

The agency

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

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

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

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

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

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

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

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

Making decisions

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

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

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

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

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

Questionnaire box 4.1 Telephone service from Child Support Program staff

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Communicating with clients

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

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

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

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

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

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

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

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

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

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

...

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

- 4.36 Most decisions and requests for documents are communicated in writing. Even simple child support cases involve regular correspondence. Under

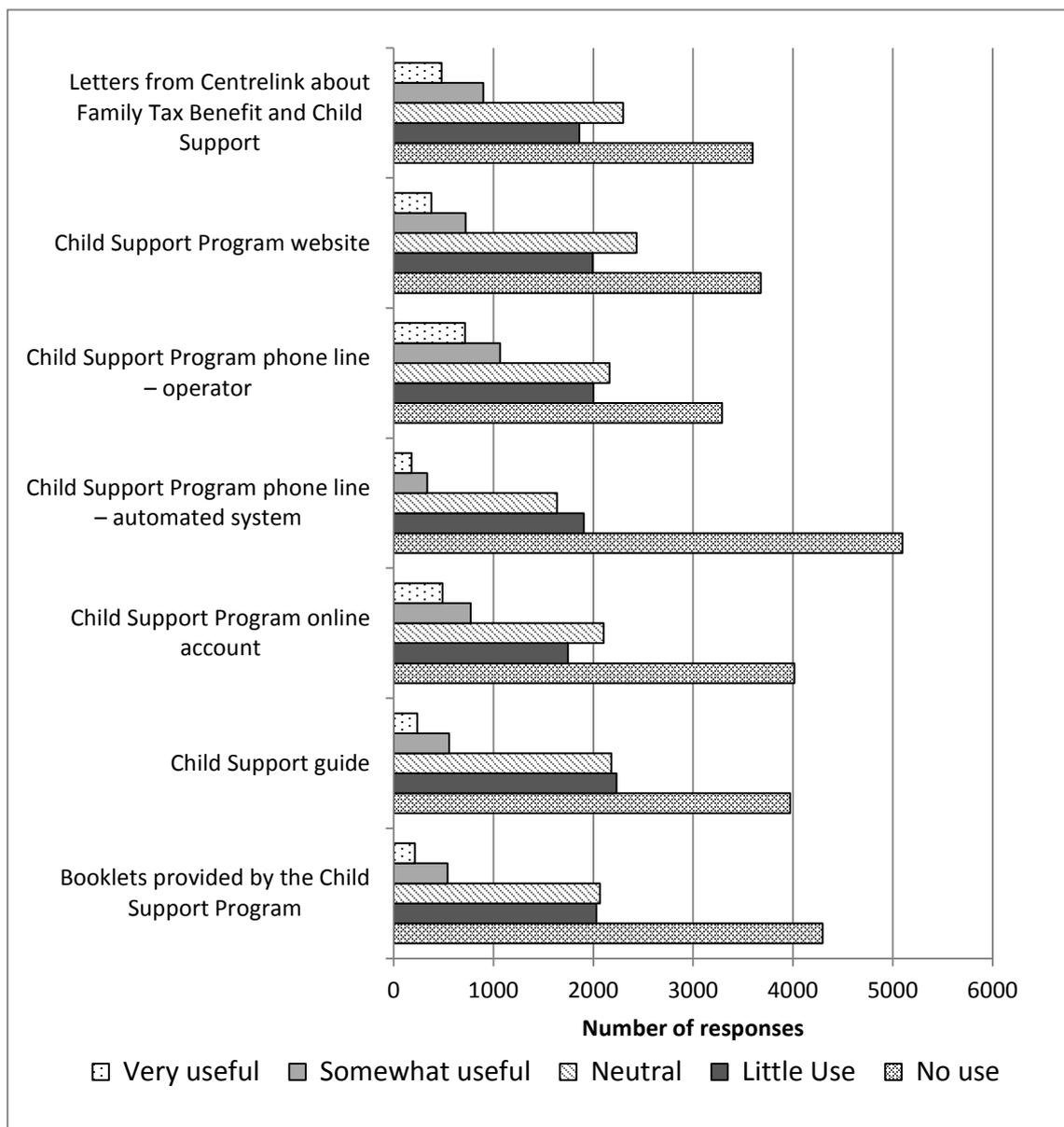
34 Stef, Community Statement Session, *Committee Hansard*, Melbourne, 21 August 2014, p. 25.

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

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

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

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



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

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

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

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

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

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

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

Questionnaire box 4.2 Letters from the CSP

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Enforcing payment

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

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

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

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

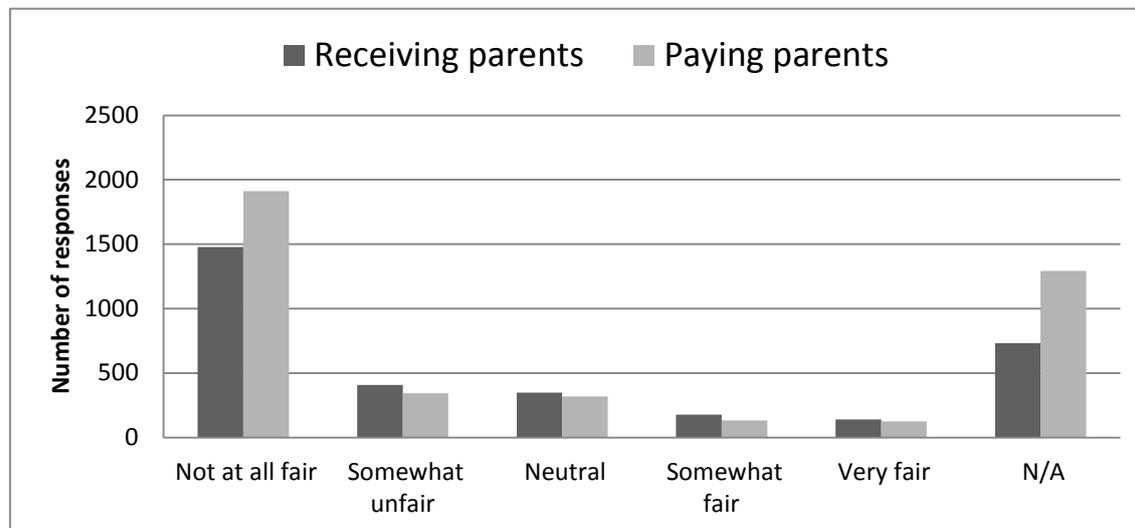
About 75.6 per cent of paying parents have no debt. As to the remainder of those, there will be a combination of some that have payment arrangements in place to get back that debt.⁴⁶

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

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

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

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



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

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

Table 4.1 CSP compliance and enforcement actions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Numerous individuals focussed on the insufficient enforcement of CSP decisions:

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

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

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

Questionnaire box 4.3 Enforcing payment

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

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

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

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

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

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

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

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

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

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

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

Better use of existing powers

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

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

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

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

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

Litigation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Departure Prohibition Orders

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

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

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

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

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

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

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

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

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

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

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

- 4.71 Professor Parkinson recommended that:

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

- 4.72 However, this view was not widely shared:

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

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

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

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

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

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

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

Additional powers

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

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

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

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

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

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

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

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

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

Family violence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Issues management:

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

Informal carers:

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

Reasonable maintenance action exemptions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

High-conflict families

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

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

One of the major things that has impacted in these situations is parenting. Parents are more likely to be ineffective and coercive in their use of discipline. They are less likely to monitor their child effectively. They use less positive attention and involvement, impacting on the parent-child relationship. We know that these sorts of maladaptive parenting practices or high conflict between co-parents places children at a very serious elevated risk of all sorts of behavioural, emotional and academic problems that can endure.⁹⁰

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

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

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

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

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

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

I distinguish two types of high conflict ex-partners:

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

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

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

and

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

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

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

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

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

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

Guarantee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 4.113 Throughout the inquiry, participants advanced numerous predictions about the ‘depersonalising’ effect of a guarantee on payers’ likelihood to pay their liability. Some contributions suggested that it would decrease compliance, as payer parents would not view the payment of their child support liability as having a real impact on their children’s welfare. However, others suggested that it would increase compliance because the liability would be owed to the government, and the government would be likely to pursue debts to consolidated revenue with more vigour than debts to third parties (payees). Unfortunately, there was little evidence to substantiate these claims one way or the other.
- 4.114 The Committee asked DHS to provide information about CSP clients being dealt with by Intensive Collection Services (ICS) in order to understand the likely cost of a guarantee. ICS deals with non-compliant behaviour (CSP clients with debts or arrears) and manages DPOs, legal enforcement and lodgement enforcement.
- 4.115 DHS provided that:
- As at 30 September 2014, there were 39 984 cases where the paying parent was being managed by [ICS]...This represents approximately \$500 million in child support debt. The total annual ongoing liability for cases currently being managed by the ICS Branch is \$144 million.
- At 30 September 2014, there were 27 909 active cases (cases with an ongoing child support liability) managed in the ICS Branch. For these cases:
- The average annual liability was \$5 167.53.
 - The average annual payee income was \$31 185.45 (compared with \$32 383.95 for payees in the wider child support population).
 - 59 per cent of payees were in receipt of some form of income support (compared with 57 per cent of payees in the general child support population).

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

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

Committee Comment

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

Making decisions

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

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

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

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

Recommendation 13

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

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

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

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

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

Recommendation 14

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

Communication

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

Recommendation 15

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

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

Recommendation 16

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

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

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

Recommendation 17

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

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

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

Recommendation 18

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

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

Enforcing payment

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

Recommendation 19

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

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

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

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

Recommendation 20

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

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

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

Recommendation 21

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

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

Recommendation 22

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

Family Violence

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

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

Recommendation 23

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

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

Recommendation 24

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

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

Guarantee

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

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

Recommendation 25

The Committee recommends that the Australian Government:

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

George Christensen MP

Chair

25 June 2015