jose Palacios
3187	Mr Christopher Nichols
3188	Mr Peter Whitford
3189	Ansett Australia Airlines
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3191	Miss Kerry Shaw
3193	Mr Ian Mason
3194	Ms Michelle Westermann
3195	Mrs Pamela Taubert
3197	Mr R J Glover
3198	Mr E J L Williams
3199	Mr Paul Mazur
3200	Mr Leonard Hanagan
3202	Mr Allan Maguire
3203	Kimberly-Clark Australia (SA) Pty Ltd
3204	Mr H Elsing

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3206	Mr Peter Anderson
3207	Ms Michelle Johnstone
3208	Mr Bruce Stirling
3209	Mr Ian Shuker
3211	Mr Gary Cummins
3212	Mr Grant McLeod
3214	Mr Elliott Wilson
3215	Ms Raelene Watson
3217	Mr Eduardo Brescia
3218	Mr Allan Curtis
3220	Mr R G Baines
3221	Ms Tracey Arena
3222	Mr Rodney Bassett
3223	Mr T Roberts
3225	Mr Bruce Venning
3226	Ms Denise Toms
3227	Mr Robert Rose
3228	Mr Lee Hardy
3229	Mr John Hosking
3230	Ms Allison Pisani
3231	Mr Richard Bullen
3232	Mr Leigh Astbury
3233	Mr R P Atterby
3235	West Heidelberg Community Legal Service Inc
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3237	Mr Bruce Cocks
3241	Mr Kym Drummond
3242	Mr Brett Winn
3243	Mr Seppo Kallonen
3244	Mr Peter McDonald
3245	Ms Jenny Nikkerud
3246	Mr Rick Smith
3250	Mr Ian Askin
3251	Mr Martin Roberts
3252	Mr Peter Kelland
3253	Mr Donald Jackson
3254	Mr Wayne Guy
3255	Mr Jeff Cadd
3256	Mr Michael Smith
3257	Ms Tracy Crosby
3258	Mr Peter Giffin
3259	Mr John Fox
3260	Ms Georgina Bush
3265	Ms Kathleen Goulden
3267	Mr Kelvin Brett
3268	Mr Tony Vancestel
3269	Mr Laurence Russo
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3278	Mr I D May
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3280	Mr Michael Green
3281	Mr N D Langdon
3282	Mr & Mrs A & I Kelly
3283	Mrs S Johnson
3285	Mr Graham Boyd

3286	Mr Christopher Stamatellis
3287	Mr & Mrs D McKay
3288	Mrs Glenys Godfrey
3290	Mr Christopher Townsend
3291	Mr Daryl Dighton
3292	Mr Daryl Law
3293	Mrs Beth Smith
3295	Mr Ronald Young
3296	Mr Mike Greenwood
3299	Mr M Berger
3300	Mr Jacob Baruch
3301	Mr Greg Nicholson
3302	Mr Malcolm McAuliffe
3303	Mrs Sheila Packer
3304	Mr Robert Wittholz
3305	Mr Reece Boucher
3306	Mr Robert Allan
3307	Mr Keith Goode
3308	Mr John Daus
3310	Ms Sue Logan
3311	Ms Judi Gorman
3312	Mr Peter Hart
3314	Ms Kathryn Allport
3315	Ms Helene Sutton
3319	Ms Melody Hoskins
3320	Ms C Cuipulstu
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3356	Ms Pamela Stephenson
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3358	Mrs Joanne Skinner
3359	Mr M G Phillips
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3361	Mrs J Vassella
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3400	Mr John Playman
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3424	Ms Mildred Ventnor
3425	Mr Mark Ellsmore
3426	Mr Kelvin Curtis
3427	Ms Sally Russell
3428	Ms Marcia Merifield
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3430	Ms Maureen Armiger
3431	Ms Cheryl Crawford
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3443	Ms Lois Hine
3445	Ms Therese Leaman

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3448	Mr I K de Valle
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3453	Ms Maria Hurst
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3455	Ms Vera Meline
3456	Ms Janene Peters
3458	Ms Debbie Stevens
3460	Ms Allana Bichel
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3584	Mr John O'Brien
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3594	Ms Jackie Berry
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3612	Ms Sally-Ann Matthews
3613	Ms Briony Coombes
3614	Mr B Phillip
3615	Mr Siotame Fakaildatonga
3616	Mr Dean Vanderputt
3617	Ms Jillian Prime
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3620	Mr Bradley Martin
3621	Mr Richard Butt
3622	Mr David Jarvis
3623	Mr Peter Miller
3625	Mr Phillip Gregory
3628	Lt Col J D Duff
3629	Mr Doug Meill
3630	Mrs Patricia O'Halloran
3631	Mr Clement Williamson
3632	Mrs L Holden
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3635	Mr Daryl Durrant
3636	Office of the Status of Women, NT Govt
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3639	Mr Nadir Tchier
3640	Ms Careen Kock
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3643	Ms Michelle Goldfinch
3644	Mr Craig Lancaster
3645	Mr Len Cecchetto
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3648	Mr P Kessell
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3653	Ms Denise Daviess
3654	Ms Heather Wodsen
3656	Ms Joan Poole
3657	Lotus Counselling Services
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3659	Mr P Wilson
3660	Mr T Kerr
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3662	Mr C P Wilkins
3663	Mr M D Hockley
3664	Mr Len Fagenblat
3666	Miss Caroline McKee
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3673	Ms Beverley Bennett
3674	Mr Robert Ashton
3675	Mr D W Hunter
3676	Ms Linda Read
3677	Mr Robert Kelly
3679	Ms Pamela Cook

3682	Mrs Kerri Giles
3683	Mr Stephen Barthell
3684	Privacy Commissioner
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3690	Mr Neville Turnbull
3692	Mr L Murphy
3695	Mr Gerry McGuinness
3696	Mr Dale Timms
3698	Mr David Knoop
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3712	Ms Judy Hollibone
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3759	Mrs Paula O'Flynn
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3765	Mr F L Martin
3766	Mr P M Rayment
3769	Mr William Buckpitt
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3776	Mr Darryl Payne
3777	Mrs Annette Perryman
3778	Mr Linsay Patterson
3780	Mr Patrick Browne
3782	Mrs Julie Van Wijk

3783	Mr A B Crosland
3784	Ms Christina Simmonds
3785	Campaign for Mens' Rights
3786	Ms Pam Dohnt
3787	Mr J Bonnaddio
3788	Mr Paul Turner
3789	Ms Anne Seaman
3793	Mrs Noreen Jarrett
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3826	Mr T Ibbotson
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3830	Mr Roger Macgowan
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3832	Mrs Barbara Lee
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3841	Mr Craig Elliott
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3845	Mr Peter Raymond
3847	Mr Howard Riley
3848	Mr Michael Ryan
3849	Ms Vanda Gould
3851	Ms Rhonda Kirby
3852	Mr Murray Schaeffer
3854	Mr Tony Bransden
3855	Mr Neville Dean
3856	Mr Duncan Kerr, MP
3858	Mr Patrick Brazil
3859	Child Support Action Group, NSW
3860	Mr Ronald Fitzgerald
3862	Mr Shane Layt
3863	Mr Stephen Duffield
3864	Mr R P Dalton

3865	Mr G Ladhams
3866	Mr J Marecki
3867	Mr Dikran Chabdjian
3868	Mr Alan Franks
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3871	Mr N Gosley
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3874	Mr David Burns
3875	Ms Jacki-Anne Farrant
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3879	Mr Ray Byrne
3880	Mr Steve Barradell
3882	Ms Denise O'Brien
3884	Ms Lynda Pettersson
3886	Mr Wolfgang Mohlerhoff
3887	Mr Martin Lee
3888	Mr Peter Sims
3889	Ms Lesley McKee
3890	Mr Allan Andrews
3891	Mrs Kathleen White
3892	Ms Vicki Scott
3894	National Women's Consultative Council
3895	Ms Susan Blair
3897	Mr M J Jackson
3898	Mr Douglas Grier
3899	Mr Dallas Stower
3901	Mr George Huggins
3903	Ms R Bedirian
3904	R G & M E Giddins
3905	Mr Frank Nagy
3906	Mr Steve Aylward
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3911	Mr Robert Bail
3912	Mr Peter Gillett
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3915	Mr Ray Hare
3916	Mr Geoffrey Wyatt
3917	Mr Shane Mouatt
3918	Ms Jayne Clissold
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3927	Mr Craig Burns
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3931	Ms Mandy Spacek
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3943	Mr Peter Pullen
3944	Mr Wayne Young
3946	Mr Martin Stevens

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3953	Ms Sandy Young
3954	Mr Alfredo Zanette
3955	Mr G N Phillips
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3958	Mr G M Hayward
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3964	Mr Garry Harley
3965	Mrs L Quaife
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3968	Ms Alison Symes
3971	Mr Robert Ramonfasse
3972	Mrs Beryl Clark
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3981	Mr Eric de Meyer
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3984	Mr David Dean
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3992	Ms Marilyn Burnett
3993	Mr Peter Balikoff
3994	Mr Paul Broom
3996	Mr Andrew Katers
3997	Ms Sandra Parmenter
3998	Mr Peter Hunter
3999	Mr Evan Hutchins
4000	Mr I C Harris
4001	Ms Ann Collier
4002	Ms Ruth Withington
4004	Mr Gary Waters
4005	Mr Adam Kloens
4008	Ms Heather Creevey
4009	Mr & Mrs R & M Harris
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4012	Mr Neil Dawson
4016	Mr Spiro Agius
4017	Mr M Beuwer
4018	Mr Albert Glowacz
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4030	Mr Colin Janson
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4053	Mr P J Wratten
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4062	Mr Mark Van Epen
4063	Ms Vicki Manners
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4065	Mr R J Baines
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4097	Mr Geof Harper
4098	Ms Lynne Aylmer
4099	Ms Veronica Mackley
4102	Ms Michele Richardson
4103	Mrs Tina Derrington
4104	GEC-Marconi Systems Pty Ltd
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4108	Ms Debbie Laird
4110	Ms R Luck
4113	Ms Marie Down
4115	Ms Maria Sarvas
4116	Mrs Judith Sullivan
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4118	Ms D E Thorpe
4120	Mr Guy Parker

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4135	Mrs Deirdre Butt
4136	Mr John Hocking
4138	Mr John Crotty
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4154	Mr Alan Burnaby
4155	Mr & Mrs Stephen O'Brien
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4157	Mr A R Miles
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4186	Mr Wayne Crowther
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4196	Mr Glen McKenzie
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4202	Ms C Van Uitregt
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4214	Mr D A Shore
4215	Ms Isabelle Arya
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4217	Mr Greg Mukavec
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4219	Mr Allan Schofield
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4225	Mr P J Sheil
4226	Mrs Annette Durrant
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4239	Mr M Davey
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4242	Mr Neville Leggett
4243	Mr Neville Jennings
4244	Ms Hannah McGirr
4245	Mr George Davies
4246	Ms Janet Kesby
4247	Ms Rhona Bird
4249	Ms Leoni Mund
4251	Ms Christine Neve
4252	Mr Dennis Neve
4253	Mr Robert Manning
4254	Mr D I James
4255	Ms Leanne Oliver
4257	Ms Maria Morales
4259	Ms Miriam Borg
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4268	Mr Guy Lacey
4269	Mr Mark Smith
4270	Mr Andrew Armstrong
4271	Mr Geoff McNamara
4272	Ms Sue MacMurray
4274	Ms H Murphy
4276	Ms Corali Morris
4277	Ms Rosheen Cartwright
4278	Mr R L Williams
4279	Mr Glenn Malone
4280	Mr Charles Madden
4281	Ms R Bolam
4282	Ms Jennifer O'Nial

4283	Ms Patricia Hermans
4284	Mr K F Moorfoot
4285	Mrs Margaret Reardon
4287	Mr Leslie Nichol
4288	Mr G R Taylor
4289	Ms K J Dahms
4291	Mr Alan Warry
4295	Mr Leon Baxten
4296	Mr David Batchelor
4297	Mr P J King
4299	Mr Rodney Baker
4300	Miss Jennifer Suter
4301	Mr G R Caughlan
4302	Mr Robert Stacey
4305	Mr Gregory Rossi
4306	Mrs Bev Moncur
4307	Mr Gary Crowhurst
4309	Mrs L Murphy
4310	Ms Debra Waghorn
4312	Mr Lino Corsoni
4313	Mr Alan Prossor
4314	Ms Christine Timson
4316	Mr R Johnston
4319	Mr Thomas Schoon
4320	Mr Guiseppe Corrone
4321	Mr John Shayler
4322	Mrs Lyn Cantwell
4323	Ms Susan Wells
4324	Ms Deborah Hockley
4326	Ms Sheree Smith
4327	Mr Murray Henderson
4328	Mr Alan Coley
4331	Mr Todd King
4333	Ms Penny Howes
4334	Ms Robyn Astill
4335	Ms Alison Blakeley
4337	Ms Rhonda Collins
4338	Mrs Sonia McCarthy
4339	Mr Bradley Woodward
4342	Ms Margaret Caddell
4344	Ms Tammy Weekes
4346	Ms Raelene Melville
4347	Mr Daniel Leggett
4349	Mrs Estelle Roser
4352	Mr Ray O'Neill
4354	Mr Wayne Debnam
4355	Ms Donne Rausmaksa
4356	Ms Pauline Chandler
4358	Mr Joseph Harding
4360	Mr Russell Phippen
4361	Ms Susan Lobban
4363	Mr Ashley Ney
4364	Mr D H McGuinness
4365	Mr Neil Norton
4369	Mr D Bahoum
4370	Mr J N Narywonczyk
4371	Mr J Persson
4372	Mr Shane Hamilton
4373	Mr J van Arend

4374	Mr Alan Harvey
4381	Mr R F Guthrie
4382	Mr R Gordon
4383	Mr Ray Liversay
4384	Mr Neville Cook
4386	Ms Beryl Wyatt
4387	Mr Alan Gregory
4389	Mrs Fran Curtin
4391	Mr Rodney Johnson
4392	Ms Maree Angus
4394	Mrs Alexina McEachan
4395	Mr Peter Williams
4396	Mr J C Schultze
4398	Mr Geoffrey Watson
4399	Mr Keith Warren
4400	Ms Heather Langton
4402	Mr M D Richmond
4404	Mr Stephen Foster
4405	Mr John Carney
4407	Ms Helen Stewart
4411	Mr George Stepanoff
4412	Mr Nick Damcevski
4413	Ms Monica Hall
4414	Ms Leah Furner
4415	Mrs R Crowe
4416	Ms Ann Freeman
4418	Ms Mary Newton
4419	Mr Trevor Scriven
4421	Mr W A Murray
4422	Mr Khalil Ayshan
4425	Ms Denise Hammett
4427	Ms Gail Gregory
4428	Mr P Randall
4429	Ms Sharon Morrison
4431	Mr Graham Haynes
4433	Mr Joe Ellemans
4434	Canberra One Parent Family Support Service
4435	Mrs R Stolworthy
4436	Mr Jeremy English
4437	Mr W Bugner
4438	Ms Marian Saines
4441	Mr Paul Scott
4442	Mrs C Carroll
4443	Mr Andrew Lette
4445	Mr John Bennett
4446	Ms P Williams
4447	Mr Phillip Renshaw
4448	Mr Steve Rohan
4449	Mr R J Large
4450	Ms Barbara Hall
4451	Ms Liz Newcombe
4452	Mr James Craven
4453	Mr Garry Bolton
4454	Mr D J Peoretti
4455	Mr Max Worger
4457	Ms Nanette Simpson
4458	Mr James Ryan
4459	Mr Terry Meehan
4460	Mr T Braisher

4461	Ms Suzi Wylie
4462	Mr/Ms B Vanstone
4463	Ms Stacey Franks
4464	Ms Deborah Parry
4465	Ms Ros Gallery
4467	Ms G Cressy
4468	Mr John Lane
4469	Mr Paul Burton
4471	Mr Mark Corbett
4472	Mr Don Chapman
4474	Mr G Palaiyan
4476	Mr Michael Standen
4477	Parents Without Partners
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4479	Mr William Constant
4480	Ms Cheryl Moir
4481	Ms Gabrielle Hutchinson
4482	Mr Reidar Frydenlund
4484	Mr Steve Homewood
4485	Ms Susan Edwards
4486	Mrs C M Harrison
4490	Legal Aid Commission of Victoria
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4492	Mr H G Lane
4493	Mr V A Altschul
4494	Ms J Field
4495	Ms Wendy O'Toole
4497	Mr S Smith
4498	Ms Joanne Fuller
4499	Mr Dennis Tompkins
4500	Mr Stephen Potts
4501	Ms Jannette Cullinger
4502	Mr David Luscombe
4503	Mr Gary Haigh
4507	Ms Karen Blinco
4508	Mr Paul Ventnor
4510	Mr Graham Mole
4512	Mr Clifford Jefferies
4513	Ms Jeanette Goedecke
4514	Mr Ian Blewett
4515	Mr David King
4516	Ms Sylvia Smith
4517	Mr A D Tugwell
4518	Ms Elizabeth Dew
4519	Mr Richard Taylor
4520	Mr A F Kelzke
4521	Mr V P Kneubuhler
4522	Mr Kelvin Cook
4523	Mr Peter Ruff
4524	Ms Shirley Keen
4525	Mr Ian Newman
4526	Mr Bruce Goodrick
4527	Mr John Grech
4529	Mr Serge Damansin
4530	Mr Laurence Fenech
4531	Mr T McGregor
4532	Mr B Roe
4533	Mr Lionel Cherry
4535	Mr Mark Olson

4540	Mr Clive Benney
4542	Ms Lynette Cracknell
4544	Mr N Butler
4545	Mr G Adams
4546	Ms J Morgan
4547	Ms Julie Johnson
4548	Ms Rachel Mulder
4549	Mr Ben Wheaton
4551	Mr Bill Harding
4552	Mr Phillip Kitney
4553	Mrs Glenda Owens
4554	Mr Christopher Wilson
4555	Mr Donald Downes
4556	Mr Ross Hebbard
4557	Mr Keith Fragameli & Miss Kerrie Brand
4558	Mr Richard Woods
4559	Ms Clare Felton
4560	Mr Paul Lennon
4561	Mr Anthony Bayliss
4562	Mr & Ms Mark & Kym Baker
4563	Mr S Watson
4564	Mr Robert Potter
4565	Mr Murray Cooper
4566	Mr C L Willersdorf
4567	Mr Leon McLachlan
4568	Mr Phillip Barwisk
4569	Ms Deborah Praden
4570	Ms Leonie Zylstra
4573	Mr Alan Davidson
4575	Mr Steven Gibbs
4576	Mr Ian McCauley
4577	Mrs J M Duddy
4578	Ms Sharon Clarke
4579	Ms Bev Fawcett
4580	Mr Robert Bliss
4582	Ms Cassandra Stokes
4584	Mr Peter Wilson
4585	Mrs Helena Baird
4586	Mr P A Clark
4588	Mr Jan Wasiukiewicz
4589	Mr Kevin Murphy
4591	Ms Kerry Atkins
4592	Mr Stuart McFarlane
4594	Mr Robert Hampson
4595	Mr Martin Clue
4596	Ms R Cobb
4597	Ms Celia Borshoff
4598	Mr I R Burrford
4599	Mr Peter Lupton
4600	Mr G H Fuchs
4601	Mr William Trueman
4602	Ms Lyn Jeffrey
4604	Mr Victor Carley
4605	Mr Roger Bird
4606	Ms Di Green
4608	Ms Kathryn Bloss
4609	Mr Manuel Gonzalez
4610	Mr Geoffrey Mendes
4613	Mr Mokoi Frost

4615	Mr F A Parkes
4616	Ms Tarma Bruggemann
4618	Ms Kym Beacham
4621	Mr Peter Robbrown
4622	Mr John Ferry
4623	Shoreham Nursing Home
4625	Ms Joanne Ingham
4626	Mr Robert Nowlan
4628	Ms Dawn Longmire
4629	Ms Maree Buchanan
4630	Mr Garrie Sinclair
4632	Mr Ron Paine
4633	Ms K Rose
4635	Ms Nicole Joslin
4636	Mr M McGhee
4637	Mr Len Arentz
4638	Mr Raymond Nissen
4639	Mr Peter Exton
4640	Mr Paul Clancy
4643	Mr Mark Schafferius
4645	Mr D M Gibbs
4646	Mr Graham McGilvray
4647	Mrs Narelle Armstrong
4648	Mr Phillip Lawler
4649	Mr Ian Stockdale
4650	Mr Graham Costin
4651	Mr T J Maloney
4653	Mr David Long
4654	Ms Marilyn Chambers
4655	Ms Jeanette Robinson
4657	Mr Simon Robinson
4658	Mr Graeme Haycraft
4659	Mr Charles Coventry
4662	Mr Anthony Shinkfield
4663	Mr Douglas Perger
4664	Mr Shawn Boland
4666	Ms Susan Williams
4667	Mr C Pefkos
4668	Ms Christa Roksandic
4669	Mr E Schiffler
4670	Mr B D Norris
4671	Mr David Berzins
4672	Ms Margaret Bayliss
4673	Mr Robert van Wijk
4674	DADS Against Discrimination, NSW
4675	Mr Gabor Hegedus
4676	Ms Julie Christiansen
4680	Mr Alan Sands
4681	Ms Marilyn Van Dyke
4682	Mr Evan Jones
4683	Ms Vicki Kippen
4685	Mr Brian Russo
4687	Ms Christine Clarke
4688	Mr Cliff Leader
4690	Mr Steven Gundry
4691	Mr M Ailwood
4693	Mr Philip Matthews
4695	Mr J D Wetherall
4696	Mr Kevin Anderson

4697	Mr Greg Evans
4698	Mr Peter Robinson
4699	Ms Rosa Pritchard
4702	Mr Frank Drew
4703	Mr Jason Cook
4705	Mr C R Allen
4706	Mr Peter Waller
4707	Mr Jim Quinliven
4708	Ms Linda Apps
4709	Mr David Caldwell
4713	Ms J Barnes and Mr T Bradley
4716	Mr Drago Cernjavic
4718	Ms Nancy Zardo
4719	Mr Brian Hodgkiss
4721	Mr Barrie Menzies
4723	Mr Trevor Oliver
4724	Mr Greshen Muphy
4726	Mr Stephen Sutcliffe
4727	Mr M Durant
4728	Miss Louise Hunt
4730	Mr Steven Hancock
4731	Mr Geoff Kendall
4732	Mr David Terry
4734	Mr Trevor Graham
4736	Mr Scott Virgo
4737	Mr Graham Brown
4738	Mrs Susan Taylor
4739	Ms N Jardine and Mr J Standen
4740	Mr Bryce Few
4741	Biniris Pty Ltd
4743	Mr Ian McInnes
4744	Mr Ian Blackman
4745	Mr Andrew McLoughlin
4746	Mr Bruce Dooley
4747	Ms Claire Coverey
4748	Mr Kevin Paddock
4750	Mr Tom Cellucci
4752	Mr Ian Layton
4754	Mr Rex Fellenberg
4756	Mr D J Rankin
4757	Rely Security Systems
4759	Mr R M Haupt
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4762	Mr E J Sorensen
4763	Ms Fiona Robertson
4764	Ms J M Sorensen
4765	Mr Peter Hancock
4766	Ms S E Threlfall
4767	Mr Rodney Lysaght
4768	Mr A J O'Reilly
4769	Mr & Ms M G & K L Prentice
4770	Miss Susan Gray
4771	Ms Patricia O'Connor
4772	Mr Allen Fortune
4773	Mrs Brenda Squire
4775	Ms Thea Buys
4777	CPL D Collings
4778	Mr Ron Daniels

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4785	Mr Linden Byrne
4786	Mr Neil Hocking
4787	Ms Barbara Bennett
4788	Mr Michael Bell
4789	Ms Debra Gillick
4790	Mr Mark Boyanton
4791	Mr Jean-Nicot Nemorin
4793	Mr Paul McCaughey
4794	Ms Nanette Gardner
4795	Mr A Svilans
4796	Ms Terri Treglown
4797	Ms M Gabb
4799	Ms Lois Blackburn-Evans
4800	Ms Yvonne Reynolds
4801	Mr Ronson Hobman
4802	Mr Andrew Palmer
4803	Mr John Pearce
4804	Mr David Rust
4805	Mrs Michelle McLeay
4806	Mr Phillip Lowry
4809	Mr Grahame Clare
4814	Ms Helen Bremner
4815	Ms D Bainbridge
4816	Mr Douglas Stuart
4818	Mr Graeme Murphy
4819	Mr Rob Turner
4820	Mr D Stewart
4821	Mr Ray Stenhouse
4822	Ms P Freeman
4824	Mr & Ms M & L Payne
4828	Mr Gary Innes
4829	Ms Noela Bishop
4830	Mr Kevin Bettens
4831	Mr Leigh Millott
4832	Mr David Dodd
4835	Mr Danny Felic
4836	Mr Ian Northover
4837	Mr Ramon Lopez
4838	Mrs S A MacDonald
4839	Mr Peter Marshman
4840	Mr George Ford
4841	Non-Custodial Parents Reform Group
4842	Mr Warren Teale
4843	Mr William Allan
4844	Mr R M Kidd
4845	Mr Iain Kelly
4847	Mr Glen Gotz
4849	Mr Vijay Gakhar
4851	Mr Gregory Balding
4853	Mr Adrian Gibson
4854	Ms Thelma Oberdorf
4855	Mr Tim Benmasaud
4856	Mr & Mrs M & A Wieczorek
4857	Mr/Ms O C Noffke
4859	Mr W J Rafter

4860	Mrs T Prior
4861	Mr Frederick Wheeler
4862	Mr C Squires
4864	Ms Carolyn Johnson
4865	Mr Lyle Fleetwood
4868	Ms Jennifer Gray
4870	Mr B E Birmingham
4871	Mr David Hutt
4872	Mr Peter Eustace
4873	Mr Damon Wilson
4875	Mr Eric Fitzgibbon, MP
4876	Ms Joanna Waites
4878	Ms Julie Nicholson
4880	Ms Lily Adolphe
4881	Mr Derrick Baragwanath
4884	Ms S T Cornell
4885	Mr Barry McSorley
4886	Mr Raoul Madden
4887	Mr Philip McElroy
4888	Ms June Page
4889	Mr Joseph Berkhout
4890	Child Support Action Group - Victoria
4891	Mr Michael Perazzo
4892	Combined Community Legal Centres Group (NSW)
4893	Mrs Judith Drake
4894	Mr Gary Francis
4895	Australian Institute of Family Studies
4896	Mr Thomas Redsell
4897	Mr Peter Brack
4899	Ms Gabriela Samcewicz
4900	Equity for Fathers
4901	Ms Elena Harvey
4902	Mr Desmond Hampson
4903	Mr Paul Everingham
4904	Mr Lucius Vilkinas
4905	Mr Edward Green
4906	Mrs Maurine Wright
4908	SA Council of Community Legal Services Inc
4909	Child Support Action Group - Nepean Branch
4910	Public Sector Union Tax Division
4913	Ms Victoria Spalding
4914	Mr Ronald Jones
4915	Ms Lynn Jackson
4916	Mr M Furlan
4917	Mr J V Mortimor
4918	Ms Jessie Keagan
4919	Mr Frederick Davies
4920	Mr Michael Cambridge
4921	Mr David Jessup
4923	ACT Women's Consultative Council
4924	Ms Vanessa Gellibrand
4925	Ms Pam Zietsch
4926	Mr Malcolm Evans
4927	Mr Edward Bowling
4929	Mr David Hutchinson
4931	Ms Donna Perry
4932	Dr David Howse
4933	Mr Greg McCauley
4934	Ms Nadine Wine

4936	Mr C Barbagallo
4937	Mr Rocco Agnese
4938	Ms Kerry Kay
4939	Mr Bruce Smith and Ms Helen Korch
4940	Mrs Nan Wilson
4942	Ms D L Selleck
4943	Mr Robert Smith
4944	Mr John Moulds
4946	Mr David Taplin
4947	Ms Anne Nissen
4948	Mrs M T McVinish
4949	Mr Maurice Piper
4953	Mrs Eileen Wakeling
4954	Ms Barbara Rimington
4955	Mr Eugeno Zadori
4956	Mr Ron Heitman
4957	Ms Carol Solomon
4958	Mr & Mrs P & T Laragy
4959	Mr Boris Klaricic
4961	Mr David Laughton
4963	Ms Chleo Lawson
4965	Mr Mark Jones
4966	Ms Milica Lindic
4967	Mr W J Trotter
4968	Mr Ramzi Halabi
4969	Ms Merredith Slavik
4970	Mr S J Blair
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4972	Mr Alan Hayes
4974	Mr John Rankin
4975	Ms Anne Clark
4977	Ms Jane Austin
4979	Mr Glenn Lyon
4980	Ms Marketa Koudelka
4981	Ms Teresa O'Brien
4982	Mr Laurie Diss
4984	Mr S J Freer
4985	Mr Chris O'Hara
4986	Ms Mary Wheaton
4988	Ms Sheridan Rogers
4989	Mr Peter Phillips
4993	Mr John Richards
4995	Mr Joseph Brolly
4996	Mr David Lewin
4998	Ms Dianne Briggs
4999	Mrs J Treloar
5001	Mr L A van Groesen
5002	Mr Neil Sheppard
5003	Mr Jeff Haines
5004	Mr Peter Klingsporn
5005	Ms Debra Goodwin
5007	Mr Gary Whitfield
5008	Mr Simon Wright
5010	Mr R M Smith
5011	Mr Peter Jamieson
5012	Mr Gavin Yates
5013	Mr Gary Rogers
5014	Ms Helen Grant
5016	Mr Gary Andrew

5018	Mr Garry Clarke
5019	Mr John Cross
5021	Mr Stephen Keech
5023	Mr Daniel Brown
5024	Mr Steve Doran
5025	Council of Single Mothers and Their Children
5026	Ms Alison Sinclair
5027	Legal Aid Office (Queensland)
5028	Mr Andrew Park
5029	Mr Emmanuel de Celis
5030	Mr Darryl Mahoney
5031	Mr Chris Murray
5032	Mr Alan Duggan
5033	Legal Aid Western Australia
5034	Mr Graeme Hamer
5035	Mr Mark King
5036	Mr Derek Kerr
5037	Mr Ian Gilmore
5038	Mr Robert Brooks and Ms Fiona Richards
5039	Mr Russell Bailey
5040	Mr Neville Saunders
5041	Mr Trevor Brown
5042	Mr Desmond Sellin
5043	Ms Kerry Boston
5044	Mr Dale Brunskill
5047	Mr M A Watkins
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5052	Mrs Joan Udy
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5055	Mr Craig Wood
5056	Ms Jenny Hartley
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5059	Mrs A Miller
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5063	Mr John Rodgers
5065	Mr Andrew Hutchinson
5066	Mrs Barbara Payne
5067	Mr Colin Riley
5068	Mr Graham Waters
5069	Mr Stephen Aldous
5070	Ms H E Winter
5071	Mr Thomas Hawley
5072	Mr Chris King
5073	Mr Glen Randall
5074	Mr William Gray
5075	Mr Cameron McCracken
5077	Mr Douglas Hatchett
5078	Mr Joe Heymans
5079	Mrs Deanne Mullaney
5080	The Salvation Army
5081	Ms Stephanie Bean
5082	Australian Council of Social Service
5083	Child Support Agency
5084	Federation of Ethnic Communities Councils of Aust

5085	Department of Social Security
5086	Law Council of Australia
5087	Ms Nancy Scherger
5088	Mr Peter Symons
5089	Furmanite Australia Pty Ltd
5090	Ms Joanne Wells
5091	Ms Fiona MacRobbie
5092	Ms Christine Bali
5093	Mr David Griffiths
5094	Mr John Sweeney
5095	Mr Jim Snedden
5096	Family Law Council
5099	Ms Caroline Willis
5101	Ms Carrie Eaton
5104	Ms Deborah Nelson
5105	Ms Sue Evans
5107	Mrs Rita Rees
5109	Mr Edward Peterson
5110	Ms Angela Richardson
5112	Mr Steven Ford
5116	Mr Murray Matheson
5119	Mr P Haywell
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5123	Mr A J Spence
5124	Mr T V Cavanagh
5127	Ms Denise da Silvi
5129	Ms Diane Shapter
5130	Mrs H Edmonds
5131	Ms Clara Santana
5132	Ms Mary-Anne Nethery
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5134	Mr Denis Perry
5136	Mr Dennis Quirk
5137	Mr Barry Charlton
5138	Mr/Ms B V Taylor
5139	Mr Keith Mattock
5141	Mr Geoffrey Adams
5142	Greenglade Nominees Pty Ltd
5143	Mr Raymond Higgins
5144	Mr F Majury
5145	Mr Mark Tagh
5146	Mr Peter Butt
5147	Ms Elizabeth Salo
5148	Ms Christine Giles
5149	Mr Albert Matheson
5150	Mr John McAllister
5152	Ms J Gale
5153	Mr Terence Bowker
5154	Mr Noel Kernke
5155	Mr Robin Price and Ms Carol Lynch
5156	Mr Rob Murray
5157	Mr Max Allford
5159	Dr Jeff Stanborough
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5163	Mr Bill Waldron
5164	Ms Cheryl Glasgow
5165	Ms E Graham
5166	Mr Jukic

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5172	Ms Ann Dorrian
5174	Mr Dan Lliong
5175	Mr Glen Corbett
5179	Mr Karl Vass
5180	Mr Glen Jobson
5182	Mr Leif Hansen
5183	Mr Daniel Hunt
5186	Ms Janis Fielding
5189	Mr David Brennam
5190	Mr Phillip Kelland
5191	Ms Colleen Henderson
5192	Ms Linda Schonhagen
5193	Mr John Jarrett
5195	Mr Ray Gorman
5196	Ms B Runciman
5197	Ms Kerrie-Anne Russell
5198	Mr Chris Gilmour
5200	Mr N Atkinson
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5205	Mr Rodney Smith
5208	Ms Melanie Outridge
5209	Ms Phyllis Gilroy
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5212	Mr David Holliday
5214	Mr Bruce Teichmann
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5216	Mr R Dick
5217	Mr T J Singleton
5218	Mr Michael Minogue
5219	Ms C M McCarthy
5220	Mr M Farago
5222	Mrs Julie Wilmot
5223	Mr Jeffrey O'Keeffe
5224	Mr Ray Morrison
5225	Mr John Schilling
5227	ACT Domestic Violence Interagency
5229	Mr Peter Muller
5230	Mr Garry Bastow
5232	Mr Tony Ale
5233	Mr Ron Gillett
5234	Mr Linton Young
5235	Mrs Lea Francis
5237	Mr Kerry Ford
5238	Mr B W Maxwell
5239	Women's Electoral Lobby, Cairns
5240	Ms Judith Wolfe
5241	Mr Paul Wright
5242	Mr Vivian Gambling
5243	Ms Christine Craig
5245	Mr John Walters
5247	Ms Nicola Smart
5249	Mr A D McGowan
5250	Mr Karl Davis
5251	Mr D M Stewart

5252	Mr Allan McGregor
5253	Mr W Pearce
5255	Mr Doug Allan
5256	Mr Harris Thomson
5258	Ms Kaye Guthrie
5259	Mr Ivan Campbell
5260	Mr Craig King
5261	Mr & Ms R & C Town
5263	Ms Donna Gray
5264	Mr Laurie Orobello
5265	Mr John Tannock
5266	Mr Michael Schipp
5267	Mr Adrian Lakin
5268	Mr Dennis Masut
5269	Mr Gavin McLean
5270	Mr/Ms K J Williams
5271	Ms Maxine Bland
5272	Mr Charles Tivendale
5273	Mr Kerynne Forrest
5274	Mr Robin Dowd
5276	Ms Corrie Gourlay
5277	Mr Lionel Mugridge
5279	Ms Annette Davies
5280	Mr Paul Ferguson
5281	Mr D Hadley
5284	Ms L K Chapman
5285	Ms Jill Underwood
5286	Mr Craig Napier
5287	Mr Orlando Mascitti
5288	Mr Steven Romain
5289	Mr Jim Cooney
5290	Mr David Murray
5291	Ms Sue Mitchell
5293	Mr Kerry Morris
5294	Mr J Howard
5296	Senator the Hon M Reynolds
5297	Ms Loretta McInnes
5298	Mr Oner Arcan
5300	Mr A J Tynan
5303	Mrs J A Schneider
5304	Ms Valerie Lawton
5306	Mr James Sloman
5307	Ms Janet Jones
5308	Mr Christopher Bell
5309	Mr Richard Pobke
5311	Mr P Harding
5312	Ms Geraldine Everly
5313	Mr J R Hinds
5314	Mr R B Dore
5315	Mr Collin Lazarus
5316	Ms Kerry Andrews
5317	Ms Zoe Salata
5318	Mr Norman Gosley
5319	Mr Colin Fleming
5320	Ms Sharon Witwer
5321	Ms Linley Hayes
5322	Mr Peter Kirkby
5323	Ms M Purcell
5324	Mr Clive Astle

5325	Legal Aid Commission of NSW
5326	NSW Child Support Unit
5327	Divorce Law Reform Assn of SA
5328	Family Court of Australia
5329	Mr Douglas Clowes
5330	Mr Michael Pagliano
5332	Mr G P Wiseman
5333	Ms Bobbie O'Rourke
5334	Sole Parents Coalition Inc
5335	Lone Fathers Association Australia
5336	Mr Tom Helm, MLC
5337	The Bowden & Brompton Mission Inc
5338	Child Support Action Group, SA
5339	Administrative Review Council
5340	Mr T M Busk
5341	Mr Wayne Johnson
5342	Brotherhood of St Laurence
5343	Mr Alan Suter
5344	Family Law Reform and Assistance Assn
5345	Family Law Injustice Group
5346	Office of the Status of Women
5347	Ms Marita Bardenhagen
5348	Women's Electoral Lobby
5350	Legal Services Commission of SA
5351	Mrs Deborah McCamley
5352	Ms C M Gargan
5353	Ms Lorna Mitchell
5354	Mr Antokio Florian
5356	Mr & Mrs P Prassler
5358	Mr Martin Hill
5359	Ms Kerrin Jones
5360	Mr Colin Furniss
5361	Mr Rodney Gibson
5362	Mr C Kellargias
5363	Mr Stephen Jeffries
5364	Mr R J Versteegh
5366	Mr Tony Roche
5368	Mr/Ms A J Lindsay
5369	Mr A Bozorgzad
5370	Mr Rod Bruce
5371	Mr Leslie Smith
5372	Mr Daryl Naylor
5375	Mr Craig Blanch
5376	Mrs Mary Mauger
5377	Mr Brett Neilson
5379	Mr Gregory Crawford
5380	Mr Noel Sage
5382	Mr William Hannah
5383	Mr Robert Roe
5384	Mr Marcel DeLeon
5385	Mr G J Humm
5386	Ms M Scott
5387	Mr Kevin Burge
5388	Mr Gary Nugent
5389	Mr Larry Hooper
5390	Mr Ian Rowe
5391	Mr James Davis
5393	Mrs Amanda Riley
5394	Yunta Transport

5396	Mr Terry Jacobs
5397	Ms Lisa Parish
5399	Ms D C Mickan
5401	Mr Peter Hauser
5403	Mrs Debbie Schubert
5405	Mr Lorenz Fretz
5406	Mr John McMurchy
5407	Ms Jan Lewis
5408	Mr Alan Jones
5409	Mr Peter Burke
5410	Mr G F Munn
5411	Ms Julie Magill
5412	Mr Peter Kelly
5414	Mr E J Turner
5415	Ms Stephanie Jones
5416	Mr A E Proud
5420	Ms Julie Nimmo
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5425	Mr Kieran Sharp
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5429	Mr Ron Prout
5430	Ms Barbara Craig-Williams
5431	Mr & Ms J & G Palmer
5432	Ms Linda Halligan
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5434	Mrs Fay Pipe
5435	Mr Leslie Juds
5436	Mr Barry Roskov
5437	Mr Paul Peperkamp
5438	Mr Jack Pyziakos
5439	Mr Earl Davis
5441	Mr Peter Gaffel
5442	Mrs R Rolfe
5443	Mr M McGhee
5444	Mr J Dorner
5445	Mr Noel Foy
5446	Mr Kenneth Millgate
5448	Ms Annette Marriott
5449	Mr Stephen Barnes
5450	Mr Christopher Sinnbeck
5451	Mr David Jameson
5452	Ms Diane Ide
5453	Mr Lawry Williams
5456	Mr & Ms L & S Igoe
5457	Mrs A Warner
5458	Mr Frederick Haskins
5459	Ms Wendy Bottomly
5460	Ms Jennifer Glendenning
5461	Mr Alex Tyrrell
5462	Mr G McKnight
5464	Mr W A Freer
5466	Mr R Caruana
5469	Ms Carol Crowe
5471	Dr Ross Evans
5472	Mr Dennis Lourigan
5473	Mr Duncan McInnes
5475	Mr Don Hunter
5476	Child Support Action Group NT

5477	Mr Mark Butcher
5478	Mr Peter Clark
5479	Mr Brian Flynn
5480	Mr William Johnson
5481	Mr Kurt Neuleuf
5482	Mr L J Wardhaugh
5483	Mr Stephen Aspinall
5487	Mr Rodney Blundell
5488	Mr Douglas Stuart
5491	Mr Dean Foweur
5492	Mr R E Welsh
5494	National Children's Bureau of Australia
5495	Mr Kevin Males
5498	Mr C W Murphy
5499	Mr Kevin Doyle
5500	Mr P Murran
5501	Ms K Lane
5504	Ms Dehla Pack
5506	Mr Neil Morris
5508	Mr Dale Harrison
5510	Mr Alan Middlebrook
5511	Mr Stuart Gardam
5512	Mr & Ms S & D Zander
5513	Mr Ricky Wright
5514	Ms Julie Adams
5515	Mr Simon Lord
5516	Mr Stephen Ince
5519	Mr Ron Daw
5520	Mr Maxwell White
5522	Mr Mark Essenhigh
5524	Mr Steven McCauley
5525	Ms Donna Stainers
5526	Mr Graeme Battams
5527	Ms Katrina Mullins
5528	Mr Brian Shellback
5530	Mr P R Clifton
5531	Mrs D H Tonkin
5532	Mr B Beighton
5535	Mr A D Prasad
5536	Mr Mark Smith
5538	Mr Ian Smith
5539	Mr Ian Booth
5540	Ms Julie Tremain
5541	Mr Colin Gerrard
5542	Mr G R Hogan
5545	Mr Lionel Newnham
5546	Mr Peter Knights
5547	Mr R W Woods
5548	Mr Greg Roughley
5549	Mr Jamie Young
5550	Ms Sylvia Lebkowski
5551	Mr Daryl Hughes
5552	Mr Colin Ramshaw
5553	Ms Noeleen Unwin
5554	Mr Anthony Ellis
5555	Mr Jeff Carberry
5556	Ms Mana Koomen
5557	Mrs Sandra Blakiston
5558	Mr Helmut Vogel

5560	Mr Damian Woods
5561	Mr Gary Sund
5562	Ms Cherrie Gray
5563	Mr M F Pursehouse
5564	Ms Robin Ball
5565	Mr Issam Khoury
5567	Mr Anthony Jackson
5570	Mr Colin Angus
5573	Mr V C Harick
5574	Ms Suzanne Nistico
5577	Mr Clinton Farmer
5579	Ms Robyn Wright
5582	Ms Margaret Laird
5583	Mr Colin Bagnell
5586	Ms C J Shepherd
5587	Ms Gail Frost
5588	Mr Philip Treble
5589	Mr A Breeden
5590	Mr P W Locke
5591	Ms Joanne Halleen
5594	Mr Alan Watts
5596	Mr Leonard Cairns
5597	Mr Brian Stokes
5598	Mr Peter Maslen
5601	Mr Andrew Nianios
5604	Mr Roger Hiles
5605	Ms Sonja Gilchrist
5606	Mr Peter Bennett
5607	Mr Stephen Woodward
5609	Mr Graham Pitt
5610	Mr Gary Andrew
5611	Mr & Ms C & K Smith
5612	Mr Rick Jenner
5614	Mr Ray Webb
5617	Mrs D Greenwood
5618	Ms Judith Monticone
5619	Mr Peter Splitek
5620	Mr & Ms M & S Williamson
5621	Centacare Family Services
5623	Mr G R Rockett
5624	Ms Carol Marshall
5625	Mr Bruce Brown
5627	Mr Trevor Clark
5629	Mr Gavan Clark
5630	Mr P J Ewen
5631	Mr James Robinson
5632	Ms R M Coutts and Mr K J Churchward
5633	Mr Rod Woodman
5634	Mr Robert Behrens
5635	Mr & Mrs F J Adams
5636	Mr Garry Williams
5637	Ms Erica Anderton
5638	Ms Eileen Short
5639	Mr Bertus Spaai
5640	Catholic Community Services
5641	Ms Colleen Allen
5642	Mr Greg Gardiner
5643	Ms Jillian Stewart
5645	Mr Michael Dwyer

5647	Mr Darryl Davey
5648	Ms Vickie Howard
5649	Mr David Harris
5651	Mr Martin Damen
5652	Mrs Joanne Noble
5653	Mr J D Wilson
5654	Mr Richard Lloyd
5656	Mr/Ms K P Griffin
5658	Ms Gillian Johnstone
5659	Mr Desmond Stanyer
5660	Ms Pam Carpenter
5662	Mr Alexander Petrovic
5664	Mr James Coote
5665	Ms G MacDiarmid
5666	Mr James Vale
5667	Mr Robert Proctor
5670	Mr L P Gregoric
5673	Mr G A Luff
5674	Mr & Ms J & D Lester
5676	Mr Graham Luff
5678	Mr Robert Ferguson
5679	Mr Ralph Maiden
5682	Mr Ross Breadsell
5683	Mr David Smith
5684	Mr Bruce Lowrie
5685	Mr Martin Wells
5688	Mr Jeffrey Tunbridge
5690	Mr Darren Penfold
5691	Mr David Melville
5694	Mr Mark Eves
5696	Mr Shane Roberts
5698	Ms Sharon Davis
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5702	Mr Steven Quinn
5703	Mr Chris Powell
5704	Mr William Callaghan
5705	Mr Dean Weston
5706	Mr Steven Britt
5709	Ms Ann Gaudion
5710	Mr Philip Rainford
5712	Mr J K Frape
5714	Dr Peter Kubler
5716	Mr Greg Warwick
5720	Mr Colin Walker
5721	Ms Christina Martin
5722	Mr Leon Welk
5723	Mr Patrick O'Connell
5724	Mr N A Ewin
5725	Mr Melvyn Dall
5727	Mr Robert McCarthy
5728	Mr Geoffrey Murray
5729	Mr W Spedding
5730	Mr Peter Cross
5731	Farrellys
5732	Mr Bruce Durham
5737	Mr Jose Calarco
5738	Premier of Tasmania
5740	Mr Tony Mahoney

5741	DSS Area South West Office
5744	Mr Stephen Leon
5745	Mr Craig Chalker
5746	Mr Malcolm East
5747	Mr Ron Myers
5748	Ms Iris Hyde, OBE
5749	Ms Jennifer Conway
5750	Mr William Freeman
5751	Mr Wayne Pedron
5754	Mrs Heather Dice
5755	Mr Graeme Robinson
5756	Annis Eve Cook
5758	Ms Debbie Caldwell
5759	Mr Geoff Pye
5760	Hon John Kerin, MP
5761	Mr Robert Conn
5762	Ms Debra Oddi
5763	Mr J D Rea
5765	Ms Ann Mumford
5766	Mr Ron Neate
5768	Maranatha Christian School
5771	Department of Social Security
5772	Mrs Louise Cardoza
5773	Mr Justin Harrison
5774	Mr Rodney Strawbridge
5775	Mr Donald James
5777	Mr Richard Gault
5778	Ms Suzanne Mullen
5781	Mrs Dianne Johnstone
5783	Dr Frank Simonson
5784	Mr P Sewell
5785	Mr John Innes
5786	Mr A J Kannegiesser
5788	Mr M L Wilmot
5789	Mr Michael Reynolds
5790	Mr Rob White
5791	Mr Rick Smith
5792	Mr G J Simonsen
5793	Ms Valerie Peers
5799	Mr Dallas Hampton
5800	Mr Nicholas Hook
5801	Mrs V L Denton
5802	Mr & Ms G & C Bergin
5803	Mr Tony Hodges
5804	Mr Malcolm Phillips
5807	Mr Shawn Heathcote and Ms Cathy Ingles
5808	Mr Daniel Ledwidge
5809	Ms Linda Hughes
5810	Mr Ken Maher
5811	Mr Colin Vanderlinden
5812	Ms LeeAnne Salmon
5813	Mrs Kathleen Archer
5815	Mr John Philpot
5817	Mr Austin Peck
5818	Ms Bernadette Archer
5819	Mr David Benson
5820	Mr Wayne Law
5821	Mr Neal Welti
5822	Mr Robert Zwikielberg

5823	Mr Paul Sipos
5824	Ms Margaret Duncan
5825	Mr Robert Simpson
5828	Mr Christopher Hillman
5829	Mr John Condon
5831	Mr Robert Till
5833	Ms Anne Wray
5834	Mr John Peake
5835	Mrs P Miller
5836	Mr E P Shakeshaft
5837	Mr R Greenwood
5839	Ms Julie Pearce
5840	Mr John Healy
5841	Mr H J Palmer
5843	Ms Andrea Orsos
5844	Mr W B Staggs
5845	Ms Patricia Scott
5846	Ms Christine Heitman and Mr Nathan Gebhardt
5847	Ms Martha Ansara
5848	Mr D G Jackson
5851	Ms Bridgett Froehlich
5852	Mr James Donnelly
5853	Mr A J Barnard
5854	Mr Ian Archer
5855	Ms Tricia Baldock
5856	Mr Glenn Thompson
5858	Mr Doug Mackay
5859	Ms Jutta Jaehue
5860	Mr Leslie Davis
5861	Ms Michele Cartwright
5862	Mr Michael Hewitt
5865	Ms Barbara Jones
5866	Ms Margaret Floss
5869	Mr Unal Oxutgen
5871	Ms Linda de Freitas
5873	Mr Peter Radoll
5874	Ms Melinda Olah
5875	Mr John Read
5877	Ms Suzette Markwell
5878	Ms Judith Docen
5879	Ms Marina Van Elst
5880	Mr G J Daley
5881	Ms Liisa Kemppainen
5882	Ms Susanne Lobert
5883	Mr Paul Masterson
5885	Mr Roy Brennan
5886	Mr Dan Kehoe
5887	Mr Neil Murphy
5888	Mr Bevan Mason
5889	Mr Boyd Hilton
5890	Mrs Christine Thomas
5892	Mr John Grace
5895	Mr Gregory Reid
5896	Mr Kevin Levitt
5897	Ms Judy Kiley
5898	Mr Arch Bevis, MP
5899	Ms Alison Manners
5900	Child Support Action Group - Gippsland
5901	Mrs Kay Woodhouse

5902	Ms Colleen Nathan
5904	Mr N S Croker
5905	Mr Leland King
5906	Mr Barry Purcell
5907	Ms Nelli Griesser
5908	Ms Lynette Pauley
5909	Ms Jane Thompson
5912	Ms Pauline Grewal
5913	Mr Stephen Rippon
5915	Mr & Mrs B & R Neilsen
5916	Mr Gary Thomas
5917	Mr Kim Hayes
5919	Mr Rodney Dobson
5920	Mr Victor Klapsas
5921	Ms Jeanette McMahon
5923	Mr Alex MacKinlay (Jnr)
5924	Mr Robert Poole-Blunden
5925	Mr John Read
5926	Mr George Kazakoff
5927	Ms J L Miller
5928	Ms Jose O'Rourke
5930	Mr Raymond McMillan
5932	Ms Christine Lisle-Williams
5933	Mr C J Schulze
5934	Mr Peter McNamara
5935	Mrs J Lubich
5936	Ms Louise Gillespie
5938	Mr Andrew Turner
5939	Mr Ronald Lehnhoff
5940	Mr A R Bailey
5941	Mr Robert Higgs
5943	Mr James Caton
5944	Mr B Maddock
5945	Mr Chris Keating
5946	Mr William Butler
5947	Mr David Woodhead
5948	Mr Bruce McDonald
5949	Ms S M Savage
5950	Mr Rene Toro
5951	Ms Margarita Priori
5952	Australian Dispute Resolution Association Inc
5953	Mr David Hansson
5954	Mr T F Ward
5955	Migrant Resource Centre of Canberra & Queanbeyan
5956	Ms Nikki McCarthy
5957	Mr Greg Fairweather
5958	Mrs Brenda Walton
5959	Ms Kate Lyon
5962	Mrs Dianne Shepperd
5963	Mr Allan Smith
5964	Mr Mervyn Wilson
5967	Miss J Coles
5969	Ms Deborah Cruddas
5970	Mr J F Traill
5971	Mr Alex Somerville
5972	Ms Julie Tomlinson
5973	Mr M G Collett
5974	New South Wales Bar Association
5975	Ms A D Gray

5976	Mr Peter Kublins
5977	Mr Trevor Jackson
5978	Mr T Panitz
5979	Ms Gillian Boyden
5980	Ms Evonne Basterfield
5981	Mr Robert Ifrah
5982	Mrs M J Symons
5983	Mr Michael Player
5984	Ms Gerardina Melssen
5985	Mr Detlef Ullrich
5986	Ms Raelene Caporn
5987	Mr Geoff Dyson
5988	Mr M C Levitzke
5989	Mr A Bardon
5990	Mr David Alexander
5991	Mr Adrian Lakin
5992	Turk Ellis Pty Ltd
5993	Dr D Newton
5994	Mr Stephen Treg
5996	Mr Barrie Verity
5997	Mr A Palombieri
5998	Mr Garry Joiner
6000	Ms Margaret Jones
6001	Ms Tina Hutcheson
6002	Mr T Puckett
6003	Mr Michael Massingham and Ms Anne Hilton
6004	Mr Wayne Cailes
6005	Mrs S Johnson
6006	Ms Sandra Promnitz
6010	Mr John Murray
6012	Ms Linda Dade
6013	Mr Christopher Hunn
6015	Mr Warren Page
6016	Mr Ross McIntyre
6017	Ms Julie-Anne Woodall
6018	Mr Rodney White
6019	Mr L J Smith
6020	Mr John Maertzdorf
6021	Ms Anne Bamber
6022	Mr Daniel Moussie
6023	Mr Garry Murphy
6024	Mr Paul Bunyan
6025	Mr David Wakeham
6026	Mr Kevin Mather
6027	Mr Phil Howe
6028	Mr Paul Spencer
6029	Mr N Ritchmond
6032	Mr David Connors
6033	Mr Graeme Herbert
6035	Ms Karen Jamieson
6036	Mr Gary Campbell
6037	Mr A R Keay
6038	Mr Larry Martin
6039	Mr Murray Rook
6041	Mr Kevin Wong Hoy
6042	Mr C D Harrison
6043	Ms Anne Dixon
6046	Bunbury Community Legal Centre
6047	Mr Keith Fragomeli and Miss Kerrie Brand

6048	Mr Greg Summers
6049	Mr Kenneth East
6050	Mr A Kane
6051	Ms Cathryn Loftus
6052	Ms Heather Galbraith
6054	Ms Belinda Exton
6055	Mr Stephen Robinson
6056	Mr F C Schmidt and Mrs Deborah Browne
6057	Department of Social Security
6058	Child Support Agency
6059	Ms Catherine York
6062	Botany Migrant Resource Centre
6063	Mrs Sandra Campbell
6065	Mr Jeremy Barwell
6068	Ms Michelle Sculac
6069	Mr Gerard Boekel
6070	Mr T Hobden
6071	Ms Jenny Moss
6072	Mrs Christine Keitel
6074	Mr Rick Maher
6075	Mr Andrew Soar
6077	Ms Debbie Hellyer
6078	Mr Pieter Molenaar
6079	Mr Philip Gebhardt
6081	Mr Neville Biffin
6082	Attorney-General's Department
6083	Mr Richard Bolt
6084	Minister for Finance
6085	Hon R L Wiese, MLA
6086	Caxton Legal Centre Inc
6087	Mr Maurice Oldis
6088	Mr Laurie Sutherland
6089	Mr Paul Olsen
6090	Mr Barry Hampton
6091	Mr Colin Brown
6092	Mr Chris Simpson
6093	Ms Dianne Hanley
6096	Ms Julie Brady
6097	Mr Albert Kiwarkis
6098	Mrs J Angel
6101	Mr Mick Rowen
6104	Ms Lorraine Arden
6109	Lone Fathers Association Australia
6110	Mr Ronald Smith
6111	Mr C M Dorrington
6112	Mr Tony Ryan
6113	Mr Joe Cox
6115	Mr David Humphries
6116	Mr & Mrs D & A Kanofski
6117	Mrs V Armitage
6118	Ms Alison Middlebrook
6119	Mr Vivek Elias
6120	Mr Peter Fleming
6121	Mr Mark Millar
6122	Mr A C Sumner
6123	Ms R M E Sempf
6124	Mr Peter Venclova
6126	Ms Sandra Pursell
6127	Mr John Corlis

6128	Mrs Christine Fraser
6130	Mr T J Coloe
6131	Dr David Reiter
6132	Mr Merv Gilby
6133	Mr D R Bensen
6134	Ms Josephine Ferguson
6135	Ms Natalie Sakowsky
6136	Mr S Barrett
6137	Mr R J Breckenridge
6138	Mr Kenneth Aranha
6139	Mr James Guthrie
6140	Mr Andrew Waters
6141	Ms Glenda Belshaw
6142	Mrs Pam Garratt
6143	Northern Territory Legal Aid Commission
6144	Ms Desley Lawrence
6145	Mr Wayne Osborne
6146	Mr Ian Ellis
6147	Ms Judy Brease
6148	Mr Philip Mason
6149	Mr Peter O'Brien
6151	Mr D T Davis
6152	Mr Tony Camara
6154	Mr Raymond Edwards
6155	Mr Trevor Lowes
6156	Ms Monique Fitzpatrick
6157	Mr Peter Mulvey
6159	Brotherhood of St Laurence
6160	Mr Pierre Van Osselaer
6163	Mr Keith Elcoate
6164	Mr Gordon Embrey
6165	Mr Neil Coulter
6166	Mrs R W Wilkinson
6167	Mr David Kaye
6168	Northern Territory Legal Aid Commission
6169	Mrs Patsy Peppan
6170	Mr Stephen Weldrake
6171	Ms Julie-may Marment
6172	Mr Michael Johnson
6174	Mr Jeremy Clarke
6175	Mr John Heathcote
6177	Mr Stephen Dewsnap
6178	Ms Sandra Chandler
6180	Ms Elizabeth Lines
6181	Mr Ron Buckpitt
6182	Ms E K Newcombe
6183	Mrs Margaret Richards
6184	Mr Cameron Schuster
6185	Mr E B Lobley
6188	Ms Kerrie Lobwein
6189	Mr Don Wood
6190	Ms Lida Tartarko
6191	Mr Greg Lowe
6192	Mr Kevin Anderson
6193	Ms Janet Wood
6194	Child Support Agency
6195	Australian Association for Marriage Education and Catholic Society for Marriage Education
6196	Ms Jeanette Robinson

6197 Mr Greg Smyth