

# **In the Best Interests of Children**

— *Reforming the Child Support Scheme*

Report of the Ministerial Taskforce on Child Support

Subject to final editing, formatting and typesetting

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# Part A: Overview

## 0.1 Background to the Review

The registration and collection aspects of the Child Support Scheme were introduced in 1988, and the formula for assessment in 1989. The formula for assessing child support was based upon recommendations of a Consultative Group chaired by Justice John Fogarty of the Family Court, which reported in 1988. The current scheme grew out of concerns about the effects of marriage breakdown on the living standards of children, especially those living in sole-parent households with their mothers. There was also concern about the increase in the numbers of separated parents dependent on welfare; low amounts of child support being paid by non-custodial parents; and the difficulties in updating and enforcing child maintenance obligations through the courts.

Although there have been numerous modifications to the formula over the years, the fundamentals remain unchanged. The basic formula under the Scheme requires liable parents to pay a percentage of their taxable income after a self-support component is deducted (\$13,462 for a single non-resident parent in 2005). The percentages are 18% for one child, 27% for two children, 32% for three children, 34% for four children, and 36% for five or more children. The formula reduces the liability of the non-resident parent where the income of the resident parent exceeds the level of average weekly earnings for all employees (currently \$39,312). The Scheme also provides for departure from the formula on a limited number of grounds through a process called Change of Assessment.

To a considerable extent, the Child Support Scheme has achieved the objectives that successive governments have given for it. The Scheme has also been successful in promoting community acceptance of the idea of child support obligations. However, much has changed in the circumstances of Australian families since 1988. There is now a greatly increased emphasis on shared parental responsibility, and the importance of both parents remaining actively involved in their children's lives after separation has gained much greater recognition. Child support policy can no longer just be concerned with enforcing the financial obligations of reluctant non-resident parents. Ensuring the payment of child support is one part of a bigger picture of encouraging the continuing involvement of both parents in the upbringing of their children.

There have also been other kinds of change that affect child support policy. Since the late 1980s, there has been a substantial increase in the workforce participation of mothers, particularly through part-time employment. Children in intact families tend to be supported from the incomes of both parents. The Government is refocussing its income support and work participation policies to treat both parents as potential labour force participants with the aims of improving family wellbeing over the longer term and reducing welfare dependence.

It is against the background of all these changes since the late 1980s, as well as the ongoing public concern about aspects of the Child Support Scheme, that this review has taken place. This review was initiated in response to the House of Representatives Committee on Family and Community Affairs report on child custody arrangements in the event of family separation (*Every Picture Tells a Story*, December 2003). It recommended that a ministerial taskforce be established to examine the child support formula. The Prime Minister announced the Government's acceptance of this recommendation on 29 July 2004 and the Taskforce, aided by

a Reference Group, began its work shortly thereafter. Members of the Taskforce had expertise in one or more of: social and economic policy, family law, family policy, and the costs of children. Membership of the Reference Group was drawn from advocacy groups representing child support payers and payees, and also included professionals who have experience in issues concerning parenting after separation, relationship mediation and counselling, and social policy.

## **0.2 Terms of Reference**

The Terms of Reference provide that the Taskforce, supported by the Reference Group, will:

1. Provide advice around the short-term recommendations of the Committee along the lines of those set out in the Report (Recommendation 25) that relate to:
  - increasing the minimum child support liability;
  - lowering the ‘cap’ on the assessed income of parents;
  - changing the link between the child support payments and the time children spend with each parent; and
  - the treatment of any overtime income and income from a second job.
2. Evaluate the existing formula percentages and associated exempt and disregarded incomes, having regard to the findings of the Report and the available or commissioned research including:
  - data on the costs of children in separated households at different income levels, including the costs for both parents to maintain significant and meaningful contact with their children;
  - the costs for both parents of re-establishing homes for their children and themselves after separation.
  - Advise on what research program is necessary to provide an ongoing basis for monitoring the child support formula.
3. Consider how the Child Support Scheme can play a role in encouraging couples to reach agreement about parenting arrangements.
4. Consider how Family Relationship Centres may contribute to the understanding of and compliance with the Child Support Scheme.

## **0.3 Approach of the Taskforce**

In order to meet the Terms of Reference, the Taskforce:

- analysed the submissions on child support made to the House of Representatives Committee on Family and Community Affairs in 2003;
- analysed issues raised in Ministerial correspondence and unsolicited submissions to the Taskforce;

- consulted the Reference Group on issues to be considered;
- reviewed the research on the costs of children both in Australia and overseas;
- conducted new research on the costs of children using three different approaches;
- examined the current impact of the Scheme on the living standards of both resident and non-resident parents;
- examined the child support systems of other countries and in particular, new approaches to child support since Australia developed its scheme;
- consulted overseas experts on child support;
- commissioned the Australian Institute of Family Studies to conduct a survey of community attitudes towards child support;
- considered the interaction of the Child Support Scheme with Family Tax Benefit (FTB) and income support payments;
- consulted the Reference Group and other stakeholders on proposals for change;
- tested the proposals using a computer model that examined their impact for a range of different families;
- consulted the Child Support Agency on the feasibility of implementing the proposed new approach.

Papers containing the research underpinning the Taskforce's findings are published in Volume 2 of this Report.

A major part of the work of the Taskforce required the analysis of the operation of the existing Child Support Scheme and proposed alternatives and their interaction with the tax and income support systems. The National Centre for Social and Economic Modelling (NATSEM) at the University of Canberra was commissioned to develop a detailed model for this purpose. This was a complex task, but this microsimulation model and the extension of NATSEM's population model (STINMOD) provide invaluable tools for future policy analysis and development. They enable the modelling of alternative policies to show outcomes for both individual families and the general population.

## **0.4 A New Child Support Formula for Australia**

A formula-based approach to assessing child support is administratively straightforward, transparent and efficient by comparison with more discretionary alternatives, such as relying on the courts. It provides the mechanism for the costs of children to be distributed equitably in accordance with the parents' capacities to pay. Its outcomes are more predictable. Its administration is also more efficient and cost-effective.

However, any child support formula that is assessed administratively represents a series of compromises between competing objectives — including fairness, simplicity and cost-effectiveness. What an administrative formula offers in terms of simplicity and speed of assessment, it may lack in capacity to adjust to the individual circumstances of all parties affected by it.

There are many factors that need to be taken into account in a child support formula. These include the economies of scale that apply in families with different numbers of children, or

with children of different ages or gender, how income of the resident parent should be taken into account, how opportunity costs and childcare expenses should be treated, and how shared care should affect child support obligations. Such issues remain matters for judgment using the best available evidence.

In undertaking the review, the central concern of the Taskforce was the wellbeing of children after separation. However, the Taskforce also recognised the importance of balancing the interests of the parents and ensuring that the fundamental principles of the Scheme reflect community values about child support in Australia.

#### **0.4.1 The basis for calculating child support obligations**

Although a number of different factors were considered by the Consultative Group that proposed the child support formula in 1988, a starting point was that, wherever possible, children should enjoy the benefit of a similar proportion of the income of each parent to that which they would have enjoyed if their parents lived together. This includes not only the proportion of income spent on consumables such as food, but a proportion of the costs of all goods shared by members of the household, such as housing, running a car, and fuel bills.

This is known as the “continuity of expenditure” principle. It has been the basis not only of the Australian scheme but of many others around the world. It does not mean that children will necessarily be able to maintain the same living standards after their parents’ separation as they enjoyed before. Children’s living standards depend on the overall income of the households in which they spend their time. However, the Consultative Group considered that this principle was the best starting point for calculating an appropriate level of child support.

The Child Support Taskforce agrees that this remains the fairest basis on which to calculate child support. While the standard of living of many resident parents falls after separation, this loss in living standards may be ameliorated if they remarry, form stable de facto relationships, or manage to increase their workforce participation. The child support formula needs to apply generally until the children are 18 and the circumstances of parents can change considerably over this time. Part VIII of the *Family Law Act 1975* gives the courts wide-ranging powers to divide the property of parents, and the financial needs of the children’s primary caregiver following separation are an important factor that courts consider. They also have the power to award spousal maintenance in appropriate cases. Certain powers to alter interests in property and to award maintenance also exist under State and Territory laws concerning de facto relationships. Government benefits such as Parenting Payment, the provision of FTB B for sole parents, rent assistance, special health care benefits and the pension concession card also help cushion the effects of separation for parents.

The child support formula should provide a transparently fair basis for calculating child support. This requirement cannot be met if the Scheme aims to fulfil objectives other than sharing the costs of children equitably between the parents. For that reason, it is proper that child support obligations be based on the best available evidence of how much children cost to parents with different levels of combined household income.

#### **0.4.2 The costs of children in separated households**

The Taskforce was asked to consider the costs of children in separated households. Where there is regular contact between children and non-resident parents, the costs of children increase significantly because of the duplicated infrastructure costs of running two households.

These costs include housing, furnishings and motor vehicles, the loss of economies of scale in the one household in terms of energy costs and other shared expenses, and the costs involved in exercising contact, especially transportation.

Both parents are likely to experience at least part of these increased costs of raising children if the children are spending significant amounts of time with both of them. How those additional costs are distributed between the parents depends on a number of different factors, including the division of property when the parents separate, and the transport arrangements for contact visits. The Taskforce has taken account of this research in its recommendations on how to factor the costs of contact into the formula.

### **0.4.3 Issues with the current formula**

While the Child Support Taskforce agrees that the “continuity of expenditure” principle remains the best starting point for considering an appropriate level of child support, it considers that the current formula is no longer appropriate as the basis for child support liabilities in 2005 — for the following reasons.

#### ***Fixed percentages***

(i) The formula assumes that, across the income range, people spend the same proportion of their income on children. This justifies the fixed percentages above the self-support component based on the number of children being supported. However, the research of the Taskforce, and the preponderance of international research published since 1988, shows that, while the higher the household income, the more parents spend on their children in dollar figures, expenditure declines as a *percentage* of their income. The impact of marginal tax rates is one reason that spending on children does not increase in proportion to the increases in people’s taxable income. Furthermore, as income increases, expenditure becomes more discretionary. Parents who are already providing a comfortable standard of living for their children may choose to put more money into savings or to spend additional income in ways other than on their children.

These research findings make it difficult to justify the fixed percentages of taxable income under the present Scheme. At the higher ends of the income spectrum, the current child support liability is well in excess of levels of expenditure on children in comparable intact families, especially for one or two children under 13 years of age.

#### ***Set percentages, irrespective of age***

(ii) The current formula applies the same percentage of income irrespective of the age of the children and therefore is not sensitive to the difference in the costs of children as they grow older. Research suggests that expenditure on teenagers is two to three times as high as for younger children, and this pattern prevails at every income level. While the approach of averaging the costs of children over the entire age range has the merit of simplicity, it means that child support payments are likely to be inadequate at the time that the costs of children are at their highest, and too high when the children are younger.

#### ***The need to reflect two incomes***

(iii) The substantial increase in the part-time employment of women with children since the Scheme was introduced means that a majority of intact families with children depend on two incomes. The formula however, is based only on the non-resident parent’s income for the great

majority of families, since the resident parent's income is only factored in above the threshold of average weekly earnings for all employees. It is therefore not obvious to child support payers that both parents are sharing in the cost of supporting their children according to their capacity.

### ***Children of second families***

(iv) The way in which children of second families are taken into account under the current formula is of significant benefit to low-income non-resident parents but does not provide much relief for those on higher incomes who have new children to support. This is because payers with new biological children are given a dollar-figure increase in their exempt income before the relevant percentage is applied. This does not reflect the reality that expenditure on children increases with household income. For low-income payers, this figure represents a large increase as a percentage of their income, but it is proportionally only a small increase for higher-income payers. At both ends of the income spectrum, this results in unequal treatment of the children of the non-resident parent, as the amount allowed for the support of the new children may be much higher or much lower than the likely costs of the new children, and has unjustifiable effects on the level of the payer's liability to the child support children. In some cases, the increased exempt amount may have the effect of reducing the payer's child support obligation to a minimal level.

#### **0.4.4 A new approach to the calculation of child support**

To address these problems, the Taskforce proposes a fundamental change to the Child Support Scheme.

The essential feature of the proposed new Scheme is that the costs of children are first worked out based upon the parents' combined income, with those costs then distributed between the mother and the father in accordance with their respective shares of that combined income and levels of contact (see section 0.6). The resident parent is expected to incur his or her share of the cost in the course of caring for the child. The non-resident parent pays his or her share in the form of child support. Both parents will have a component for their self-support deducted from their income in working out their Child Support Income.

This gives practical expression to the first objective of the Scheme, that parents share in the cost of supporting their children according to their capacity. The proposed Scheme is based upon the 'income shares' approach utilised in many other jurisdictions and reflects the notion of shared parental responsibility contained in Part VII of the *Family Law Act 1975*.

## **0.5 Assessing the costs of children**

There is no 'fixed cost' of children. The costs of children vary in accordance with the level of income of the parents. Estimates of the cost of raising children are therefore based upon evidence about patterns of expenditure on children, or the amount of money that is needed to attain a particular standard of living.

### **0.5.1 Three approaches to estimating the costs of children**

The Child Support Taskforce used three different methodologies to reach the best and most up-to-date estimates possible of the costs of children in intact Australian families. The Household

Expenditure Survey was used to examine actual patterns of expenditure on children. The Budget Standards approach was used to assess how much parents would need to spend to give children a specific standard of living, taking account of differences in housing costs all over Australia. A study was also done of all previous Australian research on the costs of children, so that the outcomes of these two studies could be compared with previous research findings. The Australian estimates were also benchmarked against international studies on the costs of children. Ultimately, the Taskforce made a considered judgment about the best estimates of the costs of children.

Research on the costs of children can only provide a broad estimate. For example, because it includes a proportion of the housing costs incurred by the family, the costs of children will vary depending on the location of the family. The costs of raising children are therefore much higher in most capital cities than in small regional centres or country areas. While the Taskforce considered housing costs in different locations, it was necessary to average out the housing costs for the purpose of the child support formula. The averages also take no account of the gender mix of children. There are likely to be greater economies of scale in a family with two children of the same gender than if the family has a boy and a girl.

### **0.5.2 Taking account of government contributions towards the costs of children**

Estimates of the gross costs of children are based upon total household income, including government benefits. In order to assess how much the parents spend of their own incomes on children, it is therefore necessary to take account of those benefits.

Raising children in intact families is a partnership of both parents and the government. The government assists most families with the costs of children, especially through FTB A, which is paid on a per child basis. For lower-income families in particular, it provides substantial tax-free financial assistance. In order to work out the amount that it would be reasonable to expect a non-resident parent to pay in child support, it was therefore necessary for the Taskforce to take account of the FTB A that is paid to parents in an intact family at different income levels.

The estimates of the costs of children, less the amount of FTB A in an intact family at that level of household income, gave the Taskforce an estimate of the 'net costs' of children in intact families. Its recommendations concerning the level of child support that ought to be paid are based as far as possible on these estimates of the net costs of children.

### **0.5.3 Taking account of childcare costs**

In order to take account of the costs of childcare or income forgone by being out of the workforce to care for young children, the costs of children aged 0-12 have been based upon the research evidence on the costs of 5-12 year-old children. These are substantially higher than the costs of children 0-4. Where childcare costs are particularly high, as they are in some parts of the country, the parent incurring this cost will be able to apply for a change of assessment to help meet this cost. This is an existing ground for a change of assessment under the Scheme.

### **0.5.4 A Costs of Children table not based upon fixed percentages of income**

In the proposed new formula the costs of children should be expressed in a Costs of Children table (see Table A of this report) based upon the parents' combined Child Support Income in two age bands, 0-12 and 13-17. This division reflects the fact that expenditure on teenagers is

generally much higher than for younger children. Where there are children in different age bands in the one family, the costs of the children should be the average of the amounts applicable in each band, as expressed in Table A: Costs of Children.

However, these costs will not be expressed as fixed percentages across the entire income range. Since parents spend a higher amount on children the more money they have, but spend less as a percentage of their household income in the higher income ranges, the percentages applicable in this formula gradually decline as combined taxable income increases.

As a consequence, under the new scheme a liable parent with a high income will pay much more in child support than a parent on a low income, but less as a *percentage* of his or her taxable income than the parent on a low income. Similarly, where the resident parent is earning a sufficient amount that the combined Child Support Income of the parents takes them into a higher bracket, then her or his income will reduce the amount that the non-resident parent has to pay. It will do so in a much more graduated way than under the current formula, which reduces liabilities more rapidly than is justified by the research on the costs of children. Under the proposed formula, child support obligations will be based upon the relative amounts of the parents' respective incomes.

As household income levels rise far above the community average, it becomes difficult to measure further increases in expenditure on children, and spending becomes increasingly discretionary. The Taskforce has recommended that the costs of children be capped at a combined Child Support Income of 2.5 times MTAW (male total average weekly earnings, as reported by the Australian Bureau of Statistics). Where both parents have adjusted taxable income up to the self-support threshold, this equates to a projected maximum combined income for 2005-06 of \$160,386. As at present, this cap can be exceeded through the change of assessment process. The most likely situation for this would be to deal with very high private school fees. All other thresholds are expressed as a proportion of MTAW above the self-support amounts, so that the formula is indexed annually.

The Taskforce gave consideration to the commonly advocated idea that child support should be based on after-tax income – but rejected this for a range of reasons, as previous inquiries have done. However, the recommendation that the Child Support Scheme should not be based on fixed percentages of income takes account of the impact of taxation in a different way. The costs of children that are the basis for the proposed new formula reflect the fact that higher-income families pay a greater percentage of their income in tax, and this is one reason why they spend a lower percentage of their income on children. Thus, although the proposed formula continues to be based on taxable income, the impact of income taxation on disposable income has been taken into account indirectly.

### **0.5.5 Number of children**

In the proposed formula the costs of children will be expressed for one child, two children and three or more children, rather than up to five children as it is at present. This simplification is possible because after taking account of the impact of FTB A, the Taskforce found that family spending on four or more children is little different from that on three children. FTB A is payable on a per child basis, and does not take account of the economies of scale that are possible for larger families. This means FTB A is proportionately more generous to large families. While families with higher incomes receive less FTB A, and may not receive any at all, their capacity to spend on each child is constrained as the number of children increases.

Consequently, approximately the same proportion of income is spent on four or more children as would be spent on three.

### **0.5.6 *An increased self-support amount***

The Taskforce proposes that the current self-support amount, which is currently set at 110% of Parenting Payment Single (\$13,462 in 2005), be increased to one-third of MTAW. In the 2005-06 financial year this is projected to be \$16,883. This increase is justifiable because the Taskforce research shows that, after taking account of the numbers of children in the household, resident parents have significantly higher disposable incomes as a result of government benefits than non-resident parents who are on incomes below the proposed self-support threshold. The self-support component should be the same for both parents.

The increased self-support component will improve workforce incentives for both parents. Parents on Newstart will be able to take on casual or part-time jobs to supplement their benefit, without it affecting child support until their earnings reach a level close to where entitlement to Newstart cuts out. Parents on other income support payments will also be able to keep some of their casual or part-time earnings without this affecting child support.

### **0.5.7 *Second families***

Children from first and second families ought to be treated as equally as possible. The Taskforce proposes that this should be achieved by taking the amount that the non-resident parent would pay for the new dependent child if he or she were paying child support based upon his or her income alone, and then deducting this amount from his or her available financial resources (together with the self-support amount) in working out his or her capacity to pay child support for the child or children in the first family. This method should replace the current approach of increasing the non-resident parent's self-support component to 220% of the partnered pension rate plus an additional amount depending on the age of the child or children in the new family.

While some parents with second families may receive a reduced allowance for the new child or children on the basis of this principle compared to the present provisions, the effect of this recommendation needs to be considered together with the impact of all the other recommendations, including a greatly increased self-support amount, fairer recognition of the costs incurred in contact, recognition that the same percentages of before-tax income should not be applied across the income range, and other changes to the way in which child support obligations are calculated. The availability of FTB to the second family should also be taken into account.

### **0.5.8 *Child support children in different families***

Where a non-resident parent is required to pay child support to children in two or more different households (having two or more child support cases), his or her contribution to the costs of these children should be calculated using his or her income only. The percentages applicable to the total number of children should be used. The resulting cost should be divided evenly amongst the child support children on a per capita basis. This is consistent with the principle recommended above in relation to second families.

## **0.6 Taking account of regular contact and shared care**

### **0.6.1 *Thresholds for recognition in the formula***

The current formula does not take adequate account of the costs of contact. A parent has the same child support liability whether he or she has no contact with the children or has the children to stay overnight for 29% of nights per year. The Scheme therefore does not take proper account of the costs incurred when children are staying with the non-resident parent.

In order to recognise that non-resident parents who have regular contact with their children incur significant costs in providing that contact, and relieve the other parent of expenditure on food and entertainment costs at least, the Taskforce considers that regular face-to-face contact should be recognised in the formula.

If a parent has the care of the children once a week on average, or 14% of nights per year, it is likely that he or she will need accommodation that is appropriate for a child to stay regularly overnight. This and other infrastructure costs do not vary much depending on how much contact the parent has. For this reason, the Taskforce considers that recognition of contact arrangements in the formula should begin when a non-resident parent has at least 14% care. If the parents agree that daytime-only contact, or a combination of days and nights, is the equivalent of the expenditure involved for 14% or more nights per year, then the same reduction in child support will be applicable. Otherwise the matter will need to be determined by the Child Support Registrar on application by a parent.

Where care is being shared between the two parents to the extent that each parent has the children for at least five nights per fortnight or 35% of nights per year, the applicable child support should be based upon a shared care formula, with the higher-income parent making a contribution to the lower-income parent after taking account of the proportion of time the children are in each parent's care.

Care of the child for between 14% and 34% of nights per year is termed "regular contact" in this Report. When parents have the care of the child between 35% and 66% of nights per year each, this is termed 'shared care'.

### **0.6.2 *The interface with FTB***

Currently, the way in which contact and shared care arrangements affect entitlement to FTB is quite different from the position under the Child Support Scheme. In the Child Support Scheme, the child support obligation is not affected unless a parent has the child staying with him or her for 30% or more nights per year. In contrast, FTB can be split where a non-resident parent has 10% or more of the care. Although the care is normally based upon nights, it may be calculated by reference to hours of care. The FTB split is in direct proportion to the level of care, so that a parent with 20% of the time with the child will be eligible for 20% of both FTB A and B.

The Taskforce proposes that the child support and FTB systems be coordinated, so that rather than having two different systems for taking into account regular contact and shared care, there is an integrated approach.

### **0.6.3 Minimising conflict over care arrangements for children**

One of the most significant problems about the way in which contact arrangements affect child support and FTB eligibility is that concerns about money can get in the way of agreements about parenting arrangements that are best for children. This is particularly the case in relation to FTB, as entitlement to FTB is based on the number of nights above 10% of the nights per year that each parent is caring for the child. Thus arguments about whether the children will stay with the non-resident parent for two nights per weekend or three, or have time with him or her in the middle of the week, may have financial implications. Monetary concerns can motivate a non-resident parent to seek increased contact or make the primary caregiver unwilling to agree to increased contact.

The Taskforce considers, on the basis of strong advice emerging from its consultations, that it is in the best interests of children that agreements about parenting arrangements not be affected by financial concerns. While different financial arrangements need to be made for parents with shared care, the Taskforce considers that the level of conflict over money can be minimised if:

- the recognised costs of contact in the formula do not vary depending on the amount of contact between 14% and 34% of nights per year;
- resident parents are entitled to 100% of the FTB where the care of the child is not being shared; and
- FTB splitting is confined to those who have shared care — that is, where each parent has the children for at least 35% of nights, or five nights per fortnight.

Consequently, recognition of the costs of regular contact should be dealt with through the Child Support Scheme rather than through FTB splitting, and the level of child support payable should be calculated on the assumption that the resident parent has the benefit of all the FTB A where the care is not being shared.

Where the non-resident parent is caring for the child between 14% and 34% of nights per year, child support should be calculated on the basis that he or she is credited with a contribution of 25% of the costs of supporting the child through the provision of that care. This figure has been informed by research on the costs of children in separated families. The research demonstrates that when children are being cared for in two households, the combined costs are much higher than when the children are being cared for in only one household. While the costs of providing for the children do not diminish much for the resident parent (because so many of those costs are related to infrastructure), the costs are, to a significant extent, duplicated in the other parent's household. The proposed formula makes an allowance for this in a way that reflects the findings of research on families with a modest but adequate standard of living after separation about the proportions of the increased cost of children in two households that are incurred in each household.

Where the parent is caring for the child for 35% of the year, child support should be calculated on the basis that the non-resident parent is bearing 25% of the costs, rising by 0.5% for every night above this until each parent is sharing 50% of the costs for approximately equal care.

Where there is a parenting plan or a court order specifying that the liable parent should have the care of the children for at least 14% of nights per year, this will be assumed to be occurring. The payee may challenge this if the level of actual contact occurring in the current child support year was significantly less than 14% of nights per year, despite the payee's willingness to make the children available for that contact.

#### **0.6.4 Recognition of costs of contact for low-income parents**

There are a number of non-resident parents who would not be as well off under these proposals as under FTB splitting. These are non-resident parents who would receive a lower reduction under the proposed arrangements for taking account of regular contact in the Child Support Scheme than they gain as a result of FTB splitting.

The research of the Taskforce has demonstrated that a significant effect of not splitting FTB A for non-resident parents would be the loss of entitlements to ancillary benefits that flow from eligibility for FTB A, including Rent Assistance and other valuable benefits. To ensure that these benefits remain for those exercising regular contact, it is proposed that non-resident parents who have contact between 14% and 34% nights per annum will continue to have access to Rent Assistance, the Health Care Card, and the Medicare Safety Net if the other eligibility criteria for FTB A are met. As a consequence, the people who currently have regular contact and are splitting FTB will continue to access significant benefits of splitting, while having a reduction in their child support liability on account of that regular contact.

It is also proposed that non-resident parents who are in receipt of Newstart be paid the 'with child' rate of the Newstart Allowance where they have the care of a child for at least 14% of the nights per year. Currently the award of the 'with child' rate of Newstart does not appear to be administered uniformly. The proposal in relation to Newstart would ensure consistency across the country and align Newstart with the recognition of regular contact under the Child Support Scheme. The Government may also wish to consider treating both parents in a shared care arrangement (35%-65% of nights each) more equally in terms of eligibility for income support. At present, where the parents are sharing the care of the child equally, and both would be eligible for Parenting Payment, only one parent can receive it, and the choice between the parents does not have a rational basis.

#### **0.6.5 The formula in operation**

Under the proposed new approach, the basic formula will have up to 5 steps.

- 1.** Ascertain the parents' 'adjusted taxable incomes' (meaning, taxable incomes with adjustments made to take account of negative gearing and other such factors) based upon the most recently available tax assessment or such other information as is available. This step is similar to the current calculation of adjusted taxable income for child support purposes.
- 2.** Calculate the 'Child Support Income' of each parent. This is equal to their adjusted taxable incomes less their self-support amount. If either parent has a new biological or adopted child, the self-support amount will be increased by the amount that the parent would have to pay in child support based upon his or her income if the child were living elsewhere.
- 3.** Calculate the cost of the child or children using the combined 'Child Support Income' of the two parents and applying the relevant amounts in Table A: Costs of Children, in this report. The resulting cost represents the amount that the parents would be likely to spend on the children from their private incomes if they were living together. The cost of the child can be expressed legislatively as a percentage of the parents' combined Child Support Income within each of the relevant income bands, with each band of additional income attracting a lower percentage. The amounts and income bands are contained in Table A.

This step is fundamentally different from the existing Scheme, because it is the cost of the child that is worked out as a percentage of the parents' combined income above the self-

support amount for each parent, whereas in the existing Scheme the payer's child support obligation is expressed as a percentage of his or her income above the self-support component.

4. Apportion the costs of the child in accordance with the parents' respective capacity to pay – that is, in proportion to their respective shares of combined Child Support Income.
5. Where there is regular contact with the non-resident parent (between 14% and 34% of the year), 24% of the costs of the child will be treated as incurred in the non-resident parent's household. The non-resident parent's liability is any balance of their share of the costs of the child, after deduction of the amount they are assumed to be expending by providing contact. For amounts of care equal to or above 35%, (that is, shared care), a percentage of the costs of the child, as found in Table B will be treated as having been incurred by the parent with lesser care. When care is equal or near equal, the share will be 50% of the costs. In all cases of shared care, a parent whose share of the combined Child Support Income is greater than his or her share of care will have a liability to the other parent.

Chapter 16 of the Report contains detailed information about how this formula translates into child support payments for a variety of cameo families. It also provides information on how the formula translates into averages of a paying parent's income before and after tax in these different scenarios. The examples also provide estimates of the disposable incomes of each parent after paying and receiving child support, taking account of the number of people being supported in each household.

### **0.6.6 *Simplicity for the public***

Although the formula will be legislatively more complex than the current formula, it will be no more complex administratively, nor will there be any greater complexity for members of the general public. At the present time, people can use a calculator available on the Child Support Agency website to obtain an estimate of a child support liability if they know the father's income, the mother's income, and the number of children. With the addition of the requirement to enter the ages of the children, it will be as simple for a member of the public to obtain an estimate of the new child support liability as at present.

## **0.7 Ensuring parents meet their obligations to their children**

### **0.7.1 *Minimum payments***

More than 40% of all payers in the Child Support Scheme are paying \$260 per year (\$5 per week) or less. Only about half of these are on Newstart, Disability Support Pension or other income support. It is likely that the reported taxable incomes of many of the remainder do not reflect their real capacity to pay a reasonable amount towards the support of their children.

The use of taxable income as the basis of child support means that those people who legally or illegally manage to minimise their tax also pay unrealistically low levels of child support.

To give effect to the principle that both parents should contribute at least something towards the costs of supporting their children, the required child support payment should be \$20 per week per child for those who were not on income support during the tax year on which the current child support amount is calculated, and who report taxable incomes below the level of

maximum Parenting Payment Single. This fixed payment should not be reduced on account of regular contact because it is designed to ensure that those whose reported taxable income does not reflect their real capacity to pay child support make at least a modest contribution towards their children's upbringing. Those who were on income support for a period during the relevant tax year but have taxable incomes above the self-support amount on the basis of the tax assessment for the relevant year, should be assessed on the basis of the formula.

While a parent is on Newstart or another income support payment with income below the self-support amount, the operation of the formula will be suspended and a minimum rate will apply. The minimum is currently \$5 per week. The payment should be increased in line with the increase in the CPI since the minimum payment was first introduced in 1999. The payment should become a minimum for each child support case, so that a payer with a liability to children in more than one household would pay the minimum to each household.

The minimum rate and the fixed payment should be increased annually in line with changes in the CPI and rounded to the nearest 10 cents.

### **0.7.2 Registrar-initiated changes of assessment**

Another strategy for ensuring that parents who have the capacity to pay reasonable levels of child support do so is the greater use of Registrar-initiated changes of assessment.

At present, the Child Support Agency has a range of methods by which it can assess the real capacity to pay of a self-employed person who has structured his or her financial affairs so as to minimise taxable income. It also has methods of estimating the real income of those who fraudulently conceal income derived from cash transactions. However, it normally relies on the payee to initiate a change of assessment process on the basis that the parent has a higher capacity to pay than is reflected in his or her taxable income.

Since 1999, the Agency has had the power to initiate changes of assessment of its own motion. This can be very useful in enabling the Agency to look at categories of child support cases that have shared characteristics and where a closer examination of the payer's finances is warranted. The Taskforce recommends increased resources for this work.

### **0.7.3 Enforcement**

The Taskforce considers that the proper enforcement of child support obligations in relation to all child support payers is essential for popular acceptance of the Scheme. As has been recognised for many years, self-employed non-resident parents who do not meet their obligations to their children represent a particular challenge for the Agency, both in assessment and enforcement. The Taskforce recommends that any enhancement of the Agency's enforcement powers should be focused on increasing its enforcement options in relation to self-employed parents who are defaulting on their obligations.

## **0.8 Helping parents to agree**

### **0.8.1 The role of Family Relationship Centres**

The new Family Relationship Centres can play an important role in helping separated parents to understand the Child Support Scheme and discuss issues about child support obligations.

Group information sessions should draw attention to the flexibility built into the Scheme, in particular through change of assessment applications. Parents should be encouraged also to discuss issues such as paying for childcare costs and plans for future schooling, especially where a private school education was contemplated before separation.

Planning for Family Relationship Centres should involve close collaboration with the Child Support Agency and Centrelink, both of which may be able to provide an information and advice service on the premises of the Centre on a regular basis, perhaps once per week or fortnight. They may also be able to provide input to group information sessions. Both agencies have particular experience in being able to provide advice and assistance to people in regional and rural areas who do not have ready access to face-to-face services. This experience should be drawn on in working out how Family Relationship Centres can service regional and rural Australia.

### **0.8.2 Giving parents time to work out arrangements**

Currently, the operation of the FTB system is such that parents who seek more than base rate FTB A must apply for child support almost immediately, at a time when little discussion may have occurred between the parents about the parenting arrangements after separation.

To give parents more time to adjust to the separation and to discuss a parenting plan, the Taskforce proposes that there should be a moratorium on the requirement to apply for child support (the Maintenance Action Test – or MAT) for 13 weeks. In that period, FTB should be determined as though the MAT has been satisfied.

### **0.8.3 Child support agreements**

The rules on the making of child support agreements can lead to serious disadvantage to payers, payees, or the taxpayer, depending on the circumstances, and need to be revised. Parents need to be given as much flexibility as possible in making their own agreements on child support, but there need to be sufficient safeguards to ensure that agreements that have long-term financial consequences for the parents and children are freely and fairly made, and are not used to increase costs for the Commonwealth.

Parents should be able to make binding financial agreements in relation to child support on the same basis as they can do for property, superannuation and spousal maintenance under the *Family Law Act 1975*. Binding financial agreements are only valid if the parties to it have independent legal advice. Agreements made other than through a binding financial agreement should be terminable by either party on one month's notice at any time after the first three years of the agreement.

Where an agreement is made for the payment of less child support than would be required under the formula, FTB should be calculated each year on the basis of the amount of child support that the formula would have required if the agreement had not been made. This will have the effect that no agreement can reduce child support for a parent at the expense of taxpayers.

### **0.8.4 Lump sum child support**

The current rules of the Child Support Scheme make it difficult for parents to make agreements about the payment of some child support in a lump sum, including in the form of property,

even when this would be of advantage to both parents in establishing themselves in different households after relationship breakdown.

Certain provisions that inhibit parental agreement about lump sum child support are no longer needed to protect the Government from increased expenditure on FTB. Parents ought to be able to make binding financial agreements concerning lump sum child support. As with other types of child support agreement, FTB ought to be calculated on the basis of the amount of child support that the formula would have required if the agreement had not been made. Default rules for working out the impact of lump sum child support on periodic liabilities should be provided in the legislation, in order to make it easier for parents to reach a binding financial agreement on this issue in appropriate circumstances.

The proposed reforms will also make it easier for courts to make lump sum awards of child support where appropriate.

### **0.8.5 Scope of legislation**

In order to ensure that the powers proposed are available to all parents and not only those who were married to one another, the proposed new provisions concerning binding financial agreements and capitalised child support should be contained in the child support legislation.

## **0.9 Other issues**

### **0.9.1 Capacity to earn**

Determinations that a parent's capacity to earn is higher than his or her actual income are amongst the most contentious of all Child Support Agency decisions. Either parent could, in principle, be caught by this provision, but in practice non-resident parents, mainly fathers, are affected. Fathers have complained that this discretion is used unfairly in such situations as where their earnings have been reduced as a result of poor health experienced after separation and divorce, where they have reduced their working hours to allow for contact with their children, or where they have undertaken study to improve their longer term financial prospects.

The Taskforce recommends that 'capacity to earn' should be given clear legislative definition. Parents should only be deemed to be earning more than they are in fact earning, based on unutilised earning capacity where, on the balance of probabilities, a major motivation for reduced workforce participation is to affect the level of child support payments.

### **0.9.2 Step-parents**

The grounds for change of assessment should be amended to include the recognition of a parent's obligation to support step-children if neither of the biological parents is able to support the children.

### **0.9.3 Maintenance Income Test**

The Maintenance Income Test (MIT), which dictates how much child support is taken by the Government to recoup some of its expenditure on FTB for the resident parent, is poorly aligned with Government policy on support for families. The consequence of the MIT is that

many separated parents receive less FTB A than they would if they were living together. There are also other serious anomalies in the current operation of the policy that need to be rectified.

The reform of the MIT needs to be considered by the Government as part of the process of reform when budgetary circumstances allow. In particular, consideration should be given to an increase in the free area before child support payments affect FTB A entitlements.

The Maintenance Income Test should only operate in relation to FTB payable for the child support children and should exclude other children living in the household.

The percentages recommended by the Taskforce in Table A: Costs of Children have been adopted after taking into account the present operation of the MIT.

#### **0.9.4 *Revision of the legislation***

The child support legislation should be rewritten as far as possible in plain English. It is highly complex and difficult to understand, due to an excessive reliance on technical language and complex phraseology. Legislation of this kind must be usable beyond the Agency entrusted with its implementation. Lawyers and other advisers, as well as courts, are significant users of the legislation and it is important to its utility that the legislation should be written without undue complexity.

#### **0.9.5 *Other issues related to the Terms of Reference***

The recommendations of the Taskforce also deal with a range of other matters of detail concerning the administration of the child support formula or the grounds for change of assessment. The recommendations also address certain legislative matters related to the application of the formula that have emerged from consultations. A number of the recommendations propose changes to promote consistency between the Child Support Scheme and other aspects of government policy in relation to separated parents. A full explanation of the rationale for all the recommendations is contained in the Report.

#### **0.9.6 *The recommendations***

The recommendations explain in detail how legislation should be drafted and the Scheme put into operation to give effect to the intentions of the Taskforce. For this reason, many of the recommendations are technical in nature. Recommendation 1, which describes the detail of the proposed new child support formula, is divided into 31 subsections to emphasise that these recommendations constitute a package of interdependent recommendations to be taken together.

### **0.10 *Expected outcomes from the reforms***

Any changes at all to the Child Support Scheme will necessarily mean changes to the amount of money that some payees receive in child support and that some payers must pay.

In some cases, the child support received by payees will increase as a result of these reforms. Recommendations that will have this effect include:

- the provisions for minimum payments;

- recognition of the higher costs of teenagers;
- different treatment of the earnings of resident parents above average weekly earnings; and
- measures to improve compliance.

In other cases, the child support received by payees will decrease as a result of these reforms. Recommendations that will have this effect include:

- recognition in the formula that expenditure on children declines as a percentage of household income as incomes increase;
- the provision for recognition of regular contact in the Child Support Scheme (offset by the limitation of FTB splitting to shared-parenting families); and
- the lower percentages applicable to children aged 0-12.

Where, as a result of these recommendations, child support payments decrease rather than increase, it does not necessarily mean a decline in living standards for children. Children usually have two parents and, where there is regular contact, they live for periods of time in both their parents' homes. The majority of child support payers, as well as payees, are on modest incomes. Changes in child support obligations will not alter the financial resources available to the children across the two homes. They will only impact on the distribution of those resources between the two homes. Children's living standards are affected by a range of other factors as well, including government benefits, the resident parent's workforce participation, and whether the resident parent is living with any other adults in a common household.

As far as possible, the recommendations of the Taskforce are based upon the best evidence available to it about the costs of children, and the most defensible principles for the allocation of those costs between the parents. The Taskforce has recognised many anomalies in the existing Scheme. The correction of those anomalies requires that child support obligations must go up or down. The Taskforce believes that its recommendations can best be assessed by reference not to a comparison between the outcomes of the current and proposed formula, but by reference to the principles and evidence upon which these recommendations are based.

The proposed new formula cannot and will not address all the grievances that people have about the Child Support Scheme. Sometimes grievances about child support reflect concerns about other aspects of family law, such as resentment about the difficulties in enforcing contact orders, or disagreement with the 'no-fault' basis of Australian divorce law. The Child Support Scheme cannot address these issues – although its design should minimise unnecessary conflict and should be responsive to the strong emotions at play when separated parents are required to work together to provide continuing support for their children.

In the long term, children will benefit most if the proposed formula is seen to be fairer and more explicable than the existing Scheme, if voluntary compliance is increased, and if disincentives to workforce participation for both parents are reduced. It is with children's interests as the paramount consideration that these recommendations for reform of the Scheme are made to the Government.

## 0.11 Recommendations

### *Recommendation 1*

The existing formula for the assessment of child support should be replaced by a new formula based upon the principle of shared parental responsibility for the costs of children. The new basic formula should involve first working out the costs of children by reference to the combined incomes of the parents, and then distributing those costs in accordance with the parents' respective capacities to meet those costs, taking into account their share of the care of the children.

#### *The measurement of income*

- 1.1 For the purposes of the formula, the current definition of adjusted taxable income should be broadened to include certain non-taxable payments such as certain forms of income support, currently exempt.
- 1.2 The definitions of income for child support and Family Tax Benefit should be consistent and the components should be the same.
- 1.3 Each parent should have a self-support amount set at the level equivalent to one third of male total average weekly earnings (MTAWE). Their adjusted taxable income less the self-support amount should be their income for child support purposes (the 'Child Support Income'). Their Child Support Income should be zero if their adjusted taxable income does not exceed the self-support amount.

#### *The costs of children*

- 1.4 The costs of children for the purposes of calculating child support should reflect the following:
  - Expenditure on children rises with age; and
  - As income rises, expenditure on children rises in absolute terms, but declines in percentage terms.
- 1.5 The costs of children shall be expressed in a Costs of Children Table based upon the parents' combined Child Support Income in two age bands, 0-12 and 13-17, and in combination between the age bands for up to three children. (See Table A: Costs of Children).
- 1.6 Where there are more than three child support children, the cost of the children shall be the cost of three children, and where the children are in both age brackets the cost of children is based upon the ages of the three eldest children.
- 1.7 Where there is more than one child support child, and the arrangements concerning regular contact or shared care differ between the children, the cost of each individual child is the cost of the total number of children divided by the total number of such children.
- 1.8 Combined parental Child Support Income for the purpose of assessing the costs of children shall not exceed 2.5 times male total average weekly earnings (MTAWE).

### ***Determining a parent's contribution to the costs of children***

- 1.9 The parents of the child should contribute to the relevant cost of the child (or children) in proportions equal to each parent's proportion of the combined Child Support Income.

### ***Regular contact and shared care***

- 1.10 Regular face-to-face contact or shared care by a parent should result in the parent providing the contact or care being taken to satisfy some part of their obligation to support the child.
- 1.11 If a non-resident parent has a child in their care overnight for 14% or more of the nights per year and less than 35% of the nights per year, he or she should be taken to be incurring 24% of the child's total cost through that regular contact, and his or her child support liability should be reduced accordingly; but this should not result in any child support being paid by the resident parent to the non-resident parent.
- 1.12 Where the care provided by one parent is equivalent to 35% or more, the parent with 35% of the care of the child will be taken to be incurring 25% of the cost, rising to equal incurring of costs when the care of the child is shared equally. The way in which the costs incurred by the parent with the fewer number of nights of care per year is calculated is set out in Table B: Shared Care.
- 1.13 A parent may also be treated as having regular contact or shared care if either the Child Support Registrar is satisfied, after consultation with the other parent, or the parents agree, that the parent bears a level of expenditure for the child through daytime contact or a combination of daytime and overnight contact that is equivalent to the cost of the child allowed in the formula for regular contact or shared care.
- 1.14 FTB A and B should no longer be split where the non-resident parent is providing care for the child for less than 35% of the nights per year. Where each parent has the child in their care for 35% of the time or more, FTB should be split in accordance with the same methodology as in Table B.
- 1.15 Non-resident parents who have care of a child between 14% and 34% nights per year should continue to have access to Rent Assistance, the Health Care Card, and the Medicare Safety Net if they meet the other eligibility criteria for FTB A at the required rate. They should also be paid the 'with child' rate for the relevant income support payments, where they meet the relevant eligibility criteria. The Government should also consider the adequacy of the current level of this rate, in the light of the research on the costs of children conducted by the Taskforce.
- 1.16 Child support assessment based upon regular contact or shared care should apply if either the terms of a written parenting plan or court order filed with the Child Support Agency specify that the non-resident parent should have the requisite level of care of the child, or the parents agree about the level of contact or shared care occurring.
- 1.17 The resident parent may object to an assessment based upon the payer having regular contact if the level of actual contact usually occurring in the current child support period is significantly less than 14% care of the child or children, although the payee is willing to make the child or children available for that contact.

- 1.18 A new assessment may be issued during a child support period if the parents agree that there has been a change in the regular care arrangements amounting to the equivalent of at least one night every fortnight, or there has been a similar degree of change as a result of a court order.

#### ***Variations on the basic formula***

- 1.19 All biological and adoptive children of either parent should be treated as equally as possible. Where a parent has a new biological or adopted child living with him or her, other than the child support child or children, the following calculations should take place:
- 1 Establish the amount of child support the parent would need to pay for the new dependent child if the child were living elsewhere, using that parent's Child Support Income alone;
  - 2 Subtract that amount from the parent's Child Support Income; and
  - 3 Calculate and allocate the cost of the child support child or children in accordance with the standard formula, using the parent's reduced income.
- 1.20 Where parents each care for one or more of their children, each parent is assessed separately as liable to the other, and the liabilities offset.
- 1.21 Where a non-resident parent has child support children with more than one partner, his or her child support liability should be calculated on his or her income only and distributed equally between the children.
- 1.22 Where a resident parent cares for a number of children with different non-resident parents, each of the child support liabilities of the non-resident parents should be calculated separately, without regard to the existence of the other child or children.
- 1.23 Where a child is cared for by a person who is not the child's parent, the combined Child Support Income of the parents should be used to assess their liabilities according to their respective capacities. Where a parent has regular contact or shared care of the child, that parent's liability will be reduced in accordance with the normal operation of the formula.

#### ***Minimum payments***

- 1.24 All payers should pay at least a minimum rate equivalent to \$5 per week per child support case, indexed to changes in the CPI since 1999. The increased amount should be rounded to the nearest 10 cents.
- 1.25 A minimum payment should not be required if the payer has regular contact or shared care.
- 1.26 Payers on the minimum rate should be allowed to remain on that rate for one month after ceasing to be on income support payments or otherwise increasing their income to a level that justifies a child support payment above the minimum rate.
- 1.27 Parents who are not in receipt of income support payments but report an income lower than the Parenting Payment (Single) maximum annual rate should pay a fixed child

support payment of \$20 per child per week and this should not be reduced by regular contact.

- 1.28 The fixed payment of \$20 per child per week should not apply if the Child Support Registrar is satisfied that the total financial resources available to support the parent are lower than the Parenting Payment (Single) maximum annual rate. In those cases, the minimum rate per child support case should apply.
- 1.29 The minimum rate and the fixed payment should be indexed to CPI from the end of the 2004-05 financial year. The increased payment should be rounded to the nearest 10 cents.
- 1.30 Where a parent has failed to lodge a tax return for each of the last two financial years preceding the current child support period, and the Child Support Agency has no reliable means of determining the taxable income of the parent, the parent shall be deemed to have an income for child support purposes equivalent to two-thirds of MTAW. That income may only be changed if the parent files a tax return for the last financial year prior to the child support period to which the deemed income relates, or taxable income information is obtained from a reliable source.
- 1.31 The Child Support Registrar may report debts arising out of child support obligations based upon a deemed income separately from other accrued debts, but may not reduce a deemed income based on the parent's failure to meet the obligation.

## **Assessment and Enforcement**

### ***Recommendation 2***

The Child Support Agency should be given increased resources to investigate the capacity to pay of those who are self employed, or who otherwise reduce their taxable income by organising their financial affairs through companies or trusts, and those who operate partially or wholly by using cash payments to avoid taxation.

### ***Recommendation 3***

- 3.1 The Child Support Agency should be given increased enforcement powers to the extent necessary to be able to improve enforcement in relation to people who are self employed or who otherwise reduce their taxable income by organising their financial affairs through companies or trusts, in particular by:
  - a) Broadening the powers available to the CSA to make ongoing deductions from bank accounts to align enforcement measures for non salary and wage earners with those for salary and wage earners;
  - b) Aligning CSA powers with Centrelink powers to make additional deductions from Centrelink benefits to cover arrears; and
  - c) Providing the power to garnishee other government payments such as Department of Veterans' affairs pensions.
- 3.2 Enforcement powers should not be extended to the cancellation of driving licences for failure to pay child support, as this might reduce parents' capacity to earn income.

#### ***Recommendation 4***

Payees should be given all the same powers of application to a court as the Child Support Registrar has for orders in relation to the enforcement of child support, provided either that the payee gives 14 days notice to the Registrar of the application, or the notice requirement is otherwise reduced or varied by the court, and that any money recovered under a payee enforcement action be payable to the Commonwealth for distribution to the payee.

#### ***Recommendation 5***

A Court hearing an application for enforcement of child support by a payee parent should have the same powers to obtain information and evidence in relation to either parent as the Child Support Registrar has when enforcing a child support liability.

#### ***Recommendation 6***

Pending the final outcomes of any application or appeal under Child Support legislation, whether in relation to assessment, registration or collection, the Court should have a wide discretion to make orders staying any aspect of assessment, collection or enforcement, including:

- a) implementing a departure from the formula on an interim basis;
- b) excluding formula components or administrative changes which might otherwise be available;
- c) suspending the accrual of debt, and/or late payment penalties, without necessarily having to substitute a different liability for a past period;
- d) discharging or reducing debt without needing to specify the changes to the assessment to effect this result;
- e) limiting the range of discretionary enforcement measures available to the Child Support Agency, or staying enforcement altogether; and
- f) suspending or substituting a different amount of available disbursement to the payee.

#### ***Recommendation 7***

Section 39(5) of the *Child Support (Registration and Collection) Act 1988* should be amended to provide that a payee's application to opt for agency collection after a period of private collection should not be refused unless it would be unjust to the payer because:

- a) the payer has been in compliance with his or her child support obligations;
- b) a failure in compliance has been satisfactorily explained and rectified; or
- c) there are special circumstances that exist in relation to the liability that make it appropriate to refuse the application.

## Overpayments

### **Recommendation 8**

- 8.1 Where, as the result of administrative error, a payee has been paid an amount not paid by the payer, for example, as the result of the payer's cheque not being met, or as the result of an incorrect allocation of employer garnishee amounts, the Registrar should not require repayment by the payee.
- 8.2 Where a payer lodges a late tax return for a child support period, and that return shows a taxable income lower than that used in the assessment, the Child Support Registrar shall vary that payer's income from the date the return was lodged, but not for the intervening period unless the payer can show good reason for not providing income information at the time the assessment was made. In making a decision whether to vary the payer's assessment, the Registrar will consider the effect on the resident parent of having to repay any overpayment thereby created.
- 8.3 Where a parent has made an application (under s.107 of the *Child Support (Assessment) Act 1989*) disputing an assessment on the basis that he is not the parent of the child, and informs the Agency of the application, the Child Support Registrar shall suspend payments of collected amounts to the payee until the application is finalised, unless the Court orders otherwise.
- 8.4 Where a Court has considered a s.107 application, and has made a declaration that the assessment should not have been made, it should immediately proceed to consider whether an order should be made for repayment of any amount under s.143 of the *Child Support (Assessment) Act*.
- 8.5 When considering how much of the balance of money paid under a child support assessment should be repaid to a payer who has successfully disputed paternity, the court should have regard to:
- a) the knowledge of the parties about the issue of paternity;
  - b) any acquiescence or delay by the payer after he had reason to doubt his paternity;
  - c) the relationship between the payer and the child;
  - d) the present financial circumstances of both parties; and
  - e) the capacity of the biological father (if known) to provide child support in the future.
- 8.6 Where a Court makes an order for repayment of an overpaid amount under s.143 of the *Act*, the amount of such payment may be registered with the Child Support Registrar as a registrable maintenance liability, for enforcement.

## **The Maintenance Income Test**

### ***Recommendation 9***

- 9.1 The mechanisms of the Maintenance Income Test (MIT) should be changed to ensure that it applies only to the children in a family for whom child support is paid.
- 9.2 The names of the Maintenance Action Test and the MIT should be changed to the Child Support Action Test and the Child Support Income Test in order to better reflect their roles.
- 9.3 The MIT's free area, taper rate and scope should be reviewed in order to ensure that the operation of the MIT does not claw back FTB A beyond the level paid to equivalent intact families.
- 9.4 There should be an extension on the moratorium on taking reasonable maintenance action for FTB purposes from 28 days to 13 weeks, in order to give separated parents more time to negotiate a parenting plan. Child support should continue to commence from the date an application is made to the Child Support Agency.

## **Change of Assessment**

### ***Recommendation 10***

- 10.1 Change of assessment applications should only be able to be made in relation to the immediately preceding and current child support period, and future child support periods, unless the Court gives leave.
- 10.2 The Court may grant leave to the parent to make an application for change of assessment in accordance with the procedures of Part 6A of the *Child Support (Assessment) Act 1989* in relation to child support periods up to seven years prior to the current child support period.
- 10.3 In considering whether to grant leave, the Court should have regard to:
  - a) the reason for the delay in bringing a change of assessment application;
  - b) the responsibility for that delay;
  - c) the hardship to the applicant if leave is refused; and
  - d) the hardship to the respondent if leave is granted.
- 10.4 If the Court grants leave to the parent to make the application, it may proceed to hear the matter itself on the application of either parent.

### ***Recommendation 11***

Section 116 of the *Child Support (Assessment) Act 1989* should be simplified to provide that a court shall have jurisdiction to determine a child support application whenever the application is brought in conjunction with proceedings under *the Family Law Act 1975* (without needing to be satisfied that the child support application should be heard 'at the same time' as the other

proceedings), and that the Court does not cease to have jurisdiction only because the other matters are resolved before the child support application is heard.

### ***Recommendation 12***

- 12.1 The current change of assessment ground in s.117 of the *Child Support (Assessment) Act 1989* based upon the high costs of contact should be replaced with a more limited ground in the light of the proposed recognition of the costs of regular contact in the formula. The ground should be that the capacity of either parent to provide financial support for the child is significantly reduced because of high travel costs borne by that parent in enabling him or her or the other parent to have contact with that child or any other child of the parent.
- 12.2 This ground should be available to a parent who is not currently exercising contact because he or she cannot afford to do so, and hence has not been able to incur the expenditure prior to making the application.
- 12.3 A change of assessment on this ground should be reversible upon application by the payee if the payer does not in fact exercise the expected level of contact, despite a reduction in their child support obligations.

### ***Recommendation 13***

- 13.1 The current ground for exclusion of an ‘additional amount’ of income (such as overtime or a second job) for a new child from the child support assessment should be expanded to allow payers and payees to apply for a change of assessment if the child support assessment is unfair, unjust or inequitable because they earn an ‘additional amount’ of income to assist them with re-establishment costs following separation, with a limit of up to five years from separation;
- 13.2 The ground is established when the parent can show that the parents lived in one household prior to separation, and that the parent commenced earning the additional amount after the separation.
- 13.3 If it has been established that, in the first five years since separation, the parent earned the additional amount to meet re-establishment costs, and if during that time the parent has a child in a new family, the additional income can be claimed as specifically for the benefit of the resident child, beyond the first five years.
- 13.4 The parent should be required to establish only that a major reason for their change in work arrangements resulting in the ‘additional amount’ was re-establishment costs or the support of a dependent child, in order to make out this ground.

## **Step-children**

### ***Recommendation 14***

- 14.1 It should be a new ground for change of assessment that the parent has a responsibility, although not a legal duty, to support a step-child.
- 14.2 The ground to support a step-child is not taken to exist unless:

- 1) the parent has lived continuously for a period of not less than two years in a marriage or de facto relationship with the parent of the step-child; and
- 2) neither parent of the step-child is able to support the step-child due to:
  - a) death;
  - b) ill health;
  - c) caring responsibilities for a child aged under five; or
  - d) caring responsibilities for a child aged over five with disabilities requiring additional assistance and care from the step-child's parent; and
- 3) the needs of the step-child for assistance can be established, taking into account any income tested benefit, allowance or payment being paid for the benefit of that step-child.

## **Capacity to Earn**

### ***Recommendation 15***

15.1 A parent's income for child support assessment purposes should only be able to be increased because he or she has a higher capacity to earn than he or she is currently exercising if the following conditions are satisfied:

(a) the parent:

- (i) is unwilling to work when ample opportunity to do so exists, or
- (ii) has reduced his or her employment below the level of normal full-time work for the occupation or industry in which he or she is employed; and

(b) the parent's decisions in relation to employment are not justified on the basis of:

- (i) caring responsibilities or
- (ii) the parent's state of health; and

(c) on the balance of probabilities, a major purpose for the parent's decisions in relation to employment was to affect the child support assessment.

15.2 Where the Child Support Agency declines to make an administrative determination in a capacity to earn case because the complexity of the issues makes it more appropriate for the matter to be dealt with by a Court, the Agency should exercise its statutory right to intervene in the case in order to lead evidence to assist the Court in reaching its decision.

## **Recommendation 16**

Section 117 of the *Child Support (Assessment) Act 1989*, which provides the legislative basis for changes of assessment, should be redrafted to:

- a) take account of the new formula for child support proposed by the Taskforce;
- b) take account of developments in the case law since 1989;
- c) reflect the simplification adopted by the Child Support Agency in its ten reasons for change of assessment;
- d) reduce the number of different categories, where reasons for a change of assessment could be combined and expressed at a higher level of generality; and
- e) make clearer the different considerations that decision-makers must take into account.

## **Child support agreements**

### **Recommendation 17**

- 17.1 Agreements between the parents concerning child support should have effect on the condition that entitlement of the payee to FTB A will be assessed on the basis of the amount of child support that would be transferred if the agreement had not been made.
- 17.2 The Child Support Registrar should have a discretion to advise a parent to obtain legal advice about the agreement if the Registrar considers that the agreement provides for a level of child support that in all the circumstances, and taking account of the current financial circumstances of the payer and payee, is not proper or adequate. The Registrar may delay the registration of the agreement until the parent confirms in writing either that he or she has sought legal advice or that he or she wishes to have the agreement registered without seeking legal advice.
- 17.3 Parents should be able to make binding financial agreements under the *Child Support (Assessment) Act 1989*, registrable with the Child Support Agency, under the same conditions and with the same effect as binding financial agreements under the *Family Law Act 1975*.
- 17.4 Child support agreements made where one or both parents do not have independent legal advice should:
  - 1) Be terminable by either party on one month's notice at any time after the first three years of the agreement.
  - 2) Be able to be set aside by the Court on the grounds of:
    - a) fraud or non-disclosure;
    - b) undue influence, duress, unconscionable conduct or other behaviour in the making of the agreement that would make it unjust to maintain it;

- c) that there has been a significant change of circumstances for the payee, the payer or the child that would make it unjust to maintain the agreement;
- d) that the agreement provides for a level of child support that in all the circumstances, and taking account of the current financial circumstances of the payer and payee, is not proper or adequate.

## **Lump sum child support**

### ***Recommendation 18***

- 18.1 Parents should be able to make agreements for lump sum child support payments only by means of a binding financial agreement or by consent orders if the payment of lump sum child support exceeds the total of the annual assessment of child support and is to be credited against payments for future child support years.
- 18.2 Agreements or orders for lump sum child support should have effect on the condition that entitlement of the payee to FTB A shall be assessed on the basis of the amount of child support that would be transferred if the agreement or order had not been made.
- 18.3 Section 128 of the *Child Support (Assessment) Act 1989*, permitting a carer parent in some circumstances to seek an assessment of child support for up to 75% of the then formula liability, despite an agreement or order to the contrary, should be repealed.
- 18.4 Default rules for the treatment of lump sum child support payments that exceed the total of the annual assessment of child support, and are to be credited against payments for future child support years, should be included in the child support legislation, and these default rules should apply in the absence of provisions of an agreement or court order to the contrary.
- 18.5 The default rules shall be as follows:
  - a) The parents should continue to have an annual assessment of periodic child support made based upon their then current income and circumstances.
  - b) The lump sum should be treated as providing the payer with a credit balance, to be credited against the periodic child support assessment as each annual assessment is made.
  - c) 100% of the annual assessed rate of child support should be credited annually from the balance of the lump sum, until the balance is exhausted.
  - d) The balance in the fund should be increased annually upon the anniversary of the creation of the fund, by a rate that is expressed in Regulations, to produce a value commensurate with the after-tax value if the money had been invested.
  - e) If there is a balance remaining to the payer after the child support liability has ended, then there should be no obligation to repay this amount unless the balance is registered as a statutory charge.

- 18.6 The balance of a lump sum child support payment should create a statutory charge that is registrable under the property legislation of the States and Territories.
- 18.7 Section 60 of the *Child Support (Assessment) Act 1989* (concerning ‘income amount orders’) should be amended to allow payers to be able to provide estimates of their income in relation to a child support period when their obligations for that period are affected by an agreement for lump sum child support.
- 18.8 Section 71A and 71B of the *Child Support (Registration and Collection) Act 1988* should be amended to allow in-kind payments to be credited by consent against less than 100% of the liability in the child support period.

## **Role of Family Relationship Centres**

### ***Recommendation 19***

- 19.1 The Family Relationship Centres should encourage voluntary agreements between parents on in-kind payments.
- 19.2 Information sessions and seminars conducted under the auspices of the Family Relationship Centres should provide information on the Child Support Scheme and draw attention to the flexibility provided in the Scheme through the change of assessment process, as well as the possibilities for private agreements and in-kind payments.
- 19.3 Family Relationship Centres and other organisations providing counselling and mediation services to parents who are negotiating parenting arrangements after separation should encourage parents to discuss child support issues including childcare costs and the future education of the children, especially where a private school education has been contemplated.
- 19.4 Planning for Family Relationship Centres should involve close collaboration with the Child Support Agency and Centrelink, particularly on ways of serving the needs of regional and rural Australia.
- 19.5 Organisations selected to run Family Relationship Centres should be encouraged to invite the Child Support Agency, Centrelink, Legal Aid and community legal centres to conduct regular advice and information sessions on the premises of the Centre.
- 19.6 The Child Support Agency should have a discretion to encourage parties to change of assessment applications to negotiate the issues through a Family Relationship Centre or other mediation or counselling organisation, prior to determining the application.

## **Designated payments**

### ***Recommendation 20***

- 20.1 The limit on Prescribed Non-Agency Payments should be raised from 25% to 30%.
- 20.2 Prescribed Non-Agency Payments should not apply to parents whose child support liability reflects regular contact or shared care.
- 20.3 Section 71D of the *Child Support (Registration and Collection) Act 1988* should be clarified so that the Registrar's discretion not to credit a Non-Agency Payment or to reduce the level of credit, should apply in circumstances where the payee would be left without sufficient funds to meet the reasonable needs of the child if the non-agency payments were credited, or credited in the normal manner.

## **Interaction with other income support payments**

### ***Recommendation 21***

- 21.1 The Government should consider the deduction of child support payments from assessable income for the purpose of the assessment of the income support payment rate, (in line with deductible child support maintenance for FTB adjusted taxable income).
- 21.2 The Government should consider treating the eligibility for income support of each parent in a shared care arrangement (35% to 65% of nights each) more equally.

## **Reconciliation**

### ***Recommendation 22***

- 22.1 Where parents reconcile, their child support assessment should be suspended during the reconciliation, such that no debt accrues for this period.
- 22.2 If the reconciliation continues beyond six months, the assessment should be terminated.

## **External Review**

### ***Recommendation 23***

The Government should consider the introduction of an external mechanism for reviewing all administrative decisions of the Child Support Agency, either by establishing a new Tribunal or by conferring jurisdiction on an existing Tribunal.

## **Legislation**

### ***Recommendation 24***

The *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989* should be replaced with new legislation written, as far as possible, in plain legal language.

## **Transition**

### ***Recommendation 25***

The government should recognise that full implementation of these recommendations will affect a range of existing child support clients, and should comprehensively consider the management of transitional issues, including the resources that the Child Support Agency will need to ensure an effective transition to the new Scheme.

### ***Recommendation 26***

- 26.1 There should be a public education campaign to explain the changes to existing clients of the Agency, and adequate resources to deal with inquiries about the new arrangements.
- 26.2 A public education campaign about changes to the Scheme should include information about the flexibility of the Child Support Scheme, especially in relation to the grounds for changes of assessment.

## **The courts and the costs of children and young adults**

### ***Recommendation 27***

The Federal Magistrates Court and the Family Court of Australia should utilise the costs of children research of the Taskforce as the basis for decision-making on child support issues, and should have regard to the impact of government benefits in working out the costs of children.

### ***Recommendation 28***

- 28.1 The Federal Magistrates Court and the Family Court of Australia should have regard to the Taskforce research on the costs of raising adolescent children, and any applicable government benefits, in working out child support liabilities in respect of young people over the age of 18.
- 28.2 The government should consider the development of a formula or guidelines for the assessment of maintenance for young people over the age of 18 in circumstances where maintenance may be ordered under s.66L of the *Family Law Act 1975*.

## **Research and monitoring**

### ***Recommendation 29***

- 29.1 The Department of Family and Community Services should undertake or commission periodic updates to research on:
- a) the costs of children;
  - b) the circumstances of payers and payees;
  - c) the interaction of the Scheme with related policy on tax, income support, family payments, and family law;
  - d) the impact of the Child Support Scheme (in combination with effective marginal tax rates) on workforce participation;
  - e) compliance amongst CSA collect and private collect payers; and
  - f) community perceptions of the fairness and effectiveness of the Scheme, and of the way it is administered.
- 29.2 The Department of Family and Community Services should take such steps as are necessary to ensure that it has a continuing expertise in child support policy and is capable of providing advice to government on the operation of the Scheme independently of the data provided by the Child Support Agency.
- 29.3 The Department of Family and Community Services should consider the establishment of an advisory body to provide advice on issues of child support policy and on the impact of the Scheme. Such a body should comprise recognised experts in all relevant fields, including family law, family relationships counselling, child development, social and economic research, and taxation.
- 29.4 The Department of Family and Community Services in collaboration with the Australian Institute of Family Studies should promote research on and discussion of child support policy by such means as the provision of research funding, the organisation of conferences, and the promotion of dialogue with child support experts from other countries.

## **Currency of the Scheme**

### ***Recommendation 30***

The currency of the scheme should be monitored, with reference to significant changes to child-related payments, and in the light of ongoing research on child support issues.

**Table A: Costs of Children**

	Parents' combined Child Support Income (income above the self-support amounts) <sup>1</sup>					
Number of children	\$0 – \$25 324 <sup>2</sup>	\$25 325 – \$50 648 <sup>3</sup>	\$50,649 – \$75 972 <sup>4</sup>	\$75 973 – \$101 296 <sup>5</sup>	\$101 297 – \$126 620 <sup>6</sup>	Over \$126 620 <sup>6</sup>
Costs of children (to be apportioned between the parents)						
Children aged 0–12 years						
1 child	17c for each \$1	\$4 305 plus 15c for each \$1 over \$25 324	\$8 104 plus 12c for each \$1 over \$50 648	\$11 143 plus 10c for each \$1 over \$75 972	\$13 675 plus 7c for each \$1 over \$101 296	\$15 448
2 children	24c for each \$1	\$6,078 plus 23c for each \$1 over \$25 324	\$11,902 plus 20c for each \$1 over \$50 648	\$16,967 plus 18c for each \$1 over \$75 972	\$21,525 plus 10c for each \$1 over \$101 296	\$24 058
3+ children	27c for each \$1	\$6 837 plus 26c for each \$1 over \$25 324	\$13 422 plus 25c for each \$1 over \$50 648	\$19 753 plus 24c for each \$1 over \$75 972	\$25 830 plus 18c for each \$1 over \$101 296	\$30 389
Children aged 13+ years						
1 child	23c for each \$1	\$5 825 plus 22c for each \$1 over \$25 324	\$11 396 plus 12c for each \$1 over \$50 648	\$14 435 plus 10c for each \$1 over \$75 972	\$16 967 plus 9c for each \$1 over \$101 296	\$19 246
2 children	29c for each \$1	\$7 344 plus 28c for each \$1 over \$25 324	\$14 435 plus 25c for each \$1 over \$50 648	\$20 766 plus 20c for each \$1 over \$75 972	\$25,830 plus 13c for each \$1 over \$101 296	\$29 123
3+ children	32c for each \$1	\$8 104 plus 31c for each \$1 over \$25 324	\$15 954 plus 30c for each \$1 over \$50 648	\$23 551 plus 29c for each \$1 over \$75 972	\$30 895 plus 20c for each \$1 over \$101 296	\$35 960
Children of mixed age						
2 children	26.5c for each \$1	\$6 711 plus 25.5c for each \$1 over \$25 324	\$13 168 plus 22.5c for each \$1 over \$50 648	\$18 866 plus 19c for each \$1 over \$75 972	\$23 678 plus 11.5c for each \$1 over \$101 296	\$26 590
3+ children	29.5c for each \$1	\$7 471 plus 28.5c for each \$1 over \$25 324	\$14 688 plus 27.5c for each \$1 over \$50 648	\$21 652 plus 26.5c for each \$1 over \$75 972	\$28 363 plus 19c for each \$1 over \$101 296	\$33 174

<sup>1</sup> Calculated by adding the two parents' Child Support Incomes, that is, adding each parent's adjusted taxable income minus their self-support amount of \$16 883 (1/3 of MTAWÉ)

<sup>2</sup> .5 of MTAWÉ

<sup>3</sup> MTAWÉ

<sup>4</sup> 1.5 times MTAWÉ

<sup>5</sup> 2 times MTAWÉ

<sup>6</sup> 2.5 times MTAWÉ. Costs of children do not increase above this cap. Note that this equates to a cap at a combined adjusted taxable income of \$160 386.

**Table B: Shared Care**

<b>Number of nights of care annually</b>	<b>Percentage of annual care</b>	<b>Proportion of net cost of child incurred</b>
0–51	0 – less than 14%	Nil
52 – 126	14 to less than 35%	24%
127 to 175	35% to less than 48%	25% plus 0.5% for each night over 127 nights
176 to 182	48% to 50%	50%

# **Part B: Background and Analysis**

# 1 Establishment of the Child Support Review

On 29 July 2004, the Prime Minister, the Hon. John Howard MP, announced the Government's response to the Report of the House of Representatives Standing Committee on Family and Community Affairs on the Inquiry into Child Custody Arrangements in the Event of Family Separation.<sup>1</sup> One aspect of that response was to adopt the Report's recommendation that the Government should establish a Taskforce to provide advice on whether particular changes to the Child Support Scheme (CSS) are warranted.

The Minister for Children and Youth Affairs, the Hon. Larry Anthony MP, announced the establishment of the Taskforce and Reference Group on 16 August 2004. The Terms of Reference are given at the beginning of the Summary.

## 1.1 How the Taskforce conducted the Review

The main role of the Taskforce was to examine the formula used to calculate liabilities for child support, and to consider a number of other issues arising out of the Government's response to the House of Representatives Committee on Family and Community Affairs' Report, *Every Picture Tells a Story* (December 2003).

To fulfil this role, the Taskforce:

- analysed the submissions on child support made to the House of Representatives Committee on Family and Community Affairs in 2003;
- analysed issues raised in Ministerial correspondence and unsolicited submissions to the Taskforce;
- consulted the Reference Group on issues to consider;
- reviewed the research on the costs of children both in Australia and overseas;
- conducted new research on the costs of children using three different approaches;
- examined the current impact of the Scheme on the living standards of both resident and non-resident parents;
- examined the child support systems of other countries and in particular, new approaches to child support since Australia developed its scheme;
- consulted overseas experts on child support;
- commissioned the Australian Institute of Family Studies to conduct a survey of community attitudes towards child support;
- considered the interaction of the Child Support Scheme (CSS) with Family Tax Benefit (FTB) and income support payments;
- consulted the Reference Group and other stakeholders on proposals for change;
- tested the proposals using a computer model that examined their impact for a range of different families; and

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<sup>1</sup> Prime Minister John Howard, announcement 29 July 2004, 'Reforms to the Family Law System', at <[www.pm.gov.au/news/media\\_releases/media\\_Release1030.html](http://www.pm.gov.au/news/media_releases/media_Release1030.html)>.

- consulted the Child Support Agency (CSA) on the feasibility of implementing the proposed new approach.

Papers containing the research underpinning the Taskforce's findings are published in Volume 2 of this report.

In analysing the costs of children, the Taskforce considered both the costs of children in intact families and the costs of children when parents live apart. Another major part of the work of the Taskforce required the analysis of the operation of the existing CSS and proposed alternatives, and their interaction with the tax and income support systems. The National Centre for Social and Economic Modelling (NATSEM) was commissioned to develop a detailed model for this purpose. This was a complex task, but this microsimulation model and the extension of NATSEM's population model (STINMOD) provide invaluable tools for future policy analysis and development. They enable the modelling of alternative policies to show outcomes for both individual families and the general population.

Submissions were not called for because all submissions presented to the House of Representatives Committee on Family and Community Affairs in 2003 were available to the Taskforce. The Taskforce considered any unsolicited letters sent to it by members of the public during the course of its work.

## 1.2 What was not in the Terms of Reference

It is important also to state what was not in the Terms of Reference. In submissions to the House of Representatives Committee on Family and Community Affairs, people raised a number of different concerns. Most of them were related to the operation of the formula. Others concerned aspects of the work of the CSA.

The Taskforce was not asked to examine issues concerning the administration of the CSS. The CSA is now under the responsibility of the Minister for Human Services, the Hon. Joe Hockey MP.

The Taskforce was also not asked to consider aspects of the *Family Law Act 1975* concerning parenting after separation. Many people who made submissions to the Parliamentary Inquiry were concerned that the Government had an administrative system in place to enforce the payment of child support but did not do enough to ensure that non-resident parents could see their children when the courts had made orders providing for regular contact. This is a very important issue, but it is one being addressed by other reforms that the Government has announced in its response to the Report of the House of Representatives' Family and Community Affairs Committee — in particular changes to the Family Law Act, the establishment of Family Relationship Centres, and the expansion of the Contact Orders program across the country.

Issues concerning the Family Law Act, including the enforcement of contact orders, are a matter for the Attorney-General, the Hon. Phillip Ruddock MP, and are outside the Terms of Reference of this Taskforce.

### 1.3 The context of the Child Support Review – reforming the family law system

While the Taskforce has focused upon the issues that it was asked by the Government to address, it has done so with an awareness of the other initiatives that are taking place to reform family law and to enhance the counselling and dispute resolution programs that support parents who do not live together because of relationship breakdown. The CSS is only one part of a broader system to ensure that both parents share in the responsibility for their children after separation and help their children to achieve their full potential as the adults of the future.<sup>2</sup>

In particular, the Taskforce and the Reference Group have been motivated by a concern for the best interests of children whose parents are not living together. Children need parents who will provide more than just financial support for them. Children generally do best after their parents' separation if they have a mother and father who are both involved in their lives and who can cooperate together as parents even if they are unable to live together as partners.

Arguments about money, or concerns about the fairness of the CSS, can get in the way of that co-operation. The overriding goal of this Review of the CSS has been to ensure that, as far as possible, the Scheme promotes, rather than hinders, the meaningful involvement of both parents in their children's lives unless this is contrary to their best interests.

### 1.4 Explanation of terminology

The terms "residence" and "contact" have been in use in family law since 1995, for orders in relation to parenting. The House of Representatives Committee on Family and Community Affairs, in its report *Every Picture Tells a Story* (December 2003), proposed a number of reforms to the Family Law Act 1975, including replacing the language of residence and contact with family friendly terms such as "parenting time" (Recommendation 4). It is anticipated that changes in terminology will result from the proposed reforms, to be given effect in a Bill not available at this time. In this report, the Taskforce uses the existing terminology in the absence of any readily substituted terms.

In this report, the term "resident parent" is used to mean the parent with whom the child generally lives, and 'non-resident parent' is used to mean the parent who has periodic contact with the child. Where care is being shared more or less equally, the term "shared care" is used. For the purposes of the recommendations of the Taskforce, "regular contact" and "shared care" are given precise definitions. These are explained in Chapter 9 of the Report.

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<sup>2</sup> Family Law Act 1975, s.60B.

## 2 The Evolution of the Child Support Scheme

The Child Support Scheme grew out of concerns about the poverty of women and children following separation and divorce and about the increasing government expenditure required to maintain children where their absent parents were not making an appropriate contribution to their upkeep.

### 2.1 The issue of poverty in sole-parent households

It has been estimated that, between the years from 1972-73 to 1985-86, the proportion of children living in poverty increased from 7.2 per cent to 17.5 per cent<sup>3</sup>. This increase was partly due to the rising number of sole-parent households (from 9.2 per cent of all families with dependent children in 1974 to 14.4 per cent in 1985) who tended to be financially disadvantaged in comparison with two-parent families.<sup>4</sup>

Increasing marital breakdown was responsible for much of the rise in sole-parent households. Following the commencement of the *Family Law Act in 1975*, the number of divorces increased from about 17 000 per year to about 45 000 per year, before falling and stabilising at about 39 000 from the mid 1980s. While the rate of births outside marriage also increased over this time, 1982 Australian Bureau of Statistics data showed that around two thirds of sole-parent households had been formed through divorce (37 per cent) or separation (30 per cent).<sup>5</sup>

In its 1986 study of the financial consequences of divorce, the Australian Institute of Family Studies found that women with children who did not repartner suffered the greatest losses from marriage breakdown.<sup>6</sup> Concern about the ‘feminisation of poverty’, particularly in female-headed sole parent households, was a significant theme in discussions of the financial outcomes for men and women following separation.<sup>7</sup> Community concern came to focus on the court-based maintenance system, which was perceived as inequitable, inaccessible, and lacking powers of enforcement. Only 30 per cent of non-custodial parents were making regular payments and only 26 per cent of sole parent pensioners were receiving maintenance. Average levels of maintenance were inadequate, there was little or no indexation of court orders, and the proportion of the population covered was inadequate, particularly for parents who had never married.<sup>8</sup> In general, the court-based system was seen as being too discretionary and led to inconsistent outcomes for people in similar circumstances.

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<sup>3</sup> Saunders in O'Connor, I., Wilson, J., Thomas, K., *Social Work and Welfare Practice*, Longman Cheshire Pty Ltd, Australia 1991 pp. 39-40.

<sup>4</sup> McClelland A., “Families and Financial Disadvantage”, *Family Matters*, no.37 April 1994, pp. 28-33.

<sup>5</sup> Raymond, J. E., *Bringing up Children Alone: Policies for Sole Parents*, Social Security Review, Issues Paper No. 3, AGPS Canberra 1987, p. 34.

<sup>6</sup> Weston, R. “Changes in household income circumstances”, in P. McDonald (ed.), *Settling Up: Property and Income Distribution on Divorce in Australia*, Prentice-Hall & AIFS, Sydney 1986.

<sup>7</sup> Cabinet Sub-Committee on Maintenance, *Child Support: A discussion paper on child maintenance*, AGPS, Canberra 1986, pp. 7-9.

<sup>8</sup> *Ibid* pp.11-13

There was also concern about the costs to taxpayers of the growth in the numbers of sole-parent households.<sup>9</sup> Most sole-parent families were at least partially reliant on government welfare payments<sup>10</sup>, and courts tended to award maintenance at levels below the free area (so as not to reduce welfare payments), which effectively transferred obligations to the government.<sup>11</sup>

During the 1980s, there were several major reports and academic studies addressing the issue of maintenance (child support) in Australia, including:

- *Cost of children in Australia* (the Lovering Report), AIFS, August 1984;
- *A Maintenance Agency for Australia: Report of the National Maintenance Inquiry*, AGPS, 1984;
- A paper by Edwards, Harper and Harrison on “Maintenance and maintenance enforcement”, presented to the Family Law Conference in November 1984;<sup>12</sup>
- Work by the Family Law Council: *Maintenance Enforcement* in 1985, and *Child Maintenance: The Family Law Council Proposal* in 1986;
- *Settling Up*, by the Australian Institute of Family Studies, in March 1986 (and the work done for its follow-up, *Settling Down*);
- A paper by Harrison, McDonald and Weston in 1987 on research findings and reform proposals;<sup>13</sup>
- A briefing paper on *Child maintenance reform* developed by the Parliamentary Library Legislative Research Service in 1987;
- Work by Lee in 1989, providing courts with a benchmark on which to base maintenance amounts<sup>14</sup>

It was generally agreed that the system was far from perfect, and community consultations also indicated public support for reform.

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<sup>9</sup> Department of Social Security, Submission to the Joint Select Committee on Certain Family Law Issues, September 1993, p. 2.

<sup>10</sup> The proportion of sole parents on a pension or benefit increased over the decade before the study from 65% to 85%: Cass, B, “Child Maintenance in the Context of the Review of Social Security Policies”, *Workshop on Child Support Issues*, Social Justice Project, ANU, February 1986.

<sup>11</sup> Cabinet Sub-Committee on Maintenance, op. cit. pp. 7-9.

<sup>12</sup> See also Bessell-Browne, T., *The Economics of Divorce: Child support and the Family Law Act*, MA thesis, Department of Anthropology, University of Western Australia, 1982.

<sup>13</sup> Harrison, M., McDonald, P. & Weston, R. “Payment of child maintenance in Australia: The current position, research findings and reform proposals” (1987) 1 *International Journal of Law and the Family*, pp. 92-132.

<sup>14</sup> Lee, D., A program for calculating the direct costs of children based on the 1984 ABS Household Expenditure Survey, Floppy Disk, Australian Institute of Family Studies, Melbourne, 1989. For a good overview of approaches on the Australian work on costs of children, see *A Guide to Calculating the Costs of Children*, Australian Institute of Family Studies, 1999.

In October 1986 the Government initiated community consultation following the release of “Child Support: A discussion paper on child maintenance”, and in March 1987 the Minister for Social Security announced the implementation of the Child Support Scheme in two Stages.

The Child Support Consultative Group (CSCG), chaired by the Hon Justice Fogarty of the Family Court of Australia, was set up in May 1987, to advise the Federal Government on a legislative formula for the administrative assessment of child maintenance. The CSCG report, *Child Support: Formula for Australia*, was presented to the Minister for Social Security in May 1988.

## 2.2 Introduction in 1988 of the Child Support Scheme

The first stage of the Child Support Scheme commenced on 1 June 1988. Stage One, empowered by what is now the *Child Support (Registration and Collection) Act 1988*, sought to move the collection and enforcement (but not assessment) of child support away from the courts to an administrative agency through the conversion of court orders into Child Agency Agreements. This stage was primarily for those already in the existing (court-based) system. In addition, Stage Two transferred the assessment function to the administrative agency. This stage was primarily for new clients to the child support system.

Stage One covered children born before 1 October 1989 whose parents separated before that date (unless these children had a sibling born on or after that date, in which case Stage Two applied). Stage Two of the scheme came into effect on 1 October 1989, empowered by the *Child Support (Assessment) Act 1989*. This stage applies to children whose parents separated on or after 1 October 1989, or who were born on or after 1 October 1989, or who have a sibling born after that day.

In Stage One, a Child Support Agency was established as part of the Australian Taxation Office. Under the *Child Support (Registration and Collection) Act 1988*, the Commissioner of Taxation was given responsibility for the collection of periodic child and spousal maintenance, and the power and authority to use collection and enforcement methods similar to those used for the collection and enforcement of income tax. It was envisaged that in most cases payment would be made as automatic deductions from salaries and wages, thus removing many of the difficulties and anomalies associated with the collection and receipt of child support. Child Support awards were still assessed by the court, but the *Family Law Amendment Act 1987* (amending the Act passed in 1975) asserted the primacy of the financial needs of children over all other considerations bar the basic self-support of parents.

Stage Two introduced the formula to calculate child support liabilities, making such calculation an administrative, rather than judicial, procedure. The formula was based on the recommendations of the CSCG, although not all recommendations of the Group were accepted. The administrative formula sought to produce much greater certainty and equity for children through equal access to fair, secure and regular child support at a level that represented an appropriate share of their parents’ income. The aim of the Group was to design a system that was predictable, accessible, simple, inexpensive, and readily understood. The formula was also intended to be flexible enough to apply fairly to a variety of circumstances.

The underlying philosophy of the scheme shifted the balance more towards private parental responsibility for the financial wellbeing of children, rather than government-funded programs. One of the foundation principles of the Scheme, for example was (and still is) that

Commonwealth involvement and expenditure be limited to the minimum necessary for ensuring children's needs are met.

## 2.3 Design of the scheme

The Child Support Scheme rests on certain principles concerning how the responsibility for providing support and care to biological and adopted children should apply where two parents are not living together. It also expresses a basis for apportioning between the parents and the government the additional costs faced by families that live apart.

The three most important design features of the Scheme are:

- 1) the use of percentages of the liable parent's income as the basis for the child support obligation, with the percentages assessed on the principle that a non-resident parent should contribute a similar amount to that contributed in an intact family;
- 2) the modification of that principle by use of an exempt amount for the liable parent's own self-support; and
- 3) the disregard of the custodial parent's income except to the extent that it exceeds average weekly earnings.

The CSCG also gave a great deal of attention to the definition and identification of income and financial resources for the purposes of the Scheme.

### 2.3.1 *The continuity of expenditure principle*

The Australian scheme, as proposed by the CSCG in 1988, was based upon a principle which has been influential in the development of child support policy in the United States and in other countries. This approach is known as the "continuity of expenditure" principle. It was explained by the Consultative Group in this way:<sup>15</sup>

As a starting point in considering what proportion of income should be shared, the Consultative Group accepted the proposition that wherever possible children should enjoy the benefit of a similar proportion of parental income to that which they would have enjoyed if their parents lived together. This proposition is based on the view that children should not be the economic losers from the separation of the parents or where the parents never lived together.

For this reason, in setting the percentages applicable for the payment of child support, the Group drew upon estimates of the percentage of gross income that is spent on children in an intact relationship. The notion underlying the basic formula (where there are no biological children of a second family) is that the liable parent can be expected to continue to contribute out of salary the same proportion as he or she would have contributed had the relationship not broken down. The percentages were based mainly on research from the United States on the

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<sup>15</sup> Child Support Consultative Group, *Child Support: Formula for Australia*, (AGPS, 1988), p.67 (hereafter CSCG).

share of family income spent on children, although the Group also had the benefit of one Australian study.<sup>16</sup>

The continuity of expenditure principle was only a starting point. In determining the percentages applicable in the Scheme, the Group had regard to a number of other factors, including:

- additional costs of rearing children where parents do not live together;
- indirect costs of children (cost of care and loss of future earnings);
- access (contact) costs incurred by non-resident parents; and
- community views on what would be a fair level of child support.

The model for the Scheme in Australia was greatly influenced by the work of Irwin Garfinkel and the approach adopted in Wisconsin, USA.<sup>17</sup> This model is known as the percentage-of-obligor-income approach. In Wisconsin, however, there is no self-support component.<sup>18</sup> This is the case also in other jurisdictions that adopt a percentage-of-obligor-income approach.<sup>19</sup>

### 2.3.2 *Exempt income*

An important factor modifying the basic principle of continuity of expenditure was the need to ensure that liable parents had enough income for their own support. The Group wrote:<sup>20</sup>

However, in designing an appropriate formula it was necessary to temper the application of this proposition in order to ensure a workable scheme and one which took into account the realities of capacity to pay and maintained appropriate incentives to work for both parents [...] The recommended formula therefore guarantees the non-custodial parent a protected component of income, the self-support component, on which no child support is levied.

The exempt income amount meant that higher-income non-custodial parents paid a higher proportion of their income than lower-income non-custodial parents.

The Group proposed also that the exempt income amount should be increased where the liable parent had a second family. The basic aim of the Group was to treat all children of the parties as equitably as possible. In particular, the Group saw no value in transferring hardship to the children in the second family by giving no allowance whatever, whilst recognising that the increased self-support component may have the effect of reserving a greater proportion of a liable parent's income for their second family, at least for low income payers<sup>21</sup>. However, the Group felt that it was important to avoid discouraging the formation of new relationships and families. The Group did not give an allowance to a second dependent spouse, except to

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<sup>16</sup> Whiteford, P., "The Cost of Children: the implications of recent research for income support policies" *Social Security Journal*, Winter 1987, 3-19.

<sup>17</sup> CSCG, pp.68-70, 168-9

<sup>18</sup> Garfinkel I. and Melli M., "The Use of Normative Standards in Family Law Decisions: Developing Mathematical Standards for Child Support" (1990) 24 *Fam LQ*, pp. 157-178.

<sup>19</sup> For detailed discussion of the US models, see Volume 2 of the Report, Discussion of Selected Overseas Child Support Schemes.

<sup>20</sup> CSCG, p. 67.

<sup>21</sup> CSCG, Chapter 12.1 to 12.7.

acknowledge a spouse's dependence by virtue of responsibility for children by giving a greater increase in the exempt income amount for the first dependent child<sup>22</sup>.

The Group was strongly of the view that a parent's assumed responsibility to a step-child should not take priority over the parent's responsibility to their own children, except where this responsibility was ordered by a Court<sup>23</sup>. The allowances for children in a second family were therefore not extended to step-children.

### **2.3.3 *The custodial parent disregard***

Another aspect of the scheme was the custodial parent disregard. This is the amount of income a custodial parent is allowed before the rest of their income is taken into account in the calculation of the non-custodial parent's child support obligation.

The purpose and level of the disregard was considered closely in the original design of the scheme. The Group noted that there were strong arguments for not taking custodial parent income into account in the assessment, particularly that the carer parent is sharing a percentage of their income directly with the child by virtue of having the day-to-day care of the child. It was also noted that the more a custodial parent's income is taken into account, the greater the likelihood that the custodial parent will remain on a benefit and not rely on paid employment. However, the Group recognised that there would be situations in which the results of not including payee income could be perceived as unfair by the general community<sup>24</sup>. Accordingly, it was determined that payee income would be disregarded unless it was relatively high.

### **2.3.4 *The definition of income***

The CSCG originally recommended a very detailed definition of income, going so far as to deal with trusts, private businesses and partnerships, capital gains, and the imputation of income. The Consultative Group was particularly keen to ensure that opportunities for income minimisation were reduced as much as possible, and particularly recommended that any sharing of income with a spouse be undone, treating the income entirely as the income of the liable parent<sup>25</sup>.

These recommendations were not initially implemented. The Government chose to apply the percentages just to taxable income. The availability of other financial resources was dealt with through the grounds for departure from the formula.

### **2.3.5 *Shared care***

The Consultative Group recommended a variation to the formula where the liable parent had care of the children for at least 35% of nights in an annual period<sup>26</sup>. At the outset, the legislation set the threshold for the operation of the shared care formula at 40% of nights.

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<sup>22</sup> CSCG, Chapter 12.9.

<sup>23</sup> CSCG, Chapter 9.4 to 9.11.

<sup>24</sup> CSCG, Chapter 13.

<sup>25</sup> CSCG, Chapter 16.

<sup>26</sup> CSCG, Chapter 18, Recommendation 2.

Where care was ‘shared’, the calculation treated both payer and payee as liable in turn, and offset the resulting assessments. The child support percentage used in each calculation was reduced.

### **2.3.6 Grounds for departure**

While the use of a formula was intended to create certainty and consistency, the Consultative Group was aware of a need to retain the discretionary elements previously applying in the court-based system, yet not to the extent that the advantages of a formula system were undermined by overly broad discretion<sup>27</sup>. The Consultative Group proposed a court-based change of assessment process, with the court retaining a discretion to depart from the formula on specified grounds. The grounds for departure proposed by the Consultative Group included those where:

- high costs are incurred by either parent as the result of the liable parent having contact with the child<sup>28</sup>
- additional costs exist due to special needs of children in either the carer or liable parent household<sup>29</sup>
- adjustment is needed for income received by natural or adopted children<sup>30</sup> or by step-children<sup>31</sup> in the liable parent’s household, or for income of children received by the carer parent household<sup>32</sup>
- there are special needs of a spouse which amount to hardship<sup>33</sup>
- income of new partners may be taken into account where income splitting operates to avoid child support obligations<sup>34</sup>
- variation is required to exceed the cap where the circumstances justify a greater contribution by the liable parent<sup>35</sup>
- variation is required to factor in the financial resources of the parties not accounted for in the formula<sup>36</sup>
- adjustments are required to allow a court to deal with subsequent obligations of a liable parent, where they are now liable to a further carer<sup>37</sup>, a court has imposed a secondary

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<sup>27</sup> CSCG, Chapter 21.5 and subsequent.

<sup>28</sup> CSCG, Chapter 18.

<sup>29</sup> CSCG, Chapter 17.

<sup>30</sup> CSCG, 9.12 to 9.13.

<sup>31</sup> CSCG, 9.14 to 9.17.

<sup>32</sup> CSCG, 9.18 to 9.20.

<sup>33</sup> CSCG, Chapter 10, Recommendation 2.

<sup>34</sup> CSCG, Chapter 10 Recommendation 3.

<sup>35</sup> CSCG, Chapter 14, Recommendation 1.

<sup>36</sup> CSCG, Chapter 16, Recommendation 2.

<sup>37</sup> CSCG, 7.20 to 7.23.

obligation to a step-child<sup>38</sup> or liability for a child is additionally imposed on a step-parent<sup>39</sup>

- a reduction in child support obligations exists on a narrowly defined ground of serious hardship or inequity.<sup>40</sup>

The implemented change of assessment grounds drew broadly upon this range of reasons.

## 2.4 Reviews since the Scheme's commencement

Recognising that neither families nor the world they live are static, the scheme has been reviewed on several occasions since its inception.

Previous evaluations of the Child Support Scheme, prior to the 2003 Inquiry into Child Custody Arrangements in the Event of Family Separation, include:

- *The Child Support Scheme: Progress of Stage 1*, Child Support Consultative Group (CSCG), August 1989;
- *Who Pays for the Children?* Australian Institute of Family Studies, 1990;
- *The Child Support Scheme: Adequacy of Child Support Coverage of the Sole Parent Pensioner Population*, Child Support Evaluation Advisory Group, AGPS, August 1990;
- *Paying for the Children*, Australian Institute of Family Studies, 1991;
- *Child Support in Australia, Final Report of the evaluation of the Child Support Scheme*, Child Support Evaluation Advisory Group (CSEAG), 1991;
- *The Family Law Act 1975: Aspects of its operation and interpretation*, Joint Select Committee on Certain Aspects of the Operation and Interpretation of the *Family Law Act 1992*; and
- *The Operation and Effectiveness of the Child Support Scheme*, The Joint Select Committee (JSC) on Certain Family Law Issues, 1994 (the Price Committee).<sup>41</sup>

## 2.5 Changes since the Scheme's commencement

On the recommendation of reviews of the Scheme, the Government has made various changes over the years, resulting in some modification of its operation, although its structure and goals remain essentially unaltered. The major changes are as follows.

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<sup>38</sup> CSCG, 9.1 to 9.3.

<sup>39</sup> CSCG, Chapter 8.

<sup>40</sup> CSCG, Chapter 19, Recommendation 1.

<sup>41</sup> See also Carberry F., *The Child Support Scheme: An evaluation of its personal and social impact*, MA thesis, University of Melbourne, 1990.

### **2.5.1 Effect of care arrangements**

Care and contact arrangements for children have always been factored into the calculation of child support, on the basis that care arrangements affect the contribution to child support required of parents, but as noted above, to begin shared care was only recognised in the formula where each parent cared for the child for at least 40% of nights (or equivalent care) per year. Where care is 'shared', the calculation treats each parent as liable to the other in turn, using an increased exempt amount and reduced percentages. The liability of each parent to the other is offset to find the overall payer.

Since 1 July 1993, a liable parent who has care of the child between 30% and 40% of the nights of the year has an assessment made as for a shared care assessment (each parent treated as liable and the calculations offset), although the percentages applied are different from those applying to parents with more than 40% care, and the parent's exempt income is not increased from the basic rate without dependants. Generally, the levels of care each parent actually provides for a child are reflected in the assessment.

However, from 1 July 1999, the legislation was amended to reduce any financial incentives the Scheme was creating to encourage parents to breach orders or court-registered parenting agreements. As a consequence, where a parent breaches a court's parenting order without reasonable excuse, the level of care used in the assessment cannot exceed that set out in the order.

A further change is that, since 1 July 1999, parents can agree that the liable parent has substantial contact with a child, even though the care did not amount to 30% of nights annually.

Prior to 1 July 1999, all changes in care arrangements had effect for the entirety of the financial year to which the assessment applied, both for dates prior to and dates after the date of the change. Often, changes in care notified late in the year resulted in overpayments or debt being created. Since 1 July 1999, a change in care only has effect from the date the Registrar is notified. However, the care is still calculated over the entire child support period. Past periods of care are factored in when determining whether a change in the level of care has actually occurred such that the assessment should be prospectively amended.

### **2.5.2 The assessment of income**

The income upon which child support was originally calculated was taxable income. Initially, the child support assessment was made for a financial year, and was based on the taxable income from the financial year two years previously, inflated by a factor to represent the equivalent income in more current terms.

Since 1 July 1999, the period of a child support assessment is a maximum of 15 months, commencing the month after the making of a tax assessment by the Tax Commissioner for the last financial year. The relevant tax assessment is generally that of the payer. This permits the taxable income from the latest financial year to be used in an assessment as soon as possible after the ending of the financial year, to most closely represent the financial position of the payer.

Since 1 July 1999, supplementary amounts are added on to taxable income, including exempt foreign income, and net rental property losses. Reportable fringe benefit amounts have been

included since 1 July 2000.<sup>42</sup> This mirrors social security provisions where such forms of income were generally taken into consideration.

Where a parent's taxable income was not known, the assessment was originally required to be based upon a default figure equivalent to 2.5 times average weekly earnings. Since 11 December 1992, CSA can choose an appropriate default income where a new assessment must start and taxable income information for the relevant year is not available.

Where a parent's income situation has worsened (by 15%) since the financial year two years previously, the parent has an option of asking for the assessment to be based on their estimate of current income. Initially, this was an estimate of income for the full length of the then current financial year (which was retrospective). Such estimates regularly resulted in overpayments. The estimate provisions were changed from 23 December 1997, to allow an estimate for the whole financial year, but then to adjust the income used from the date of the estimate so that the resulting liability for the total year, adding the periods prior to the estimate to those after, resulted in the same rate as though the income for the entire year had been changed. This avoided overpayments in most instances.

Since 1 July 1999, with the advent of variable child support periods not tied to the financial year, estimates have been changed to being a prospective indication of expected annual income, from the date of the estimate. CSA can amend an assessment where the estimate is inaccurate or the income of the parent has changed.

### **2.5.3 Exempt and disregarded amounts**

The exempt amount allowed to the payer and the disregarded amount allowed to the payee were designed with different functions in mind: the exempt amount is meant to prevent the payer (and any second family) from falling into poverty, while the disregarded amount includes the payee's financial support of the children. This difference notwithstanding, the large disparity in the level of the amounts is one of the features of the Scheme that attracts the most criticism from the public.

Initially, the payer's exempt income amount was equivalent to the annual amount of the relevant single rate of Social Security pension for the child support year. If the payer had relevant dependent children (meaning, child support children by the liable parent and of any further biological or adopted children, or step-children for whom there is a legal responsibility), the exempt income amount was twice the annual amount of the relevant married rate of Social Security pension for the child support year, plus additional amounts for relevant dependent children.

Since 1 July 1999, the payer's exempt income amount has been increased to 110% of the unpartnered rate of Social Security pension. When the liable parent has relevant dependent children, the exempt income amount is 220% of the annual amount of the partnered rate of Social Security pension, plus additional amounts for relevant dependent children.

The exempt income rules change where the children for whom the assessment is in place are cared for by both the payer and payee (either on a shared basis in some proportion, or because

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<sup>42</sup> Although the legislation relating to reportable fringe benefits was passed at the same time as that relating to other supplementary amounts, reportable fringe benefits were added only from 1 July 2000.

some of the children live with the payee, and some with the payer). Prior to 1 July 1999, the exempt income amount allowed to each parent where both parents care for the child for 40–60% of nights, was only that of a parent with no relevant dependants. Since 1 July 1999, additional amounts for the children are added to the single rate of exempt income where parents have care of above 40%.

Prior to 1 July 1999, CSA could include relevant dependent children in a child support assessment from the actual date when they became a relevant dependent. Substantial time could elapse between this date and the parent's informing CSA, resulting in overpayments. Since 1 July 1999, the maximum allowable period of backdating is 28 days.

#### **2.5.4 *The custodial parent's disregarded income***

The payee's disregarded income was initially the "full-time adult weekly earnings" figure, plus additional flat amounts for child care for any children under 12. Any excess amounts were deducted in full from the payer's child support income. The payer's liability could not be reduced to less than 25% of the assessment that would otherwise have applied.

Since 1 July 1999, the payee's disregarded income is based on the "all employees average weekly earnings" figure rather than the higher full-time average weekly earnings figure, and extra amounts for child care costs are no longer added to it. In calculating the amount payable in an assessment, the payer's income is reduced by 50 cents for every dollar of the carer parent's income above the disregarded income amount. The payer's liability can still be reduced by a maximum of 75% by this adjustment. A change of assessment reason allowing a payee to claim high child care costs was also added.

#### **2.5.5 *Consideration of step-children***

From 1 July 1999, a payer's step-child is automatically considered to be their relevant dependant if a court has made an order under section 66M of the *Family Law Act 1975*. Prior to this, the paying parent would need to seek a change of assessment to have a legal duty under a Court order to support the step-child taken into account in the assessment. This has not resulted in significant numbers of cases, due to the limited range of eligibility for parents to take advantage of s.66M (which is generally only available in the context of an application for maintenance against a step-parent living apart from the child).

A new change of assessment reason was added from 1 July 2001, allowing a parent to apply for a change of assessment on the basis that they were earning additional income to benefit a child living in their household. The child could be either their natural child or their step-child.

#### **2.5.6 *Minimum liability***

Initially, where a payer had an income that resulted in a formula assessment of less than \$260, the resulting child support liability would be nil. In 1999, a minimum child support liability of \$260 was introduced, with few exceptions. This change was designed to reinforce the government's view that all parents should contribute financially to the support of their children. There was also a belief that payment of even a token amount would encourage the non-custodial parent to be involved with the child, and would instill a habit of payment that could be used to support the children if the payer's financial situation improved.

### **2.5.7 Requirement that resident parents seek maintenance**

At the inception of the scheme, any resident parent (payee) in receipt of child support, after becoming eligible for a Commonwealth payment by originally seeking an assessment, could elect to end an assessment at any time.. From 6 April 1992, payees in receipt of an income-tested pension, allowance or benefit could not elect to end their assessment. However, such payees could agree with the payer that the amount of the assessment would be nil, effectively getting around the 1992 amendment.

From 29 May 1995, CSA was required to refer a private child support agreement to the Secretary of the then Department of Social Security if the payee received more than minimum family payment or Sole Parent Pension. CSA could then accept these agreements only if the Secretary decided that the agreement passed the “reasonable action to obtain maintenance” test. CSA was required to refuse to accept an agreement if the payee received more than the minimum family payment or Sole Parent Pension and had not applied for a child support assessment.

From 1 July 1999, payees who received more than the base rate of Family Allowance could elect to end their assessment if the Secretary of the Department of Family and Community Services (FaCS) approved. The same rule now applies to parents in receipt of Family Tax Benefit Part A. The Secretary must be satisfied that the payee is taking reasonable action to obtain maintenance for the child. In practice, this generally requires that the payee be granted an exemption from reasonable maintenance action. Such exemptions are granted for reasons such as fear of violence and, more recently, well-founded doubts as to the parentage of the child.

### **2.5.8 Effect of maintenance payments and receipt upon Commonwealth payments**

Consideration of maintenance income (including a requirement that resident parents seek maintenance) was introduced in June 1988 with the commencement of the Child Support scheme. The maintenance income test covered all forms of received maintenance (cash, non-cash and capitalised maintenance). Both child and spousal maintenance were assessed. Maintenance income affected pensions, job search, Newstart and sickness allowances and special benefits. The annual maintenance income free area was converted into a weekly figure of \$15 plus an additional \$5 per week for a second and each subsequent child dependent on the maintenance recipient. Payments were reduced by 50 cents for each dollar over a maintenance threshold.

With the integration of family payments from 1 January 1993, maintenance income no longer affected income support payments, but it reduced Additional Family Payment. Additional Family Payment and Basic Family Payment were merged in 1996 to form Family Payment, which was then subject to the maintenance income test. With the change to Family Tax Benefit from 1 July 2000, the maintenance income test was essentially retained, with the 50% taper rate applied to income over the maintenance threshold.

Parents paying maintenance could deduct 50% of the amount from family income for the purposes of their receipt of Family Allowance from 1 July 1999. The 50% deduction was retained when Family Tax Benefit was introduced from 1 July 2000. From 1 July 2001, the deduction was increased to 100% of maintenance paid.

### **2.5.9 *Administrative system for changes of assessment***

Although it was the exclusive domain of the Registrar to make child support assessments for children coming under the legislation, the flexibility of the system was preserved by allowing the Family and Magistrates' Courts to depart from the formula in particular circumstances. From 1 July 1992, departure from the formula via an administrative process was established, which was free of charge and for which the parties did not require legal representation. Child Support Review Officers assessed applications for administrative departure from the formula, relying on the grounds previously available to the Courts.

### **2.5.10 *Payment of child support otherwise than to the Agency***

Initially, where the child support liability was registered with the Agency, the scheme required payment be made to CSA. From 1992, this was eased to a limited extent, and CSA could credit an amount as a non-agency payment where the payer made that payment otherwise than to the Agency, although only if both parents intended the payment to be for child support. The provisions additionally required that there be special circumstances.

The requirement for special circumstances was removed from 1 July 1999 along with easing of the payee parent's choice to collect the liability privately, and the scope of non-agency payments extended to non-cash payments. Payments were prescribed as payments which may be credited as child support, although only against 25% of the periodic liability.

## 3 The Formula for Assessment of Child Support

This Chapter explains systematically the current operation of the formula in the Child Support Scheme.

### 3.1 The process

Under the *Child Support (Assessment) Act 1989*, any eligible separated parent or carer for a child may make an application to the Child Support Agency for a child support assessment<sup>43</sup>. The previous system of court ordered maintenance continues to apply to parents not eligible for a child support assessment. This group now represents only 2.3% of CSA's active caseload.<sup>44</sup>

### 3.2 Primacy of a parent's responsibility to their own children

The basic child support formula gives priority to a parent's duty to support their own biological or adopted child over other obligations, such as those to a new partner, step-children, or aged parents, where there is no duty to maintain. Thus only a "parent" of a child within this limited definition is liable to support that child<sup>45</sup>.

The scheme draws a clear distinction between the legal obligation of a parent to share their income with their own or adopted child or children, and any assumed obligations of the parent<sup>46</sup>. Where a parent has children in successive families, the formula attempts to draw a balance:

the duty of a parent to maintain a child:

- (a) is not of lower priority than the duty of the parent to maintain any other child or another person; and
- (b) has priority over all commitments of the parent other than commitments necessary to enable the parent to support:
  - (i) himself or herself; and
  - (ii) any other child or another person that the parent has a duty to maintain; and
- (c) is not affected by:
  - (i) the duty of any other person to maintain the child; or

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<sup>43</sup> The parents must have separated after 1 October 1989, or have a child born after that date.

<sup>44</sup> Child Support Scheme Facts and Figures, 2003-2004 at 3.1.

<sup>45</sup> A person's liability to support a child under the child support scheme will end if a court finds that the child is not biologically or legally their child.

<sup>46</sup> There is limited facility to reflect a legal obligation to a step child as a relevant dependant under s.5 where there is a Court declaration under s.66M of the *Family Law Act 1975*. Obligations to a dependent spouse or other dependant may be included via a change of assessment.

- (ii) any entitlement of the child or another person to an income tested pension, allowance or benefit.<sup>47</sup>

### 3.3 The basic formula

The principal object of the Act is to ensure that children receive a proper level of financial support from their parents.<sup>48</sup>

The current Australian child support formula is based upon a flat percentage of payer income.

The basic formula takes into account the income of each of the parents, the time each spends caring for the child support child or children, and the payer's obligations to additional children for whom he or she is legally responsible.

The particular objects of the scheme as set out in the Act, include ensuring:

- (a) that the level of financial support to be provided by parents for their children is determined according to their capacity to provide financial support and, in particular, that parents with a like capacity to provide financial support for their children should provide like amounts of financial support; and
- (b) that the level of financial support to be provided by parents for their children should be determined in accordance with the legislatively fixed standards; and
- (c) that persons who provide ongoing daily care for children should be able to have the level of financial support to be provided for the children readily determined without the need to resort to court proceedings; and
- (d) that children share in changes in the standard of living of both their parents, whether or not they are living with both or either of them.<sup>49</sup>

The care of children determines whether a parent is a paying or receiving parent, except for those situations where both parents have significant care.

### 3.4 Definition of income

Income for child support purposes is taxable income with various deductions added back, (net rental property losses) and other amounts included (reportable fringe benefits and exempt foreign income)<sup>50</sup>. This is identical for both the payee and payer<sup>51</sup>.

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<sup>47</sup> Child Support (Assessment) Act 1989 ss.3(2).

<sup>48</sup> Child Support (Assessment) Act 1989 s.4(1).

<sup>49</sup> Child Support (Assessment) Act 1989 s.4(2).

<sup>50</sup> Included by amendment by the Child Support Legislation Amendment Act 1998.

<sup>51</sup> *Child Support (Assessment) Act 1989* ss.38 and s.38A for the liable parent, and s.45 and s.45A for the entitled carer.

### **3.4.1 Self-support component**

#### ***Payer parents***

The formula percentages are not applied to income for child support purposes in its entirety, however, since an amount of paying parent income is first exempted for the self-support of the individual parent. The exempt income is based upon the unpartnered annual rate of Social Security pension<sup>52</sup>, although the formula allows 110% of that rate. For 2005, the exempt amount is \$13 462.

#### ***Carer parents***

The income of the carer parent is also taken into account in the current formula. The amount of payee income disregarded<sup>53</sup> is the annual rate of All Employee Weekly Earnings as published by the Australian Bureau of Statistics, which includes full time and part time employees' ordinary earnings and ordinary overtime earnings.<sup>54</sup> For 2005 the disregarded amount is \$39,312.

Payee income above the disregarded amount (excess income) reduces payer income by 50 cents per dollar of excess income. This has the result that the child support percentage for the payer is applied to a lesser income, and so the obligation is reduced. However, payee income cannot reduce the resulting assessment below 25% of the assessment that would be made without incorporating payee income.

### **3.4.2 Child support liabilities as percentage of income**

Because of the exempt income allowed under the formula for the payer's self-support, the actual percentage of a payer's income before tax paid in child support is lower than the percentages applicable in the formula.

Tables 3.1, 3.2 and 3.3 show the actual percentage of income before and after tax that is taken in child support for one, two and three children respectively, using the current basic formula (payer has no other dependants and any shared care is below 30%) at intervals up to nearly \$50,000. \$50,000 is about average full-time ordinary earnings in 2004.

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<sup>52</sup> *Child Support (Assessment) Act 1989* s.39 for the liable parent.

<sup>53</sup> *Child Support (Assessment) Act 1989* s.46.

<sup>54</sup> Australian Bureau of Statistics, *Average Weekly Earnings Catalogue No 6302.0* (August Edition).

**Table 3.1: Child Support for 1 child, basic formula, no new dependent children**

<b>Child support income</b>	<b>Liability p.a.</b>	<b>Liability as a % of NET Income</b>	<b>Liability as a % of Before Tax Income</b>
\$14,820.00	\$260.00	1.9519%	1.7544%
\$20,020.00	\$1,180.44	6.6931%	5.8963%
\$25,220.00	\$2,116.44	9.8522%	8.3919%
\$27,560.00	\$2,537.64	10.9760%	9.2077%
\$30,160.00	\$3,005.64	12.0515%	9.9656%
\$32,240.00	\$3,380.04	12.8051%	10.4840%
\$35,100.00	\$3,894.84	13.7152%	11.0964%
\$37,440.00	\$4,316.04	14.3696%	11.5279%
\$40,040.00	\$4,784.04	15.0177%	11.9482%
\$45,240.00	\$5,720.04	16.1146%	12.6438%
\$49,140.00	\$6,422.04	16.8002%	13.0689%

**Table 3.2: Child Support for 2 children, basic formula, no new dependent children**

<b>Child Support Income</b>	<b>Liability p.a</b>	<b>Liability as a % of NET income</b>	<b>Liability as a % of before tax income</b>
\$14,820.00	\$366.66	2.7527%	2.4741%
\$20,020.00	\$1,770.66	10.0397%	8.8445%
\$25,220.00	\$3,174.66	14.7782%	12.5879%
\$27,560.00	\$3,806.46	16.4639%	13.8115%
\$30,160.00	\$4,508.46	18.0772%	14.9485%
\$32,240.00	\$5,070.06	19.2077%	15.7260%
\$35,100.00	\$5,842.26	20.5728%	16.6446%
\$37,440.00	\$6,474.06	21.5543%	17.2918%
\$40,040.00	\$7,176.06	22.5266%	17.9222%
\$45,240.00	\$8,580.06	24.1719%	18.9656%
\$49,140.00	\$9,633.06	25.2003%	19.6033%

**Table 3.3: Child Support for 3 children, basic formula, no new dependent children**

Child Support Income	Liability p.a	Liability as a % of NET income	Liability as a % of before tax income
\$14,820.00	\$434.56	3.2625%	2.9323%
\$20,020.00	\$2,090.56	11.8535%	10.4424%
\$25,220.00	\$3,762.56	17.5149%	14.9190%
\$27,560.00	\$4,511.36	19.5128%	16.3692%
\$30,160.00	\$5,343.36	21.4249%	17.7167%
\$32,240.00	\$6,008.96	22.7647%	18.6382%
\$35,100.00	\$6,294.16	22.1641%	17.9321%
\$37,440.00	\$7,672.96	25.5459%	20.4940%
\$40,040.00	\$8,504.96	26.6981%	21.2412%
\$45,240.00	\$10,168.96	28.6482%	22.4778%
\$49,140.00	\$11,416.96	29.8670%	23.2335%

### **3.4.3 Child support periods**

A parent's capacity to pay is determined by their adjusted taxable income. However, unlike for other purposes, such as social security purposes, parents are likely to be reluctant to provide full income information voluntarily. In order to reflect new taxable income information when it becomes available, child support assessments apply for a "child support period". This period starts when a parent's tax assessment is available, and ends when the next tax assessment is made.

On average, such periods are intended to run for approximately 12 months. However, the 12-month period is not related to the financial year, nor to any other period used for other purposes, such as the assessment of eligibility for FTB. The assessment is based upon past income year information. If a parent's circumstances have changed significantly since that year, an application for variation must be made.

The trigger for the new period is the lodgment of a tax return, generally by the paying parent.<sup>55</sup> However, a large minority of child support payers do not lodge tax returns, at least in sufficient time for the child support period to be triggered by the resulting tax assessment. Approximately 44% of child support payers as at June 2004 had not lodged tax returns for the relevant financial year, and so had assessments based on income information other than shown by the relevant tax assessment.<sup>56</sup> For the four financial years to 2002-03, by 3 December 2004, approximately 52% of payers had lodged all four tax returns.<sup>57</sup> In the absence of a timely tax return, a maximum period of 15 months applies, so that a new period will start in any case, using an income the Registrar thinks is appropriate.<sup>58</sup>

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<sup>55</sup> The carer parent tax return may trigger a new period where their income can affect the assessment.

<sup>56</sup> Child Support Scheme Facts and Figures, 2003-04.

<sup>57</sup> Unpublished CSA data.

<sup>58</sup> This income may be based on financial information from any reliable source, or may be a figure inflated from a previous year's tax return.

## 3.5 Care of Children

### 3.5.1 Care by an entitled carer

The scheme assumes that a child under the age of 18 is dependant. Where the child is married, or living in a de facto marriage, the child is no longer regarded as requiring support from their parents.<sup>59</sup> However, this is the only situation in which the child is defined as independent.<sup>60</sup>

Only a person with care of a child may be the entitled carer under a child support assessment against the parent or parents of the child. The formula takes as a default that the carer is the sole or principal provider of care for the child.<sup>61</sup> However, a parent is entitled to claim child support once they have care of a child amounting to 30% of the nights per year.

### 3.5.2 Dependants of the liable parent

Care of the child support children by the liable parent, and care of any further biological or adopted children, or step-children for whom there is a legal responsibility, is factored into the assessment. Where the liable parent has responsibility for care of either the child support children or new children, an increased exempt amount is allowed to take account of this. The amount makes no explicit reference to whether the liable parent has a new partner or otherwise. However, the amount allowed implicitly assumes a new dependent spouse. The exempt amount does not take into account the income of any other members of the parent's household.

For the exempt amount to be increased to reflect a dependent child, the liable parent must have care of the child for 60% or more nights annually. In this case, the exempt amount increases to 220% of the partnered rate of Social Security pension, (\$22,480 for 2005) plus additional amounts for children based upon their age<sup>62</sup>:

Child under 13 years	\$2,362
Between 13 and 15 years	\$3,296
16 years and over	\$5,109

The carer's disregarded income does not vary with the number of children for whom that parent is caring.

### 3.5.3 Non-parent carers

Eligibility may be affected where a person is the carer for a child and is not the parent or guardian of that child. Where a parent or guardian lives with the child, although care is provided jointly with another person, the application for support must be made by or on behalf

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<sup>59</sup> Child Support (Assessment) Act 1989 s.24.

<sup>60</sup> Income of a child may be taken into account in the change of assessment process.

<sup>61</sup> Child Support (Assessment) Act 1989 s.36.

<sup>62</sup> The additional amounts are related to Family Tax Benefit amounts for children up to age 16, and pension amounts for children 16 years and over.

of the parent or guardian.<sup>63</sup> If the carer is not a parent or guardian, the carer is eligible to have child support assessed in their favour unless the parents object to the carer providing such care.<sup>64</sup> Despite parental objection, the carer may still be eligible if it would be unreasonable for the child to live at home.

The incidence of non-parents caring for children has increased, with approximately 1% of families with children now being grandparent families, and 52 100 children living with people who are not their biological or adopted parents.<sup>65</sup> Whilst small in number, the impact of this increasing group within the child support population warrants more consistent treatment by the formula in terms of the treatment of income and reflection of care by the liable parent.<sup>66</sup>

## **3.6 Minimum and maximum amounts**

### **3.6.1 *Minimum liabilities***

Since 1999, a minimum liability (of \$260 annually, or approximately \$5 per week) applies to all liable parents who do not have at least 30% care of a child (that is, to the level acknowledged by the formula). Where the application of the formula results in an annual child support liability that is less than \$260, \$260 is substituted as the annual rate. The minimum rate can only be reduced to nil by application to the Registrar. The payer must establish that they have access to total financial resources during the child support period of less than \$260, in order to have the minimum liability waived.

The minimum liability applies per payer, regardless of the number of children. If the payer pays child support to more than one carer, the \$5.00 rate is apportioned between the carers according to the number of children in their care.

### **3.6.2 *Maximum liabilities***

The maximum income on which a liability may be calculated is capped at an annual rate of 2.5 times full time adult average weekly total earnings, as published by the Australian Bureau of Statistics. Income beyond this level is not subject to the formula. The self-support amount for the individual payer is deducted from the capped income prior to application of the formula. As the level of the cap is related to average weekly earnings, it is automatically updated. The cap for 2005 is \$130 767. This produces a maximum child support liability of \$ 21 115 for one child, \$ 31 672 for 2 children, \$ 37 538 for 3 children, up to \$ 42 230 for 5 children.

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<sup>63</sup> Child Support (Assessment) Act 1989 s.26.

<sup>64</sup> Child Support (Assessment) Act 1989 s.7B.

<sup>65</sup> ABS, Family Characteristics Survey, June 2003.

<sup>66</sup> The current formula does not reduce a non-parent carer's child support where the liable parent has contact or care of the children in circumstances that would be recognised were the child cared for by a parent. In some limited circumstances, the current formula takes into account the income of a non-parent.

### 3.7 The basic formula in operation

In the simplest of cases, where the child support child lives with one parent, the non-resident parent will be required to pay child support. The liability is a percentage of the liable parent's taxable income after a self-support component is deducted (\$13,462 for a non-resident parent with no dependants in 2005). The percentages are 18% for one child, 27% for two children, 32% for three children, 34% for four children, and 36% for five or more children. The formula reduces the liability of the non-resident parent where the income of the resident parent exceeds the level of average weekly earnings for all employees (currently \$39 312).

The formula involves the following steps:

**Step 1** – Calculate the income for child support purposes of the payer and of the payee.

**Step 2** – Deduct the applicable payers exempt amount from the payer's income, and the payee's disregarded amount from the payee's income.

**Step 3** – Subtract 50% of any excess amount of payee income (above the payee disregarded amount) from the payer's income<sup>67</sup>.

**Step 4** – Take the applicable child support percentage of the remaining portion of payer income. The child support percentages are:

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

**Step 5** – If the resulting liability is less than either of the following, substitute the higher of:

- i) an assessment amount which is 25% of the amount which would result if payer income was not reduced by payee income with the result of step 3, or
- ii) an annual rate of \$260 if the resulting amount is less than \$260.

The result of this formula application is the annual rate of child support liability for the child support period.

### 3.8 When the payer has other children to support

Whenever a payer has new biological or adopted children in a second family (or care of child support children), the parent is allowed an increased self support amount. The child support percentage is then applied to only income exceeding the self support amount. The result is still checked against the legislated minimum rates.

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<sup>67</sup> Only approximately 7% of payees in June 2004 had income exceeding the payee disregard (CSA unpublished data). In 93% of cases this step can be omitted.

### **3.9 Payer with children with different carers**

Where a paying parent is liable to pay child support to more than one carer, the percentage applied in each assessment is worked out according to the proportion of care each payee has of the total number of children. For example, a payer liable for two children to two different payees will pay 13.5% (1/2 of the 27% applicable to two children) to each payee, not the 18% (applicable to one child) to each payee.<sup>68</sup> The liability to each payee is then calculated separately under the standard formula, using this percentage.

### **3.10 Carers with children of different liable parents**

Where a carer has children with different non-resident parents, the liability of each paying parent is calculated separately, and no cap applies.<sup>69</sup>

### **3.11 When the child is not being cared for by either parent**

Where a child is living with someone who is not their parent, the liability of each parent is calculated separately, subject only to a cap on the combined amounts.<sup>70</sup>

### **3.12 Treatment where both parents have care of their children**

Where some of the children live with one parent, but others live with the other parent, the formula treats each parent in turn as liable to the other.<sup>71</sup> The liabilities are offset, so that one parent becomes the overall payer.

### **3.13 Shared care**

The child support formula changes where there is contact of more than 30%. Where a child's care is shared between both parents, or each parent has a child living with them, each parent has an entitlement to child support from the other. The calculation of how much each parent has to pay is according to how much care the other parent has. The liabilities are then offset so that only one parent overall is the payer.

Levels of care are generally based on the number of nights each year that a child spends with the parent. Care levels are based on bands, as follows:

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<sup>68</sup> Child Support (Assessment) Act 1989, Part 5, Subdivision G.

<sup>69</sup> This situation was not addressed by the original Consultative Group.

<sup>70</sup> *Child Support (Assessment) Act 1989*, Subdivision F Part 5 s.51 and 52.

<sup>71</sup> The two individual calculations are done in accordance with the general formula, save that in each case, the income of the parent being treated as the carer is not applied to reduce the income of the parent being treated as the liable parent.

**Percentage of care nights per year assessed**

Percentage of care	Nights per year	Assessed care level
0–30%	0–109	0%
30–40%	110–145	35%
40–60%	146–219	50%
60–70%	220–255	65%
70%+	256+	100%

Parents may agree that the non-resident parent should be considered to provide 35% of care even when the threshold of nights is not reached.

Each parent’s *total* level of care is calculated by adding together the assessed care percentage for each child support child. For example, a parent caring for one child 35% of the time and another child 55% (treated as 50%) of the time will be assessed as caring for 0.85 children. The other parent’s liability is then calculated by finding the relevant child support percentage for this amount of care, and applying this to their child support income (see below). Where a parent is liable for a “part” of a child, the percentage of income payable is taken from a sliding scale between the percentages for whole numbers of children.<sup>72</sup> For example, a parent liable for 1.15 children has a child support percentage of 20%, which is between 18% for one child and 27% for two. The process is reversed to calculate the second parent’s level of care and the first parent’s liability. The dollar amounts are offset and the balance is payable.

Care of children also determines the exempt amount for each parent, which is subtracted from their total income to give their child support income. The parent’s care of new biological children and of child support children is relevant for this calculation. In these cases, the same rules apply to both parents. In situations where there are different care arrangements for different children, the child for whom the parent has the *highest* level of care determines the base exempt amount.

<b>Assessed % of care self-support amount:</b>	
0 (that is, not shared)	110% of the unpartnered rate of income support
35	110% of the unpartnered rate of SS income support
50	110% of the unpartnered rate of SS income support plus an allowance for each child
65	220% of the partnered rate of SS income support plus an allowance for each child
100	220% of the partnered rate of SS income support plus an allowance for each child.

The formula steps then become:

**Step 1** – Calculate the child support income of each parent. If either parent’s income exceeds the cap, the cap is substituted.

<sup>72</sup> A full table of possible combinations of care for up to 5 children and resulting child support percentages is set out in the Act.

**Step 2** – First, treat one parent as the liable parent, and the other as the payee parent. Deduct the paying parent’s exempted amount from that parent’s income.

**Step 3** – This step is omitted, that is, that is, the income of the parent being treated as the payee is not applied to reduce the income of the parent being treated as the liable parent.

**Step 4** – Apply a child support percentage (based upon the care for child support children being provided by the *other* parent) to the remaining portion of payer income over their self-support amount.

**Step 5** – Repeat steps 2 and 4, but reverse the treatment of the parents, that is, treat the parent previously treated as the liable parent as the carer parent, and the parent previously treated as the carer as the liable parent.

**Step 6** – The parent with the higher liability as the result of the previous steps is the paying parent. The liabilities are offset, and the parent with the higher liability is liable to pay the difference between the higher and lower liabilities.

### **3.14 When child support ends**

A child support assessment will end when particular specified events occur, including the death of one of the parents or a child, the liable parent moving overseas to a country with which Australia has no reciprocal arrangements, the child ceasing to be in the care of the carer parent, or reaching the age of 18. Reconciliation of the parents does not end the child support assessment.

The carer parent may elect to end the assessment. However, their entitlement to Family Tax Benefit may be affected if they do so.

#### **3.14.1 Children aged 18 and over**

The child support scheme does not currently extend to making an initial assessment for liability for the support of a young person aged 18 or over. Maintenance may be ordered in these cases by a Court under the Family Law Act, where continuing support for the young person is needed by virtue of continuing education, disability or other compelling reason. The child support formula is not applicable in such Court processes, although a Court may have regard to likely formula assessment outcomes when making such determinations.

However, where a child has been the subject of a child support assessment, and is completing their secondary education in the year during which they turn 18, there is facility for their parent to seek an extension of an existing child support assessment to the end of the school year<sup>73</sup>.

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<sup>73</sup> Child Support (Assessment) Act 1989 s.151B.

## 3.15 Variation to assessments

### 3.15.1 *Updating of incomes*

Where an assessment is formula based, the level is updated approximately annually by the Child Support Agency (CSA) either upon the receipt of a new income tax assessment for the liable parent, or 15 months after the previous assessment was made, whichever is sooner.<sup>74</sup> If a past assessment was made based upon an income determined by the Registrar (because no taxable income was available), this must be replaced retrospectively (to the start date of the assessment based upon the default income) when taxable income information for the relevant period becomes available.<sup>75</sup>

By contrast, where the Tax Commissioner makes an amendment to a parent's tax return upon which their child support assessment is based, the change in income will generally not be reflected by the a change to the child support assessment, except where there has been tax avoidance.<sup>76</sup>

### 3.15.2 *Estimates of income*

The original intention was that the assessment would operate annually, and hence only significant changes would result in a variation of the assessment.<sup>77</sup> However, the original formulation of the scheme recognised that basing an assessment of liability on a past year's income could result in significant inequities where current circumstances had changed, and hence there was a need for a mechanism for variation of the assessment in a broader range of circumstances. The current estimation process aims to deal with unexpected changes, such as a loss of a job, and to enable immediate adjustment of the liability to avoid debt. This parallels the way in which the enforcement of Court ordered liabilities for those parents not eligible for child support formula assessment are suspended whilst a parent is in receipt of the full rate of income support.<sup>78</sup> It is not intended to closely track current income and override the use of a past year's income for standard formula assessments, in the way required for income support eligibility.

Estimating income for the purposes of the child support formula now involves a parent applying to have their prospective estimate of current income substituted into the assessment, with the income calculated from the day the estimate is made, to the last day of the child support period.<sup>79</sup> The parent's current income must have decreased by at least 15% from the child support income amount used in the assessment before the parent is eligible to have their assessment based upon their estimate of their current income. However, thereafter, a parent

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<sup>74</sup> *Child Support (Assessment) Act 1989*, Part 4A, s.34A. A new tax assessment for the carer parent may trigger a new period if the parent's income will affect the assessment, that is, exceeds the disregarded amount.

<sup>75</sup> *Child Support (Assessment) Act 1989*, s.58.

<sup>76</sup> *Child Support (Assessment) Act 1989* s.56.

<sup>77</sup> *Child Support – Formula for Australia*, Chapter 22.5 and .6.

<sup>78</sup> *Child Support (Registration and Collection) Act 1988* s.37B.

<sup>79</sup> *Child Support (Assessment) Act 1989* s.60.

may substitute replacement estimates of either decreased or increased income, from time to time to maintain the currency of the estimate, until the end of the child support period.

Estimates are subject to review by the Registrar where there is information tending to indicate that the estimate may not be correct.<sup>80</sup> The last estimate in a child support period may also be reconciled after the end of the child support period<sup>81</sup>.

The estimate mechanism is used only by individual parents who wish to amend their income details for the purposes of an assessment. Where a parent wishes to change the other parent's income used in the assessment, they must use the change of assessment process.

### **3.15.3 Change in care**

Each approximately annual child support assessment is made on the basis of each parent's anticipated care of children for the first 12 months of the child support period. Changes may be reflected in a variation to the assessment, but any variation generally only operates from the time the Registrar is advised of the change of care.<sup>82</sup> The only exception from this is where a parent has ceased to care for a child altogether.<sup>83</sup> Where there has been a change, the ongoing level of care is calculated by taking into account care provided by the parents since the start of the child support period to the date of the change, along with the care anticipated to be provided up to the end of the period. Consequently, only increasingly large variations in care arrangements as the child support period progresses will necessitate an amendment to the assessment, and changes late in the period (particularly towards the end of the child support period) may not result in any amendment.

## **3.16 Agreements**

Parents may prefer to substitute their own individualised child support assessment, reflected in a written child support agreement. What an agreement is, how it may be registered and factors relating to variations of agreements are set out in Chapter 13 of this Report.

## **3.17 Changes of Assessment**

Where a parent believes the formula does not operate fairly in their individual case, based upon a limited range of reasons, they may apply for a departure from the formula, or change of assessment. Details and some analysis of the reasons, or grounds, upon which departure may be sought are set out in Chapter 12, alongside an explanation of process.

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<sup>80</sup> Child Support (Assessment) Act 1989 s.63A and s.63B.

<sup>81</sup> Child Support (Assessment) Act 1989 s.64.

<sup>82</sup> Child Support (Assessment) Act 1989 s.74A.

<sup>83</sup> This is a terminating event, and results in an amendment of the assessment back to the date the parent ceased to care for the child: *Child Support (Assessment) Act 1989* s.74.

## **3.18 Appeal and review**

### **3.18.1 Internal review**

Most decisions of the Child Support Registrar are subject to internal review by the Child Support Agency, (except most decisions about enforcement of child support obligations). A parent seeks internal review by lodging a written objection against a decision, which is then considered by an objections officer (who did not make the original decision). The decision on the objection substitutes for the original decision.

A parent who is dissatisfied with the outcome of the decision on their written objection may then appeal the decision to a Court with family law jurisdiction.

### **3.18.2 External review**

Courts with Family Law jurisdiction may review most child support decisions once they have been reconsidered internally by the Child Support Agency. Courts also have original jurisdiction to make orders departing from a formula assessment in some instances.

The parties to an appeal against a Child Support Agency decision, and an application for departure from a formula assessment are the payer and payee parents. The Child Support Registrar is not a party and is not required to justify their decision. However, the Registrar may choose to intervene in a case.

### **3.18.3 Role of tribunals**

Administrative tribunals have only a limited role in the Child Support Scheme. The Administrative Appeals Tribunal has a limited role to review decisions about the time within which a parent is permitted to seek internal review by the Child Support Registrar of a decision, and about the Registrar's decisions as to remission of late payment penalties, and penalties for inaccurate parental estimates of income. The respondent to such application is the Child Support Registrar, although the AAT will invite the other parent to seek to be a party to the proceedings if the other parent's rights may be affected by the outcome.

## 4 The Interaction of Child Support with Government Payments to Families

The operation of the Child Support Scheme cannot be fully understood without understanding its interaction with the income support system and payments to help families with the costs of children. Of greatest importance is the interaction of child support with Family Tax Benefit A through the Maintenance Action Test and Maintenance Income Test.

### 4.1 The Family Payment System

Family Tax Benefit (FTB) is the centrepiece of family payments as we know them today. The system of family payments comprises:

- FTB Part A, a two-tiered payment linked to the number of children for whom a claimant is responsible;
- FTB Part B, to provide extra help for families with one main income, including sole parents;
- Child Care Benefit, to assist families with their child care costs;
- Maternity Payment, to assist families following the birth or adoption of a baby; and
- Maternity Immunisation Allowance, to encourage immunisation of children aged 18–24 months.

The FTB Part A rate also comprises several additional components:

- Rent Assistance, for private renters;
- Multiple Birth Allowance, for the birth of triplets or more; and
- Large Family Supplement, for the fourth and subsequent children.

There are also several Australian Government concessions that base eligibility upon qualification for FTB Part A, including:

- the Health Care Card, which provides Commonwealth health concessions, such as low-cost medicines under the Pharmaceutical Benefits Scheme, and in some instances concessions on services such as transport, rates and utilities; and
- FTB Part A Medicare Safety Net threshold, assistance for families with out-of-pocket medical expenses over and above the Medicare rebate.

#### 4.1.1 *Family Tax Benefit Part A*

FTB Part A is paid at two rates. The base rate recognises the costs of children for all but the highest-income parents. It is concerned with what is sometimes called “horizontal equity” — fair treatment of people who have similar incomes but different family responsibilities.

Many families with relatively low household incomes are given an additional payment of FTB Part A. This is known as the “more than base” rate. It is provided to ensure that parents on low incomes have enough money to maintain their children adequately. In the income year 2004–05, parents with a household income of less than \$32 485 are entitled to maximum rate FTB Part A.

Payments of FTB Part A are for each child and do not take account of economies of scale in raising children. This contrasts with the Child Support Scheme, where there is an assumption, supported by research, that two children cost less per child than one and that three children cost less per child than two. The current maximum FTB Part A rates are in Table 4:1.

**Table 4.1: Maximum rates in 2004-05 financial year**

For each child	Fortnight	Annual
Under 13 years	\$133.56	\$4095.30
13-15 years	\$169.40	\$5029.70
16-17 years	\$42.98	\$1733.75
18-24 years	\$57.82	\$2120.65

Note: Annual rates include the Family Tax Benefit Part A Supplement (\$613.20), which can only be paid after the end of income year reconciliation.

Above an income of \$32 485, the rate of FTB Part A declines by 20 cents in the dollar until parents are only entitled to base rate.

**Table 4.2: Income limit beyond which only base rate of Family Tax Benefit Part A is paid**

Number of children aged 0-12 years	Number of children aged 13-15 years			
	Nil	One	Two	Three
Nil		\$48 964	\$65 444	\$81 924
One	\$44 292	\$60 772	\$77 252	\$93 731
Two	\$56 100	\$72 580	\$89 059	\$105 539
Three	\$67 908	\$84 387	\$100 867	\$117 347

Note: Relevant to 2004-05 financial year. Income limit is higher if family is eligible for Rent Assistance

The current base rate for FTB Part A is as follows:

**Table 4.3: Base rate in 2004-05 financial year**

For each child	Fortnight	Annual
Under 18 years	\$42.98	\$1733.75
18-24 years	\$57.82	\$2120.65

Note: Annual figures include the FTB Part A Supplement of \$613.20. This is not included in the fortnightly figure as it can only be paid after the end of the financial year

**Table 4.4: Income limit at which base rate of Family Tax Benefit Part A stops**

Number of children aged 0-17 years	Number of children aged 18-24 years			
	Nil	One	Two	Three
Nil		\$91,092	\$101,519	\$111,946
One	\$89,803	\$100,229	\$110,656	\$121,886
Two	\$98,940	\$109,367	\$120,596	\$131,826
Three	\$108,077	\$119,307*	\$130,537*	\$141,766*

# Income limit is higher than stated for three children aged 13 to 15 years.

#### 4.1.2 Family Tax Benefit Part B

FTB Part B provides additional assistance to sole-parent families and two-parent families with one main income. It is based on the age of the youngest child. Unlike Part A, Part B is not paid for each child.

**Table 4.5 Maximum rates in 2004–05 financial year**

Age of youngest child	Fortnight	Annual
Under 5 years	\$114.66	\$2989.35
5-15 years (or 16-18 years if full time student)	\$79.94	\$2084.15

For a couple, this payment is not income tested on the higher earner's income but on the income of the lower income earner. Under the FTB Part B income test, the lower earner can earn receive the maximum rate of FTB Part B up to \$4 000 each income year before the payment is tapered out at 20 cents for each dollar of income. For lone parents, there is no income test.

#### 4.1.3 Splitting FTB

Shared care arrangements can be taken into account for both FTB Part A and FTB Part B. Eligibility for FTB is based on each carer's household income and individual circumstances.

Introduced in 2000, this provision allows the parents to split FTB on the basis of the *number of hours* of care provided by each, subject only to the proviso that FTB cannot be paid to a parent who provides less than 10 per cent of the care. By contrast, the child support formula provides for a reduction in child support liability only if the child spends more than 30 per cent of the year (110 *nights* or more each year) with the paying parent.

The shared care percentage is generally based on the care arrangements in place between the parents, as advised by them to Centrelink/ the Family Assistance Office (FAO). Where there is parental dispute about the shared care arrangements, the parents are asked in writing to detail the level of care they provide. Where the parties do not agree, they are required to provide additional evidence regarding the actual level of care. Evidence can be a parenting plan, family court order, custody order or any other document to support the actual care given.

Parents with at least 10 per cent but less than 30 per cent care of a child can choose to waive their FTB entitlement for the child in favour of the other parent. A small proportion of FTB customers share their payment. However, this proportion has grown over the last four years or so, even though many separated parents choose not to split FTB despite eligibility to do so.

Overpayments in FTB can occur in circumstances where the parent who receives FTB fortnightly fails to advise of the existence of a shared care arrangement. This happens when another parent claims FTB retrospectively for a period of up to three years. In order to avoid overpayments, all FTB customers are required to advise the FAO of any change to their children's care arrangements.

## **4.2 Interaction of FTB with child support**

### **4.2.1 *The Maintenance Action Test (MAT)***

Under the Maintenance Action Test, most separated people claiming the higher tier of FTB Part A must take "reasonable action" to obtain child support — in other words, to lodge an "Application for Child Support Assessment" – and to:

- have the payments collected by the Child Support Agency (CSA); or
- privately collect 100 per cent of the CSA assessment; or
- lodge a "Child Support Agreement" for an amount no less than the formula assessment.

Some people are exempt from the MAT. The main grounds are fear of violence, emotional trauma, cultural considerations and inability to establish paternity. The number of children exempted from the MAT at 30 June 2004 was 33,250 (2.8% of the children who are eligible to receive child support and registered to receive FTB Part A).

### **4.2.2 *The Maintenance Income Test (MIT)***

For family assistance purposes, maintenance payments (which can be child support and/or partner (spousal) maintenance) are assessed separately from all other income. The separate Maintenance Income Test only applies to customers who are eligible for more than the base rate of FTB Part A.

Both the MAT and the MIT are central to the objective of limiting Commonwealth expenditure to the minimum necessary for ensuring that children's needs are met, and shifting the primary responsibility of supporting children back to separated parents.

The MIT has the effect of reducing a resident parent's FTB Part A by 50 cents for each dollar of child support above a prescribed threshold, usually \$1150 per annum plus \$383 for each child after the first.

For most families, the MIT will affect:

- the more than base rate of FTB Part A for all children under 16; and
- Rent Assistance.

This means that the other components that are included in the base rate are not affected (that is, the base rate of FTB Part A, FTB Part A supplement, Large Family Supplement, and Multiple Birth Allowance).

As a result of the operation of the MIT, government expenditure on FTB was reduced by an estimated \$433 million in 2003–04.

### **4.3 Income Support**

Nearly 25% of payers and 60% of payees are in receipt of some form of income support payments through Centrelink. The most common payment received by payers is Newstart Allowance (NSA), which 12.8% of all payers receive. The most common payment for payees is Parenting Payment (Single) (PPS), which 50.8% of all payees receive. Other payments include Disability Support Pension (DSP), Parenting Payment Partnered (PPP), Partner Allowance (PA), Carers Payment (CP), and Aged Pension (AP). Further demographic details are outlined in Volume 2 of this Report.

Payment rates, income tests and other supplementary payments vary considerably between payments. Newstart Allowance is indexed to CPI, whereas Parenting Payment single is aligned with pensions, which are indexed to Male Total Average Weekly Earnings (MTAWE). Some income support payments are taxable, such as Newstart Allowance and Parenting Payment, and some are not taxable, such as Disability Support Pension and Carers Payment. The different levels of income support reflect different expectations of participation in the labour force and, hence, the length of time likely to be spent on income support.

Table 4.6 provides a comparison of some of the key payment characteristics.

**Table 4.6: Income support rates, income test thresholds, and taper rates**

Characteristic	Single rates				Partnered rates		
	PPS	AP, CP, DSP (21 and over)	NSA with dependent child	NSA with no dependent child	NSA partnered (each)	PPP	PA
Maximum rate, per fortnight	\$476.30	\$476.30	\$432.00	\$399.30	\$360.30	\$360.30	\$360.30
Income test for full payment, per fortnight	\$146.60 plus \$24.60 per child	\$122.00	\$62.00	\$62.00	\$62.00	\$62.00	\$62.00
Taper rates	40c in \$	40c in \$	50c (\$62-\$142pf) and 70c (above \$142pf)	50c (\$62-\$142pf) and 70c (above \$142pf)	50c (\$62-\$142pf) and 70c (above \$142pf)	50c (\$62-\$245pf) and 70c (above \$245pf)	50c (\$62-\$142pf) and 70c (above \$142pf)
Income test for part payment, per fortnight	\$1351.85 (with one child)	\$1327.25 (single)	\$702.00	\$655.29	\$599.57	\$599.57	\$599.57

Note: Figures are current for a period from 20 March 2005 to 30 June 2005

### 4.3.1 Newstart Allowance

Newstart Allowance is designed to facilitate entry to employment. Centrelink clients receiving this payment are required to comply with the activity testing which includes:

- actively looking for suitable paid work;
- accepting suitable work offers;
- attending all job interviews;
- agreeing to attend approved training courses or programs;
- never leaving a job, training course, or program without a good reason; and
- giving Centrelink accurate details about any income they have earned.

Centrelink clients who fail to comply with activity test requirements may be breached, with reduction or suspension of their payments.

### 4.3.2 Parenting Payment

Parenting Payment is designed to provide an income and opportunities for greater financial independence to people with parenting responsibilities. Parenting Payment is an income support payment for both sole and partnered parents. However, it is only payable to one

member of a couple. An alternative income support payment such as Newstart Allowance may be payable to the other member of the couple.

In 1998 Parenting Payment amalgamated the former Sole Parent Pension, which was paid to sole parents, and Parenting Allowance, which was paid to partnered parents. While some conditions that differed between the former payments, such as the assets test, have been aligned, core conditions, such as rates, the income test, and concessions, have not changed under Parenting Payment.

Therefore, single recipients of Parenting Payment continue to be subject to pension rates, income testing and concessions, while partnered recipients are subject to benefit rates, concessions and a modified benefit-style income test.

### **4.3.3 Shared care provisions for income support**

The Government provides assistance for families within a system that encourages personal responsibility, independence, and self-help. Without this assistance, many children, particularly those in separated families, would be at risk of hardship.

The Government provides additional support to lone parents through measures such as higher rates of Parenting Payment, more generous income test and concession card arrangements, and entitlement to more supplementary benefits such as Education Entry Payment, Employment Entry Payment, and Pensioner Education Supplement.

As mentioned above, Parenting Payment can only be paid to *one* parent for the same child. Where separated parents share the care of a child, generally the parent with the greater proportion of care is eligible. The other parent may receive Newstart Allowance at the ‘with child’ rate, but this does not appear to be administered uniformly.

Where the care of the child is shared approximately equally (within the range of 46 to 54 per cent), other factors are also considered to determine which parent is eligible. These factors include the relative financial needs of the parents, whether only one parent has claimed Parenting Payment, or whether one parent has already been receiving the payment continuously for a reasonable period when the other parent makes a claim.

If both parents qualify after separation for a pension payment (for example, Parenting Payment single, Disability Support Pension, Carer Payment or Aged Pension), they receive the *same* amount of government assistance for their self-support. However, if the non-resident parent qualifies for an allowance payment (such as Newstart Allowance, Youth Allowance or Sickness Allowance) they receive a *lower* amount of government assistance for their self-support.

## **4.4 2005–06 budget measures**

As part of the 2005-06 Budget, the Government announced proposed changes to payment arrangements, which are relevant to the work of the Taskforce, including the following.

***Welfare to work measures***

- Parents receiving Parenting Payment prior to 1 July 2006 will remain on that payment until their youngest child turns 16. They will be required to seek part-time work of at least 15 hours per week when their youngest child turns six;
- Parents applying for Parenting Payment on or after 1 July 2006 will receive Parenting Payment while their youngest child is less than six years old;
- When their youngest child turns six, these parents will receive enhanced Newstart and be subject to an obligation to seek part-time work of at least 15 hours per week; and
- The Newstart Allowance will be enhanced through changes to the income test. The maximum withdrawal rate will be reduced from 70 to 60 cents in the dollar. In addition, the income at which this rate commences will be increased to \$250 per fortnight, up from \$142 for Newstart currently.

***Assistance for Families measures***

- The lower income threshold for FTB A will be increased to \$37,500 from 1 July 2006 to allow low income earners to increase their earnings without affecting family assistance payments; and
- Families receiving arrears of child support from previous years will also benefit from a new measure that allows them to access any unused maintenance income free area from previous years to offset late maintenance payments.

The Taskforce became aware of these proposed changes as it was finalising its full report, but considers that they do not materially affect any of its recommendations, including the details of the proposed new formula.

## 5 Evaluating the Scheme in operation

There can be little doubt that the Australian Child Support Scheme has been a success in a great many ways. It has certainly led to a cultural change in community attitudes about the responsibility of both parents to provide for and support their children regardless of their relationship with each other. There is also evidence that the Scheme has made a significant difference to the financial circumstances of children in single-parent households, with fewer living in poverty than before the Scheme was introduced.<sup>84</sup> However, child support remains an area of very high concern to the community, particularly to the people most directly engaged by it — separated parents. As well, many non-resident parents — already on low incomes at the time of their separation — tend to remain on low incomes for long periods. This situation, and other factors, can lead to poor compliance in meeting their child support liabilities, resulting in debts that become increasingly difficult to pay off.

This chapter looks at each of these issues – the impact of child support on the financial circumstances of payees and payers, concerns about how the Scheme is currently operating, and the issues of payer compliance and debt, including the performance of the CSA in this regard.

### 5.1 Financial impacts of the Scheme

All separated parents with children are able to register with the CSA, and 94 per cent of those eligible to register do so.<sup>85</sup> At 30 June 2004 there were 713 000 CSA cases representing 661 000 paying parents, 657 000 payee parents and over 1.1 million children. Private Collect cases comprised 51.8 per cent of these cases and 48.2 per cent were CSA Collect.

In June 2004, the average annual child support liability under the Scheme was \$2570 for CSA Collect and \$4432 for Private Collect payer parents. Where those clients on minimum liabilities are excluded, the figures are \$4470 and \$5900 respectively.

#### 5.1.1 Taxpayers

The Child Support Scheme has helped to reduce the cost of relationship breakdown to taxpayers. As a result of the mandatory transfer, or deemed transfer, of child support between parents, expenditure on Family Tax Benefit (FTB) was reduced by an estimated \$433.5 million in 2002–03.

#### 5.1.2 Payee families

An analysis of data from Australian Bureau of Statistics (ABS) income surveys shows that, in the period 1982 to 1997–98, the proportion of children in lone parent families benefiting from

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<sup>84</sup> Funder K., Harrison M. & Weston R., *Settling Down: Pathways of Parents after Divorce*, Melbourne: Australian Institute of Family Studies, Monograph no.13, 1993.

<sup>85</sup> Unpublished CSA data comparing its caseload with data on separated families provided by the Australian Bureau of Statistics, January 2005.

child support payments rose from 12 per cent to 31 per cent. Over this period, the average amount of child support received by female-headed lone parent families also increased — from \$12 a week in 1982 to \$41 a week in 1997–98 (both amounts in 1997–98 dollars). Without these payments, it is estimated that the incidence of child poverty would have been around 1.2 per cent higher (representing 58,000 children) over this period than it otherwise was.<sup>86</sup>

### 5.1.3 Payers

Many non-resident parents are already on low incomes when they separate from their partners and tend to remain on low incomes over a long period afterwards. The authors of a study which tracked a large group of male non-resident parents over a four-year period from when they first registered with the CSA in 1997, described the group's financial situation over this period as one of "prevailing and persisting low incomes".<sup>87</sup> In fact, among the parents aged 25–44, the proportions reporting very low incomes actually increased marginally (from 39.7% to 42.4%) over the period of the study.<sup>88</sup> At the same time, there was also a significant accumulation of child support debt among payers in the very low income group. Their average annual child support liability in 2001 was \$679 but their average debt was \$861. The authors attribute this, in the main, to the payers' continuing low-income status.

Australian Institute of Family Studies (AIFS) researchers used data from the Institute's *Australian Divorce Transitions Project* to determine whether the Child Support Scheme was having a detrimental effect on the economic wellbeing of payer parents.<sup>89</sup> Data analysis revealed a detrimental impact for a small percentage of payers in the survey (all of whom were in the workforce): the proportion of payers with incomes below the Henderson poverty line increased from three per cent before child support was being deducted to seven per cent when payments were being made.<sup>90</sup>

In another study, which sought information on payers' views on the affordability of paying child support, payers and payees with a child support assessment of \$260 were surveyed. Of those meeting their liabilities, 59 per cent reported that they could do so only by reducing expenditure on other items, including food. Not being able to afford child support payments was the main reason given by non-paying respondents for not meeting their liabilities.<sup>91</sup>

As noted in Chapter 4, about one quarter of payer parents are reliant on income support (with about half of these being on Newstart Allowance). Consistent with this, payers have much lower rates of employment and labour force attachment than do their counterparts in the

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<sup>86</sup> See Harding A., & Szukalska A., "The changing face of child poverty in Australia, 1982 to 1997–98", paper presented at the 7<sup>th</sup> *Australian Institute of Family Studies Conference*, Melbourne, 26 July 2000.

<sup>87</sup> Silvey J., & Birrell B., "Financial outcomes for parents after separation", (2004) 12(1) *People and Place*, 49.

<sup>88</sup> By comparison, between the 1996 and 2001 Censuses, the proportions of all Australian men in this age group reporting similar incomes decreased from 20.7 per cent to 16.9 per cent. *ibid* p.50.

<sup>89</sup> Data for the Divorce Transitions Project were obtained from a telephone survey of 650 divorced people in 1996.

<sup>90</sup> See Smyth B. & Weston R., *Financial Living Standards after Divorce: A Recent Snapshot*, Melbourne: Australian Institute of Family Studies Research paper No. 23, December 2000.

<sup>91</sup> Wolffs T. and Shallcross L., "Evaluation of the Introduction of a \$260 Minimum Child Support Assessment", *Family Matters* No.57 Spring/Summer 2000 pp. 26-33.

general population. For example, Household Income and Labour Dynamics in Australia (HILDA) data for 2001 shows that, of non-resident parents aged 18–64 who reported having a child support liability, 75.1 per cent were employed, 10.1 per cent were unemployed and 14.8 per cent were not in the labour force. The equivalent figures for those in the same demographic group but without a child support liability were 89.7 per cent employed, 3.5 per cent unemployed and 6.8 per cent not in the labour force.

## 5.2 Concerns about the Scheme

That the Child Support Scheme has proven controversial is not surprising. The Scheme operates at the intersection of family law, income support and the tax system. It sometimes seems to act as a lens for intensifying personal resentment on the part of those who feel aggrieved by court decisions on children’s living arrangements and the division of property, or by the circumstances that resulted in separation, or the unplanned birth of a child. Even in the absence of conflict between the parents, it may prove difficult to develop a mechanism that both parents will consider fair.

There are a number of specific concerns that have been voiced repeatedly about the Scheme, most recently in submissions made to the House of Representatives’ Inquiry into Child Custody Arrangements in the Event of Family Separation.<sup>92</sup>

Many submissions expressed concerns that:

- the costs of children are not well reflected in the formula;
- the disparity between the payer’s exempt income and payee disregarded income is inequitable;
- the costs of contact to the non-resident parent are only reflected in the formula if the children spend at least 110 nights per year with each parent;
- child support liabilities are assessed against gross rather than net income;
- there is little incentive for either payers or payees to work;
- the costs of step-children are not adequately recognised;
- children are treated differently in first and second families; and
- property and court settlements are not reflected adequately in the formula.

Other issues frequently raised in submissions to the Inquiry include:

- some payers and payees avoid their child support obligations by minimising their reported income through cash-in-hand earnings;
- concern that the ‘capacity to pay’ assessments either prevent contact parents from reducing their hours to provide care for children or result in debt;
- poor interaction with the income support system; and
- CSA administration problems.

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<sup>92</sup> See also Chapter 5 in the AIFS survey of attitudes to child support, in Volume 2 of this report.

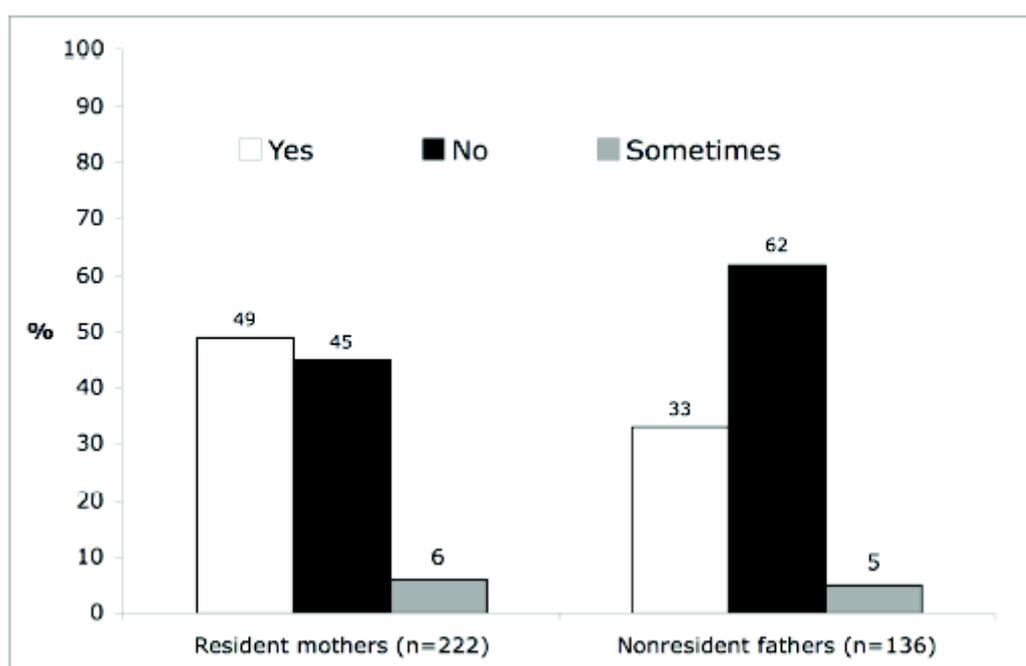
### 5.2.1 Community attitudes towards the Scheme: fairness and efficiency issues

The Australian Institute of Family Studies (AIFS) was commissioned by the Taskforce in December 2004 to conduct a national survey of community attitudes to the Scheme.<sup>93</sup> Data for the survey was obtained through telephone interviews conducted over a three-week period in January–February 2005 from two samples: a general population sample comprising 1001 people aged 18–64, and a national random sample of 620 separated/divorced parents with at least one child aged under 18.

The survey data thus represents the views of two distinct groups: those within the ambit of the child support system ‘looking out’ (resident mothers and non-resident fathers — the two most common post-separation parent groups), and those outside the system ‘looking in’ (men and women who had not experienced separation).

The survey collected information on respondents’ attitudes on a range of aspects of the Child Support Scheme. Figure 5.1 shows the pattern of responses of resident mothers and non-resident fathers in regard to their opinion of the Scheme’s functioning.

**Figure 5.1: Do you think that, overall, the child support system is working well? Attitudes of separated parents with at least one dependent child**



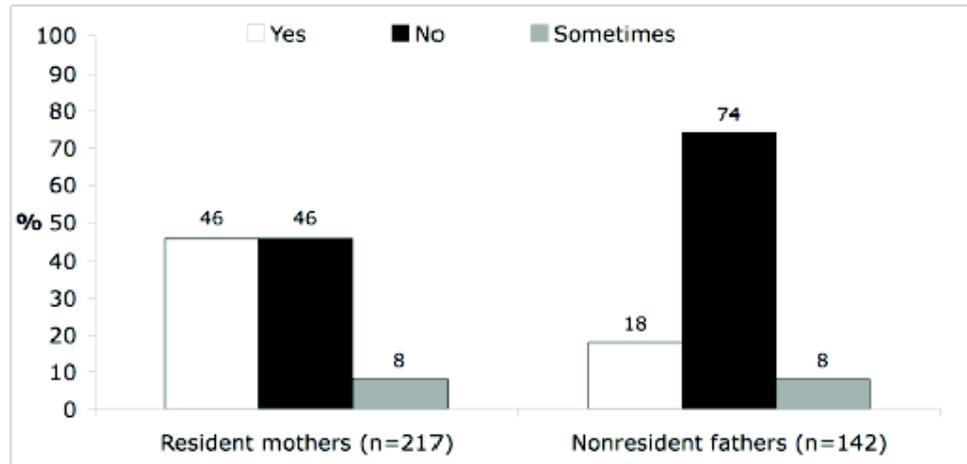
Note. Response options were not offered.  
 $\chi^2(2) = 9.56, p < .01$ .

Most non-resident fathers (62%) maintained that the Scheme was *not* working well, while only one third believed that it was. Resident mothers, on the other hand, were fairly evenly divided on this issue.

<sup>93</sup> The full report on the survey, *A snapshot of contemporary attitudes to child support*, by Bruce Smyth and Ruth Weston is in Volume 2 of this Report.

Separated parents' views as to whether they thought the Scheme was fair to both parents are summarised in Figure 5.2.

**Figure 5.2: Do you think that the child support system is 'fair' for both parents? Attitudes of separated parents with at least one dependent child**



Note. Response options were not offered;  
 $\chi^2 (2) = 30.53, p < .001$ .

Around three-quarters of non-resident fathers believed that the Scheme was *not* fair to both parents, while 18 per cent said that it was fair. By contrast, the same proportion of resident mothers (46%) claimed it was fair as those who claimed it was not. Another eight per cent of these women and men volunteered that it was “sometimes” fair.

In summary, although non-resident fathers tended to believe that the Scheme was not working well and/or was not fair to both parents, they were likely in particular to be negative about the issue of fairness. Resident mothers, on the other hand, tended to be evenly divided on both issues.

## 5.3 Compliance with child support obligations

In this context, compliance is defined simply as the regular and timely payment by non-resident parents of their child support liabilities. The CSA is the main source of data on compliance, some of which is presented in its annual publication, *Child Support Scheme: Facts and Figures*. Alternative data sources are relatively scarce. They include surveys conducted by AIFS and the ABS and some smaller-scale studies conducted by other researchers.

### 5.3.1 Paying child support pre-CSS

In order to provide some baseline data against which the performance of the Child Support Scheme can be judged in regard to compliance, it is necessary to examine the child support payment situation before the Scheme was introduced in 1988. Payment data for this period is even more limited than for the post-CSS period, with the main sources being AIFS researchers and the former Department of Social Security (DSS). Estimates from these sources range from around a quarter to around a third of resident parents receiving child support on a regular basis

during the 1980s.<sup>94</sup> In terms of amounts, child support payments at this time are reported to have ranged from a weekly average of \$10 per sole parent family in 1982 to between \$20 and \$24 per week per child in the late 1980s.<sup>95</sup>

### **5.3.2 Paying child support under the CSS**

Data sources on compliance other than that from the CSA since the introduction of the Scheme, include studies by AIFS, ABS and other researchers, and DSS statistics. These sources generally suggest improved levels of payment by non-resident parents, with compliance figures (as measured by the proportion of payee parents reporting receipt of child support) ranging from 40 to 50 per cent in the 1990s, to around 60 per cent in 2000.<sup>96</sup>

Where payer parents have been surveyed on this topic, they have given a much higher estimate of their rate of compliance. For example, 79 per cent of payer respondents in one study reported that they were paying child support, compared to 60 per cent of payees in the same study who reported receiving it.<sup>97</sup>

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<sup>94</sup> For example, McDonald and Weston calculated that 24 per cent of resident parents were receiving regular child support payments in 1982 (McDonald P. & Weston R., "The database for child support reform", paper presented at the *Workshop on Child Support Issues*, Social Justice Project, Australian National University, Canberra 1986). In a 1988 AIFS survey, 34 per cent of resident parent respondents reported they were then receiving child support (Harrison M., Snider G. & Merlo R., *Who pays for the children? A first look at the operation of Australia's new Child Support Scheme*, Australian Institute of Family Studies, Monograph No. 9, Melbourne 1990, p. 84). Around 26 per cent of recipients of Sole Parent Pension (the then equivalent of Parenting Payment (Single)) reported receiving maintenance payments in April 1988 (Department of Social Security (DSS), *Annual Report*, Canberra 1992).

<sup>95</sup> Reported in Harding and Szukalska above, n. 3 and Harrison *et al* above, n. 11.

<sup>96</sup> See Australian Bureau of Statistics (ABS), *Family Characteristics, Australia 1997*, Cat. No. 4442.0, Canberra 1998; Smyth and Weston above, n. 7, Wolffs and Shallcross, above at n. 8 for payers and payees whose child support is assessed at \$260 per annum, and DSS *Annual Report*, Canberra 1995, 1998.

<sup>97</sup> See Wolffs and Shallcross, above at n. 8, for payers and payees whose child support is assessed at \$260 per annum. This finding is consistent with a review of Australian and overseas research by Fehlberg and

### **5.3.3 CSA data on compliance**

Unpublished CSA data on CSA Collect payers (produced by the CSA for the Taskforce) provides a picture of compliance that is broadly in line with the findings of the studies referred to above.

As shown in Table 5.3 on the next page, in 2003–04, while only 20 per cent of CSA Collect payers failed to pay any of their liabilities, only 43 per cent paid all of their liabilities.

Table 5.4 on the following page (also derived from unpublished CSA data) shows levels of compliance by CSA Collect payers over the period of a month (May 2004). This provides a better indication of the timeliness of payments made to payees than that which can be gained from rates of compliance over a 12-month period. The table shows that only payers on higher levels of income paid significant proportions of the child support they owed during this month.

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Smyth (Fehlberg B. and Smyth B., “Child Support and Parent-Child Contact”, *Family Matters* No. 57 Spring/Summer 2000 p. 20–25) which suggested that payer parents tend to over-estimate their payment of child support, while payee parents appear to under-estimate the payments they actually receive.

**Table 5.3: Payer Liability by % paid in current period (2003-04) for CSA collect active clients, June 2004**

Payer liability (\$A)	Paid 0%		Paid 1-<25%		Paid 25 -<50%		Paid 50 - <75%		Paid 75 -<100%		Paid 100%		Paid over 100%		Total	
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
Negative	9,707	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	9,707	100.0
0	16,407	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	16,407	100.0
1-259	6,852	14.6	2,291	4.9	2,779	5.9	3,417	7.3	6,538	13.9	2,372	5.0	22,758	48.4	47,007	100.0
260	13,449	33.2	1,303	3.2	1,374	3.4	1,667	4.1	4,494	11.1	8,326	20.5	9,944	24.5	40,557	100.0
261-500	2,802	8.3	2,794	8.3	2,429	7.2	4,155	12.3	11,795	35.1	1,012	3.0	8,664	25.7	33,651	100.0
501-1,000	2,664	14.1	1,992	10.5	2,346	12.4	1,549	8.2	2,279	12.0	1,325	7.0	6,798	35.9	18,953	100.0
1,001-2,000	5,554	16.2	4,676	13.6	2,522	7.3	2,735	8.0	4,918	14.3	2,679	7.8	11,267	32.8	34,351	100.0
2,001-3,000	2,936	10.6	3,033	10.9	1,872	6.8	2,261	8.2	4,908	17.7	2,607	9.4	10,095	36.4	27,712	100.0
3,001-4,000	1,622	7.4	1,889	8.6	1,342	6.1	1,767	8.1	4,483	20.4	2,423	11.0	8,410	38.3	21,936	100.0
4,001-5,000	834	5.0	1,214	7.3	953	5.7	1,267	7.6	3,638	21.7	2,107	12.6	6,727	40.2	16,740	100.0
5,001-6,000	582	4.4	856	6.5	693	5.3	949	7.2	2,919	22.1	1,872	14.2	5,309	40.3	13,180	100.0
6,001-7,000	459	4.7	581	5.9	485	5.0	655	6.7	2,182	22.3	1,474	15.1	3,939	40.3	9,775	100.0
7,001-8,000	295	4.0	460	6.3	366	5.0	446	6.1	1,691	23.2	1,155	15.8	2,887	39.5	7,300	100.0
8,001-9,000	202	3.8	324	6.1	257	4.8	386	7.3	1,221	23.0	857	16.1	2,063	38.9	5,310	100.0
9,001-10,000	145	3.7	247	6.3	201	5.1	241	6.2	931	23.8	649	16.6	1,495	38.2	3,909	100.0
10,001-15,000	358	3.7	592	6.2	540	5.6	644	6.7	2,216	23.1	1,530	16.0	3,706	38.7	9,586	100.0
15,001-20,000	155	5.0	249	8.0	189	6.1	224	7.2	704	22.7	465	15.0	1,121	36.1	3,107	100.0
20,001-25,000	60	6.3	121	12.7	75	7.9	64	6.7	208	21.8	126	13.2	298	31.3	952	100.0
25,001-30,000	38	6.5	70	11.9	38	6.5	29	4.9	120	20.4	110	18.7	183	31.1	588	100.0
30,001-35,000	25	11.5	48	22.1	16	7.4	13	6.0	35	16.1	32	14.7	48	22.1	217	100.0
35,001-40,000	18	18.6	30	30.9	14	14.4	5	5.2	11	11.3	9	9.3	10	10.3	97	100.0
40,001-45,000	16	30.8	27	51.9	3	5.8	0	0.0	3	5.8	1	1.9	2	3.8	52	100.0
45,001-50,000	9	23.1	19	48.7	4	10.3	3	7.7	2	5.1	0	0.0	2	5.1	39	100.0
50,001-55,000	10	30.3	18	54.5	3	9.1	1	3.0	0	0.0	0	0.0	1	3.0	33	100.0
55,001-60,000	6	33.3	9	50.0	1	5.6	0	0.0	0	0.0	1	5.6	1	5.6	18	100.0
60,001-65,000	6	54.5	2	18.2	1	9.1	0	0.0	0	0.0	1	9.1	1	9.1	11	100.0
65,001-70,000	6	50.0	5	41.7	0	0.0	0	0.0	1	8.3	0	0.0	0	0.0	12	100.0
70,001-75,000	3	50.0	2	33.3	1	16.7	0	0.0	0	0.0	0	0.0	0	0.0	6	100.0
75,001-80,000	6	42.9	8	57.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	14	100.0
80,001-85,000	1	25.0	2	50.0	0	0.0	1	25.0	0	0.0	0	0.0	0	0.0	4	100.0
85,001-90,000	1	14.3	5	71.4	0	0.0	0	0.0	1	14.3	0	0.0	0	0.0	7	100.0
90,001-95,000	3	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	100.0
95,001-100,000	2	40.0	2	40.0	0	0.0	0	0.0	0	0.0	0	0.0	1	20.0	5	100.0
100,001-110,000	5	71.4	2	28.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	7	100.0
110,001-120,000	2	66.7	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	100.0
120,001-130,000	1	50.0	1	50.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	100.0
130,001-140,000	2	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	100.0
140,001-150,000	1	33.3	2	66.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	100.0
160,001-170,000	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	100.0
200,001+	1	50.0	1	50.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	100.0
Total	65,246	20.3	22,876	7.1	18,504	5.8	22,479	7.0	55,298	17.2	31,133	9.7	105,730	32.9	321,266	100.0

**Table 5.4: Payer child support income by amount paid in May 2004 for CSA collect active cases**

Payer child support income (\$A)	Paid 0 - < 25%		Paid 25 - < 50%		Paid 50 - < 75%		Paid 75 - < 100%		Paid 100%		Paid over 100%		Total	
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
0	20,365	46.5	774	1.8	1,584	3.6	4,036	9.2	5,841	13.3	11,210	25.6	43,810	100.0
1-1,000	715	44.4	14	0.9	85	5.3	196	12.2	95	5.9	505	31.4	1,610	100.0
1,001-2,000	755	48.8	28	1.8	96	6.2	157	10.1	80	5.2	432	27.9	1,548	100.0
2,001-3,000	759	45.8	30	1.8	84	5.1	189	11.4	79	4.8	515	31.1	1,656	100.0
3,001-4,000	1,027	50.3	25	1.2	105	5.1	189	9.3	117	5.7	577	28.3	2,040	100.0
4,001-5,000	1,372	48.0	44	1.5	150	5.2	274	9.6	134	4.7	885	31.0	2,859	100.0
5,001-6,000	1,985	48.9	60	1.5	208	5.1	401	9.9	186	4.6	1,217	30.0	4,057	100.0
6,001-7,000	2,952	48.3	109	1.8	310	5.1	620	10.1	223	3.6	1,901	31.1	6,115	100.0
7,001-8,000	4,405	45.2	205	2.1	608	6.2	1,138	11.7	246	2.5	3,151	32.3	9,753	100.0
8,001-9,000	8,273	41.0	422	2.1	1,350	6.7	2,803	13.9	446	2.2	6,877	34.1	20,171	100.0
9,001-10,000	11,006	36.6	589	2.0	2,196	7.3	4,449	14.8	670	2.2	11,160	37.1	30,070	100.0
10,001-15,000	21,290	43.1	1,094	2.2	3,098	6.3	6,129	12.4	1,964	4.0	15,796	32.0	49,371	100.0
15,001-20,000	11,193	52.6	1,023	4.8	585	2.8	907	4.3	1,813	8.5	5,750	27.0	21,271	100.0
20,001-25,000	19,011	58.1	678	2.1	785	2.4	1,395	4.3	2,813	8.6	8,024	24.5	32,706	100.0
25,001-30,000	7,944	34.4	597	2.6	774	3.4	1,555	6.7	3,884	16.8	8,349	36.1	23,103	100.0
30,001-35,000	6,264	28.5	503	2.3	675	3.1	1,632	7.4	4,863	22.1	8,046	36.6	21,983	100.0
35,001-40,000	4,421	24.4	420	2.3	633	3.5	1,423	7.9	4,636	25.6	6,566	36.3	18,099	100.0
40,001-45,000	2,945	21.5	319	2.3	420	3.1	1,108	8.1	4,122	30.1	4,786	34.9	13,700	100.0
45,001-50,000	2,072	19.8	248	2.4	380	3.6	837	8.0	3,404	32.5	3,545	33.8	10,486	100.0
50,001-55,000	1,305	17.5	130	1.7	255	3.4	588	7.9	2,789	37.5	2,375	31.9	7,442	100.0
55,001-60,000	918	16.4	115	2.1	182	3.2	503	9.0	2,185	39.0	1,699	30.3	5,602	100.0
60,001-65,000	658	16.7	73	1.9	160	4.1	344	8.7	1,530	38.8	1,177	29.9	3,942	100.0
65,001-70,000	429	15.8	73	2.7	105	3.9	242	8.9	1,041	38.4	818	30.2	2,708	100.0
70,001-75,000	316	17.1	46	2.5	63	3.4	163	8.8	687	37.1	578	31.2	1,853	100.0
75,001-80,000	235	17.0	27	2.0	53	3.8	120	8.7	478	34.5	471	34.0	1,384	100.0
80,001-85,000	174	17.5	36	3.6	37	3.7	86	8.6	348	35.0	314	31.6	995	100.0
85,001-90,000	145	19.7	17	2.3	29	3.9	48	6.5	279	37.9	219	29.7	737	100.0
90,001-95,000	94	17.5	15	2.8	26	4.8	51	9.5	173	32.2	178	33.1	537	100.0
95,001-100,000	90	22.3	9	2.2	12	3.0	40	9.9	128	31.7	125	30.9	404	100.0
100,001-110,000	92	17.2	9	1.7	19	3.6	53	9.9	207	38.7	155	29.0	535	100.0
110,001-120,000	212	17.4	19	1.6	35	2.9	109	8.9	490	40.2	354	29.0	1,219	100.0
120,001-130,000	135	22.1	16	2.6	26	4.2	69	11.3	231	37.7	135	22.1	612	100.0
140,001-150,000	1	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	100.0
200,001+														
<b>Total</b>	<b>133,558</b>	<b>39.0</b>	<b>7,767</b>	<b>2.3</b>	<b>15,128</b>	<b>4.4</b>	<b>31,854</b>	<b>9.3</b>	<b>46,182</b>	<b>13.5</b>	<b>107,890</b>	<b>31.5</b>	<b>342,379</b>	<b>100.0</b>

Note: The reason why some payers who reported zero child support income may have met their child support liability is because they may have managed to pay arrears.

In contrast to the data in Tables 5.3 and 5.4 above, the CSA's published data on compliance (as provided in its annual *Facts and Figures* report) tells the compliance story in a less straightforward way. Because the Agency assumes 100 per cent compliance by Private Collect payers, it collects compliance data only in respect of CSA Collect cases. It publishes this data either as representing CSA Collect cumulative credits and liabilities, or combined with the assumed 100%-compliant Private Collect cases, as representing overall compliance rates. This approach does not provide a clear picture of actual compliance rates.

As well, the Agency uses a *cumulative* collection rate (that is, the proportion of liabilities collected over the period since the inception of the CSS) in its compliance reporting, rather than an annual figure. According to the CSA's *Facts and Figures 2003–04* report, these cumulative collection rates increased gradually from around 70 per cent (of liabilities collected since 1988) in the early 1990s, rising to above 85 per cent in the late 1990s and to just under 90 per cent by June 2004.

It is not clear from these published statistics on collection rates, how the CSA has treated those who cannot be traced for the purposes of its reporting on cumulative collection rates. This group ought to be clearly represented in the published statistics on collection rates.

## 6 Issues with the Current Scheme

There are a great many issues concerning the Child Support Scheme that were the subject of comment or criticism in submissions to the House of Representatives' Committee on Family and Community Affairs, in the course of its Inquiry held in 2003, or that have been raised with the Taskforce since it began its work.

Many of these issues are perennial, such as, for example, the definition of income for child support purposes and the problem of how to assess the real capacity to pay of people who are self-employed. Others concern the operations of the Child Support Agency. Many of these perennial issues were considered in great depth by the Joint Select Committee on Certain Family Law Issues, chaired by Roger Price MP, which reported in November 1994. Other issues were dealt with in the House of Representatives' Committee on Family and Community Affairs report, (*Every Picture Tells a Story*, December 2003).

From research in the course of this Review, the following major issues emerged as central to the Terms of Reference of the Taskforce.

### 6.1 Child support expenditure as a percentage of income

The Scheme assumes that across the income range, people spend the same proportion of their income on children. This justifies the set percentages of 18% for one child, 27% for two children and upwards, above the exempt amount. Thus the idea is that the person on \$30,000 will spend say, 20% of their income on child-related expenditure for one child, and so will the person on \$80,000. That justifies using a common percentage for everyone.

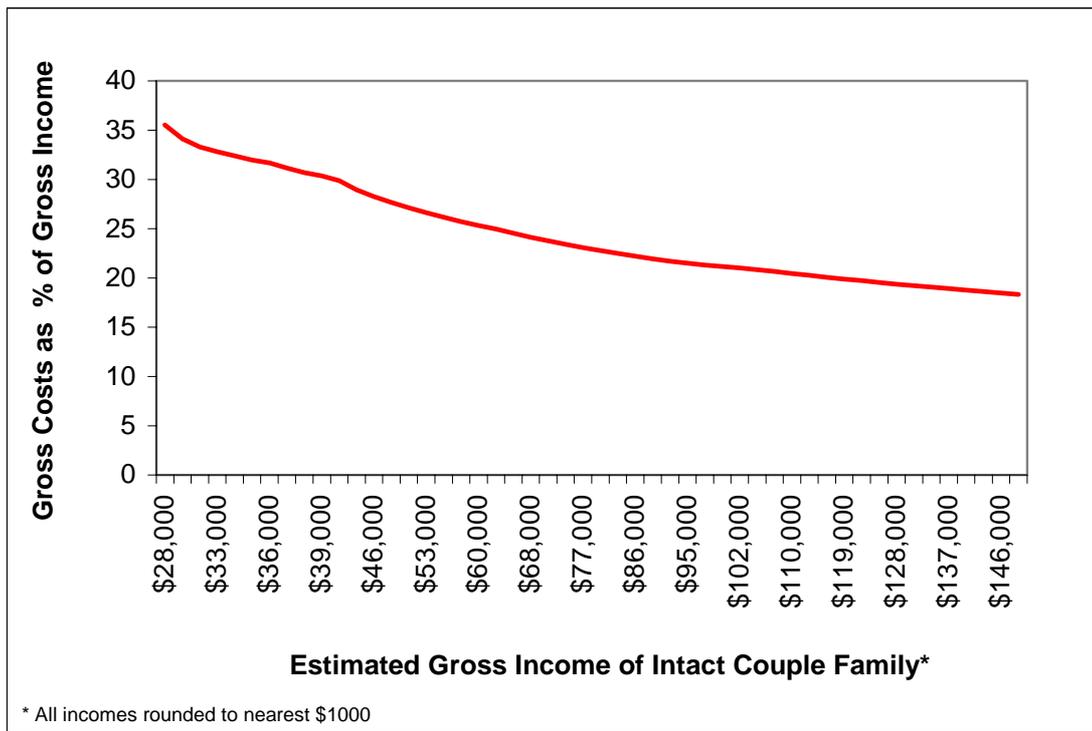
However, the preponderance of international research shows that while the higher the household income, the more parents spend on their children, that expenditure declines as a *percentage* of their income.<sup>98</sup> This is because as income increases, people may choose to put more into savings, or to use a greater proportion of income for purposes that do not involve expenditure on children. In the Australian context, the decline of expenditure as a percentage of income is also a result of our progressive taxation system, in that, due to marginal tax rates, disposable income does not increase in proportion to the increases in taxable income.

This is borne out by the Australian research commissioned for this Review. Figure 6.1 below looks at the costs of one child in an intact family as a percentage of total gross household income, based upon the National Centre for Social and Economic Modelling (NATSEM) costs of children research.

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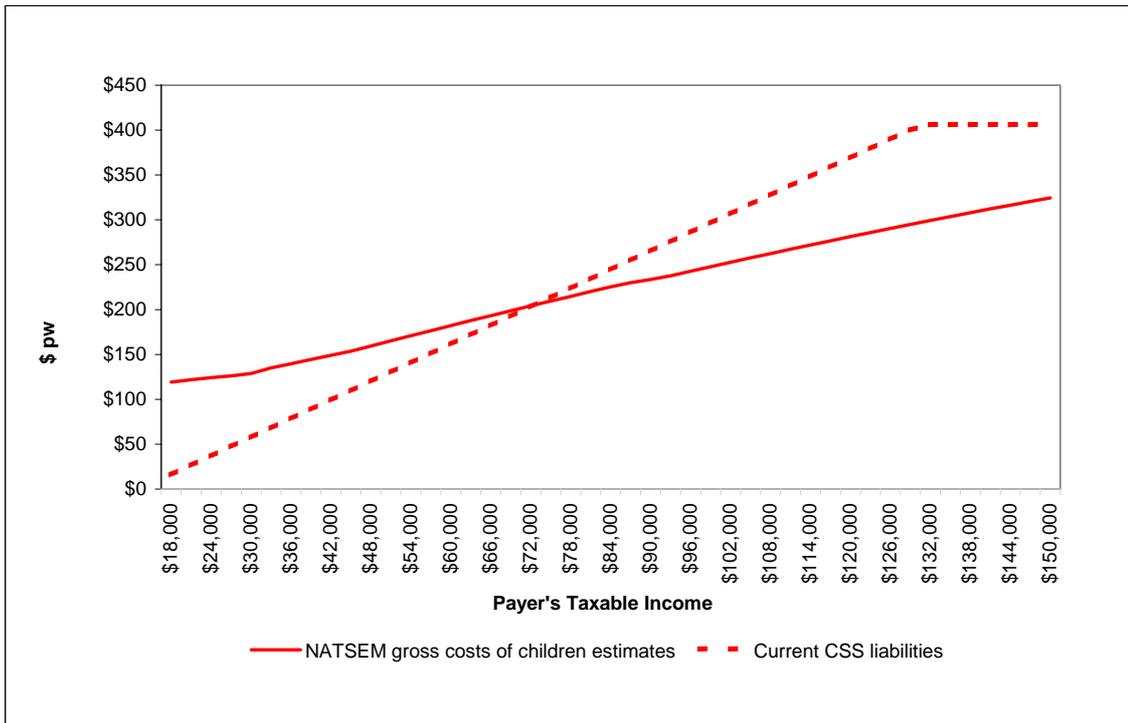
<sup>98</sup> Robert G. Williams, *An Overview of Child Support Guidelines in the United States*, in *Child Support Guidelines: The Next Generation 26* (ed Margaret Campbell Haynes, US Department of Health and Human Services, 1994); Jo Michelle Beld, "Improving Child Support Guidelines in Minnesota: the "Shared Responsibility Model for the Determination of Child Support" (2001) 28 *William Mitchell LR* pp. 791, 797.

**Figure 6.1: Estimated gross costs of two children aged 5 to 12 years as a percentage of gross family income**



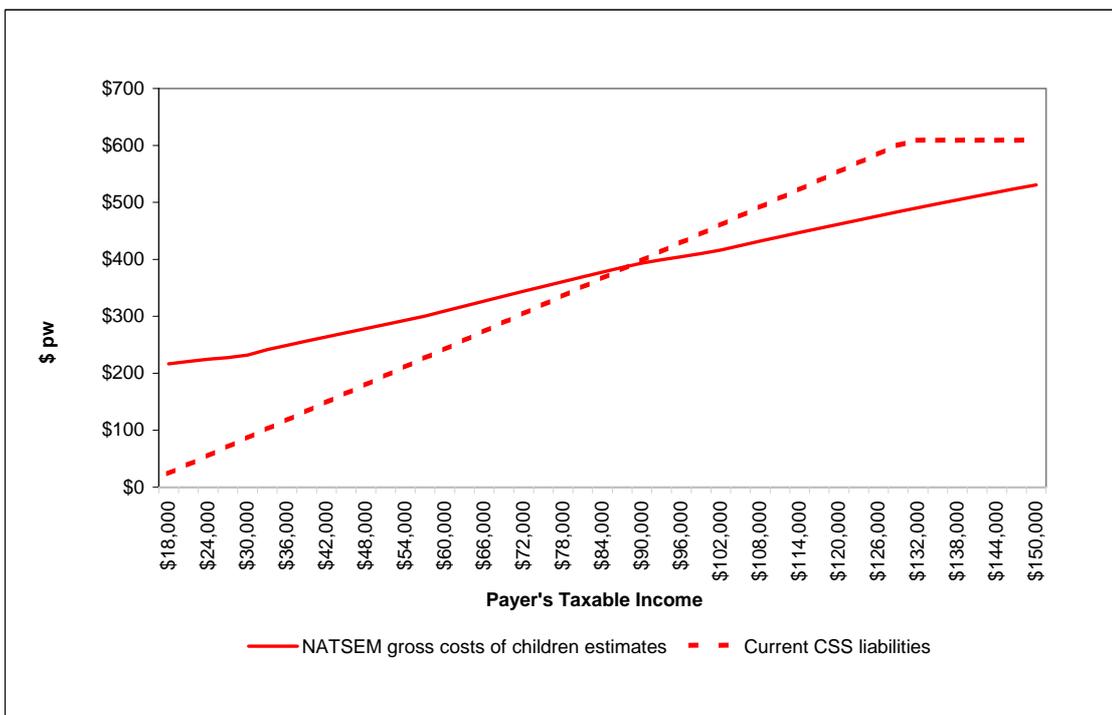
This analysis makes the fixed percentages appear problematic. As a result of fixed percentages, at the higher ends of the income spectrum the current child support liability is well in excess of levels of expenditure on children in comparable intact families, at least for one and two children under 13 years of age. Figures 6.2 and 6.3 illustrate this in relation to one child and two children aged between five and 12 years of age.

**Figure 6.2: Estimated gross costs of children and current CSS liabilities for a payer with one child aged 5 to 12 years**



Note: The gross costs of children are calculated with reference to the gross costs that would have been incurred in an intact family if the payer at each level of private income had a spouse with zero private income.

**Figure 6.3: Estimated gross costs of children and current CSS liabilities for a payer with two children aged 5 to 12 years**



These figures also show that current liabilities for low income payers are often less than expenditure levels on children in comparable intact families. However, as will be discussed in Chapters 7 and 8, to work out whether child support obligations are adequate in relation to lower income families, it is important to take account of the (often substantial) level of government family benefits, from which households spend on their children.

## 6.2 The Child Support Scheme and capacity to meet the costs of children

The first objective of the Child Support Scheme states that parents are meant to share in the cost of supporting their children, according to their capacity. The assumptions underlying the existing scheme are that:

- the percentages applicable after the liable parent's exempt income is deducted, are broadly commensurate with the expenditure that the parent would have been incurring if the two parents were living together, and to this extent represent an appropriate contribution to the costs of raising children
- the resident parent is making a contribution in kind proportionate to her or his capacity to pay.

The Fogarty Committee took as its starting point the proportion of family income normally devoted to children in a two-parent family.<sup>99</sup> It then took account of a range of other factors in arriving at appropriate percentages after deducting the self-support component.<sup>100</sup> What is unclear from the methodology is how the Committee moved from the research findings on *total family income* to determine the proportion of the taxable income of the parent who is liable to pay child support. Total family income may include the earned income of both parents, together with government benefits payable to the intact family to support children. While the issue of the custodial parent's income was dealt with at length,<sup>101</sup> it is not clear how, if at all, it was factored into the calculation of the percentages of the liable parent's income payable in child support.

It is likely that the Child Support Consultative Group assumed that because expenditure on children rises as the family income rises, the inclusion of the custodial parent's income would not reduce the liability of the non-resident parent, except when family income reached a very high level.<sup>102</sup> This was valid on the basis of the research evidence at the time. However, given the preponderance of research evidence now that expenditure on children falls as a percentage of total family income as that income rises, to translate the research evidence on total family income to a percentage of one parent's taxable income, without taking account of the different components of that total family income apart from the liable parent's income, is problematic.

The Child Support Consultative Group did include the custodial parent's income to a limited extent. Nonetheless, as the formula now stands, only a relatively small percentage of cases exist in which the recipient parent's income operates to reduce the liable parent's child support.

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<sup>99</sup> Child Support Consultative Group, *Child Support: Formula for Australia*, (AGPS, 1988), p. 68.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*, Chapter 13.

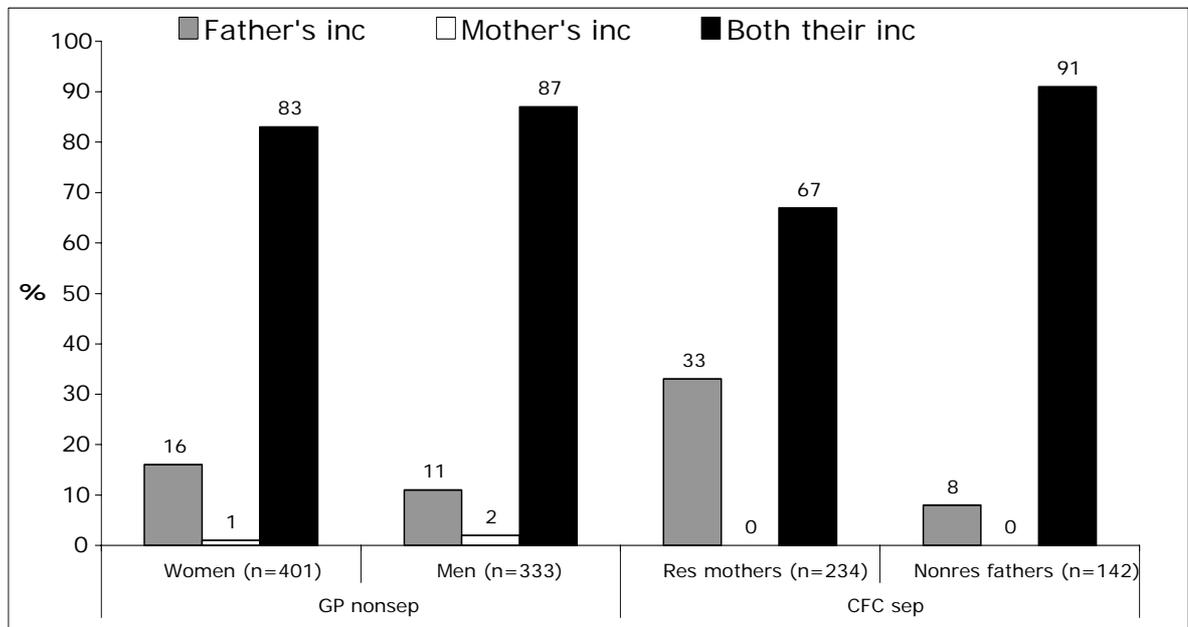
<sup>102</sup> See para 13.6, p. 79.

The Taskforce research indicates that 12% of payees have income that counts in the application of the basic formula<sup>103</sup>, that is, an income equal to or greater than the level of average earnings for all employees (\$39 312 in 2005).

Thus the current approach looks mainly at the liable parent's capacity to pay, not at the relative capacity to pay of both parents. While the payee is contributing to the support of the child in kind, and there are significant indirect costs involved in parenting, especially when children are young, it is not necessarily obvious to the liable parent who is struggling to meet child support payments, that the cost is being fairly distributed between the parents in accordance with their relative capacities to pay.

The results of a community attitude survey conducted by the Australian Institute of Family Studies in early 2005, and illustrated in Figure 6.4, showed strong support for both parents' incomes being taken into account.

**Figure 6.4: Do you think the amount of child support that a father pays for his children should depend on how much he earns, how much the mother earns, or both their incomes?**



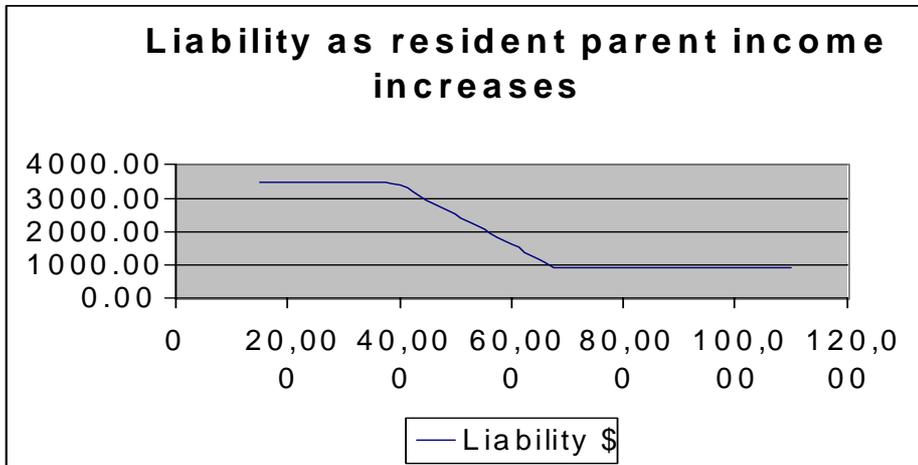
Notes. GP nonsep = general population non-separated sub-sample; CFC sep = *Caring for Children after Parental Separation* sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(3) = 54.43, p < .001$  (based on the two categories of responses: father's income and both their incomes).

A further issue is the way in which the resident parent's income is taken into account in the cases where it exceeds the disregarded amount of the level of average earnings for all employees. Dollars earned above that point reduce the liable parent's child support income by 50 cents in the dollar, with the consequence that the relevant percentages will apply to a lower amount than would be the case if the resident parent's income is not factored in. The effect of payee income is capped, in that the liability cannot fall below 25% of the child support liability that would apply if the payee had no income.

<sup>103</sup> Payee income of less than \$39 312 is taken into account by the modified formula where care of children is shared between the parents. Care that is recognised by the formula is provided by payers in just under 8% of CSA cases – Child Support Scheme Facts and Figures 2003–04.

The effect of including the resident parent's income can be seen in the Figure 6.5 where the non-resident parent's income is \$32 000.

**Figure 6.5: Liability as resident parent income increases**



As Figure 6.5 shows, the resident parent's income has no effect at all until it reaches the disregarded level, even though it is rather higher at this level than the income of the liable parent, but as that income increases above that point, it has the effect of reducing the liable parent's income quite sharply until the minimum 25% of the liability otherwise applicable, is reached. A more graduated approach to the inclusion of the resident parent's income may be appropriate, taking account of the relative capacities of each parent to support the children.

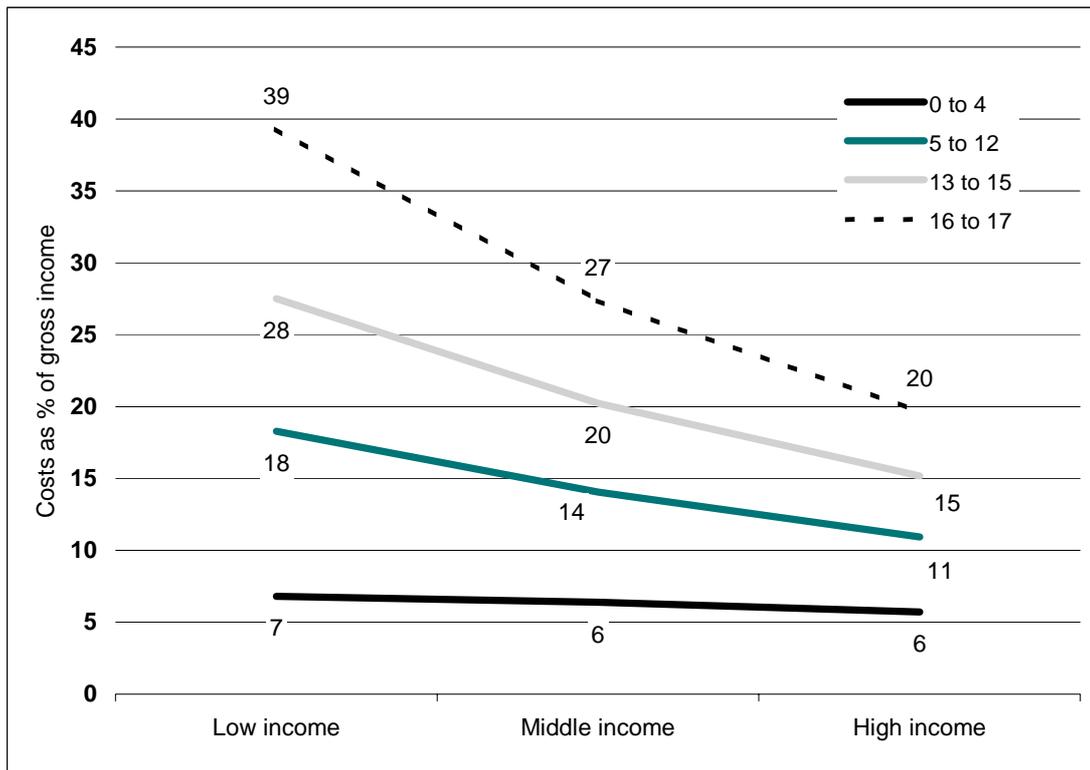
### 6.3 Child support expenditure and the ages of children

Under the current formula, the amount of child support that a payee receives does not vary with the age of the children and therefore is not sensitive to the difference in the costs of children as they grow older. Australian research estimates that expenditure on teenagers is two to three times higher than for young children, and this pattern prevails at every income level.<sup>104</sup> Figure 6.6 illustrates this in terms of the costs of children as a percentage of gross household income, based upon the NATSEM costs of children research — although it is important to note that these figures exclude the costs of childcare. Costs for pre-school age children vary significantly, depending on whether full-time childcare is required to support parental employment, and on the nature of that childcare. For example, other Australian research shows that the costs of a three- year-old child for a middle income household varies from \$4 910 to \$17 620 per year.<sup>105</sup>

<sup>104</sup> Percival and Harding, 2005, p. 11.

<sup>105</sup> (Henman, 2005).

Figure 6.6: Costs of children as percentage of gross household income, by age



The difference in costs of children as they grow older was also an issue considered by the Child Support Consultative Group in 1988. It decided that to assess child support with reference to the increased costs as children grow older, would make the formula unduly complex.<sup>106</sup> It concluded that using a single percentage rate for all the years of a child's dependence would achieve a reasonable and balanced result.<sup>107</sup>

Whether a fair result is achieved in assessing child support over the course of childhood may depend, however, on the time of separation. If the parents never lived together, and therefore the child support liability began soon after the child's birth, then the effect of having a fixed percentage of income throughout childhood is that the liable parent's contribution to the costs of the child, relative to his or her income, would average out over time, being a higher proportion of the cost when the child is younger than when he or she is a teenager. However, if the children are 13 and 11 when the parents separate, the payee will not have had the benefit of the higher payments relative to cost when the children were younger and so will not benefit from this averaging.

Furthermore, the approach of averaging the costs of children over the entire age range means that child support payments are likely to be inadequate at the time that the costs of children are at their highest. Since people tend to spend their income when they have it, and savings among lower income families are not very high, it is unlikely in most cases that some child support paid in earlier years will have been saved to cope with the costs of raising teenagers. The

<sup>106</sup> Ibid, p.70 (para 11.18).

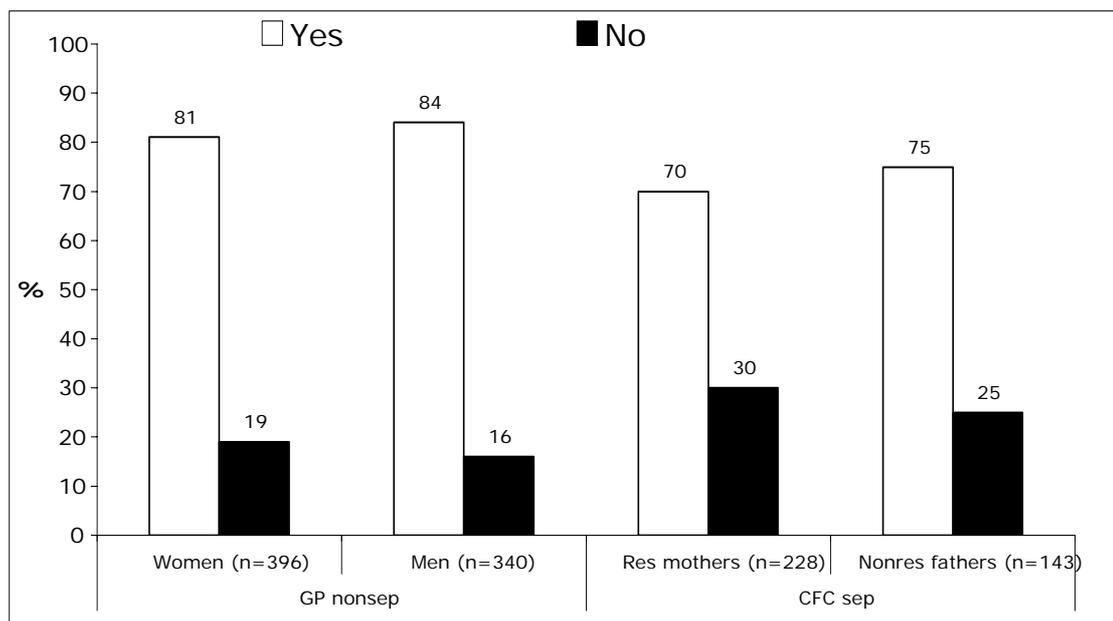
<sup>107</sup> Ibid.

consequence of averaging may be that separated parents caring for teenagers suffer relative disadvantage compared to those with younger children.

It is difficult to achieve the right balance between simplicity and fairness. The approach of averaging the costs of children across childhood may have been the right decision at the time, but now the system of administrative assessment of child support is well established, it may be that a different balance between simplicity and fairness can be found.

The results of the 2005 community attitude survey conducted by the Australian Institute of Family Studies, in Figure 6.7 below, showed very strong support for child support payments being related to age.

**Figure 6.7: Do you think the amount of child support should depend on the children’s ages?**



Notes. GP nonsep = general population non-separated sub-sample; CFC sep = Caring for Children after Parental Separation sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(3) = 17.91, p < .001$ .

This view was expressed by over 80% of non-separated men and women in the general population sample, and by 70 to 75% of resident and non-resident parents in the *Caring for Children* sample.

## 6.4 The Child Support Scheme and the costs of contact

A parent has the same child support liability whether he or she has no contact with the children or has the children to stay overnight for 29% of nights per year. The Scheme therefore does not take proper account of the in-kind child support that is provided when children are staying with the non-resident parent.

This is not to say that regular contact was ignored when the Scheme was first established. The Child Support Consultative Group indicated that the percentages chosen “recognise that while a non-custodial parent may not have high costs of access...he or she may have some costs of

access.”<sup>108</sup> A similar approach was adopted in the United States in jurisdictions with a Scheme similar to Australia’s, for example, in Wisconsin.<sup>109</sup>

However, because the great majority of payers pay the same amount whether or not they have the children staying regularly overnight, it is not at all clear to people that the costs of contact are recognised in the Scheme. Recognition in the formula only occurs once the level of overnight stays reaches 30% or 110 nights.

Taking account of the costs of contact is, however, problematic. If the liable parent has regular contact with the children, then the total family expenditure related to the children is necessarily much higher than it would be if the relationship had not broken down. There are duplicated infrastructure costs from having two households suitable for children to stay over in, and there are transportation costs involved in seeing the children. The costs incurred by one parent are not necessarily offset by savings in the other household, other than in relation to food and entertainment costs during contact visits.

Research conducted for the Taskforce using the budget standards approach identified that the costs incurred by a middle-income, non-resident parent having 20 per cent contact, represent 38 per cent of the costs of raising the child by the sole parent if no contact were occurring or similar. However, the converse is that the resident parent with 80 per cent contact incurs 99 per cent of the cost had he or she been caring for the child 100 per cent of the time.<sup>110</sup>

## 6.5 Regular contact and Family Tax Benefit (FTB)

The way in which contact and shared care arrangements affect entitlement to FTB is quite different from the affects on Child Support payments under the Child Support Scheme.

Introduced in 1999, the provision for splitting FTB allows the parents to split both FTB A and B on the basis of the number of hours of care provided by each parent, subject only to the proviso that FTB cannot be paid to a parent who provides less than 10 per cent of the care. By contrast, the CSS formula provides for a reduction in child support liability only if the child spends 110 nights (which is 30%) or more each year with the paying parent.<sup>111</sup> Whatever the logic might be underpinning these differences, it is not apparent to the parties concerned in family matters.

In the FTB system, the FTB is shared in direct proportion to the amount of time spent in the care of each parent, without recognition that expenditure on children is not typically proportionate to the hours of care provided, except in relation to food and other such day-to-day expenses.

A consistent approach is required that minimises conflicts over money in making contact arrangements, and that operates fairly to both parents.

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<sup>108</sup> Ibid, p.72. High costs of access were made a ground for departure from the formula.

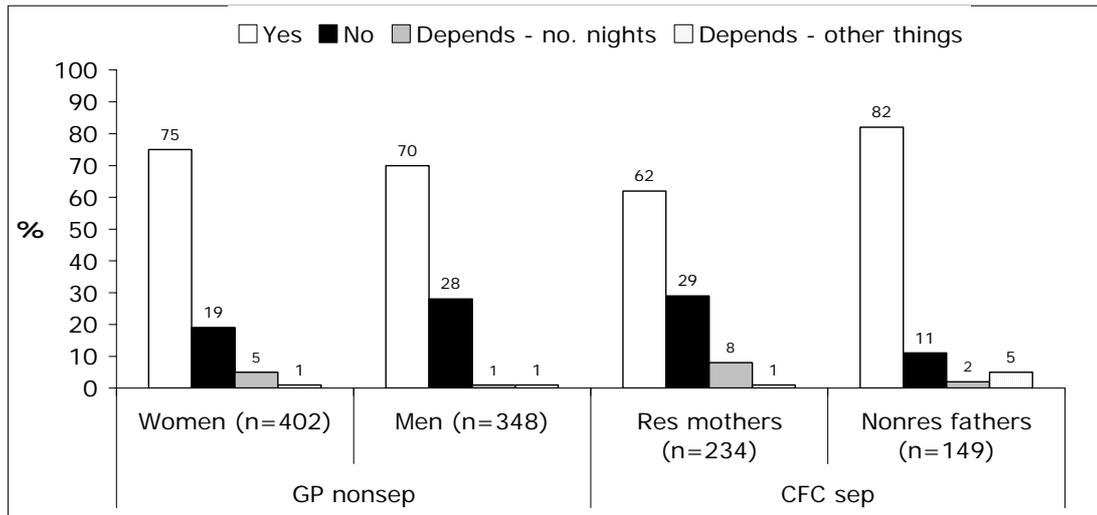
<sup>109</sup> Garfinkel I. and Melli M., “The Use of Normative Standards in Family Law Decisions: Developing Mathematical Standards for Child Support” (1990) 24 Fam LQ pp. 157–178.

<sup>110</sup> Henman P., “Updated Costs of Children Using Australian Budget Standards”, in Volume 2 of this report.

<sup>111</sup> Legislative amendments proposed in 2000 to recognise costs of contact down to contact of 10% within the context of the current formula were not passed: *Child Support Legislation Amendment Bill (No 2) 2000*.

The results of the AIFS survey, as shown in Figure 6.8, indicated strong support for contact being taken into account in setting child support payments. All groups most commonly believed that overnight stays should be taken into account in setting child support liability. Non-resident fathers were the most likely to feel this way (82%), but close to three quarters of non-separated men and women and 62% of resident mothers in the *Caring for Children* sample endorsed this view.

**Figure 6.8: When children often stay overnight with their father, should this be taken into account when calculating his child support payments?**



Notes. GP nonsep = general population non-separated sub-sample; CFC sep = *Caring for Children after Parental Separation* sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(9) = 55.78, p < .001$ .

## 6.6 Numbers of payers who have a minimum assessment

Almost 41% (288 057) of all payers in the Child Support Scheme are paying the current minimum rate of \$260 per year or less as at 30 June 2004. Only 138 725 (or about half) were in receipt of a Centrelink benefit (excluding those who receive Family Tax Benefit only). Only 9% of all payers had a minimum assessment and were in receipt of a Newstart Allowance. Unemployment is therefore not a major explanation for the substantial percentage of all payers with a minimum liability.

The Child Support Agency on behalf of the Taskforce conducted further analysis of the low income group. It reported that of all minimum assessment cases:

- 22.4% of parents were in receipt of Newstart benefits;
- 12.2% were receiving Parenting Payment (Single);
- 10.7% were in receipt of Disability Pension;
- 0.9% were receiving Carer Pension;
- 2.3% were receiving Partner Allowance; and
- 0.6% were receiving Age Pension.

A further 17 771 parents had relevant dependent children, meaning second families. In these cases the exempt income was a minimum of \$24 000. Another 10 184 parents had major or shared care of their children, and in this situation are exempt from the minimum payment. There are also some other payers who have a minimum assessment by agreement with the other parent, or whose low income is explicable for other reasons.<sup>112</sup> For example, a person may have no income because he or she is in jail.

However, this still leaves a substantial proportion of all payers who have a minimum assessment of \$260, and for whom there is neither a ready explanation for their low income (generally less than about \$13 000) nor an indication of how they manage to support themselves in the absence of Centrelink benefits or any other form of Government help, such as Rent Assistance. This is probably around 15% of all payers. Some of these are payers who lodged a tax return showing either a negative income, or an income so low that they fell below the self-support exempt amount, even though they were not on any form of income support. A substantial proportion of payers with a minimum assessment (23.9% of all those with a minimum assessment) did not lodge a tax return at all and do not fall into any of the categories listed above which would provide a ready explanation for their minimum liability.

There are many ways in which people may legally organise their financial affairs so as to minimise their taxable income. They should not also be exempt from paying all but a minimal sum towards the support of their own children. There are also ways in which people may organise their affairs so that they operate illegally, either partially or wholly, in the cash economy.

The evidence that there is a significant proportion of all payers who have a minimum liability without any obvious explanation for their low income or their means of self-support, suggests that tax minimisation and avoidance are both significant problems for the Child Support Scheme. There may be many more payers who have a liability above the minimum, but whose reported taxable income does not reflect their real financial capacity to support their children.

## 6.7 Non-lodgement of tax returns

The problem of working out a person's taxable income for the purposes of assessing child support payments is exacerbated by the large number of payers who either do not file tax returns at all, or do so irregularly, in breach of their legal obligation to do so.

As has been seen above, nearly one quarter (23.9%) of all those with a minimum assessment and who were not on Centrelink benefits are people who did not lodge a tax return in the most recent tax year. This is 68 770 payers.

While payee parents with incomes below the tax threshold, or with income purely from Centrelink benefits, are not required by law to lodge a tax return, parents with a child support

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<sup>112</sup> For example, there were 13 447 cases with a nil liability. For this to be the case, the Registrar has to be satisfied either that the applicant has an income of less than \$260 per year: *Child Support (Assessment) Act 1989* s.66A, or care of the children is provided by both parents and no transfer is required given their respective incomes, or this is the liability resulting from some court orders or agreements.

liability (payer parents) are specifically required to lodge a tax return, irrespective of the benefit or source of income.<sup>113</sup>

Figures provided to the Taskforce by the Child Support Agency provide an indication of the proportion of payers who are in breach of this legal obligation. Data from the Agency as at 3 December 2004, indicates that nearly 20% of all payers had not lodged a tax return in the last four years. The figure provided for “multi-clients” represents those who either have more than one child support assessment or who are both payers and payees.

**Table 6.9: Number of tax returns clients have lodged over the past 4 years (as at 3 December 2004)**

Client	Number of years lodged returns from 1999–2000 to 2002–03				Total lodged	Total clients with active cases as at 03/12/04	% Lodged a return in last 4 years
	1	2	3	4			
Payee	54 454	54 959	56 157	211 011	376 581	526 323	71.5
Payer	36 608	37 521	53 820	299 133	427 082	531 562	80.3
Multi-Client	20 790	19 555	19 948	78,600	138 893	204 439	67.9
<b>Total</b>	<b>111 852</b>	<b>112 035</b>	<b>129 925</b>	<b>588 744</b>	<b>942 556</b>	<b>1 262 324</b>	<b>74.7</b>

Source: Child Support Agency.

According to this table, less than 60% of payers lodged in all four years between 2000 and 2003.<sup>114</sup> Thus, while most payers do file tax returns, there is a substantial number who are either in serious default of their obligation or who do not file on a regular basis, even when late tax returns are included in the statistics.

To calculate the child support liability of payers who have not lodged a tax return for the last full financial year the Agency seeks to determine a derived income from other sources. This income is calculated by accessing a taxable income figure for an earlier year and then using an uplift factor account for inflation. It may also be derived by accessing Centrelink data or

<sup>113</sup> Section 161(1) of the *Income Tax Assessment Act 1936* provides that: “Every person must, if required by the Commissioner by notice published in the Gazette, give to the Commissioner a return for a year of income within the period specified in the notice.” The relevant notice, published in the Gazette, includes child support payers in Table A of those required to lodge a tax return.

<sup>114</sup> This payer lodgement figure is higher than the figure reported in the Agency publication, *Child Support Scheme: Facts and Figures* as these totals have allowed for late tax returns to be counted for each of the financial years.

through information from other ATO systems, or employers. This is the primary default method used by the CSA.

Where a prior year's taxable income is not available, and there is no other information on which to base an assessment, the CSA will use a default income related to the median income of child support payers.<sup>115</sup> However, that default income may be reduced to zero if the liable parent fails to make any payments. *The Guide*, the Agency's online law and policy guide, provides that:

If a payer has made no payments (either to CSA or to the payee) by the end of a child support period for which the assessment was based on a median default income, CSA will consider amending the assessment to a nil default income. CSA will not amend a default income to nil without contacting the payee and giving them the opportunity to provide any relevant information. If the payee has no information CSA will reduce the income to nil.<sup>116</sup>

The consequence of this policy is that where a payer both fails year after year to lodge a tax return in breach of his or her legal obligation, then further fails to make any child support payments based upon the income that he or she is deemed to have, the Child Support Agency will deem them to have no income at all. The position is then reviewed every six months.

The effect of the current policy is that a payer can avoid the obligation to pay child support by first failing to lodge tax returns year after year and secondly failing to make any child support payments based upon the Child Support Agency's default assessment. Of the 68 770 child support payers who had a minimum assessment at 30 June 2004 and were: (a) not on Centrelink benefits; (b) had not lodged a tax return in the most recent tax year, 13 159 were treated as having an income of nil. This was based on a range of methods of determination, some more reliable than others.<sup>117</sup>

One outcome of this policy is that the Child Support Agency's statistical record of success in child support compliance and debt recovery may not accurately reflect (and indeed overstates) the real levels of success in enforcing child support obligations, because this group of non-compliant parents is treated as having no income — and therefore debt of only the minimum liability - in relation to that child support period.

## 6.8 Second families

The Child Support Consultative Group that recommended the formula for child support in 1988 had a clear view of the relationship between first and second families. It wrote:<sup>118</sup>

The fundamental precept of the Consultative Group is that all children of a parent share equally in that parent's income.

However, that has not been the outcome of the Scheme as it currently operates. The way in which children of second families are taken into account under the current formula (increasing substantially the liable parent's exempt income before the relevant percentage is applied) is of

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<sup>115</sup> The figure used is the current inflated value of the median income of child support payers from 1995/6.

<sup>116</sup> Child Support Agency, *The Guide* at 2.4.10.

<sup>117</sup> CSA data provided 26 May 2005.

<sup>118</sup> Child Support Consultative Group, *Child Support: Formula for Australia*, AGPS, 1988, p.7.

great benefit to low income liable parents, but does not provide as much proportionate reduction to those on higher incomes who have new children to support. This is because the flat rate nature of the increase in exempt income due to a second family represents a much higher proportion of the income of a low income payer than of a high income payer.

This can be illustrated by comparing the position of a payer with one new baby to a payer without new dependants, both paying child support for two children of a previous relationship (as seen in Table 6.10). The figures given are before and after tax (net income).

**Table 6.10: Effect of exempt income amount for second families**

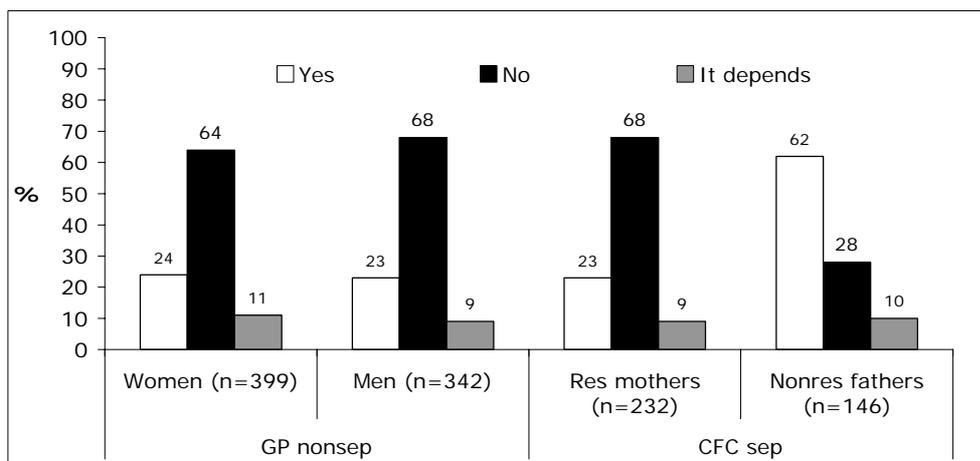
Income	No new dependants		1 new dependant	
	% of taxable	% of net	% of taxable	% of net
\$32 600	16.3%	19.9%	7.2%	8.8%
\$52 600	20.4%	26.3%	14.7%	19%
\$72 600	22.2%	30.5%	18.1%	24.9%
102 600	23.6%	35.3%	20.7%	30.9%

As a proportion of net income, payers on the higher incomes get between 4.5 and 6 percentage points reduction in their child support for the new dependant, but they are still paying between 12.5% and 15.5% of their net income for each child for whom they are paying child support. By way of contrast, the liable parent with an income of \$32 600 has an 11 percentage points reduction in the level of their net income paid out in child support and is paying only 4.5% child support for each child.

The proportionate benefit of the allowance for a new dependent child is thus much greater for the lower income liable parent, and in comparison, higher income liable parents don't see a substantial decrease in their child support liability. This can be perceived as treating the children from the different families unequally. The effect of the allowance for a new dependant child of low-income liable parents, is that it takes precedence over the children from the first relationship, whereas the converse is true for higher income liable parents.

The results of the AIFS survey of community attitudes showed people had mixed views about whether a second family should reduce a liable parent's child support obligation to the first family. The majority in all groups, except the non-resident father group, maintained that fathers should not be permitted to pay less child support if he has a child with another partner (64–68 %). Most non-resident fathers, on the other hand, felt that an allowance should be made for such children (62%).

**Figure 6.10: Do you think that if the father has another child with a new partner (not step-children), he should be allowed to pay less child support for the children he does not live with?**



Another issue related to second families is the issue of support of step-children. Generally, the Child Support Scheme only takes new biological or adopted children into account in determining a liable parent's child support obligation to a child living elsewhere. In some circumstances, courts have been willing to make orders under s.66M of the Family Law Act, providing that a person has a legal obligation to support step-children, but these orders are not common.<sup>119</sup>

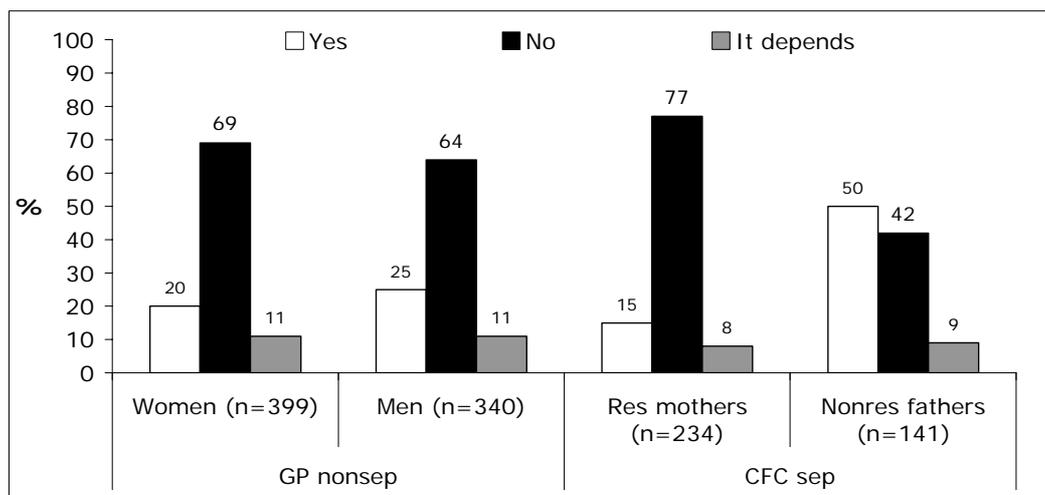
The Child Support Scheme is predicated on the view that all parents should support their biological children. If the non-resident parent is paying child support, money will be coming into the family where there is a step-parent, and there is no need to take account of the step-parent's financial support of those children in a way that reduces his or her financial responsibility to his or her own biological children.

The results of the AIFS survey of community attitudes did not show strong support for the inclusion of step-children as relevant dependants for the purposes of reducing a liable parent's child support obligation. Again, with the exception of non-resident fathers, most respondents in the various groups rejected the notion that a non-resident father should be allowed to pay less child support if he is living with step-children. Half the non-resident fathers believed that step-children should be taken into account, while 41–42 per cent disagreed.

<sup>119</sup> Under section 5 of the *Child Support (Assessment) Act 1989*, relevant dependant child is defined as follows: "relevant dependent child", in relation to a liable parent, means a child or step-child of the parent, but only if:

- (a) the parent:
  - (i) is the sole or principal provider of ongoing daily care for the child or step-child; or
  - (ii) has major contact with the child or step-child; and
- (b) the child or step-child is under 18 and is not a member of a couple; and
- (c) in the case of a step-child:
  - (i) an order is in force under section 66M of the *Family Law Act 1975* in relation to the parent and the step-child; or
  - (ii) the parent has the duty, under section 124 of the *Family Court Act 1997* of Western Australia, of maintaining the step-child.

**Figure 6.11: If the father has re-partnered and now has stepchildren to support, should he be allowed to pay less child support for the children he does not live with?**



Notes. GP nonsep = general population non-separated sub-sample; CFC sep = *Caring for Children after Parental Separation* sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(6) = 68.38, p < .001$ .

## 6.9 The need for major change

The identification of these problems does not imply that the original design of the Scheme was deficient. To a great extent, the Child Support Scheme has achieved the objectives that successive governments have given for it over the last 15 years. The Scheme has also been successful in promoting community acceptance of the idea of child support obligations. Indeed for a ‘first generation’ scheme it has proved remarkably durable.

The changes that have been made over the years, although significant, have not involved major alterations to the fundamental design elements of the Scheme. The Scheme has, to a substantial extent, fulfilled its purpose in ensuring that where possible, levels of child support are paid that provide children with an adequate standard of living and that allow them to benefit from the earning capacity of higher income non-resident parents. Other aspects of the Scheme, including the administrative system for assessment of child support and for changes of assessment, and the measures put in place for collection of child support, have created a much better system than existed when courts were responsible both for the assessment and enforcement of child maintenance liabilities.

Nonetheless, the issues are significant. In particular, the problem that expenditure on children is not a consistent percentage of before-tax income across the income range is fundamental. While adjustments to deal with these issues could be made to the existing system, the level of change needed is considerable. Consequently, the Taskforce has concluded that redesign of the formula underlying the Child Support Scheme is a better option than making piecemeal changes to the existing model.

## 7 Principles for a New Child Support Formula

This chapter sets out the broad social context for revising the existing Child Support Scheme, and sets out the principles on which the proposed new formula is based.

### 7.1 No change to the fundamentals of the Scheme

The Taskforce does not propose any change to the fundamentals of the Scheme. There are many aspects of the current Scheme that work well in providing an adequate level of financial support for children. The Taskforce was not asked to re-examine these fundamentals and in any event, considers that they remain appropriate.

Fundamentals of the Scheme that would *not* change with the recommendations of this Report are as follows.

- The use of a formula-based administrative system for the calculation of child support.
- The provision of a self-support component below which only a minimum rate of child support is payable.
- The principle that children should share in the standard of living of both parents with the consequence that child support levels depend on parental income.
- The system of being able to seek a change of assessment through a simple administrative process, if certain criteria are satisfied.
- Responsibility to pay child support based upon biological or legal parenthood.<sup>120</sup>
- Assessment of child support based upon the parents' individual incomes, disregarding the incomes of new partners.
- Collection and enforcement through the Child Support Agency where the parents are unable to agree on their own arrangements for private transfers.

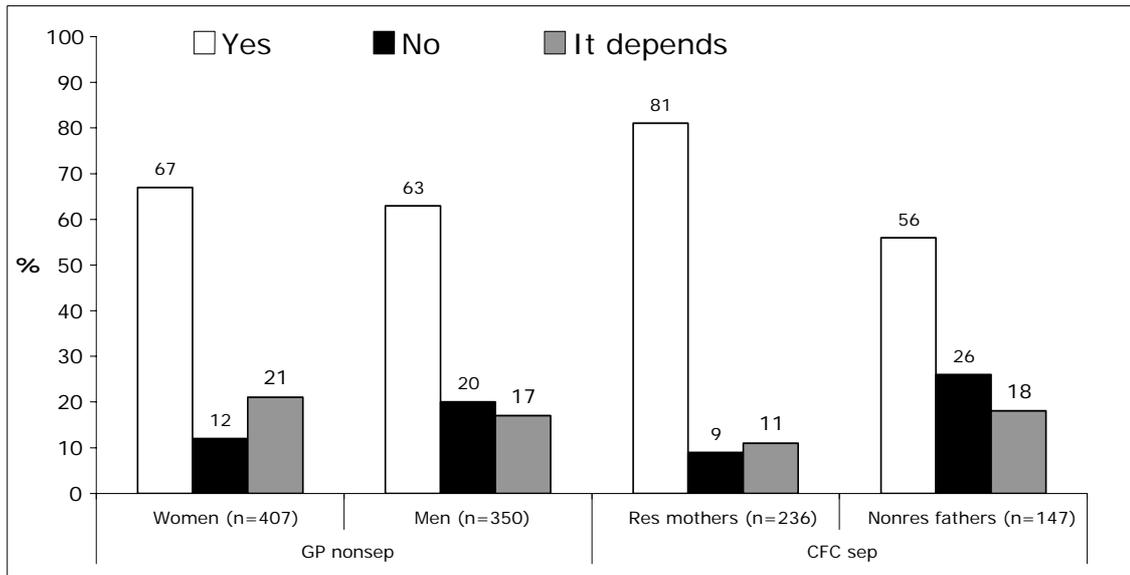
The Taskforce considered that its Terms of Reference did not invite it to engage in a re-assessment of these fundamental principles of the Scheme, and nor did it consider it desirable to do so.

The results of the community attitudes survey conducted by the Australian Institute of Family Studies (AIFS), as seen in Figures 7.1 to 7.2 on the next page, showed a considerable level of support for the broad principles of the existing Scheme.

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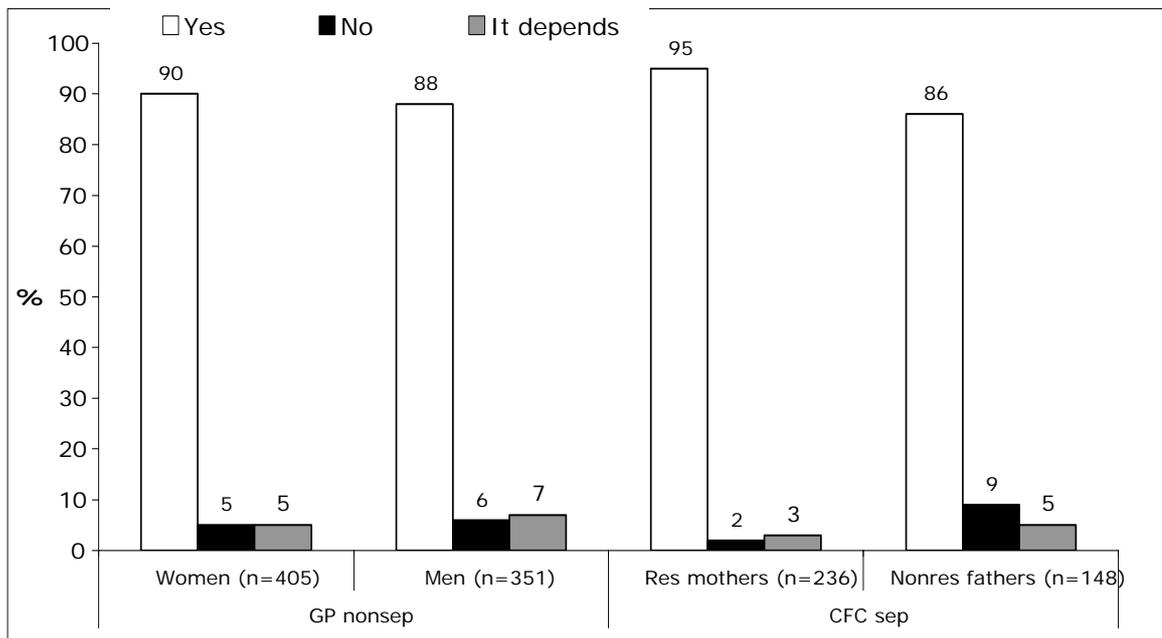
<sup>120</sup> This concept includes not only adoption but also where a child born of artificial conception procedures is treated by the law as the legal child of a person.

**Figure 7.1: Do you think a father who does not usually live with his child or children should always be made to pay child support?**



Notes. GP nonsep = general population non-separated sub-sample; CFC sep = *Caring for Children after Parental Separation* sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(6) = 44.23, p < .001$ .

**Figure 7.2: Do you think a mother who does not usually live with her child or children should always be made to pay child support?**



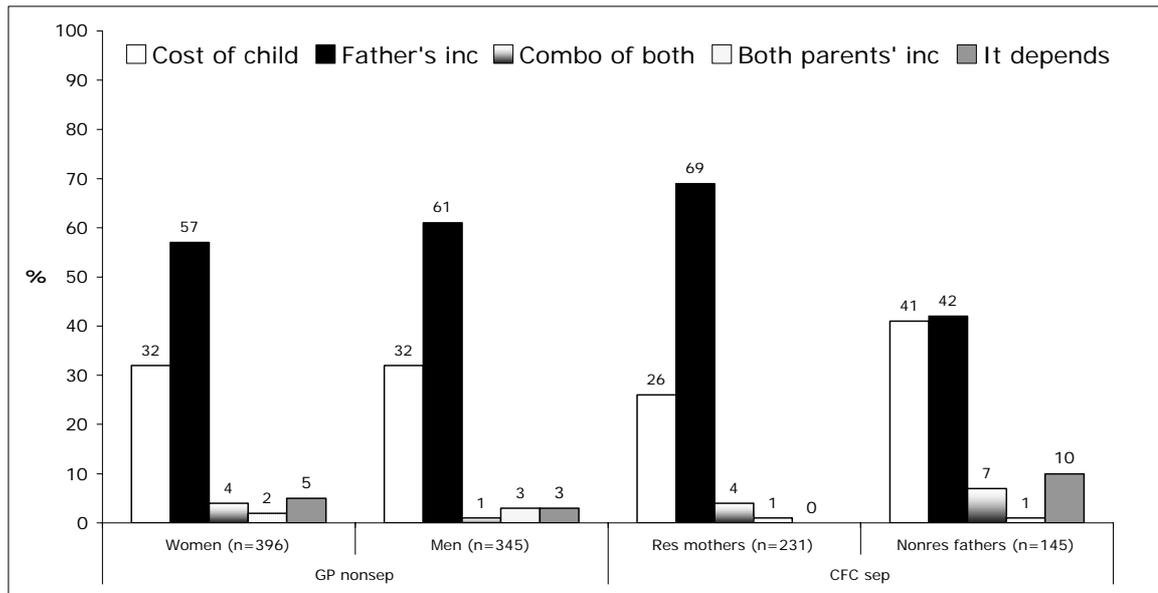
Notes. GP nonsep = general population non-separated sub-sample; CFC sep = *Caring for Children after Parental Separation* sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(6) = 13.50, p < .05$ .

The majority in all groups felt that child support should always be paid, regardless of the gender of the non-resident parent. Of those who did not endorse this view, some felt that child support should not always be paid and others volunteered that payment should depend on other factors.

The two groups of women were less likely than the two groups of men to reject the idea that child support should always be paid by non-resident fathers (9–12% as against 20–26%), while only 2–9% rejected the notion of universal payment by non-resident mothers.

Three of the four groups also supported the idea that child support payments should be relative to the income of the parent, rather than being set by basic costs of raising children.

**Figure 7.3: Do you think child support payments should just cover the basic costs of children or should fathers who earn more, pay more than this?**

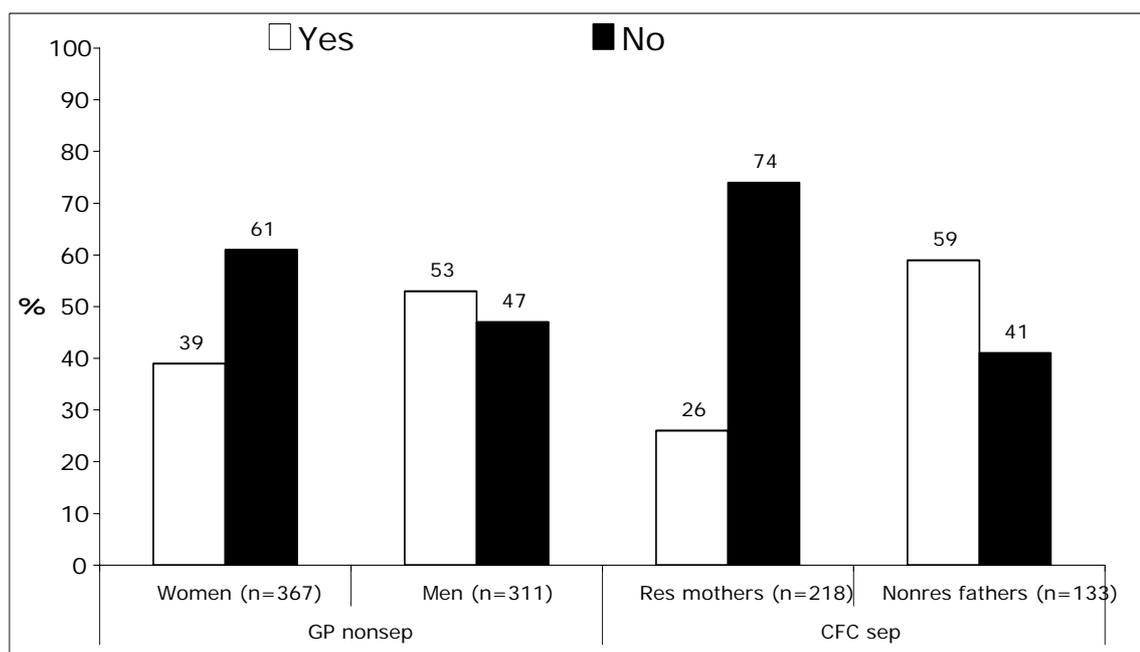


Notes. GP nonsep = general population non-separated sub-sample; CFC sep = *Caring for Children after Parental Separation* sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(12) = 48.37, p < .001$ .

The majority of non-separated women and men (57–61%) and resident mothers (69%) thought that the level of payment should depend on the father’s income rather than the basic costs of children. However, non-resident fathers were fairly evenly divided on this issue (41% opted for the “basic costs” model and 42% opted for the “earning capacity” model).

The survey showed gender differences regarding support for government involvement in the collection of child support.

**Figure 7.4: Do you think most fathers would pay child support without any government involvement?**



Notes. GP nonsep = general population non-separated sub-sample; CFC sep = *Caring for Children after Parental Separation* sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(3) = 54.67, p < .001$ .

Views on this issue (as shown in Figure 7.4) varied according to gender and residency status. In terms of gender, women were more sceptical than men, with most women (61–74%) of the opinion that fathers would not pay without government involvement, while more than half the men said that they would pay without government intervention. This pattern was especially pronounced for separated parents: 74 % of resident mothers thought that payment would not be forthcoming; 59 % of non-resident fathers believed that it would.

## 7.2 Including both parents' incomes in the calculation of child support

While endorsing the fundamentals of the Scheme, the Taskforce considers that there is now the need for a new approach to the assessment of child support obligations. This need arises from problems with the existing Scheme and from the significant social and demographic changes since 1988. In particular, the Taskforce considers that changes in educational attainment and patterns of employment for both mothers and fathers since that time, mean that it is no longer justifiable to base the Child Support Scheme on the income of only one parent, as the current Scheme does in most cases.

### 7.2.1 Changes in educational attainment since 1988

The increase in levels of education is the first of several social changes justifying that both parents' income should be taken into account by the Child Support Scheme. School retention rates have increased markedly since the 1980s. In 1984, the retention rates from year 7/8 to

year 12 for females was 48 % and 42.1 % for males,. In 2004, this has risen to 81.2 for females and 70.4 for males.<sup>121</sup>

Women and men are now participating in higher education in record numbers. Overall numbers in tertiary education rose from 393 730 in 1987 to a high of 695 500 in 2000.<sup>122</sup> Between 1987 and 2000, the rate of participation in higher education for women has nearly doubled, increasing by a multiple of 1.9 (and increasing by 1.6 for men).<sup>123</sup> In 1967, about one-quarter of students were female. Over the next two decades, the proportion of women increased rapidly to one-half by 1987. By 2000, the proportion of women had reached 55.2 %.<sup>124</sup>

In 1987 around two-thirds of students were male in fields of: Agriculture and Animal Husbandry; Architecture and Building; Business, Administration and Economics; and Science, and over 90 % were male in Engineering and Surveying. In contrast, the fields of study including Arts, Humanities and Social Sciences, Education, and Health had around two-thirds female students. Only Law and Legal Studies and Veterinary Science had a relative balance of male and female students. By 2000, the gender balance, while still evident, had improved in most of these fields. The exceptions were the fields of Education where the gender imbalance increased (three-quarters female) and Veterinary Science where a gender imbalance emerged (two-thirds female).<sup>125</sup>

These figures indicate that formal education levels are now generally higher for the whole population. Of particular relevance, less women today are held back from participation in the workforce by of a lack of appropriate educational qualifications.

## **7.2.2 Changes in patterns of labour force participation**

The second aspect of social change justifying that both parents' income should be taken into account, is the change that has occurred in patterns of labour force participation. Labour force participation rates for women grew by one-quarter between 1983 and 2004, from 44.8 % to 55.9 %.<sup>126</sup>

Particular groups of women whose rate of employment increased markedly were partnered mothers with dependent children and sole mothers.<sup>127</sup> The proportion of partnered mothers with dependent children in employment rose by one-half (or 21.7 percentage points) from 42.1 % in

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<sup>121</sup> Australian Bureau of Statistics, *Schools*, Australia, 2004, Cat. No. 4221.0, p. 18.

<sup>122</sup> Department of Education, Science and Technology, *Higher Education Students Time Series Tables, Selected Higher Education Statistics, 2000*, p 5, retrieved 14 February 2005 from <http://www.dest.gov.au/highered/statistics/timeseries/timeseries00.pdf>

<sup>123</sup> Id, p.17.

<sup>124</sup> Id, p.5.

<sup>125</sup> Id, p.5.

<sup>126</sup> Australian Bureau of Statistics, *Labour Force*, Australia, Spreadsheets, Table 01. Labour force status by Sex – Trend, 6202.0.55.001, released 10/02/2005.

<sup>127</sup> de Vaus D., *Diversity and change in Australian Families, Statistical Profiles*, Australian Institute of Family Studies, Commonwealth of Australia, (2004), p. 303; Australian Bureau of Statistics, *Family Characteristics, Australia*, June 2003, Cat. No. 4442.0, pp. 25–28.

1983 to 63.8 % in 2003. The proportion of sole mothers in employment rose by 56.1 % (or 18 percentage points) from 32.1 % in 1983 to 50.1 % in 2003.

### **7.2.3 Growth in part-time work**

The strong growth in part-time employment is a major factor in the increase in labour force participation for women.<sup>128</sup> Over the two decades to 2004, the proportion of the labour force in part-time employment increased markedly. For females, the increase was from 31.8 % in August 1983, to 42.5 % in August 2004. For males, the proportion increased from 5.4 % to 14 %. For both males and females, the proportion of the labour force in full-time work fell.

Women with children tend to have different patterns of employment from the average. Between 1983 and 2003, part-time employment for that group increased from:

- 22.3 % of all partnered mothers with dependent children to 37.8 %.
- 11.8 % of all sole mothers to 27.1 %.

The rate of full-time employment for partnered mothers also increased from 1983 to 2003, but not as much as the rate of part-time work. Their rate of full-time employment rose by 7.6 percentage points from 18.3 % in 1983 to 25.9 % in 2003. In contrast, the rate of full-time employment of sole mothers fluctuated within a small range of between 20.3 % in 1983 to 28.7 % in 1988, then falling to around 23 % in 2003.<sup>129</sup>

### **7.2.4 Mothers' workforce participation increases as children grow older**

Not surprisingly, female workforce participation increases as children grow older, although there has been a significant increase in the workforce participation of women with preschool aged children since the 1980s.<sup>130</sup>

In 1986, just over a third (37.2 %) of partnered mothers whose youngest child was under five were employed, compared to one –half of that group (50.7 %) in 2003. Of these employed mothers, in 1986 two-thirds were employed part-time and one third were employed full-time. Although participation rates are greater, in 2003 the preference for part-time work has continued, with two-thirds of employed partnered mothers of preschool aged children continuing to work part-time.

Although sole mothers also participate more in the labour force as their children get older, their participation rates remain much lower than partnered mothers. This trend has persisted since the 1980s.<sup>131</sup>

In 1986, 21.8 % of sole mothers with preschool aged children were working (11.8 % full-time and 10 % part-time). In 2003, the employment rate of sole mothers with a pre-school aged child had risen to 32.9 % (9.8 % full-time and 23.1 % part-time).

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<sup>128</sup> de Vaus, op.cit. p. 303; ABS, op.cit. pp. 25-28.

<sup>129</sup> de Vaus, op.cit. p. 303; ABS, op.cit. pp. 25-28.

<sup>130</sup> de Vaus, op.cit. p. 301; ABS, op.cit. p. 27.

<sup>131</sup> de Vaus, op. cit., p.301; ABS op cit p.28.

Sole mothers of primary aged children also tend to participate more as their youngest reaches primary age, however, not as much as partnered mothers. In 2003, 20.3 % of sole mothers of primary aged children were working full-time, while 32.9 % were working part-time. This is an employment rate of just over one-half. The figures for partnered mothers with primary aged children are 25.8 % and 41.3 % respectively, with more than two-thirds (67.1 %) in the labour force in total.

### **7.2.5 Decreased labour force participation rates for men**

Between 1983 and 2004, men's labour force participation levels dropped from 76.7 % to 71.5 %.<sup>132</sup> The biggest decrease has been for sole fathers. Full-time employment for sole fathers declined from 66.6 % in 1983 to 50.2 % in 2003.<sup>133</sup> Full-time employment among partnered fathers declined less, from 86.7 % in 1983 to 83.4 % in 2003. %

Although the part-time rate of employment for men, as for women, has increased markedly, these figures indicate that while women have entered the labour force in record numbers, in contrast, there has been a sharp decline in the numbers of lone fathers in the labour force.

### **7.2.6 Changes in unemployment levels**

The 1980s was characterised by higher average unemployment levels than today. In 1983, trend unemployment rate peaked at 10.3 %. After that, it undulated, peaking again at 10.7 % in 1992 and 1993, before following a gradual overall downward trajectory, reaching 5.1 % in January 2005.<sup>134</sup> Clearly, with very high levels of employment, there is a much greater chance of being able to participate in the labour force than in times of lower employment.

### **7.2.7 Two income households**

Many couples with dependent children depend on two incomes, if not two full-time incomes, in supporting the children in an intact relationship, and many separated parents caring for children have some income from part-time or full-time work. In most cases, the income of the separated parents caring for children is not factored into the assessment of child support payable by the non-resident parent.

Whatever the merits of minimising emphasis on the resident parent's income back in 1988, changing patterns of workforce participation suggest that it is reasonable now to take account of both parents' capacity to support the child.

## **7.3 Changes in patterns of parenting after separation**

Another major social change since 1988 is the increasing recognition of the importance of both parents in bringing up children after parental separation. The principle of joint parental

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<sup>132</sup> Australian Bureau of Statistics, *Labour Force*, Australia, Spreadsheets, Table 01. Labour force status by Sex – Trend, 6202.0.55.001, released 10/02/2005.

<sup>133</sup> de Vaus, op. cit., p.301; ABS op cit pp.27,28.

<sup>134</sup> Australian Bureau of Statistics, *Labour Force*, Australia, Spreadsheets, Table 01. Labour force status by Sex – Trend, 6202.0.55.001, released 10/02/2005.

responsibility was given emphasis in the *Family Law Reform Act 1995*, which amended the law of parents and children in Part VII of the *Family Law Act 1995*. These reforms were intended to bring about a much greater emphasis on shared parenting.<sup>135</sup>

The Reform Act, particularly in its statement of objects and principles, emphasised the equal responsibility of both parents after divorce, and the child's right of contact with both parents, unless contrary to the child's best interests.<sup>136</sup> The concept of shared parenting has very widespread support in the Australian population, including in the divorced population. Research by the Australian Institute of Family Studies in the mid-1990s<sup>137</sup> indicated that when parents are married, 78 % think children should always be cared for by both parents, sharing the duties and responsibilities for their care, welfare and development and another 20 % think this should mostly be the case.<sup>138</sup> When parents are separated or divorced, assent is still strong for this proposition, although somewhat more conditional; 50 % of Australians think this should *always* be the case and another 33 % think this should *mostly* be the way parents care for their children.<sup>139</sup> These were the views of respondents in the survey taken as a whole. But even among the subset of those who had experienced separation and divorce, the results were very similar.<sup>140</sup>

These changes in the law and social attitudes towards parenting after separation have been accompanied by changes in attitudes towards post-separation parenting by non-resident parents, mostly fathers. Over time, there have been significant changes in the ideal of fatherhood, with a greater emphasis on emotional closeness and active involvement with the children.<sup>141</sup> This has led to a greater involvement of men in parenting in intact relationships, which then affects fathers' attitudes towards post-separation parenting.<sup>142</sup>

As a consequence, child support policy can no longer just be concerned with determining and enforcing the financial obligations of reluctant non-resident parents. Ensuring the payment of child support is one part of a bigger picture of encouraging the continuing involvement of both parents in the upbringing of their children. Furthermore, since many children after parental separation, where there is regular contact or shared care, have two homes, often one for most of the time and another for a minority of the time, it is important that the infrastructure costs of both parents are reflected properly in assessing how much child support should be paid.

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<sup>135</sup> See generally, Patrick Parkinson & Juliet Behrens, *Australian Family Law in Context* (3rd ed. 2004); Tom Altobelli, *Family Law In Australia—Principles & Practice* (2003); Anthony Dickey, *Family Law* (4th ed. 2002); Henry Finlay, Rebecca Bailey-Harris & Margaret Otlowski, *Family Law In Australia* (5th ed. 1997).

<sup>136</sup> Family Law Act, 1975 s. 60B.

<sup>137</sup> Kathleen Funder & Bruce Smyth, *Evaluation Of The Impact Of Part VII* (1996). The research was conducted mostly in November 1995 with some further interviewing done in January 1996.

<sup>138</sup> *Id.*, at Table 3.1.7.

<sup>139</sup> *Id.* at Table 3.1.10.

<sup>140</sup> *Id.* at Tables 3.7.8 3.7.9 3.7.12 3.7.15 3.7.17 3.7.18.

<sup>141</sup> Graham Allan & Graham Crow, *Families, Households and Society* (2001); Jonathan Bradshaw, Christine Skinner, Carol Stimson & Julie Williams, *Absent Fathers?* (1999).

<sup>142</sup> Carol Smart, "Towards an Understanding of Family Change: Gender Conflict and Children's Citizenship", (2003) 17 *Australian J. Family Law* 20; Patrick Parkinson & Bruce Smyth, "Satisfaction and Dissatisfaction with Father-Child Contact Arrangements in Australia", (2004) 16(3) *Child and Family Law Quarterly*, pp. 289–304.

## 7.4 Assessing the fairness of a child support formula

In making its recommendations, particularly concerning the amount of child support that should be paid, the Taskforce considered that the basis of working out a fair level of child support is fundamental to this.

The Child Support Scheme aims to ensure that parents contribute financially, as far as they are able, towards raising their biological children, whether or not they live with those children. This, now widely agreed principle, encapsulates ideas of fairness:

- for the child (that they should share in the income and living standards of both of their parents);
- for the resident parent/payee (that they should not be required to bear all the financial costs of raising their child);
- for the non-resident parent (that their contribution must be commensurate with their financial capacity); and
- for the state/taxpayer (that the state's contribution towards children in separated families should not replace the financial contribution of parents).

However, beyond these shared principles, there is a range of views about determining the fairness of child support. Some people argue that fairness requires that non-resident parents should pay sufficient child support to ensure that their children are not financially disadvantaged by separation. Others argue that fairness should ensure that non-resident parents should only pay the basic costs of raising the child, surplus amounts being regarded as spousal support.

The four main and competing principles for calculating child support obligations are:

- The continuity of cost principle;
- The meeting child costs principle;
- Maintaining a child's living standards principle;
- Equivalent living standards principle.

### ***Continuity of cost principle***

The “continuity of cost principle” is based on the idea that fairness requires that a non-resident parent should contribute the same amount towards the child after separation as they would if they were living with the other parent.

To put this principle into operation and assess it, it is necessary to identify the amount a non-resident parent would hypothetically contribute if living with the other parent and the child, and compare this amount with their child support obligation when in separate households. An important consideration is to take into account that the parents are not the only parties financially contributing towards the costs of raising a child. The government supports families through a range of family benefits, and the child may also have an income.

### ***Meeting child costs principle***

The “meeting child costs principle” is based on the idea that fairness requires that a non-resident parent’s child support obligation is to ensure that the resident parent receives sufficient monies to meet the cost of raising the child *after* separation.

This principle recognises that costs of raising children in couple households can vary from those in separated households, all other things remaining constant. In particular, research has shown that sole parents caring for a child 100% of the time often face higher costs in raising a child, compared with parents in intact households.<sup>143</sup> However, other research suggests this is the case for middle and high income households, but not for low income households, where access to a range of discounts and in-kind benefits can in turn reduce the costs of children as compared with costs for intact families.<sup>144</sup>

To put this principle into operation and assess it, it is necessary to compare the costs of a child after separation with the contribution towards that cost coming from:

- a) child support from the non-resident parent;
- b) notional child support from the resident parent calculated on a similar basis; and
- c) government child benefits.

Should the three items add up to more than the cost of the child, then it could be argued that either government family benefits or the child support formula are higher than what is needed to raise the child.

The above comparison might be relatively straightforward when a child is living solely with one parent and has no contact with the other parent, and if there were a fixed cost involved in raising a child. However there is no fixed cost. Furthermore, in the common case when a child spends time with both parents, the comparison for both parents needs to be relative to the costs each of them face in raising their child when the child is in their care. Previous research,<sup>145</sup> and research conducted for the Taskforce indicates that when regular overnight contact occurs, the total costs of the child — that is, the addition of the costs of the child in both households — significantly exceeds the cost of caring for a child 100 % of the time in one household, be it an intact couple or separated sole parent household.

### ***The maintaining a child’s living standards principle***

The “maintaining a child’s living standards principle” is based on the idea that fairness is achieved by ensuring that a child’s living standard does not suffer as a result of separation.

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<sup>143</sup> Whiteford P., *The Costs of Soleparenthood*, Reports and Proceedings No. 95, Social Policy Research Centre, University of New South Wales, Sydney, 1991.

<sup>144</sup> Saunders P. et al, *Development of Indicative Budget Standards for Australia*, Policy Research Paper No. 74, Department of Social Security, Canberra, (1998); Henman P., *Updating Australian budget standards costs of children estimates*, Policy Research Paper No. 7, Department of Family and Community Services, Canberra, 2001.

<sup>145</sup> Henman P., and Mitchell K. “Estimating the Costs of Contact for Non-resident Parents: a budget standards approach”, (2001) 30(3) *Journal of Social Policy*, pp. 495–520.

The principle is based on a desire to ensure that children are not financially (and thus socially) disadvantaged from separation. However, because living standards are usually regarded as being equally shared within a household (for example, a lounge room, a car, a refrigerator and televisions are all shared household items from which each occupant derives a living standard), this principle requires that all occupants in the household in which the child resides do not suffer a drop in living standard relative to their standard before separation. As a consequence, to achieve this aim, it is necessary for child support to have a component of ‘spousal support’ built into it, as the ex-spouse’s living standard will be necessarily underpinned by ensuring a child’s living standard is maintained.

This principle can be put into operation by comparing the living standard after separation with the living standard in the circumstance prior to separation (or under identical private incomes in an equivalent couple household). When contact or shared care occurs this standard is usually unachievable, because of the increased costs in separated households.

### ***The equivalent living standards principle***

The “equivalent living standards principle” is based on the idea that fairness is achieved when sufficient child support is transferred to ensure both post-separation households have the same living standard.

This principle recognises that in an intact family, living standards achieved through income are evenly distributed within the family and that it should stay this way. However, like the previous principle, it implies a level of ‘spousal support’ and does not allow parents any financial separation from their ex-partners. Relationships of financial dependency are maintained and there can be significant workforce disincentives.

This principle can be put into operation by calculating and comparing the living standards post-separation of each household. Accordingly, under this principle, Child Support would be regarded as insufficient if the (net) payer’s household maintained a higher living standard than the (net) payee’s household, and vice versa.

Having considered these competing principles of fairness, the Taskforce concluded that the continuity of expenditure principle provides the fairest reference point for the Child Support Scheme. There is no fixed cost of a child. How much a child costs beyond providing for his or her basic needs depends on the incomes of the parents and the living standard they want the child to have.

The Taskforce also concluded that it was not a feasible basis for the Child Support Scheme either to maintain the child’s living standards or to equalise the living standards in each household. These objectives cannot be achieved without a significant degree of spousal maintenance when there is a disparity between the parents’ incomes.

It is also difficult to fulfil either of these objectives without taking into account the financial circumstances of new partners. If the objective were to maintain a child’s living standards despite the parental separation, it would first be necessary to work out whether the child was experiencing the same living standard as he or she would have if the parents were living together. If the child did not have that living standard, the next step would be to work out how much Child Support would need to be transferred to achieve it. If the resident parent has re-partnered, then the primary responsibility for the child’s support, on this principle, would rest

with the resident parent and step-parent, with Child Support payments being used to ‘top up’ the child’s living standard if necessary.

If the objective were to give each household equivalent living standard, then the incomes of new partners in both households would have to be considered. To aim to do this would contradict one of the fundamental principles both of the existing Child Support Scheme and the *Family Law Act 1975* — that the two parents have continuing parental responsibility for their children, not step-parents. Section 61C of the Family Law Act encapsulates the principle:

- (1) Each of the parents of a child who is not 18 has parental responsibility for the child.
- (2) Subsection (1) has effect despite any changes in the nature of the relationships of the child's parents. It is not affected, for example, by the parents becoming separated or by either or both of them marrying or re-marrying.

Furthermore, it is not possible to maintain the living standards of the child where there is regular contact, without one parent also bearing all the costs of contact.

For these reasons, the Taskforce concluded that it is proper for Child Support obligations to be based on the best available evidence of how much children cost to parents with different levels of combined household income in intact relationships, and for the costs of children in separated households to be considered in evaluating how to take account of contact arrangements and shared care in the formula.

In reaching this conclusion, the Taskforce was mindful of the evidence on the effects of relationship breakdown on living standards.<sup>146</sup>

While the standard of living of many resident parents falls after separation, this loss in living standards may be ameliorated if they remarry, form stable de facto relationships, or manage to increase their workforce participation. The Child Support formula needs to apply generally until the children are 18 and the circumstances of parents can change considerably over this time. Part VIII of the *Family Law Act 1975* gives the courts wide-ranging powers to divide the property of parents. The financial needs of the children’s primary caregiver following separation are an important factor that courts consider. Courts also have the power to award spousal maintenance in appropriate cases. Certain powers to alter interests in property and to award maintenance also exist under State and Territory laws concerning de facto relationships. Government benefits such as Parenting Payment (Single), the provision of FTB B for sole parents, Rent Assistance, special health care benefits and the pension concession card, also help cushion the effects of separation for parents.

The child support formula should provide a transparently fair basis for calculating child support. This requirement cannot be met if the Scheme aims to fulfil objectives other than sharing the costs of children equitably between the parents.

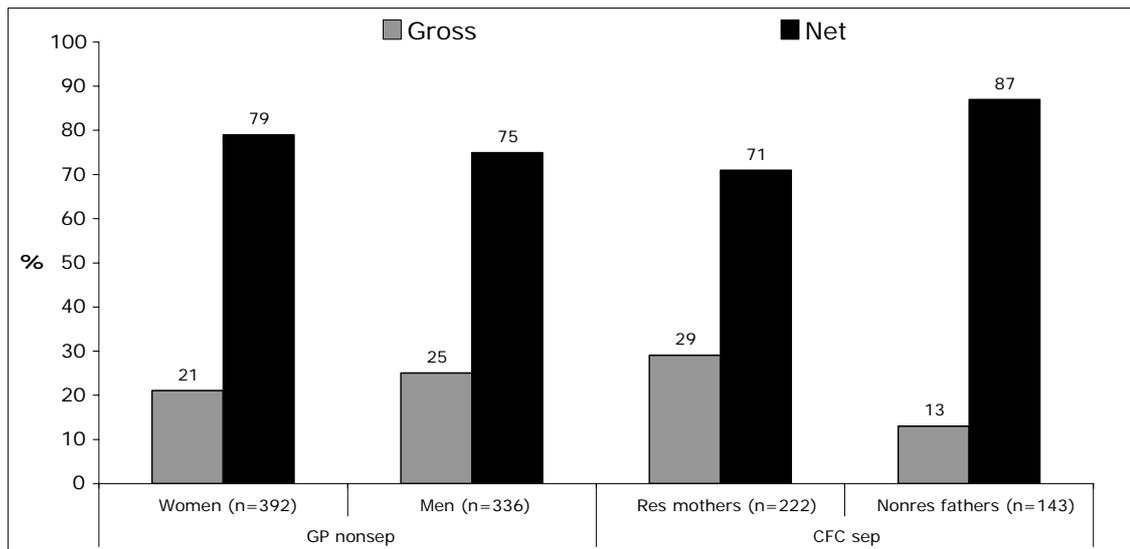
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<sup>146</sup> Peter McDonald (ed), *Settling Up* Prentice-Hall, Sydney 1986; Kate Funder, Margaret Harrison and Ruth Weston, *Settling Down*, AIFS Melbourne, 1993; R. Weston and B. Smyth, “Financial Living Standards After Divorce” [2000] *Family Matters*, no 55 11-15; Simon Kelly and Ann Harding, “Love can hurt, divorce will cost”, AMP/NATSEM Income and Wealth Report Issue 10, AMP, April 2005.  
<[www.amp.com.au/ampnatsemreports](http://www.amp.com.au/ampnatsemreports)>

## 7.5 Gross or net income

The Taskforce also gave consideration to the question of whether the formula should apply to income before or after tax. The results of the AIFS community attitudes survey demonstrated very strong support for the use of after tax income as the basis for the formula, as shown in Figure 7.5.

**Figure 7.5: Should child support payments be based on a percentage of the parent's income before tax or after tax?**



Notes. GP nonsep = general population non-separated sub-sample; CFC sep = *Caring for Children after Parental Separation* sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(3) = 15.05, p < .01$ .

Most respondents in all groups maintained that child support payments should be based on net rather than gross income. This view was expressed by 87 % of non-resident fathers and by 71 to 79 % of women and men in the other three groups.

The history of consideration of this issue was given in the House of Representatives Committee on Family and Community Affairs' Report (*Every Picture Tells a Story*, 2003) as follows:<sup>147</sup>

6.47 In devising the child support formula the CSCG recommended it apply to taxable income (before tax) rather than after tax (net income). This was done because:

- this was consistent with placing child support as a primary responsibility equivalent to paying tax;
- before tax income is readily identifiable during the year, thus allowing a non-resident parent to more easily predict their liability, compared with after-tax income that is not certain until after a tax assessment;
- a before tax base impacts less heavily on lower income earners because lower marginal tax rates apply at lower income levels;
- it is easier for the CSA to calculate;

<sup>147</sup> House of Representatives Committee on Family and Community Affairs' Report, *Every Picture Tells a Story* (December 2003), p.134.

- using taxable income would not add to the difficulties likely to be encountered in calculating more complex cases (such as self-employed persons); and
- administrative assessment under a formula which takes into account a tax liability could not apply to recent years of income figures for provisional taxpayers.

6.48 Subsequent reviews of the formula by the Child Support Evaluation Advisory Group in 1991 and the Joint Select Committee on Certain Family Law Issues in 1994 supported the use of taxable income.

The use of taxable income was also supported by the Child Support Agency. The Agency wrote:<sup>148</sup>

The possibility of assessing child support on after tax income rather than taxable income has frequently been suggested. The main argument in support of such a change is that net income may better reflect a paying parent's capacity to pay child support.

While this argument is acknowledged, it does not counter the strong rationale for using taxable income to calculate child support. This rationale includes:

- Using taxable income for child support purposes is consistent with other Government business requirements such as FTB, Medicare levy, superannuation surcharge, and child care rebate;
- Using taxable income retains benefits of administrative simplicity; and
- Using taxable income impacts less heavily on lower income earners.

All families, intact or separated, support their children using their taxable income.

The rationale that using taxable income rather than after-tax income impacts less heavily on lower income earners would not apply if the Child Support Scheme ceased to be based upon a standard percentage of income across the income range.

Other arguments do not withstand careful scrutiny. For example, it is not the case that PAYG taxpayers support their children from their taxable income rather than their disposable income, for tax is deducted before the PAYG earner receives it. Furthermore, the principles by which the Government calculates benefits and imposes liabilities for the purposes of its business requirements may not in all cases be directly relevant to Child Support, which is a private transfer between individuals (often through the Agency as intermediary), not a government benefit or tax. Nonetheless, the arguments about administrative simplicity remain.

The Taskforce also had other reasons for rejecting the use of after-tax income. As will be seen later in the Report, the methodology of the Taskforce has involved basing child support liabilities on the best estimates of how much the payer would be contributing if the two parents were living together, after taking account of government benefits.

Surveys of expenditure on children indirectly take account of the impact of income tax, because they provide an indication of how much of the parents' disposable income is spent on children, while expressing this as a proportion of the total household income available.

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<sup>148</sup> Communication from the Child Support Agency to the Ministerial Taskforce on Child Support, February 2005, pp. 10–11.

The impact of marginal tax rates is one reason why expenditure on children declines as a percentage of taxable income across the income range. By reflecting this in the formula, account can be taken of the after-tax income available to support children. As will be seen, the Taskforce is recommending that child support obligations should no longer be expressed as a fixed percentage of taxable income. Rather, the percentages applicable in the formula should gradually decline as combined taxable income increases. As a consequence, a liable parent with a high income will pay much more in child support than a parent on a low income, but less as a *percentage* of his or her taxable income than the parent on a low income. Thus, although the proposed formula continues to be based on taxable income, the impact of income taxation on disposable income has been taken into account indirectly.

## 7.6 Principles for a redesigned child support scheme

The Taskforce proposes that a redesigned Scheme be based upon the following central principles and values. The principles provide a contemporary interpretation of the Child Support Scheme's objectives, and have guided the development of the detailed proposals contained in this Report.

The key principles that have guided the Taskforce are as follows:

1. Children who do not live with both parents should have an adequate living standard, and as far as possible, should receive support from a non-resident parent commensurate with the amount that the parent would be likely to spend out of his or her taxable income if the two parents were living together, taking account of that parent's direct expenditure on the children when they are in his or her care.
2. The formula should be so designed that it can be demonstrated that parents are sharing in the expenses of raising their children at a level appropriate to their combined incomes and in proportion to their capacity to pay.
3. In assessing the level of support the non-resident parent should provide, account needs to be taken of the contribution that the taxpayer provides in supporting all children, whether in intact or separated families, through government benefits.
4. The Government contribution to the expenses of raising children where parents are living apart should be no less than if the parents were living together. The Government is entitled to expect a contribution from the non-resident parent towards the taxpayers' costs of supporting the children beyond this level of contribution.
5. The Child Support Scheme should take proper account of the costs to each household where children are spending time in the homes of both parents.
6. The Child Support Scheme should endeavour to treat children in first and subsequent families equally.

## 7.7 Explanation of the principles

1. Children who do not live with both parents should have an adequate living standard, and as far as possible, should receive support from a non-resident parent commensurate with the amount that the parent would be likely to spend out of his or her taxable income if the two

parents were living together, taking account of that parent's direct expenditure on the children when they are in his or her care.

This is the fairness to children principle. It combines two yardsticks by which the proper measure of child support may be assessed. The first is the need of the child for an adequate living standard. The approach that was once taken by the Family Court, for example, was first to consider the needs of the child and then to examine the parents' respective capacities to meet that need.<sup>149</sup> Children are entitled to an adequate living standard and non-resident parents should contribute towards meeting this in accordance with their capacity to pay. The Government provides considerable assistance towards providing that adequate living standard whether the parents are living together or apart. The non-resident parent needs also to contribute towards that adequate living standard.

The second yardstick, is the "continuity of expenditure" principle, as noted above. The idea is that child support is not just about meeting children's basic needs, but that children should enjoy a standard of living commensurate with their parents' income level, in the same way they do in intact families. That justifies looking at the level of expenditure that, on average, parents in intact families spend on their children, as a way of working out what is appropriate for the non-resident parent to contribute after separation.

The continuity of expenditure approach needs to be qualified by the recognition that non-resident parents may not be able to afford to make the same level of contribution after separation as they might have done in an intact family. Separation and divorce increase expenses for the two parents. There are now two households rather than one, with other duplicated infrastructure costs as well as costs associated with having contact, such as transportation between the two households. There is also direct expenditure on the children while they are in the care of the non-resident parent and in buying birthday and Christmas presents, for example, which modify the extent to which the child support formula can track the patterns of expenditure in an intact family.

2. Parents should share in the expenses of raising their children at a level appropriate to their individual income and in proportion to their capacity to pay.

This is the cost-sharing principle. It recognises that while there is no fixed 'cost of children' — for this depends on the living standards of the family — the Child Support Scheme should take account of research on the costs of children at different standards of living and patterns of household expenditure on children, as a starting point in working out what is a fair allocation of those costs between the parents.

This principle is consistent with the first three objectives of the Child Support Scheme, that:

- Parents share in the cost of supporting their children according to their capacity;
- Adequate support is available for all children not living with both parents;
- Commonwealth involvement and expenditure is limited to the minimum necessary for ensuring that children's needs are met.

The cost-sharing principle makes transparent that there are significant costs associated with raising children and that if either parent is not contributing to the costs of children in

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<sup>149</sup> *Mee v Ferguson* (1986) FLC 91-716.

accordance with his or her capacity to pay, then those costs have to be borne either by the other parent or by the taxpayer, or the children's living standards will suffer.

- 3.** In assessing the level of support the non-resident parent should provide, account needs to be taken of the contribution that the taxpayer provides in supporting all children, whether in intact or separated families, through government benefits.

In intact families with the care of children under 18, the Government provides support for children, and this is substantial in the case of low-income households. It does so by supplementing the income of the parents through Government benefits such as Family Tax Benefit.

The significance of family payments is much greater than it was in the late 1980s, since there is now much greater financial support given to intact families through family benefits. Comparing expenditure on family benefits now to those in the period when the Child Support Scheme was introduced is not straightforward, since the structure of family payments has changed significantly. Some allowances that are now payable as a benefit to families were formerly allowable deductions in the tax system.

Nonetheless, the Department of Family and Community Services has estimated that between the years 1993–94 and 2003–04, expenditure on family payments increased in real terms (after adjusting for inflation) by about 115%, from \$7 billion to \$15.3 billion in 2003–04 dollars.<sup>150</sup> Much of this growth has been in payments to intact families.

Because of this growth in family payments no analysis of Child Support policy can ignore the significance of these government benefits in assessing how much of the parent's own income is spent on children for Child Support purposes. Child support is payable from parents' private income. In working out how much needs to be transferred from the non-resident parent's household to the resident parent's household, it is important to take account of the fact that the family benefits which formed part of the total household income of the intact family are paid mainly to the primary caregiver following separation. This level of support should be taken into account in assessing the relative contributions by the parents in accordance with their capacity to pay.

- 4.** The Government contribution to the expenses of raising children where parents are living apart should be no less than if the parents were living together. The Government is entitled to expect a contribution from the non-resident parent towards the taxpayers' costs of supporting the children beyond this level of contribution.

This is the neutrality principle. In many cases, total Government support to the separated family is much higher than to the intact family, as a consequence of various benefits.

It follows that it is justifiable for the Government to seek some reimbursement from the non-resident parent towards the additional costs associated with supporting the household in which the children live with their primary caregiver after separation. This argument supports the principle of "clawback" through the Maintenance Income Test, but the neutrality principle sets a limit to the total amount of clawback that is justified. In accordance with this principle and reflecting the requirement in the Terms of Reference of the Taskforce that the current balance

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<sup>150</sup> Letter to Chair of Taskforce, 15 March 2005.

between private and public contributions be broadly maintained, the Taskforce has examined whether it is possible to reconfigure the application of the Maintenance Income Test.

5. The Child Support Scheme should take proper account of the costs to each household where children are spending time in the homes of both parents.

This principle ensures that the Child Support Scheme takes proper account of the costs of shared parenting where this has been agreed between the parents or ordered by a court.

The principle is that the child support obligation should be lower where there are regular overnight stays with a non-resident parent. The Scheme needs to take into account the infrastructure costs of contact and the level of expenditure incurred during regular contact in a way that balances the interests of payers and payees fairly. This principle needs to be qualified by the recognition that where there is regular overnight contact, the infrastructure costs are duplicated rather than being shared. When a primary carer has less than 100% overnight care, there are cost reductions in caring for the children in consumables, such as food. However, this may be countered to some extent by increased costs in communication and transportation in co-ordinating contact between the two households.

The infrastructure costs for a non-resident parent are clearly incurred at a level below that of 30%+ overnight stays per year. It is arguable that once a child is spending on average one night per week or more with the non-resident parent (or 14% of overnight stays), the increased infrastructure costs involved justify some recognition in the child support formula.

Because of the duplication of infrastructure issue, and because of wide variations in who bears the transportation costs of regular contact, it is very difficult to make allowance for the costs of contact in a scientific way. It may be best just to give recognition to the costs of contact in a general way, while taking account of the fact that the resident parents costs also may not be greatly reduced.

6. The Child Support Scheme should endeavour to treat children in first and subsequent families equally.

The principle here is that children should not be systematically more disadvantaged through the Scheme in one household than the other. Children should be treated equally, whatever the order of their birth to the liable parent. This view was shared by the House of Representatives Committee.<sup>151</sup> This is indeed, exactly the same view that the original Consultative Group reached back in 1988. It wrote:<sup>152</sup>

“The fundamental precept of the Consultative Group is that all children of a parent share equally in that parent’s income.”

Whether the current scheme has achieved that in practice is another matter. Achieving equality of treatment in the formula is very difficult, for the first family gets a sum of money and the second family can be given a deduction before the child support is calculated, but then has access to the liable parent’s remaining disposable income as well. Approximate equality is therefore an aspiration to guide us more than a destination to reach.

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<sup>151</sup> Every Picture Tells a Story at 6.70.

<sup>152</sup> Child Support Consultative Group, *Child Support: Formula for Australia*, (AGPS, 1988), p.7.

## 7.8 Trade-offs between principles

It is important to recognise, however, that translating these principles into practice inevitably requires broad judgements and trade-offs between the principles in the interests of arriving at a workable scheme.

A formula-based approach to assessing child support is administratively straightforward, transparent, and efficient by comparison with more discretionary alternatives such as relying on the courts. It provides the mechanism for the costs of children to be distributed equitably in accordance with the parents' capacities to pay. Its outcomes are more predictable. Its administration is also more efficient and cost-effective.

However, any child support formula that is assessed administratively represents a series of compromises between competing objectives — including fairness, simplicity, and cost-effectiveness. What an administrative formula offers in terms of simplicity and speed of assessment, it may lack in capacity to adjust to the individual circumstances of all parties affected by it. The principles therefore were used to guide the development of the Taskforce's recommendations at a general level, subject to making the necessary trade-offs between principles in order to develop a workable Scheme.

## 8 The Costs of Children

### 8.1 Relevance of the costs of children

The aim of an administrative child support formula is to provide an efficient and certain method of assessment that will be fair to most parents, most of the time. A formula-based approach to assessing child support is administratively straightforward, transparent, and efficient by comparison with more discretionary alternatives such as relying on the courts. It provides the mechanism for the costs of children to be distributed equitably in accordance with the parents' capacities to pay. Its outcomes are more predictable. Its administration is also more efficient and cost-effective.

At the core of child support formula are the percentages that determine how much a parent is required to pay or receive in child support payments from the other parent. In general, the amount of child support that is required to be paid varies according to the number of children, the proportion of the care the other parent has and parental incomes.

For a child support scheme to be successful, it must be seen as fair. Although the Australian Child Support Scheme could be characterised as one based on the sharing of living standards rather than the costs of children,<sup>153</sup> the extent to which the child support formula percentages are considered *not* to reflect accurately the cost of children in varying family circumstances is commonly raised as a criticism of the Scheme. Liabilities in excess of the "reasonable" costs of children are considered a form of spousal maintenance by some payers, while payments lower than the real costs of children are considered by some payees to represent a failure of the Scheme to ensure shared parental responsibility. Dissatisfaction with the formula percentages was raised in many submissions to the recent Parliamentary Inquiry into child custody and constitutes a recurring theme in Ministerial correspondence.

Child support percentages were identified as problematic by the Joint Select Committee on Certain Family Law Issues, which found that:

the formula percentages recommended by the Consultative Group are arbitrary and simply represent the Consultative Group's judgement of the appropriate balance points for the Child Support Scheme.<sup>154</sup>

The recent House of Representatives Committee reached a similar position:

After seven years the answers needed to evaluate the formula percentages are still not available.<sup>155</sup>

This Committee considered it imperative:

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<sup>153</sup> P. Parkinson, Evidence to Child Custody Inquiry 13/10/03, p.51.

<sup>154</sup> The Joint Select Committee on Certain Family Law Issues, *The Operation and Effectiveness of the Child Support Scheme*, 1994, p.295.

<sup>155</sup> House of Representatives Standing Committee on Family and Community Affairs, Report of the Inquiry into Child Custody Arrangements in the Event of Family Separation, *Every Picture Tells a Story*, (December 2003), p.133.

that independent modelling of the cost of children in separated families [...] be undertaken and published to establish what the impact would be if child support payments were based upon those results.<sup>156</sup>

The second of the Taskforce Terms of Reference requires the Taskforce, *inter alia*, to evaluate the child support formula percentages in the light of research on the costs of children in separated households.

This Chapter describes the approach that the Taskforce has taken in determining the costs of children, the different types of research on the costs of children commissioned for the Taskforce, how the results from differing methodologies have been integrated, and, finally, how the government's contribution to the costs of children in the form of family payments has been taken into account.

## 8.2 Equivalence scales and estimation of the cost of children

Research on the costs of children can be viewed as analysis of data on how children add to observed couple-household expenditure (the marginal cost approach) or about how much it costs couple households to meet the non-discretionary needs of children (the budget standard approach), holding living standards constant. A detailed discussion of the different approaches that have been taken to estimating the costs of children can be found in Matthew Gray's chapter in Volume 2 of this Report.<sup>157</sup> The costs of children are often expressed as equivalence scales. Equivalence scales show the ratios of incomes for households with differing numbers of children, of differing ages, that are required to support a given living standard.

The Taskforce has come to the conclusion that there is no 'true cost' of a child and that, in the end, it is a matter for judgment — but that this judgment needs to be informed by the existing empirical estimates and evidence based. Many other reviewers have come to the same view, including the National Academy of Sciences Panel on Poverty and Family Assistance in the United States of America, who undertook a major study on how to measure poverty and equivalence scales (Citro and Michael 1995).

The Taskforce has taken the view that the formula percentages should be based on the best available estimates of the direct costs of children. For the reasons explained in Chapter 7, it considers that the fairest basis for the Scheme is the costs of children in intact couple families, with the research on the costs of children in separated families informing the issue of how to take account of the costs of contact.<sup>158</sup>

The Child Support Taskforce used three different methodologies to reach the best and most up-to-date estimates possible of the costs of children in intact Australian families. The Household Expenditure Survey was used to examine actual patterns of expenditure on children. The Budget Standards approach was used to assess how much parents would need to spend to give children a specific standard of living, taking account of differences in housing costs all over Australia. A study was also done of previous Australian research on the costs of children, so

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<sup>156</sup> Ibid.

<sup>157</sup> Gray M (2005) 'Costs of children and equivalence scales: A review of methodological issues and Australian estimates', *Report of the Ministerial Taskforce on Child Support, Volume Two: Commissioned Research*, Canberra.

<sup>158</sup> See above, section 7.4.

that the outcomes of these two studies could be compared with previous research findings. The Australian estimates were also benchmarked against international studies on the costs of children. The detailed findings are reported in the papers cited in this Chapter and published in Volume 2 of the Taskforce's Report. Summaries of the methods and the main findings are given below.

### 8.3 Expenditure Survey Approach

The National Centre for Social and Economic Modelling (NATSEM) at the University of Canberra was commissioned to undertake a household expenditure-based study of the costs of children in intact and separated families. In their paper for the Taskforce, Percival and Harding of NATSEM echoed earlier observations about the difficulties in arriving at a definitive estimate of the costs of children:

Estimating the costs of children is inherently difficult, as many items of family expenditure are often shared among all family members or incurred indirectly by parents. In practice, it is also likely that there are wide variations in the amounts that parents spend on their children, both as family incomes vary and as the sense of what it is proper to spend varies. (Percival and Harding 2005 p. 2)

Using the publicly released unit record file from the ABS' 1998–99 Household Expenditure Survey (ABS 2000), with both spending and incomes indexed to 2005–06 prices, the authors developed expenditure-based (or equivalent standard of living) estimates of the costs of children. Using econometric models of Australian household expenditure patterns, this method compares the calculated household expenditure of a couple with children with that of a couple of the same age without children who have an equivalent standard of living. The difference in the calculated expenditure of the two households represents the costs of the children.

It should be noted that this study differs from previous NATSEM studies, in that expenditure on child care was specifically excluded at the request of the Taskforce. This decision was made on the grounds that:

- the 1998–99 Household Expenditure Survey shows the out-of-pocket costs for child care that parents incurred in that year, and there have been such major changes in child care rebates since then that it seemed unlikely that 1998–99 spending would provide an accurate guide to likely out-of-pocket outlays in 2005–06;
- child care costs vary widely between households; including an average child care cost would have made the percentages too high for families that spend little or nothing on child care and too low for families that spend significant amounts; and
- child care costs are a ground for departure from the formula through the Change of Assessment process.

Percival and Harding used the proportion of total expenditure devoted to a specified basket of goods as their indicator of the 'standard of living'. It is important to note that this approach attempts to measure what parents actually spend on their children today, rather than what they 'should spend' or would spend if they did not have a limited budget.

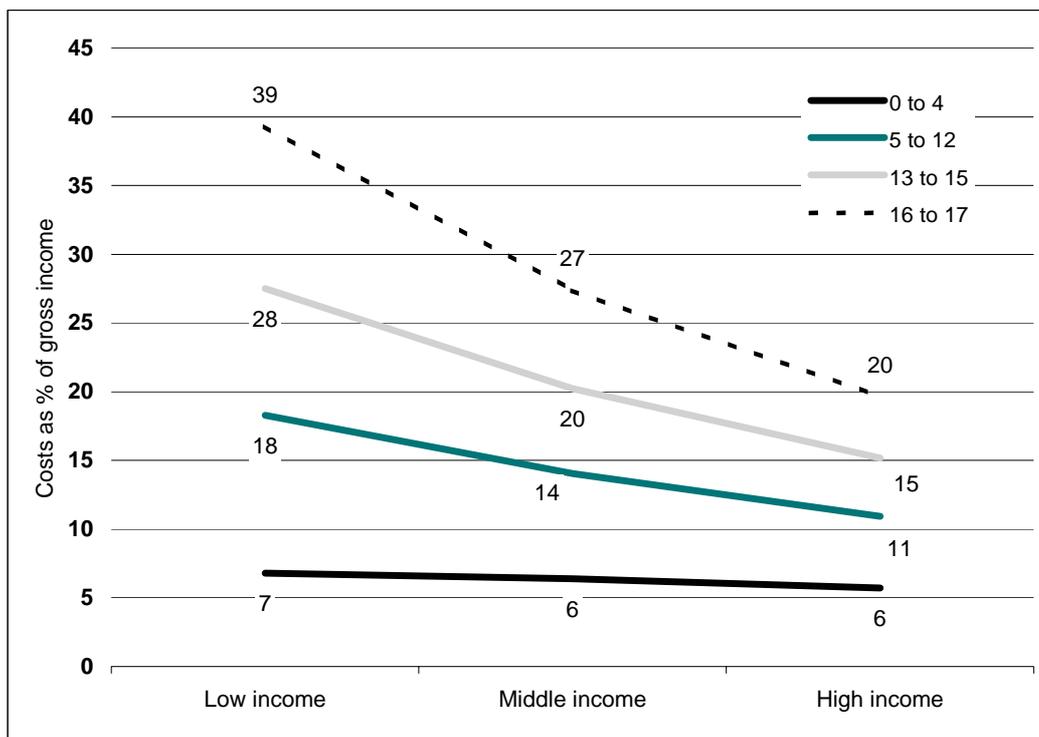
### 8.3.1 Costs of children in couple households

Consistent with previous research, the first key finding from this study for the Taskforce was that the dollar costs of children increased with the age of children. While the relationship between spending on children of different ages varied with income, on average older children aged 16 to 17 years were found to cost more than three times as much as children aged zero to four years, as shown in Table 8.1 below.

The second key finding was that, while the dollar costs of children continued to increase with rising family income, costs as a *percentage of family income* declined as family income increased. For example, for a five to 12 year-old child, costs declined from 18 % of the gross income of a low income family to 11 % of the income of a high income family, and shown in Figure 8.1 to follow).

This finding is consistent with the findings of other Australian studies. Almost without exception, these studies have found that the costs of children increase with age.<sup>159</sup>

**Table 8.1: Estimated average gross costs of a single child in couple families, by age of child and family income, 2005-06**



Source: Percival & Harding 2005, p. 11

A third key finding was that the marginal costs of children fell as the number of children increased, reflecting both economies of scale (such as shared toys or clothing) and the constraints imposed by family finances, with parents simply being unable to continue to afford spending at the same rate on their second and subsequent children. Thus, while the average

<sup>159</sup> See Gray (2005) for analysis of the Australian literature on this question.

cost of a child in single child couple families was estimated at \$188 a week, the average additional cost of the second child was estimated at \$143, declining further to \$115 for the third child as shown in Table 8.2.

**Table 8.2: Estimated average marginal costs of children in couple families, by number of children and family income, 2005-06**

Level of income	Average income	Number of children				
		1 child	2 children	3 children	4 children	5 children
		(\$pw)	(\$pw)	(\$pw)	(\$pw)	(\$pw)
Low income	\$661	\$114	\$209	\$290	\$362	\$427
Middle income	\$1,330	\$179	\$317	\$428	\$522	\$605
High income	\$2,662	\$285	\$492	\$651	\$779	\$888
Average	\$1,473	\$188	\$331	\$446	\$543	\$627

Source: Percival & Harding 2005, p. 14

### 8.3.2 Costs of children in single parent families

In keeping with the Taskforce mandate, the researchers were also asked to analyse expenditure on children in sole parent families. This involved comparing the expenditure of sole parent households with those of single person households at the same material standard of living. The findings generally followed similar patterns to those for couple households, with the costs of children in sole parent families also increasing by age and income.

**Table 8.3: Estimated average gross costs of a single child in sole parent families, by age of child and family income, 2005-06**

Level of income	Average income	Age of child			
		0 to 4	5 to 12	13 to 15	16 to 17
		(\$ pw)	(\$ pw)	(\$ pw)	(\$ pw)
Low income	\$284	\$77	\$81	\$94	\$179
Middle income	\$459	\$102	\$106	\$125	\$220
High income	\$1,169	\$184	\$186	\$218	\$345
Average	\$583	\$115	\$119	\$140	\$240

Source: Percival & Harding 2005 (p18)

A direct comparison of the costs of children in sole parent and intact couple households is hindered by the differences between the income of the two groups and their different household size. However, single child couple families with a low income of \$661 a week spent an estimated 17.2 % of their gross income on that child, while sole parents with a single child and an average income of \$583 a week spent 22.5 % of their gross income on the child (Percival and Harding, 2005, p. 19). While the income of the latter is about \$80 a week less than the income of the former, and this in itself would lead to an increased percentage of income being spent on the child in the sole parent family, this might also be initially seen as suggesting that sole parents incur slightly higher child costs at a given income level than intact couples. However, any remaining difference would also reflect the fact that in couple households an additional adult has to be supported by the family income, which would reduce the amount that could be spent on the child.

## 8.4 Budget Standards Approach

In contrast to the Expenditure Survey approach, which attempts to measure what households actually spend on their children, the Budget Standards approach attempts to measure what households *need* to spend on children to achieve a particular standard of living. The Budget Standards method involves calculating the cost of achieving a given standard of living for a given household type, by identifying and pricing the goods and services necessary for it to achieve that level of consumption at a particular place and time. The estimated costs of a child at a particular living standard level is the difference between a household with a child and that same household without a child. One advantage of this approach is that it identifies the costs of children as if income constraints did not hinder household expenditure.

Although the fundamental motivation behind the budget standards, or basket of goods, approach is to achieve a measure of scientific rigour in the estimation of “need”, for the construction of meaningful poverty lines, or the costs of children, the method is not immune from the need for judgments. Research regarding current community expectations and behaviour can form part of the basis upon which certain items are included or excluded, as can research on nutritional requirements and on health and dental care needs, for example. Like the expenditure survey approach outlined in section 8.3, there are also commonly recognised limitations in the budget standards approach:

A budget standard must incorporate both normative and behavioural factors. The former may have an official or quasi-official status if they take the form of official guidelines published by relevant authorities. Many countries, for example, have nutritional guidelines developed and endorsed by such bodies as the National Health and Medical Research Council (NH&MRC) or its equivalent and these can be used to develop a food budget. In other areas, where there are no established social norms available, budget standards are based on expert recommendations which have no official status. ...The normative standards must also to some extent reflect the actual behavioural patterns of the population if their relevance is not to be severely circumscribed. ... The difficulty is how this can be achieved without undermining the ability of a budget standard to reflect normative judgments about *needs*, as opposed to the resource *constraints* that also influence actual patterns of behaviour. (Saunders 1998 p 7).

Nevertheless, the budget standards approach has certain advantages:

A key strength of this approach is that it is sensitive to the circumstances and requirements of different household types, such as geographical location, the number of adults and their labour market status, the age and sex of the children, whether a child has a disability, and housing tenure. Because the estimates are based on a detailed list of goods and services, the assumptions are relatively transparent and therefore more readily open to debate and alteration. As the approach is normative, it also overcomes distortions in measuring the cost of children due to income constraint in low-income households. (Henman 2005 p. 2)

The Taskforce commissioned Dr Paul Henman of the University of Queensland to produce updated costs of children estimates in each Australian capital city using the budget standard approach. The estimates represent an update and extension of those previously published by Henman<sup>160</sup> and Henman & Mitchell<sup>161</sup> (2001), and reflect changes in prices.<sup>162</sup>

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<sup>160</sup> 2001 ref

<sup>161</sup> 2001 ref

Household budget standards, and the resulting costs of children are calculated at two living standard levels rather than income levels:<sup>163</sup>

- ‘modest but adequate’ representing middle Australia; and
- ‘low cost’ representing low-income households.

Budget standards for over fifty household types were constructed by varying household composition (the number of adults and the number, age and sex of children — girls aged three and six, and boys aged 10 and 14), and the employment status of adults. Private renting at the median price level was assumed. The annual gross costs of raising a child were estimated for each capital city using the June quarter 2004 as the reference period. They were derived using the difference technique — that is, by subtracting the budget standard for a couple-only household from a couple-with-child household.

#### **8.4.1 Costs of children in couple households**

Like the Percival and Harding study, the Henman study for the Taskforce found that the gross costs of children (with child care costs excluded) increased with age and family income. However, the differences between children of different ages were lower than found in the Percival and Harding study. For example, Henman estimated that the weighted average cost across the eight capital cities for a family at a ‘modest but adequate’ income level and with only one parent employed full-time and the other not in the labour force, varied from \$6500 a year for a three year-old to \$10 300 for a 14 year-old. For a couple with the same labour force status but at the ‘low cost’ standard of living, costs varied from \$4910 for a three year-old to \$7 850 for a 14 year-old (Henman, 2005, Table 1).

While the budget standard costs can vary widely depending upon the precise circumstances of the families, this suggests that the gross costs of children are substantially higher but still less than double for older children relative to younger children — with budget standards thus producing less differences in cost by age than the expenditure survey approach used by Percival and Harding. The Henman results also suggested that a ‘middle income’ couple family spends about 30 % more on a single child than a ‘low income’ couple (Henman, 2005, Table 1). This relative difference between low- and middle-income families was again lower than the differences found by Percival and Harding.

Henman cautions that it is difficult to draw firm conclusions about the extent to which the marginal costs of the second and subsequent children are lower than that of the first, as the

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<sup>162</sup> The research in Henman (2001) and Henman & Mitchell (2001) has been updated to the June quarter 2004 using published and unpublished Australian Bureau of Statistics (ABS Cat. No. 6401.0; 6403.0) data on changes in prices. See Henman 2005 p. 4.

<sup>163</sup> ‘The modest but adequate standard is one which affords full opportunity to participate in contemporary Australian society and the basic options it offers, lying between the standards of survival and decency and those of luxury. It attempts to describe the situation of households whose standard of living falls somewhere around the median standard experienced in the Australian community as a whole.

The low cost standard, in contrast, is seen as one which may require frugal and careful management of resources but still allow social and economic participation consistent with community standards, and enable the individual to fulfil community expectations in the workplace, home and in the community. Whilst not seen as a minimum standard, the low cost standard is one below which it would become increasingly difficult to maintain an acceptable standard of living because of the increased risk of deprivation and disadvantage’ (Saunders 1999, p3).

budget standards approach is tied to specific ages for each child. However, his averaged costs for the first child equal 20.1 % of household disposable income (2005, Table 2), while those for two children of specific ages equal about 33 % of household disposable income, those for three children about 39 % and those for four children about 45 % of household disposable income (2005, Table 4). These percentages are, of course, different to the Percival and Harding percentages, as they relate to disposable income rather than gross income, but they are nonetheless suggestive of reducing marginal costs as the number of children increases.

**Table 8.4: Gross costs of one child, including child care, for couple and sole parent households (June quarter 2004, \$'000/year)**

Household type	Couples		Sole parents	
	Weighted average		Weighted average	
	Total costs	Child care	Total costs	Child care
<b>3 year-old</b>				
F+3yo MBA	17.62	12.63	17.86	12.63
N+3yo MBA	6.50	0.56	5.74	0.56
N+3yo LC	4.91	0.00	3.50	0.00
<b>6 year old</b>				
F+6yo MBA	11.71	3.36	10.36	3.24
P+6yo MBA	7.57	0.56	8.28	0.56
N+6yo MBA	7.01	0.00	7.39	0.00
N+6yo LC	6.02	0.00	5.49	0.00
<b>10 year-old</b>				
F+10yo MBA	13.10	3.36	11.73	3.24
P+10yo MBA	8.95	0.56	9.65	0.56
N+10yo MBA	8.38	0.00	7.62	0.00
N+10yo LC	6.74	0.00	5.75	0.00
<b>14 yearold</b>				
F+14yo MBA	10.30	0.00	10.54	0.00
o MBA	10.30	0.00	10.54	0.00
N+14yo MBA	10.30	0.00	9.54	0.00
N+14yo LC	7.85	0.00	6.85	0.00

Note: The costs shown are the weighted average costs for the eight State and Territory capital cities (see Henman, 2005, Tables 1 and 5). The column headings to the left relate to the labour force status of the sole parent in sole parent families. In every case, in couple families one parent is assumed to be working full time and the other has the labour force status shown here for the primary carer. Key: F=parent in full-time employment; P=parent employed part-time; N=parent full-time carer and not in the labour force; MBA=Modest But Adequate living standard level; LC=Low Cost living standard level

#### **8.4.2 Costs of children in single parent families**

The Henman study also examined the costs of children in sole parent families. As with a child or children in a couple household, Henman found that the cost of one child in a sole parent household generally increases with age, but this varies depending on the requirement for child care services (which depend on the labour market status of the parent and the child's age). For example, for a sole parent of a three year-old at the modest but adequate living standard level, the cost of the child ranges from an average of \$17 860 per annum when the parent is in full-time employment, to \$5740 when the parent is not in the labour force as a result of being a

full-time carer. This is a significant difference, due entirely to child care costs of \$12 630 per annum.

Sole parents at the low cost level face annual costs of a lower bound of \$3500 for raising a three year-old to \$6850 for a 14 year-old. For a similar 'modest but adequate' sole parent (that is, a full-time carer), the costs are from \$5740 per annum to \$9540 respectively.

Compared with couple adult households, sole parents face a range of different circumstances and expenditure concerns. Much previous research tended to find that sole parents face greater expenditure costs when raising their children, relative to couple adult households (Whiteford 1991). This results from greater needs for child care and respite, and the purchase of household services to help manage the juggling of raising children with only one adult. The Australian budget standards research found that while this occurs for 'modest but adequate' households (where the parent is assumed to be employed), this is not the case in 'low cost households' (where the parent is assumed to be a full-time carer). This is due to the fact that low-income sole parents are able to access a large range of substantial savings using their pension card attached to receipt of Parenting Payment (Single). This saving is worth about \$1500 per annum. (Henman, 2005).

### **8.4.3 The costs of children where contact occurs**

One of the innovations requested by the Taskforce was that Henman examine the financial costs of contact. The above discussion of costs of children in separated families only relates to the situation when one parent has 100 % care. However, in many situations both parents have care of the child, even if the level of care is significantly uneven.

Previous research has shown that non-resident parents who exercise regular contact with the child of 15 to 30% of the time face considerable costs for caring for the child, well in excess of the proportion of care exercised (Henman and Mitchell 2001). In particular, a non-resident parent with 20% contact faces more than 20% of the costs of the child when cared for 100% of the time by either a sole parent or a couple parent household. This disproportionate cost results from costs in providing basic infrastructure for the child (such as a bedroom, some clothes and toys) as well as communication and transportation costs in coordinating and undertaking contact.

Henman found that a non-resident parent (at a modest but adequate living standard level, working full-time) with 20% care of a six year-old child has average costs that amount to 38% of the cost of the child in 100% care with a sole parent. Altogether, in this separated household, the total costs of this child are, on average, 37% more than the total costs of raising the child completely in a single household.

Looking at the equivalent low cost household, when regular contact occurs, the non-resident parent faces average costs that are 60% of the cost of raising a child in one household. Altogether, the total cost across the two households is 59% greater than the cost of raising the child in one household.

These results demonstrate that when contact occurs, the total costs of raising the child significantly increase. This occurs because of the need to duplicate infrastructure to support the care of the child in two households.

This increase is also evident in the case of shared care, where Table 6 in Henman (2005) shows that the costs are relatively equally distributed between both parents, but the costs borne by

each parent with 50% care represent around 71% of the cost borne when 100% care is exercised for modest but adequate households, and 87% in low cost households. Thus, when equal care occurs, the overall costs increase by 43% for modest but adequate households and 75% for low cost households, relative to raising a child 100% in one household.

## 8.5 Literature review

Finally, to inform its thinking on the gross costs of children, the Taskforce asked Dr Matthew Gray of the Australian National University to undertake a literature review of the costs of children in earlier Australian and international studies. Gray took the approach of calculating the average of the majority of Australian studies of the costs of children published since 1985. This approach has previously been used by Whiteford,<sup>164</sup> who calculated the average of all Australian studies published before 1985.

For the purposes of the Child Support Scheme a useful way of presenting the costs of children is as a proportion of family income spent on children, and the costs for couple families with one, two, three and four children are presented in Table 8.5. The “average” of the post-1985 studies is for an average income family and is averaged across the ages of children. Couples with one child are estimated to spend 16% of their income on that child. Couples with two children are estimated to spend 28% of their income on their children, three children 37% and four children 40%.

**Table 8.5 Expenditure costs of Australian children (percent of family income spent on children)**

	Number of children			
	1	2	3	4
Post-1985 studies	16	28	37	40

Source: Gray (2005b).

## 8.6 Taskforce estimates of the costs of children

As can be seen from the preceding three sections, although the particular techniques and underlying assumptions used to estimate the costs of children affect the level of costs, both the household expenditure and the budget standards approaches (along with much other previous work) produced some consistent findings regarding the gross costs of children. These are that:

- the costs of a child generally increase with age;
- there are economies of scale, so that, in general, each additional child costs less than the last; and
- the dollar costs of children increase with family income but decline as a *proportion* of income.

Given the differences between the costs of children produced using the expenditure survey and basket of goods approaches, and informed by Gray’s research on earlier overseas and

<sup>164</sup> (1985)

Australian estimates of the costs of children, eventually the Taskforce had to reconcile these different estimates and produce its own agreed costs of children estimates.

Informed by the evidence base that it had assembled, the Taskforce eventually adopted the following gross costs as a percentage of the gross income of families as reasonable estimates for middle income families with around \$50 000 to \$60 000 in gross household income in 2005—06.

**Table 8.6: Taskforce agreed gross costs of children as a percentage of gross family income, for middle income families, 2005–06**

Number of children	Detailed Age Ranges				Broad Age Ranges	
	0 to 4 years	5 to 12 years	13 to 15 years	16 years and over	All aged 0-12	All aged 13+
1	10	14	19	20	14	19
2	16	22	29	30	22	29
3	20	28	36	37	28	36
4+	24	33	42	43	33	42

Note: Middle income families means couple families with gross incomes in the vicinity of \$50 000 to \$60 000.

### 8.6.1 Use of two age groups

While the above ‘gross costs as a percentage of gross income’ percentages were originally calculated for four age ranges, as shown in Table 8.6, the Taskforce decided to recommend only two age ranges be used in any revised child support scheme. While the current CSS payment rates do not vary with the age of children, the Taskforce decided that the differences in cost between older and younger children were sufficiently great that some differentiation should be introduced within the system. However, the Taskforce decided that children under five should be grouped with those aged six to 12, and the percentages applied should be those of the older group, which are higher. This was to take into account the costs of child care that can be faced by the parent who has major care of a child under five and wishes to undertake paid work, and the opportunity costs that resident parents face when children are very young. A further reason was administrative simplicity.

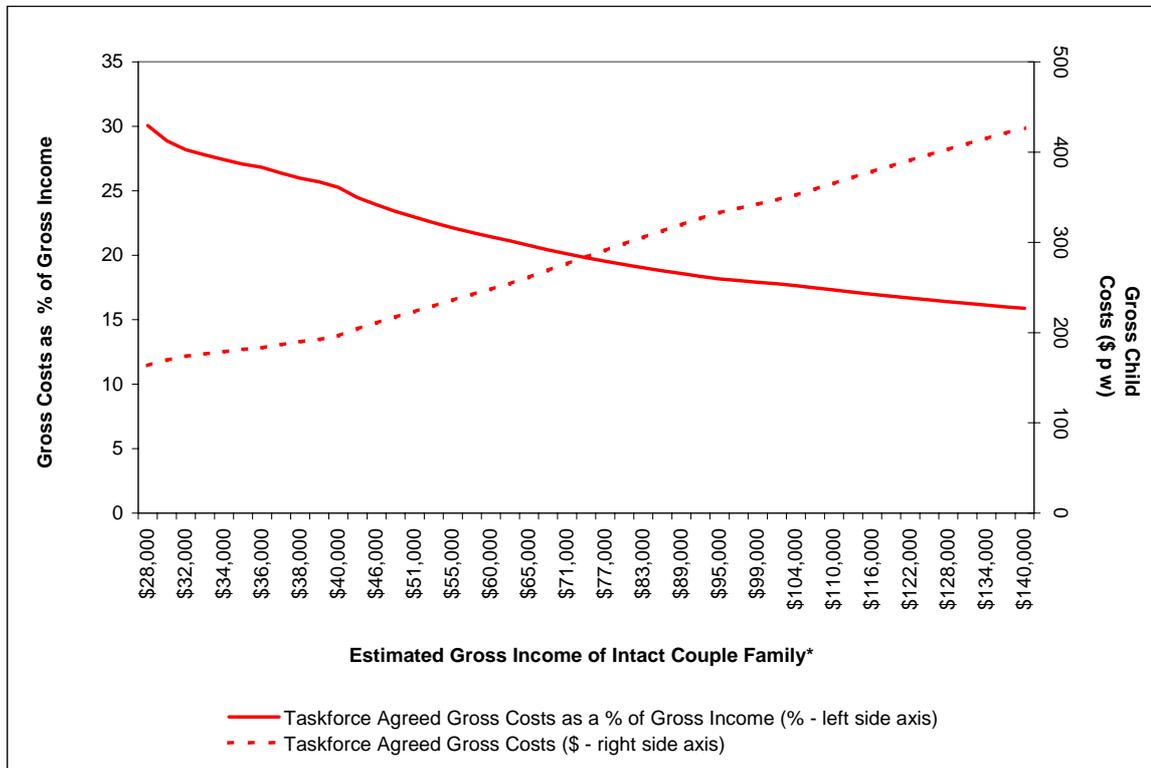
Given the modest differences between the costs as a percentage of income for children aged 13 to 15 and those aged 16 and over — and to enhance administrative simplicity — the Taskforce also recommended a single age band for children aged 13 and over. The final gross costs as a percentage of gross income for middle income families endorsed by the Taskforce are shown in the two right hand columns of Table 8.6.

### 8.6.2 Costs at different income levels

The research by Percival and Harding demonstrated in detail how the costs of children decline, as a percentage of total household income, with increasing incomes (see above, Figure 8.1). Using their research findings, NATSEM was able to develop a series of gross costs of children curves for the Taskforce, varying with the age and number of children and gross family income. The Taskforce accepted the relative differences between the costs faced by intact families at different income levels produced by the Percival and Harding (2005) expenditure survey approach, but all the gross cost curves were appropriately raised or lowered so that the

gross costs as a percentage of gross family income for middle income families aligned with the Taskforce Agreed Gross Costs shown in Table 8.6. The resulting Taskforce Agreed Gross Costs, both as a percentage of gross family income and in dollar terms, are illustrated in Figure 8.2 for a couple family with two children aged between 0–12 years.

**Figure 8.2 Illustrative taskforce agreed estimates of the gross costs of children for a couple with two children aged 0-12 Years, 2005–06**



Note: The gross income figures have been rounded to the nearest \$1000.

## 8.7 The net costs of children

The costs of raising children have always been split between parents and the community, with the latter form of support effectively occurring through taxpayers funding the provision of cash transfers or services used by families with children.

During the period since the establishment of the Child Support Scheme in 1988, the Federal government has sharply increased the real value of the cash transfers paid to families with children, with Family Tax Benefit (Part A) now comprising the main form of cash assistance from the Federal Government.<sup>165</sup> This means that the community as a whole now plays a much more substantial role in sharing the costs of children in all types of families, particularly those at the lower income levels. Indeed, for some very low income households, research presented to the Taskforce suggested that government benefits meet the full measured costs of children in intact households.

<sup>165</sup> See Chapter 7, at 7.7 (principle 3).

Consequently, and as explained in Chapter 7,<sup>166</sup> the Taskforce believes that the fairness of child support liabilities must be based on the contribution parents normally make out of their own earnings in intact families towards the costs of raising their children, rather than the total costs. Such ‘net’ costs of children are the gross costs of children minus the contribution of government through FTB A.

The Taskforce formed the view that the best way of recognising the contribution of government family benefits is to calculate the costs of children in a way that takes into account the contribution of FTB A. When the gross costs of children for intact families, described in the preceding section, are reduced by the amount of FTB A received by that family at their income level, this provides the *net costs* of children in intact couple families. The Taskforce recommends that the net costs of children percentages be used in the child support formula.

The Taskforce was required to make a range of assumptions to move from estimates of the gross costs of children at various gross family income levels for couples, to the net costs of children at various taxable income levels for separated parents, as required for the implementation of a new child support formula. One of the difficulties, for example, is that intact couple families at the same level of gross household income may have very different taxable and disposable incomes, because of differences in the labour force participation of the parents — with consequent effects upon their spending on their children.

In addition, any unadjusted net costs of children line is not a smooth curve, as the impact of the withdrawal of more-than-minimum FTB A and then, subsequently, minimum FTB A, creates two fluctuations in the net costs curve. This occurs when increases in taxable income are not matched by commensurate increases in net spending on children, due to the income tests associated with FTB A and thus the withdrawal of this form of government assistance.<sup>167</sup> The Taskforce accordingly smoothed the net costs curves, to provide greater policy and administrative simplicity, as well as greater certainty to parents about their liabilities.

It was also necessary to take account of the impact of the Maintenance Income Test. Furthermore, the Taskforce agreed net costs of children also needed to take account of other aspects of the child support policy, especially the self-support threshold, the minimum payment, and workforce incentives. Ultimately, the Taskforce decided that a self-support threshold with a series of subsequent income thresholds, and a reducing series of net child cost percentages, provided a sufficiently accurate and administratively workable representation of the net costs of children.

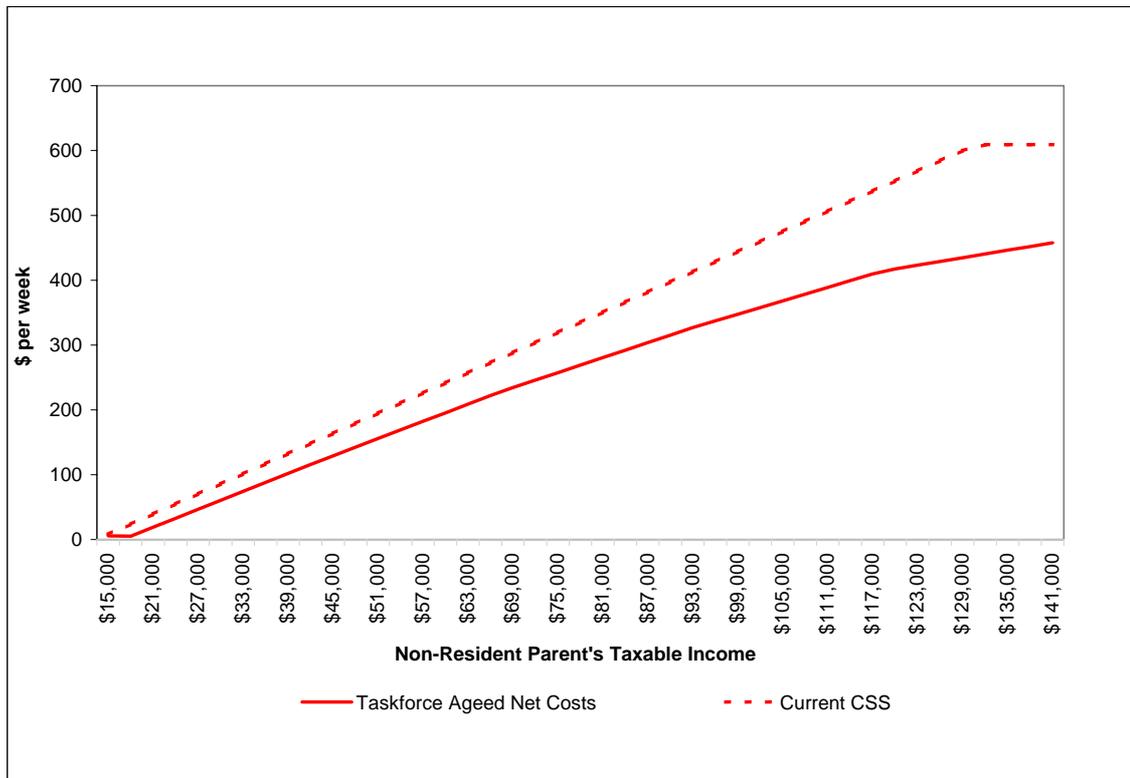
Figure 8.3 illustrates the Taskforce agreed net costs of children for two children aged 0–12 years, as embodied in its recommended new formula, and compares them with current payments under the Child Support Scheme. Figure 8.4 illustrates the agreed net costs for two children aged 13 to 17 years and compares them with current payments under the Child Support Scheme.

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<sup>166</sup> Ibid.

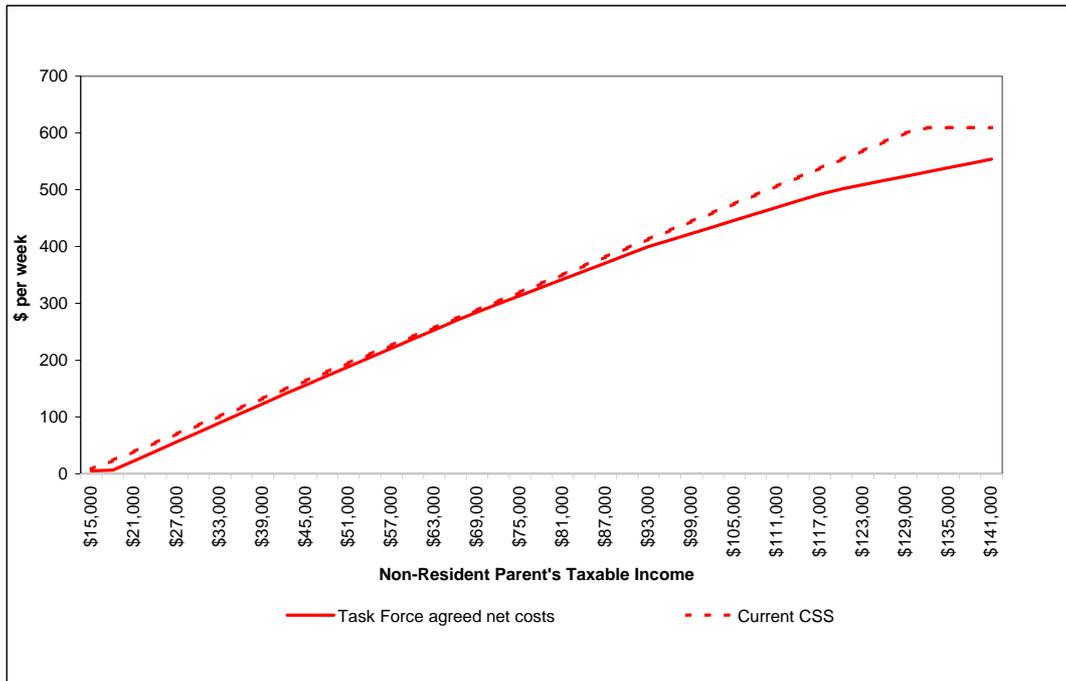
<sup>167</sup> As noted in Chapter 16, the modelling assumed the rates of FTB A expected to apply in 2005–06.

**Figure 8.3: Taskforce agreed net costs of children as a percentage of taxable income compared with current CSS liabilities for two children aged 0-12 Years**



Note: The estimates are for where there are two child support children aged 0 to 12 years, the resident parent's taxable income is below the self-support threshold, and there is no regular contact by the non-resident parent. All taxable income figures have been rounded to the nearest \$1000.

**Figure 8.4: Taskforce Agreed Net Costs of Children as a Percentage of Taxable Income Compared with Current CSS Liabilities for Two Children Aged 13-15 Year**



Note: The estimates are for where there are two child support children aged 13 to 15 years, the resident parent's taxable income is below the self-support threshold, and there is no regular contact by the non-resident parent. All taxable income figures have been rounded to the nearest \$1000.

## 8.8 Larger families

FTB A is paid at the same rate for each child within a particular age range, with a large family supplement usually payable to families with four or more children. Thus, a family with three children aged less than 12 years receives three times as much FTB A as a family with one child. As a result, and according to the evidence on the costs of children examined by the Taskforce, FTB A does not reflect the reduction in average spending on children that occurs as family size increases. Because of this, at lower family income levels, FTB A meets a higher proportion of the gross costs of children in larger families than it does in smaller families. This means that the net costs of children — those costs which remain to be covered by the parents rather than the taxpayer — do not increase as rapidly as the gross costs of children as family size increases.

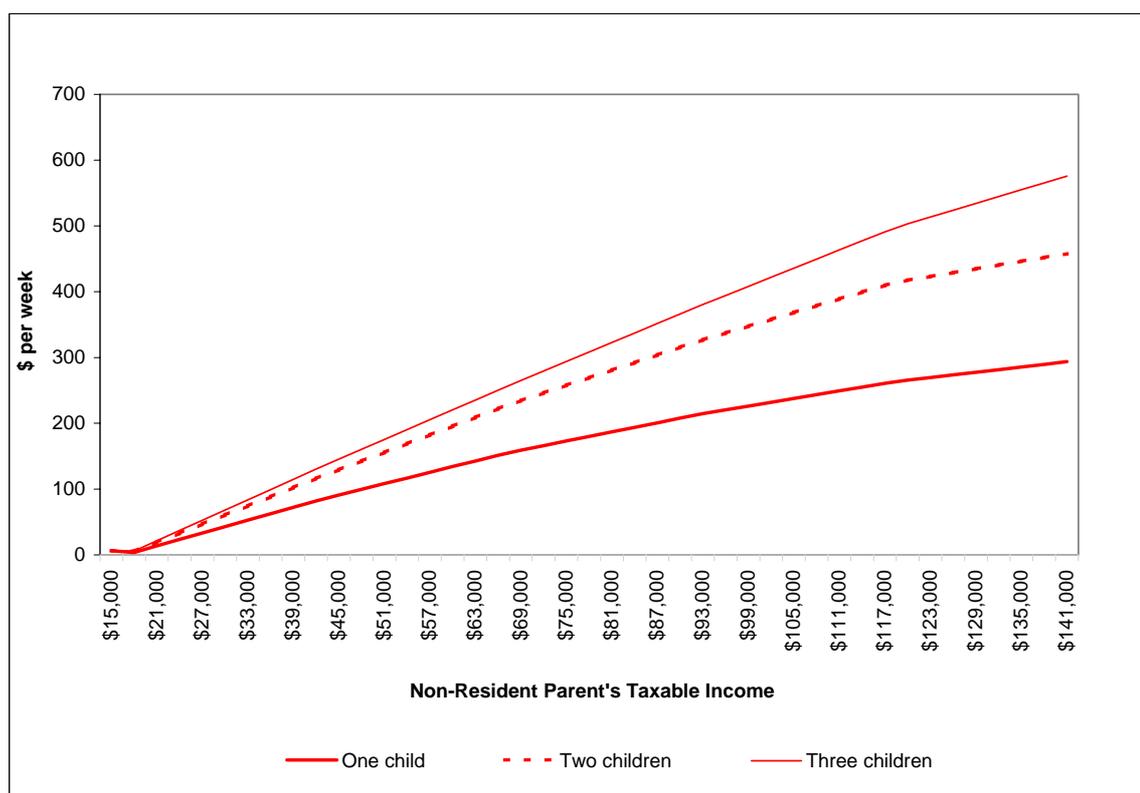
This discrepancy — between the uniform ‘per child’ rate of FTB A paid by government and the declining average spending on children that apparently occurs in the real world, as family size increases — explains why the net costs of children expressed as a percentage of taxable income after the exempt income for self-support (see Table A: Cost of Children, in Chapter 9) look very different to the gross costs of children expressed as a percentage of gross income (shown in Table 8.6).

The marginal costs of the third, fourth and fifth child produced by Percival and Harding and shown in Table 8.2 suggested that, in low income families, such children cost about \$80 a week or less — with the picture being reasonably similar for the fourth and fifth child in middle income families. As the maximum rate of FTB A in 2005–06 for children aged less than 13 years is about \$80 a week, this indicates that for many families the net costs of four and five children are no higher than for three children. The key exception to this is for very high income families, who are not eligible to receive FTB A.

Given that the number of such large high income families is relatively small, and that the differences between net costs for families with three children and those with more children were very similar at lower to middle income levels, the Taskforce decided to recommend that a single uniform child support rate be applied for three or more children. Thus, the new evidence presented to the Taskforce suggested that it was no longer appropriate to continue to have a higher rate for fourth and fifth children, as embodied in the percentages applying in the current child support scheme.

Figure 8.5 illustrates the new Taskforce agreed net costs of children for one to three children aged 0–12 years. The smaller distance between the curves for three and for two children than for between the curves for two and for one child graphically illustrates the estimated lower marginal net cost increases associated with second and subsequent children.

**Figure 8.5 Taskforce Agreed Net Costs of Children, by Number of Children Aged 0-12 Years**



Note: All taxable income figures have been rounded to the nearest \$1000

## 8.9 Children in different age groups

There are cases where all of the child support children do not fall into one of the two age groups recommended by the Taskforce – namely ‘0–12 years’ and ‘13 years and over’. In such cases, the Taskforce recommends that the marginal child support cost rates applying within each of the income bands represent a simple arithmetic average of the two rates. The Taskforce did examine the possible impact of using a weighted average rate (for example, with the applicable percentage being the result of the weighted average for two children aged 0–12 years and one child aged 13 years and over where there was a family with three such child support children). However, as there were relatively few such large child support families, and as the weighted average made only a small difference to the results, the Taskforce decided to opt for administrative simplicity and use a simple arithmetic mean. The resultant Taskforce recommended net costs of children percentages are shown in Table A: Costs of Children, in Chapter 9.

## 8.10 Very high income families

The NATSEM expenditure-based research for the Taskforce suggested that, at very high income levels, the growth in both the gross and net costs of children began to reduce. Thus, at income levels above around \$130 000 a year, increases in taxable income resulted in lower increases in spending on children than for families further down the income spectrum. This reflected the falling percentage of gross income spent on children as income increased, which

was discussed earlier (see Figure 8.2). Accordingly, the Taskforce decided that it was reasonable to impose a ceiling on the maximum level of child costs that any parent could be expected to meet. This is reflected in the proposed cap on liabilities once Child Support Income reaches \$126 620 (which, if both parents have adjusted taxable incomes above their self-support amounts, equates to a combined adjusted taxable income of \$160 386).

## 8.11 Costs for separated families

The research commissioned for the Taskforce does not clearly indicate that separation per se increases the costs of children.

The Terms of Reference required the Taskforce to consider, “data on the costs of children in separated households at different income levels, including the costs for both parents to maintain significant and meaningful contact with their children.” This Chapter has reported on those findings.

As discussed in Chapter 7, the Taskforce concluded that the Child Support Scheme percentages should continue to be based upon the estimated spending upon children in intact couple families, giving preference to the “continuity of expenditure” principle over any possible differences in costs in separated families. The lack of a clear evidence base for working out the costs of children in separated families was an additional reason for reaching this conclusion. The Taskforce concluded that the main rationale for looking at the costs of children in separated families was in terms of the combined increased costs where care is being shared or the non-resident parent is having regular contact.

## 8.12 Costs of contact

The research commissioned by the Taskforce did suggest that contact is associated with increased costs for the non-resident parent, allied with less-than-proportionate reductions in costs for the resident parent. In other words, the total costs of children were higher when their care was shared between two households, relative to spending all of their time in one household.

The difficult policy question is how to recognise these significantly increased total costs of children when being cared for in two households. One option is for the government to provide extra assistance through a cash benefit in these situations, as the House of Representatives Committee on Family and Community Affairs proposed.<sup>168</sup> This is, of course, a matter for the Government; it was not one of the recommendations of the Committee on which the advice of the Taskforce was sought.

A second possibility is to inflate the total measured costs of children when contact occurs and distribute the costs between the two parents accordingly. This is done in some States in the USA. Although this approach visibly recognises the increased costs, it does so with greater policy complexity.

The third approach, which, the Taskforce has recommended, is to apportion the costs of the child in a way that tries to reflect the relative costs each face in having contact. Accordingly,

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<sup>168</sup> *Every Picture Tells a Story*, op. cit Recommendation 25.

the recommendation is that the costs associated with care between 14 and 30 % of nights be better recognised than in the existing system by reducing a payer's child support liabilities. This is explained in Chapter 9.

# **Part C: Detailed Recommendations**

## 9 A New Formula for Assessing Child Support

To address the issues identified in the earlier chapters of this Report, the Taskforce proposes a fundamental change to the formulae used in the Child Support Scheme.

### 9.1 Overview of the proposed new formula

The essential feature of the proposed new Scheme is that the costs of children are first worked out based upon the parents' combined income, with those costs then distributed between the mother and the father in accordance with their respective shares of that combined income and levels of contact.

The resident parent is expected to incur his or her share of the cost in the course of caring for the child. The non-resident parent pays his or her share in the form of child support. Both parents will have a component for their self-support deducted from their income in working out their Child Support Income.

This gives practical expression to the first objective of the Scheme — that parents share in the cost of supporting their children according to their capacity. The proposed Scheme is based upon the 'income shares' approach used in many other jurisdictions and reflects the notion of shared parental responsibility contained in Part VII of the *Family Law Act 1975*.

The proposed formula will be based upon Table:A Costs of Children, in this Report., The table expresses the cost of the child as a percentage of the parents' combined income above their individual self-support amounts in two age groups, 0–12 and 13–17. These percentages are based as far as possible on the estimates of the net costs of children explained in the previous chapter. The costs represent the best estimate the Taskforce can make of the amount that parents on average spend on children in these age groups out of their own incomes.

In settling on the percentages that apply above the self-support amounts, the Taskforce took account of the present operation of the Maintenance Income Test (see Chapter 11).

Another theme of the Recommendations in this Chapter concerns the importance of having consistency in the approach towards separated families across different areas of government policy. A number of recommendations therefore concern the interface between child support, income support and family payments.

The recommendations in this Chapter explain in detail how legislation should be drafted and the Scheme put into operation to give effect to the intentions of the Taskforce. For this reason, many of the recommendations are technical in nature.

Although the formula may be legislatively complex, it will be no more complex to administer than the current formula, nor will there be any greater complexity for the general public. At the present time, people can use a calculator on the Child Support Agency website<sup>169</sup> to obtain an estimate of a child support liability, if they know the father's income, the mother's income, and the number of children. With the addition of the requirement to enter the ages of the children, it

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<sup>169</sup> [www.csa.gov.au](http://www.csa.gov.au).

will be as simple for a member of the public to obtain an estimate of the new child support liability as it now is.

## 9.2 The income-shares approach

The ‘income shares’ method has been adopted by a majority of US states. It begins with a figure for the costs of the child based upon combined parental income, and then distributes that cost between the parents in accordance with their respective share of that combined income — in other words, their capacity to pay. The primary caregiver is assumed to meet her or his share of that cost in kind. The non-resident parent’s share becomes the child support obligation.

The major difference between the income-shares approach and the “percentage of obligor income” approach that is now the basis for the Australian scheme<sup>170</sup>, is the explicit inclusion of both parents’ incomes, in a way that parallels likely expenditure by those parents as if in an intact household where both parents have income. In American jurisdictions that use the income-shares approach, the percentage of income required for the calculation of both the cost of children and Child Support amount declines as combined parental income increases. Although the total combined Child Support contribution required of the parents increases with combined income, it does not rise proportionately to income.

But for this difference both approaches would yield the same child support requirement for the liable parent. The flat percentage liability, calculated only by reference to the liable parent’s income, will produce the same proportional share of the cost of the child as that parent’s income bears to the total income of the two parents combined.

In principle, the income-shares approach is to be preferred for the following reasons:

- If the purpose of the child support scheme is to ensure that “parents share in the cost of supporting their children, according to their capacity” then the amount of child support payable ought to be referable to some measure of the costs of, or average expenditure on, raising children.
- If the scheme does not generally take into account the income of both parents then it cannot demonstrate that the parties are sharing equitably in the reasonable costs of raising children.
- The income-shares approach is more transparent. It makes clear how much is being contributed by the mother, the father and the community, to the child’s support.
- It makes change of assessment processes clearer. If there is a reduction in the liability of one parent, then either the increased costs must be borne by the other parent, or taxpayers must pay more, or the child’s living standards must suffer.

For these reasons, the Taskforce considers that, in principle, the income-shares approach is more appropriate for Australia’s current circumstances, and more in line with community

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<sup>170</sup> The Australian scheme is a modified percentage of obligor income approach which takes account of both parents incomes in cases where resident parent income is high, but the result does not equate to the share of the cost of the child which would otherwise apply at that income level – see discussion around Recommendation 1.9 below.

values<sup>171</sup>, than the current system in which the great majority of all child support liabilities are based upon just the non-resident parent's income.

Recommendation 1, which describes the detail of the proposed new child support formula, is divided into 31 subsections to emphasise that these recommendations constitute a package of interdependent recommendations to be taken together.

### **Recommendation 1**

The existing formulae for the assessment of child support be replaced by new formulae based upon the principle of shared parental responsibility for the costs of children. The new basic formula should involve first working out the costs of children by reference to the combined incomes of the parents, and then distributing those costs in accordance with the parents' respective capacities to meet those costs, taking into account their share of the care of the children.

## **9.3 The measurement of income**

The income basis for the calculation of child support for the current scheme is taxable income, but with various deductions<sup>172</sup> and exempted amounts<sup>173</sup> added back, and the gross value of the parent's reportable fringe benefits included. Conceptually, this is similar to the definition of income for Family Tax Benefit purposes, except that with FTB the calculation of some of the components is slightly different, and it includes many tax-free pensions or benefits<sup>174</sup>.

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<sup>171</sup> As was seen in Chapter 6, the great majority of respondents considered that both parental incomes should be taken into account in the assessment of child support. This view was expressed by more than 80 per cent of non-separated women and men and non-resident fathers, and by two thirds of the resident mothers.

<sup>172</sup> Net rental property losses.

<sup>173</sup> Exempt foreign income.

<sup>174</sup> Family Assistance Guide – 3.2.6 - The following payments are tax free pensions or benefits for the purposes of calculating Adjusted Taxable Income:

DSP where the recipient is under age pension age,

WP where both the recipient and partner are below age pension age,

CP where both the carer and the person being cared for are under age pension age,

DVA invalidity service pension where the recipient is below age pension age,

DVA disability pension, war widow's and war widower's pension,

DVA service pension and partner service pension where both partners are under age pension age and the veteran receives an invalidity service pension at the time of death,

DVA income support supplement paid on the grounds of invalidity if the person is under age pension age,

DVA DFISA, where DFISA is exempt from income tax,

Special Rate Disability Pension safety net payment (SRDP) paid by the Military Rehabilitation and Compensation Commission,

compensation for permanent impairment paid by the Military Rehabilitation and Compensation Commission,

additional compensation for impairment from another service injury or disease paid by the Military Rehabilitation and Compensation Commission,

The Taskforce considers that it is desirable not to multiply the definitions of income across Government policy without a clear basis. It concluded that in principle, the definition of income for the purposes of the Child Support Scheme should be no different from the definition for the purposes of Government benefits paid to families, particularly Family Tax Benefit. It is a matter for the Government how best to align the two definitions. Aligning the definitions does not necessarily mean that the period of assessment of income for FTB and child support should also be aligned.

In particular, the Taskforce considers that while the Child Support Scheme is based on taxable income, with such adjustments as are included within the definition of supplementary income, the definition of income should include non-taxable forms of income support. An example is the Disability Support Pension. While many of those on this pension are not able to work at all, and therefore will have incomes below the self-support amount, it is possible for a person to do some paid work while on a disability pension. For that reason, it ought to be included in the definition of income for child support purposes.

Family Tax Benefit payments should not however be part of the income base of the parents. The Government's contribution to the costs of children through Family Tax Benefit Part A has already been factored in to calculate the net cost of the child for distribution between the parents.<sup>175</sup> It would be counted twice if additionally included as income in the hands of either parent. Family Tax Benefit Part B is more problematic. However, it provides additional support for sole parents and families with one main earner, compensating them in some cases for having access to only one tax-free threshold and for the opportunity costs for the parent with reduced work opportunities because of their care for children. The Taskforce considered such compensation should not be treated as available for the support of the children, and so Family Tax Benefit Part B should not be included as income for child support purposes.

#### **Recommendation 1.1**

For the purposes of the formula, the current definition of adjusted taxable income should be broadened to include certain non-taxable payments such as certain forms of income support, currently exempt.

#### **Recommendation 1.2**

The definitions of income for child support and Family Tax Benefit should be consistent and the components should be the same.

## **9.4 The self-support amount**

The basic self-support component (or exempt amount, as it is known) is an important feature of the existing Scheme, and the Taskforce recommends that it be increased. Concerns have long existed as to the adequacy of the current level of the exempt amount. This was one of the key

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interim compensation paid by the Military Rehabilitation and Compensation Commission while waiting for compensation payment for permanent impairment or additional compensation payment for impairment from another service injury or disease, and

compensation for eligible widow partner paid by the Military Rehabilitation and Compensation Commission.

<sup>175</sup> See Chapter 8 at 8.7.

issues raised with the Parliamentary Inquiry.<sup>176</sup> One argument is that the current level creates serious work disincentives for some non-resident parents. The House of Representatives' Committee concluded that the level of the self-support allowance should be raised.<sup>177</sup>

In order to respond to the concerns about work disincentives, the Taskforce took into account the applicable taper rates for income support in setting the self-support component. In keeping with the linkage of other base values for the Scheme to average earnings, and adjustments with changes in such earnings, the Taskforce proposes that the self-support amount be set at one third of average weekly earnings.

The Taskforce also recommends that both parents should have the same self-support amount, since the income of the payee is treated differently in the proposed new Scheme, and does not operate to reduce the child support income of the payer. It is therefore unnecessary to include the resident parent's contribution to support of the child by disregarding her income below average weekly earnings of all employees. Instead, the resident parent's contribution by caring for the child is recognised expressly in the assessment of the parents' respective child support obligations.

The first was to treat the self self-support amount as a "floor" or minimum, where the relevant percentage is applied to all income, but the child support rate is reduced if this would otherwise result in the payer having income of an amount less than the "floor" for his or her own support. However, this approach has the disadvantage that it creates disincentives to increase income just above the "floor" as every dollar in increased income up to a certain level would go towards Child Support. Instead, the Taskforce decided to adopt the approach under the existing Scheme in which a percentage of income above the self-support amount becomes relevant for Child Support purposes. Each parent requires a reasonable level of income for their own support in their circumstances of separation, before they have the capacity to support their children for the purposes of the Child Support Scheme. Even once this income level is reached, the proportion of this income not required for the support of the child is available to the parent. If a parent's taxable income does not exceed the self-support amount, it is deemed to be zero for the purposes of the formula.

### **Recommendation 1.3**

Each parent should have a self-support amount set at the level equivalent to one third of male total average weekly earnings (MTAWE). Their adjusted taxable income less the self-support amount should be their income for child support purposes (the 'Child Support Income'). Their Child Support Income should be zero if their adjusted taxable income does not exceed the self-support amount.

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<sup>176</sup> House of Representatives Standing Committee on Family and Community Affairs, Report of the Inquiry into Child Custody Arrangements in the Event of Family Separation, *Every Picture Tells a Story*, (December 2003), 6.58 and following.

<sup>177</sup> *Ibid*, 6.69. The Committee did not make a specific recommendation to this effect.

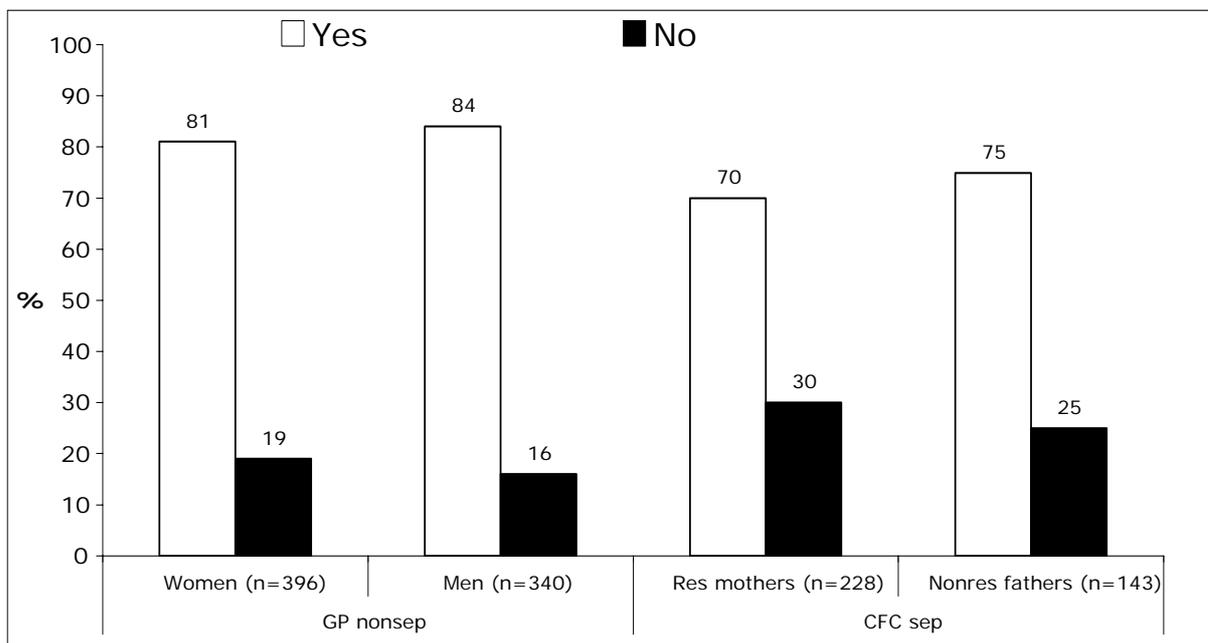
## 9.5 The Costs of Children Table

### 9.5.1 Two age bands

As indicated in Chapter 6,<sup>178</sup> it is clear from all the available research evidence that expenditure on teenagers is significantly greater than that on pre-school and primary-school aged children.

There is significant community support for the Child Support Scheme to reflect this difference in the formula. Figure 9.1 shows the level of support for the idea that children's ages should be taken into account in setting child support liabilities.

**Figure 9.1: Do you think the amount of child support should depend on the children's ages?**



Notes. GP nonsep = general population non-separated sub-sample; CFC sep = *Caring for Children after Parental Separation* sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(3) = 17.91, p < .001$ .

In making estimates on the best available data of the costs of children, the Taskforce initially used four age groups. The findings for different ages of children in these categories are presented in Chapter 8. The Taskforce then considered that for the purposes of the formula used in the Child Support Scheme, having four groups would be unnecessarily complex. It decided to align the age groups for the Child Support Scheme broadly with FTB A, by having two age groups, 0–12 and 13–17. (FTB uses three age bands, with the amounts payable for 16 and 17 year-old young people being lower than for younger teenagers).

Where there are children in different age bands in the one family, the costs of the children should be the average of the amounts applicable in each band. For this reason, Table A: Costs of Children also has a third set of percentages that apply to combinations of children between the age bands.

<sup>178</sup> Chapter 6, at 6.3.

### 9.5.2 *A Costs of Children Table not based upon fixed percentages of income*

Table A: Costs of Children (in this chapter) provides percentages for each portion of income above the self-support threshold of each parent. In order to achieve automatic indexation, each threshold is expressed as a proportion of MTAW (male total average weekly earnings, as reported by the Australian Bureau of Statistics) above the self-support amounts.

Since parents spend more on children the more money they have, but spend less as a percentage of their household income in the higher income ranges, the percentages applicable in this formula gradually decline as combined taxable income increases. The proposed percentages map as closely as possible the research evidence on the net costs of children explained in the previous chapter. The rate of decline is greater for one child than for two or three children because of the way FTB interacts with parents' own expenditure on children.

The applicable percentages operate like the tax system, but in reverse. That is, the costs of children are greater as a percentage of the first portion of income above the self-support threshold than as a percentage of higher portions.

As a consequence, a liable parent with a high income will pay much more in child support than a parent on a low income, but less as a *percentage* of his or her taxable income than the parent on a low income.

Similarly, where the resident parent is earning a sufficient amount that the combined Child Support Income of the parents takes them into a higher bracket, then her or his income will reduce the amount that the non-resident parent has to pay. It will do so in a much more graduated way than under the current formula, which reduces liabilities more rapidly than is justified by the research on the costs of children. Under the proposed formula, child support obligations will be based upon the relative difference between the parents' respective incomes.

### 9.5.3 *The costs of child care*

In order to take account of the costs of child care or income forgone by being out of the workforce to care for young children, the costs of children aged 0–12 have been based upon the research evidence on the costs of 5–12 year-old children. As seen in the previous chapter, these costs are substantially higher than the costs of children aged 0–4 for middle income families.<sup>179</sup>

In practice, child care costs can vary enormously depending on the location of the child care and whether or not the care is being provided by a commercial provider. Where child care costs are particularly high, as they are in some parts of the country, the parent incurring this cost will be able to apply for a change of assessment to help meet this cost. This is an existing ground for a change of assessment under the Scheme. Parents of young children should also be encouraged to discuss the issue of child care costs when negotiating financial arrangements following separation through Family Relationship Centres or in other ways.

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<sup>179</sup> See Chapter 8, Table 8.6, Taskforce Agreed Gross Costs of Children as a Percentage of Gross Family Income, for Middle Income Families, 2005–06.

#### **9.5.4 Number of children**

The current scheme has percentages of income for up to five children. As discussed in Chapter 8,<sup>180</sup> the Taskforce found in its research that because FTB is payable on a per child basis without taking into account any economies of scale within the family, the net costs of four or more children is little different from the costs of three. For this reason, the Taskforce has concluded that it is only necessary to have a percentage of combined income for three or more children in the formula. Where there are more than three children, the age of the eldest three should be the measure of the cost of all the children.

However, for the purposes of calculations, it may be necessary to measure costs of individual children for some situations. These may include situations where a parent has different contact arrangements with different children, or where a change of assessment decision or other variation (such as an agreement) differentiates between the costs of individual children in the same family. As a result, there should be a system for allocating a cost to individual children where necessary, based upon the Taskforce percentages.

##### **Recommendation 1.4**

The costs of children for the purposes of calculating child support should reflect the following:

- Expenditure on children rises with age.
- As income rises, expenditure on children rises in absolute terms, but declines in percentage terms.

##### **Recommendation 1.5**

The costs of children shall be expressed in a Costs of Children Table based upon the parents' combined Child Support Income in two age bands, 0–12 and 13–17, and in combination between the age bands for up to three children. (See Table A: Costs of Children).

##### **Recommendation 1.6**

Where there are more than three child support children, the cost of the children shall be the cost of three children, and where the children are in both age brackets the cost of children is based upon the ages of the three eldest children.

##### **Recommendation 1.7**

Where there is more than one child support child, and the arrangements concerning regular contact or shared care differ between the children, the cost of each individual child is the cost of the total number of children divided by the total number of such children.

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<sup>180</sup> See Chapter 8, at 8.8.

**Table A: Costs of Children**

Parents' combined Child Support Income (income above the self-support amounts) <sup>1</sup>						
Number of children	\$0 – \$25 324 <sup>2</sup>	\$25 325 – \$50 648 <sup>3</sup>	\$50,649 – \$75 972 <sup>4</sup>	\$75 973 – \$101 296 <sup>5</sup>	\$101 297 – \$126 620 <sup>6</sup>	Over \$126 620 <sup>6</sup>
Costs of children (to be apportioned between the parents)						
Children aged 0–12 years						
1 child	17c for each \$1	\$4 305 plus 15c for each \$1 over \$25 324	\$8 104 plus 12c for each \$1 over \$50 648	\$11 143 plus 10c for each \$1 over \$75 972	\$13 675 plus 7c for each \$1 over \$101 296	\$15 448
2 children	24c for each \$1	\$6,078 plus 23c for each \$1 over \$25 324	\$11,902 plus 20c for each \$1 over \$50 648	\$16,967 plus 18c for each \$1 over \$75 972	\$21,525 plus 10c for each \$1 over \$101 296	\$24 058
3+ children	27c for each \$1	\$6 837 plus 26c for each \$1 over \$25 324	\$13 422 plus 25c for each \$1 over \$50 648	\$19 753 plus 24c for each \$1 over \$75 972	\$25 830 plus 18c for each \$1 over \$101 296	\$30 389
Children aged 13+ years						
1 child	23c for each \$1	\$5 825 plus 22c for each \$1 over \$25 324	\$11 396 plus 12c for each \$1 over \$50 648	\$14 435 plus 10c for each \$1 over \$75 972	\$16 967 plus 9c for each \$1 over \$101 296	\$19 246
2 children	29c for each \$1	\$7 344 plus 28c for each \$1 over \$25 324	\$14 435 plus 25c for each \$1 over \$50 648	\$20 766 plus 20c for each \$1 over \$75 972	\$25,830 plus 13c for each \$1 over \$101 296	\$29 123
3+ children	32c for each \$1	\$8 104 plus 31c for each \$1 over \$25 324	\$15 954 plus 30c for each \$1 over \$50 648	\$23 551 plus 29c for each \$1 over \$75 972	\$30 895 plus 20c for each \$1 over \$101 296	\$35 960
Children of mixed age						
2 children	26.5c for each \$1	\$6 711 plus 25.5c for each \$1 over \$25 324	\$13 168 plus 22.5c for each \$1 over \$50 648	\$18 866 plus 19c for each \$1 over \$75 972	\$23 678 plus 11.5c for each \$1 over \$101 296	\$26 590
3+ children	29.5c for each \$1	\$7 471 plus 28.5c for each \$1 over \$25 324	\$14 688 plus 27.5c for each \$1 over \$50 648	\$21 652 plus 26.5c for each \$1 over \$75 972	\$28 363 plus 19c for each \$1 over \$101 296	\$33 174

<sup>1</sup> Calculated by adding the two parents' Child Support Incomes, that is, adding each parent's adjusted taxable income minus their self-support amount of \$16 883 (1/3 of MTAW E)

<sup>2</sup> .5 of MTAW E

<sup>3</sup> MTAW E

<sup>4</sup> 1.5 times MTAW E

<sup>5</sup> 2 times MTAW E

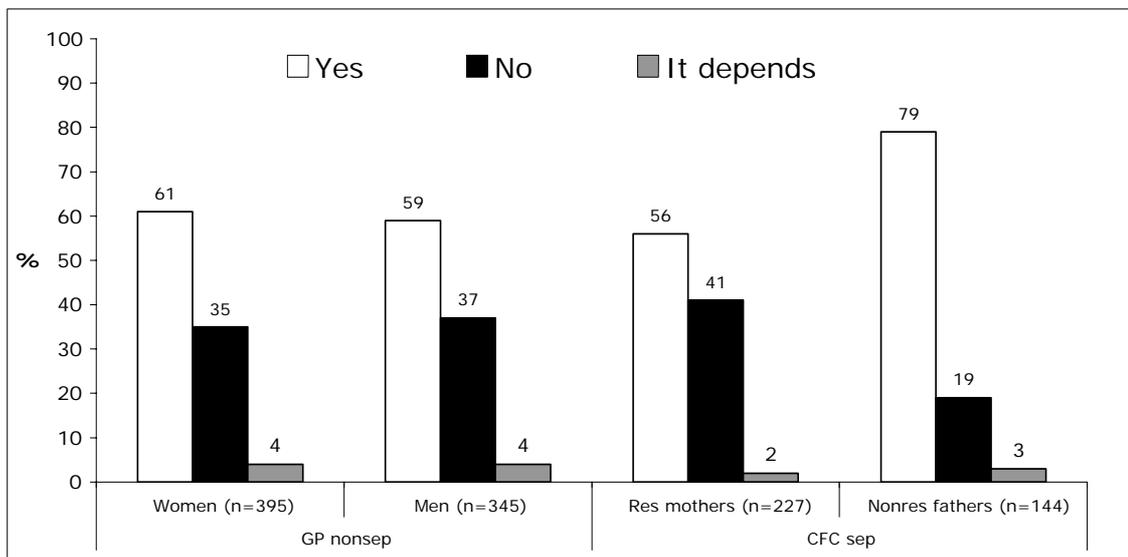
<sup>6</sup> 2.5 times MTAW E. Costs of children do not increase above this cap. Note that this equates to a cap at a combined adjusted taxable income of \$160 386.

### 9.5.5 A cap on the costs of children

Expenditure on children becomes increasingly discretionary as household income increases. One couple may choose to make extra repayments on the mortgage, another may have regular overseas trips with the children, another may provide personal tuition for a child. The need to place a limit on the income to which the formula applies is recognised in the current Scheme by placing a cap on income at 2.5 times full time adult average weekly earnings for the purposes of applying the child support percentages. The cap for 2005 is \$130 767.

Most respondents in the four groups supported the idea that there should be a cap on the amount of child support a high-earning non-resident father should pay.

**Figure 9.2: Should there be a maximum amount of child support payable for high-income fathers?**



Notes. GP nonsep = general population non-separated sub-sample; CFC sep = *Caring for Children after Parental Separation* sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(6) = 23.44, p < .01$ .

The Taskforce considers that it continues to be appropriate to limit the level of compulsory transfers under the scheme. There is no obvious cut-off point for child-related expenditure. If a child is attending one of the most expensive private schools in Australia, the fees and additional costs for extra-curricular activities alone may exceed the total level of child support paid by liable parents whose income exceeds the cap under the existing formula.

However, nothing in the Child Support Scheme mandates that money transferred be used for a particular purpose. The formula is applicable whether or not parents choose to educate children privately, and whether or not they take expensive overseas holidays, or engage in any other such activities that involve child-related expenditure.

It follows that there must be mandatory limits on the level of transfers made, based on a generic formula. A parent may choose to pay more. It should also remain possible to exceed the cap through the change of assessment process. The Child Support Registrar already has a discretion to assess mandatory child support contributions in excess of the cap. At present, two reasons for a change of assessment are that:

- It costs extra to cover the children's special needs.

- It costs extra to care for, educate or train the children in the way that the parents intended.

Only a small number of cases are likely to arise on this ground involving raising the cap.

Consistent with the income-shares approach, the Taskforce proposes that the cap will be on combined income for calculating the costs of the child, whether most of the income is in the hands of one parent or both have well paid jobs. This would be expressed as a sum above each parent's self-support amount, so it is a higher cap than now applies; under the present formula, the cap applies to income before the payer's exempt amount is deducted. The Taskforce proposes that the costs of children be capped at a combined Child Support Income of 2.5 times MTAW. This equates to a projected maximum combined income for 2005–06 of \$160 386.

#### **Recommendation 1.8**

Combined parental Child Support Income for the purpose of assessing the costs of children shall not exceed 2.5 times male total average weekly earnings (MTAW).

### **9.6 Determining a parent's contribution to the costs of children**

The formula should operate by first working out the financial needs of the child based upon the combined child support incomes of the parents, that is, the proportion of the income of each of them that exceeds their self-support amount. That calculation would be based on the Table A: Costs of Children. That cost is then shared in proportion to the parents' respective child support incomes.

#### **Recommendation 1.9**

The parents of the child should contribute to the relevant cost of the child (or children) in proportions equal to each parent's proportion of the combined Child Support Incomes.

### **9.7 Regular contact and shared care**

As noted in Chapter 6, one of the concerns about the current Scheme is that the formula is the same whether a non-resident parent is caring for the children for 29% of the nights per year or is not seeing them at all. This is difficult to justify. The House of Representatives Committee on Family and Community Affairs, in its report *Every Picture Tells a Story*<sup>181</sup> proposed a number of reforms to the *Family Law Act 1975*, and a range of other measures, to emphasise the desirability of shared parental responsibility, and to encourage both parents' involvement after separation, to the maximum extent consistent with the best interests of the child. The Committee also recognised that there were some circumstances where shared parental responsibility was not in the best interests of children, in particular where there is a history of violence, child abuse or entrenched conflict.

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<sup>181</sup> House of Representatives Standing Committee on Family and Community Affairs (December 2003) .

### **9.7.1 The Child Support Scheme and post-separation parenting**

It is very important that the Child Support Scheme be aligned with Government policy on post-separation parenting.

One aspect of this is that the Scheme ought to recognise the costs of regular contact in a way that is as fair as possible to both parents. The Terms of Reference of the Taskforce required it to provide advice on the recommendations of the House of Representatives' Committee concerning changing the link between child support payments and the time children spend with each parent. The Taskforce was required to evaluate the existing formula percentages and associated exempt and disregarded incomes, having regard to data on the costs of children in separated households at different income levels, including the costs for both parents to maintain significant and meaningful contact with their children. It is clear therefore that the connection between the Child Support Scheme and the involvement of both parents in their children's lives was central to the work the Taskforce was asked to undertake.

However, recognising the costs of contact in the Child Support Scheme is not at all straightforward. The Parliamentary Committee noted the findings of research that care of children in two separated households is significantly more expensive than care in an intact household.<sup>182</sup> While a non-resident parent having regular contact with the children will necessarily spend money on the children while they are in that parent's care, this expenditure may not greatly diminish the costs that the resident parent bears. The central issue is that many fixed costs, in particular housing, are duplicated. Furthermore, the greater the level of care by the non-resident parent, the more likely it is that there will be clothes, toys and other belongings in both households, to minimise the need for the child to carry everything in a suitcase from one house to the other.

### **9.7.2 Recognising regular contact in the formula**

The Taskforce considers that when a parent has regular care of a child for at least one night a week, or an equivalent amount of time over the year during school holidays, this involves a parent incurring a level of expenditure that should be recognised in the formula. This level of care equates to care for 14% of nights per year, significantly below the 30% of nights or more required for recognition under the current formula. Many of these costs are infrastructure costs, including appropriate accommodation and bedding. They do not vary much with the level of care involved. Others are consumption costs including expenditure on food, entertainment and transport.

### **9.7.3 Child support, Family Tax Benefit and conflict about parenting arrangements**

The Terms of Reference required the Taskforce to consider how the Child Support Scheme can play a role in encouraging couples to reach agreement about parenting arrangements. There may not be a great deal that the Child Support Scheme can do in a positive way to encourage parents to agree on parenting arrangements. The most useful sources of help will naturally come from the new Family Relationship Centres and other government initiatives to extend the

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<sup>182</sup> Dr Paul Henman, also referred to by the House of Representatives Committee, *Every Picture Tells a Story*, p.144, paras 6.99 to 6.101.

services available for counselling and mediation. The Child Support Agency will no doubt be able to play a constructive role in supporting these initiatives (see Chapter 15).

There is, however, a way in which the Child Support Scheme could hinder parents from reaching agreement about parenting arrangements. One of the dangers of giving recognition to contact arrangements in the Child Support Scheme is that arguments about money can get in the way of reaching agreements that are in the best interests of the children. In the current Scheme, if the non-resident parent is caring for the children for at least 110 nights (30% of nights per year), this reduces his or her child support compared to the situation where the contact is for less than 110 nights. There is extensive anecdotal evidence that disputes between parents about contact arrangements have been motivated, at least in part, by the financial considerations arising if the number of nights of contact exceeds the 109 night threshold. The House of Representatives' Committee heard evidence to this effect, and research on the *Family Law Reform Act 1995* also reported anecdotal evidence of conflict around the 30% threshold for child support purposes.<sup>183</sup> The desire to reduce child support can motivate a non-resident parent to want increased contact, or make the resident parent resist increased contact.

The potential for conflict is greatly exacerbated by the present arrangements for splitting FTB. Entitlement to FTB is based on the number of nights above 10% of the nights per year that each parent is caring for the child. Thus, arguments about whether the children will stay with the non-resident parent for two nights per weekend or three, or have time with him or her in the middle of the week, may have financial implications.

#### **9.7.4 Reducing conflict in the best interests of children**

The Taskforce considers, on the basis of strong advice emerging from its consultations, that it is in the best interests of children that agreements about parenting arrangements not be affected by financial concerns. The Taskforce considers that the level of conflict over money can be minimised if the recognised costs of contact in the formula do not vary between 14% and 34% of nights per year. Most non-resident parents who maintain an active involvement in their children's lives will have a level of contact that exceeds the 14% threshold. Some will have daytime contact only, and this can also be recognised in the formula in some circumstances (see Recommendation 1.13 below): 35% of nights each year should be the threshold for treating the parents as having shared care.

The Taskforce proposes that between 14% and 34% of care, the contact parent will be treated as incurring 24% of the total costs of the child while caring for the child. That means that the parent's child support liability will be reduced by a figure representing 24% of the costs of the child. This is not only the mid-point between 14% and 34%. Evidence from the budget standards research (see Volume 2 of this Report) indicates that this reflects the findings of research on the proportions of the increased cost of children in two households that are incurred by each parent in separated families with a modest but adequate standard of living when regular contact is occurring.

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<sup>183</sup> H. Rhoades R. Graycar and M. Harrison, *The Family Law Reform Act 1995 - The first three years, Final Report*, University of Sydney and the Family Court of Australia, 2000.

**Recommendation 1.10**

Regular face-to-face contact or shared care by a parent should result in the parent providing the contact or care being taken to satisfy some part of their obligation to support the child.

**Recommendation 1.11**

If a non-resident parent has a child in their care overnight for 14% or more of the nights per year and less than 35% of the nights per year, he or she should be taken to be incurring 24% of the child's total cost through that regular contact, and his or her child support liability should be reduced accordingly; but this should not result in any child support being paid by the resident parent to the non-resident parent.

**9.7.5 Shared care**

Where care is being shared between the two parents to the extent that each parent has the children for at least five nights per fortnight or 35% of nights per year, the applicable child support should be based upon a 'shared care' formula. For this group, it is proposed that the parent with the minority of the care should be treated as incurring 25% of the cost of the child at the 35% care level, rising to an equal sharing of costs at near equal provision of care, with every percentage point of care recognised in the assessment.

It is often the case that even where the care of a child is substantially shared, the parent with the care of the child the majority of the time incurs proportionately greater expenditure than the other parent on non-recurrent items, such as school uniforms and shoes. The Taskforce took the view that a tapered approach was better than treating the costs of the child as being provided pro rata by each parent.

The proportion of the costs of the child incurred by the parent with the fewer number of nights of care would be established by reference to Table B: Shared Care. The other parent incurs the remaining proportion of the costs of the child.

**Table B: Shared Care**

Number of nights of care annually	Percentage of annual care	Proportion of net cost of child incurred
0–51	0 – less than 14%	Nil
52 – 126	14 to less than 35%	24%
127 to 175	35% to less than 48%	25% plus 0.5% for each night over 127 nights
176 to 182	48% to 50%	50%

By this method, small changes in the levels of contact above the level for regular contact would not result in large changes in the child support arrangements. In other words, there is no cliff effect of crossing a threshold of a certain number of nights per year. Small changes would occur with increases in the level of care provided by the parent with the minority of nights. However, parents who are already in a shared care arrangement are more likely to have a co-operative approach to parenting and this reduces the risk that financial incentives will be a dominant motivation for making parenting arrangements.

In the proposed shared parenting formula, the costs that each parent incurs for the time the child is with him or her, is treated as a ‘credit’, and deducted from the higher income parent’s share of the cost of the child, resulting in that parent making a contribution to the lower income parent. As at present, this may mean the parent with the care of the child for most of the time will make a contribution to support the child in the care of the other parent. By way of contrast, regular contact may reduce a non-resident parent’s child support obligation, but cannot result in payments from the resident parent to the non-resident parent.

#### **Recommendation 1.12**

Where the care provided by one parent is equivalent to 35% or more, the parent with 35% of the care of the child will be taken to be incurring 25% of the cost, rising to equal incurring of costs when the care of the child is shared equally. The way in which the costs incurred by the parent with the fewer number of nights of care per year is calculated is set out in Table B: Shared Care.

### **9.7.6 Daytime contact**

Some parents do not have their children overnight often, and may not do so at all, but have extensive daytime contact. The costs incurred for such daytime contact can vary enormously. For a very young child, if visits occur in the primary caregiver’s home or the parent takes the child out in a pram or to a playground nearby, the costs involved in daytime contact may be quite small. Conversely, entertaining an older child for the day may incur substantial expenditure.

It is reasonable to give the same allowance for regular contact or shared care to parents with daytime contact, or a mixture of daytime and night-time contact falling short of the requisite level of nights, if a parent can establish that they incur a substantial level of expenditure on the child through day time contact. The applicable test is whether the costs incurred are approximately equivalent to the costs the formula takes as incurred by having the care of the child for at least the minimum number of nights required for regular contact or shared care.

The Child Support Agency ought to encourage the parents to reach their own agreement about this, with assistance available from the Family Relationship Centres. The parents are best placed to know what expenditure on the child each typically incurs when the child is residing with them, including matters such as costs of transportation between the two homes, direct expenditure on meals and the costs of entertainment.

If the parents cannot agree, then the Child Support Registrar should be able to determine that the level of expenditure involved for a parent with daytime contact is sufficient to justify treating the parent as having regular contact or shared care, as the case may be. If there are no infrastructure costs for housing as a consequence of having contact, then typically it would be expected that the daytime contact would need to be substantially in excess of 14% of the days in order to justify the Registrar in determining that the parent is incurring costs equivalent to someone with regular contact of one night per week.

The onus will be on the parent seeking such recognition in the formula to make out the case to the Child Support Registrar. If the Registrar is not satisfied of that case, then no recognition of the contact will be provided in the formula. Like other discretionary decisions of the Registrar, this decision ought to be reviewable by the Administrative Appeals Tribunal or ultimately by a court.

### **Recommendation 1.13**

A parent may also be treated as having regular contact or shared care if either the Child Support Registrar is satisfied, after consultation with the other parent, or the parents agree, that the parent bears a level of expenditure for the child through daytime contact or a combination of daytime and overnight contact that is equivalent to the cost of the child allowed in the formula for regular contact or shared care.

## **9.8 Splitting Family Tax Benefit**

Consideration of the way in which regular contact and shared care are treated in the Child Support Scheme would be incomplete without considering how Family Tax Benefit is split, because each system treats post-separation parenting in a different way. Reforming one system cannot be effective without reforming the other and ensuring that the two systems represent a consistent and coherent policy.

When Family Tax Benefit was introduced, it became possible to split the benefit between parents as long as the non-resident parent had contact with the child at least 10% of the time. Both FTB A and B are split in proportion to the share of the care of the child. Eligibility for FTB is based on each carer's household income and individual circumstances.

### **9.8.1 Current arrangements for splitting FTB**

Currently, separated parents entitled to FTB are able to share the payment for a child if they share the care of their child. The rate of FTB is apportioned between each parent in direct proportion to the caring arrangements in place. A parent must have at least 10 per cent of the care of a child to receive FTB. In that case he or she would receive 10 per cent of the FTB they would be entitled to on the basis of their new household income, while the other parent would receive 90 per cent of the FTB they would be entitled to based on their new household income.

The level of care provided by each parent is assessed by using either the number of nights in care, or the hours of care for each FTB child. There may be some occasions where only counting the nights in care does not accurately reflect the caring arrangements for the child. In such cases, at the request of a carer, the actual number of hours of care may be calculated for each carer in determining the pattern of care and this is then converted into days in care.

### **9.8.2 The small incidence of FTB splitting**

Only a small proportion of FTB customers share their payment. However, the proportion is increasing. In two years, the proportion of FTB shared care customers in the total FTB population has increased from 3.6 per cent in March 2003<sup>184</sup> to 5.5 per cent of the total population (around 100 000 FTB recipients) in March 2005<sup>185</sup>. That is, about 50 000 parents split the FTB with the other parent.

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<sup>184</sup> Administrative snapshot 2003–04 data as at 7 March 2003 provided by Department of Family and Community Services.

<sup>185</sup> Administrative snapshot 2004–05 data as at 4 March 2005 provided by Department of Family and Community Services.

Although the numbers of parents splitting FTB has increased over the years since the introduction of this option, the numbers remain modest when compared with the number of non-resident parents who have regular contact. Data derived from the Household, Income and Labour Dynamics in Australia (HILDA) Survey in 2001 indicated that 47% of fathers reported having children stay overnight, while a further 17 per cent saw their children only during the day.<sup>186</sup>

There are a number of reasons why eligible parents may have chosen not to split FTB. One is that the eligibility for that percentage share of FTB will depend on the circumstances of the non-resident parent. If that parent has a taxable income that is in excess of the amount giving an entitlement to maximum FTB A, while the resident parent does not, then less FTB A will be payable in the hands of the non-resident parent than the resident parent. Another reason why people may have chosen not to split FTB is that the non-resident parent does not want to deprive the resident parent of that income.

### **9.8.3 Problems with splitting FTB**

There are a number of problems with the current arrangements for splitting FTB. First, the share of FTB is split in proportion to the amount of care that each parent has. While that may appear logical, the costs of children are not necessarily shared in proportion to the amount of time that is spent in each parent's care. Where, for example, the children spend the great majority of the time with the resident parent, visiting the other parent every other weekend and for a portion of the school holidays, it is likely that the resident parent will still be purchasing the majority of the clothes and toys that the child needs and paying for school supplies and excursions. Other costs are duplicated in both households.

Secondly, the rules for splitting FTB and the rules concerning shared care under the Child Support Scheme are not aligned. Currently, the way in which contact and shared care arrangements affect entitlement to FTB is quite different from the position under the Child Support Scheme. Under the current Child Support formula, the child support obligation is not affected unless a parent has the child staying with him or her for 30% or more nights per year, or the parents agree that the parent should be treated as providing this amount of care of the child. In contrast, FTB can be split where a non-resident parent has 10% or more of the care. Although the care is normally based upon nights, it may be calculated by reference to hours of care. The FTB split is in direct proportion to the level of care, so that a parent with 20% of the time with the child will be eligible for 20% of both FTB A and B.

Thirdly, the FTB rules require processes for the resolution of disputes about the level of care provided in each household if the parents cannot agree, and this is an expense to government that would be greatly reduced if FTB splitting were confined to shared care families. Currently, where the carers do not agree to the percentage of care, a Family Assistance Office decision maker must determine the care percentage to be applied. This decision is based on the available evidence of what is the actual pattern of care. The carers are asked in writing to detail the level of care they provide. The shared care percentages are then determined on the information provided, even if only one carer responds. If only one carer provides evidence they are informed that the other carer may request a review of the decision.

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<sup>186</sup> Patrick Parkinson & Bruce Smyth, "Satisfaction and Dissatisfaction with Father-Child Contact Arrangements in Australia", 16 *Child & Fam. L. Q.* 2004, p. 289

Fourthly, the Reference Group and others with whom the Taskforce consulted indicated that the regime for splitting FTB based upon every 1% of care produces considerable conflict. It sometimes has the effect that efforts to reach agreement between the parents on the best arrangements for contact with the children are adversely affected by concerns about the financial repercussions of that decision in terms of entitlement to FTB.

Fifthly, the Taskforce is not persuaded by the policy rationale for splitting FTB B. In an intact family, FTB B is paid where one parent is not in the workforce or has only a low income from paid employment. Where parents are separated, its history suggests it has a different rationale. Single parent households are entitled to claim FTB B to compensate them for the loss of having two tax-free thresholds in comparison to intact couples with children. It is not at all clear why this benefit should be split merely because the child has contact with the other parent at least 10% of the time.

#### **9.8.4 *Offsetting FTB against child support for families with regular contact***

In the proposed new methodology for calculating an appropriate level of child support, it is proposed that FTB A entitlements should be broadly considered as offset against child support obligations for families with regular contact, and that FTB splitting should be confined to those with shared care arrangements (35%+ nights each).

The non-resident parent's child support should be calculated taking into account that the resident parent usually has a significant contribution from the Government towards the cost of children through FTB A. If the FTB were split between the parents where contact occurs for 10% of the time or more, then the non-resident parent who receives a share of the FTB A would also have to pay more child support because less would be in the hands of the other parent. It follows that they cancel one another out.

The Taskforce proposes that the child support and FTB systems be aligned, so that, rather than having two different systems for taking into account regular contact and shared care, there is one consistent approach. Recognition of the costs of regular contact should be dealt with through the Child Support Scheme rather than through FTB splitting, and the level of child support payable should be calculated on the assumption that the resident parent has the benefit of all the FTB A where the care is not being shared.

As a result of this reform, the scope for conflict over money, either in relation to child support or Family Tax Benefit, will be minimised; resident parents will have the guaranteed on-time payment of all of the Family Tax Benefit, and non-resident parents will have their child support obligations reduced significantly on account of the costs incurred in regular contact.

#### **Recommendation 1.14**

FTB A and B should no longer be split where the non-resident parent is providing care for the child for less than 35% of the nights per year. Where each parent has the child in their care for 35% of the time or more, FTB should be split in accordance with the same methodology as in Table B: Shared Care.

#### **9.8.5 *Benefits for low income parents with regular contact***

The Taskforce was mindful of possible disadvantage this change may produce for low income non-resident parents, for whom the amount of child support paid is small by comparison with

the level of FTB to which they may be entitled. The Taskforce noted that while the child support payer may not get a substantial financial benefit from his or her share of the FTB, the value of the additional benefits flowing from FTB entitlement for low income parents may be considerable. Such benefits include Rent Assistance, Health Care Card and other Medicare benefits. The Taskforce proposes that for this group who would otherwise be entitled to a share of FTB if the current system were continued, access to such benefits should be maintained.

Income support payments often include a ‘with child’ rate, where the recipient does not qualify for parenting payment but has care of a child to a specified level. Historically, parents were required to have care of 30% of nights annually. There has been some uncertainty about this rate since the introduction of FTB with its qualifying threshold of 10% care, however. Currently, the award of the ‘with child’ rate of Newstart does not appear to be administered uniformly. The Taskforce proposes that parents with regular contact (14% or more) be given the ‘with child’ rate, to ensure consistency across the country and to align Newstart with the recognition of regular contact under the Child Support Scheme. The research on the cost of children conducted by the Taskforce could be used to assess the adequacy of this allowance.

#### **Recommendation 1.15**

Non-resident parents who have care of a child between 14% and 34% nights per year should continue to have access to Rent Assistance, the Health Care Card, and Medicare Safety Net if they meet the other eligibility criteria for FTB A at the required rate. They should also be paid the ‘with child’ rate for the relevant income support payments, where they meet the relevant eligibility criteria. The Government should also consider the adequacy of the current level of this rate, in the light of the research on the costs of children conducted by the Taskforce.

## **9.9 Determining the parenting arrangements**

Currently, the Child Support Agency is required to make an administrative finding as to the level of care being provided by a parent in order to make a child support assessment. Where parents are in agreement that a particular level of care on the part of each is occurring, an assessment may be made on the basis of the agreed arrangements. However, in some cases the Agency may be placed in a position of having to determine care levels where there is parental dispute as to the level of care actually provided and anticipated to be provided into the future.

Where parents are in dispute, Family Relationship Centres will be available to assist them to negotiate parenting arrangements for the children, including the time children will spend with each parent. Family Relationship Centres will also have a role to help where such arrangements break down, or require renegotiation. The ultimate arbiter of disputes as to care arrangements remains courts with family law jurisdiction. Hence, parents with an agreed arrangement will have a parenting agreement setting out their mutual understanding. Where parents have had their dispute resolved in a court, the resulting court order will set out care arrangements.

It is problematic for an administrative agency to be required to make a ‘finding’ as to the specific joint care arrangements proposed into the future when the parents themselves don’t agree about the arrangements occurring. The terms of a parenting agreement or court order may reliably form the basis for child support assessment on the basis of regular contact or shared care. Under the proposed Scheme, if the parents are not in agreement, it will be up to the parent who wants the child support assessment to be calculated on the basis of a different

level of care, to seek to resolve the dispute about care arrangements with the other parent by seeking a variation to the parenting plan or court orders.

This will have the additional advantage of promoting certainty in parents' child support arrangements where a parenting dispute has been resolved, and the agreed or Court ordered arrangements set out.

**Recommendation 1.16**

Child support assessment based upon regular contact or shared care should apply if either the terms of a written parenting plan or court order filed with the Child Support Agency specify that the non-resident parent should have the requisite level of care of the child, or the parents agree about the level of contact or shared care occurring.

However, there needs to be an exception to the general rule of no change, and in particular, no retrospective change. This relates to a complaint of some resident parents in cases where they have received reduced support on the basis of proposed regular contact, and such contact has not been denied, but the non-resident parent has failed to avail themselves of opportunities to see and care for their child.

In this exceptional circumstance, the resident parent should be able to seek a retrospective adjustment to the level of child support assessed. If there was a dispute about whether regular contact had been occurring, or whether the resident parent was to blame when contact did not occur, the matter would probably need to be resolved by a court. It would only be appropriate to justify a change in the child support assessment if there was a clear pattern established of failing to turn up for scheduled contact visits.

**Recommendation 1.17**

The resident parent may object to an assessment based upon the payer having regular contact if the level of actual contact usually occurring in the current child support period is significantly less than 14% care of the child or children, although the payee is willing to make the child or children available for that contact.

The general rules about adjustments during a child support period not being retrospective should continue to apply. There are often variations between the levels of contact that ought to occur and the levels of contact in practice as a result of everyday events, such as illness. These don't actually constitute a change to the general pattern of care and should not result in requests for variations to the assessment.

It is proposed that there should be a threshold level of change, below which no adjustment is made to the assessment until the next child support period, even where the change in care level would otherwise result in a change to the assessment. Where there has been a change in the care arrangements amounting to a regular change for the future of at least one night per fortnight (or approximately 26 nights a year), then it ought to be possible to ask the Agency for a new assessment based on the new care arrangements. The fact that there had been variations in contact arrangements, such as additional unplanned visits or missed visits due to unforeseen factors would not suffice to justify a new assessment, as this would not be a change to the regular care arrangements for the future.

### **Recommendation 1.18**

A new assessment may be issued during a child support period if the parents agree that there has been a change in the regular care arrangements amounting to the equivalent of at least one night every fortnight, or there has been a similar degree of change as a result of a court order.

## **9.10 Variations on the Basic Formula**

The basic formula deals with situations in which the parents, although now separated, continue to support their children. However, families' situations do not remain static. Either parent may re-partner and have a new family, they may then again separate with additional children to support, or children may be cared for by carers other than their parents. The new formula (in common with the current formula) must adequately handle each of these situations.

### **9.10.1 Second families**

Tensions regularly arise when separated parents have re-partnered, and have a new family with the new partner. The parent feels the conflicting pressures of having children in two families to support, and the children will feel any differences in treatment between the parent's new family and their old.<sup>187</sup> The Child Support Scheme can only deal with these conflicting pressures on the basis of principle. As discussed in Chapter 7,<sup>188</sup> the fundamental principle adopted by the Taskforce is that adopted by other inquiries — that all children of a parent should be treated as equally as possible, irrespective of the order of their birth.

The current Scheme recognises a parent's responsibility to new children for whom they have a legal duty of support. It does so by increasing the exempt amount of the parent by a substantial flat sum, plus amounts for each new child.<sup>189</sup> However, the increase bears no relationship to the amount of child support paid for children in the parent's previous family.<sup>190</sup> The increase substantially overstates the costs of children in low income families, but is inadequate to cover children's costs at higher incomes. When new children arrive in an intact household, the income of their parent must be spread further, and the standard of living of all the children falls to some extent. If continuity of expenditure principles grounding the child support formula are extended, the available income of the parent to expend on the child support child should be reduced when new children arrive.

In order to demonstrate that children are being treated as equally as possible, the reduction should relate to the cost of the new children. This cost could be assessed to a large extent upon the principles outlined in the cost of children findings of the Taskforce. However, it must be assumed that the responsibility of the parent to their new children is undertaken alone, disregarding any income of a new partner of the parent. Cost calculated on this basis is a

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<sup>187</sup> Parkinson P., Cashmore J. and Single J., "Adolescents' Views on the Fairness of Parenting and Financial Arrangements After Separation" 43 *Family Court Review* 2005pp. 430–445.

<sup>188</sup> See 7.7, Principle 6.

<sup>189</sup> See chapter 3.

<sup>190</sup> Submissions to the Parliamentary Committee raised the comparison between the allowance for new children, and the amount of child support being paid, showing that there was no relationship between the two – 6.137.

reasonable approximation of at least one parent's share of the total cost of those new children, even where their new partner has income. It avoids involving a new unrelated person's income in the child support calculation, with the administrative complexity this entails.

Because the new calculation under the proposed scheme considers only the new children, it assumes that there are no economies of scale involved in the support of those new children. This reflects reality, where it is the non-resident parent who has new children, although perhaps overestimates the child's cost where it is the resident parent who has new children to support, in addition to the child support children already in her or his care. The approach, however, may similarly be justified because it openly endeavours to treat the resident and non-resident parents of the child support child equally, while again avoiding too great a level of administrative complexity.

The calculated cost of the children in the new family would be deducted from the available income of the parent. The child support calculation for both the costs and allocation of the child support children may then occur as usual, although using that parent's reduced income. The outcome will not produce mathematically identical amounts allocated to the support of children in the new and old family, but certainly demonstrates continuity in the principle behind the approach, which is clearly not achieved by the current formula.

While some parents with second families may receive a reduced allowance for the new child or children on the basis of this principle compared to the present provisions, the effect of this recommendation needs to be considered together with the impact of all the other recommendations, including a greatly increased self-support amount, fairer recognition of the costs incurred in contact, recognition that the same percentages of before-tax income should not be applied across the income range, a greater range of individual variations and other changes to the way in which child support obligations are calculated. The availability of FTB to the second family should also be taken into account.

#### **Recommendation 1.19**

All biological and adoptive children of either parent should be treated as equally as possible. Where a parent has a new biological or adopted child living with him or her, other than the child support child or children, the following calculations should take place:

- 1) establish the amount of child support the parent would need to pay for the new dependent child if the child were living elsewhere, using that parent's Child Support Income alone;
- 2) subtract that amount from the parent's Child Support Income; and
- 3) calculate and allocate the cost of the child support child or children in accordance with the standard formula, using the parent's reduced income.

### **9.10.2 Split care**

Another possible family arrangement in families with several children is where one parent takes responsibility for some of the children, and the other parent takes responsibility for the others. In these cases, it is not clear which parent will have the overall child support liability, as each is both a resident and non-resident parent (although to different children). Each may be assessed separately as liable for children in the care of the other parent. The liabilities of each

parent may then be offset in order to find the overall payer parent. This is precisely what happens under the current formula.

**Recommendation 1.20**

Where parents each care for one or more of their children, each parent is assessed separately as liable to the other, and the liabilities offset.

**9.10.3 *Payments to children in more than one household***

The situation of a non-resident parent supporting children to different resident parents fits uncomfortably with income-shares principles. Theoretically, an approach of treating each resident parent separately, and calculating the liability to each such parent using the standard formula would accurately reflect the costs of two separate households. However, the non-resident parent would never factually live in two separate households and support them each to a level as though the other household did not exist. The liabilities in this case should reasonably be limited by the capacity of the liable parent to provide support for the children as though they all lived in one household with the resulting economies of scale. As a result, it is necessary to disregard the income of the carer parents in this circumstance, and calculate the liability on the payer's income alone. The non-resident parent will not then see any reduction in their obligation as the income of either payee parent rises.

However, the payers have already benefited from both households being treated as having the economies of scale of one household. Given this assumption, additional reductions for payee income would significantly underestimate the children's needs. For this reason it is valid to disregard such income.

**Recommendation 1.21**

Where a non-resident parent has child support children with more than one partner, his or her child support liability should be calculated on his or her income only and distributed equally between the children.

**9.10.4 *Payments from more than one non-resident parent***

In contrast with the situation of a resident parent who cares for children with different non-resident parents, the issues are slightly different when there are more than one non-resident parents. The resident parent in that instance has available economies of scale in caring for more than one child in the same household. However, each non-resident parent, unless they have contact with the children, may not necessarily know about the existence of the other child, nor of the details of the other child's non-resident parent.

In theory an assessment could be performed based upon the costs of the children in combination, using the income of the minimum of three parents in combination, with adjustments for new families as per the standard formula. However, this is highly artificial, because it would be extremely rare for an intact household with these parameters to exist. There is little basis upon which the child support scheme can justify performing an assessment involving the income and living arrangements of all three involved parties, with the breaches of privacy this involves. It would also be treating each non-resident parent as partially

responsible for the support of the other child or children, to whom they are not biologically related, which seems unjustifiable.

On balance, the Taskforce feels that the treatment of such situations by the current scheme should be retained, and the calculation and allocation of the cost of the children of each non-resident parent performed separately.

#### **Recommendation 1.22**

Where a resident parent cares for a number of children with different non-resident parents, each of the child support liabilities of the non-resident parents should be calculated separately, without regard to the existence of the other child or children.

### **9.10.5 Payments by the parents to other carers**

A final variation that may be encountered is where neither parent cares for the child. Sometimes grandparents or other relatives will take over the primary care of the child, because neither parent is able to do so. This may be an informal arrangement, with the consent or acquiescence of the parents, or a formal arrangement either by court order or through child protection authorities placing the child with the relatives<sup>191</sup>. Child support is payable by both biological parents in these circumstances.

Where the care by a person who is not the child's parent is such that child support should be available, the fact that the person has no parental obligation to the child should be clearly recognised in the formula. Their income should not be taken into account in any way by the calculation, which should be based upon the incomes of both parents of the child. This should not prevent recognition that a parent is incurring costs in providing some care of the child through regular contact or shared care, as recognised by the general formula.

#### **Recommendation 1.23**

Where a child is cared for by a person who is not the child's parent, the combined Child Support Income of the parents should be used to assess their liabilities according to their respective capacities. Where a parent has regular contact or shared care of the child, that parent's liability will be reduced in accordance with the normal operation of the formula.

## **9.11 Minimum and fixed payments**

### **9.11.1 The \$260 per year minimum**

Since 1 July 1999, there has been a minimum payment of \$260 per annum (\$5 per week), even if the payer has an income below the exempt amount.<sup>192</sup> The minimum payment of \$260 was

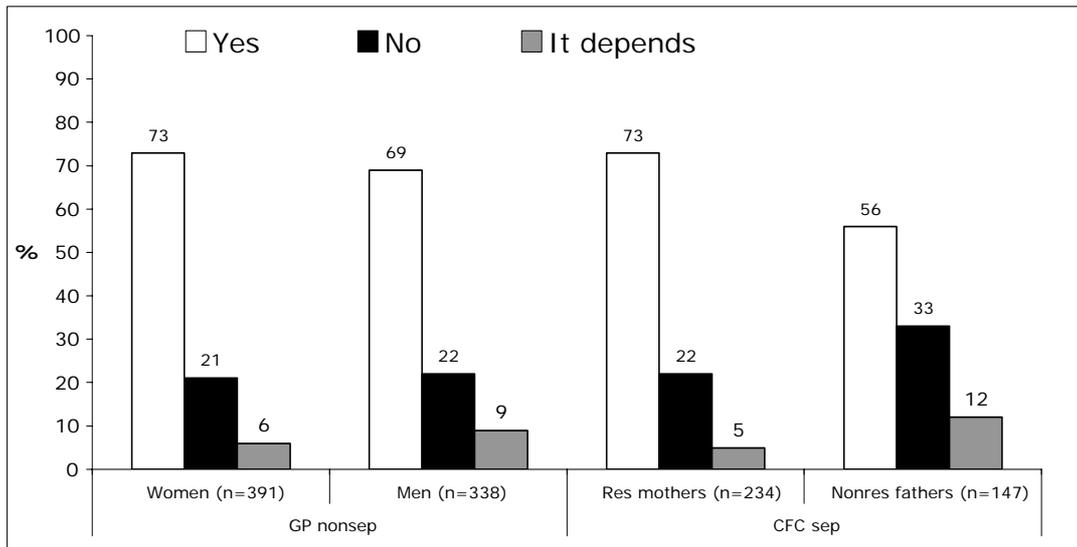
<sup>191</sup> Such placement must be other than under a child welfare law of Queensland, South Australia, Western Australia, Norfolk Island, Christmas Island, or the Cocos (Keeling) Islands (section 22 and regulation 4), in which jurisdictions the child is not eligible as the subject of a child support assessment.

<sup>192</sup> Child Support Legislation Amendment Act 1998 No. 120, 1998.

first proposed in 1994.<sup>193</sup> The payment was not linked to any index when it was introduced, with the consequence that inflation since 1999 has eroded the value of the payment.

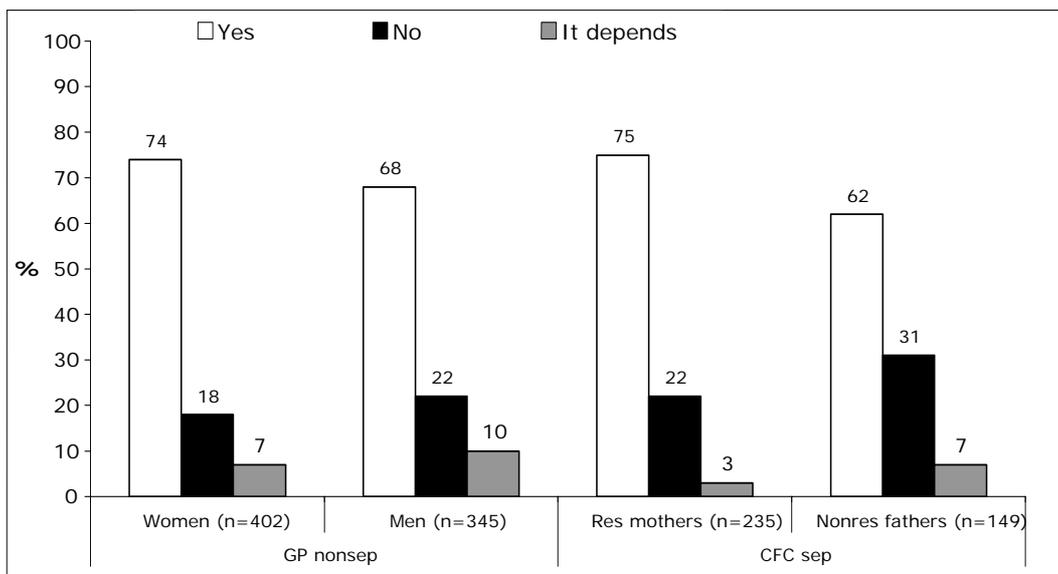
AIFS survey results in Figures 9.3 and 9.4, show broad community support for a minimum child support obligation.

**Figure 9.3: Do you think a father who does not usually live with his children should pay some child support even if his earnings are very low or he only receives government income support?**



Notes. GP nonsep = general population non-separated sub-sample; CFC sep = *Caring for Children after Parental Separation* sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(6) = 19.74, p < .01$ .

**Figure 9.4: Do you think a mother who does not usually live with her children should pay some child support even if her earnings are very low or he only receives government income support?**



<sup>193</sup> The Joint Select Committee on Certain Family Law Issues, *The Operation and Effectiveness of the Child Support Scheme*, 1994, Rec 122.

Most respondents in all groups thought that non-resident mothers and fathers on low incomes should, like all other non-resident parents, pay some child support. This view was advanced by close to 60 per cent or more respondents in the four groups.

The Parliamentary Committee endorsed the earlier introduction of the minimum payment<sup>194</sup>, but commented that they felt the amount was now too low. It recommended an increase to \$10 per week. This is one of the specific issues on which the Taskforce was asked to advise further by its Terms of Reference.

There was strong support within the Reference Group for an increased minimum rate, or at least applying a minimum rate per child, although there were also concerns that the minimum remain affordable to very low income parents, who may be receiving only income support payments. For this reason, some members of the Reference Group had reservations about the Parliamentary Committee's recommendation that the sum be increased to \$10 per week, since this represents a significant sum for those on Newstart.

Accordingly, the Taskforce, advised by the Reference Group, thinks it is more appropriate that the current minimum be increased by reference to the level of inflation since 1999. Income support pensions and benefits are adjusted on different bases, with some linked to movements in average wages, and others to the movements in the consumer price index. The basic income support payment for a person seeking work has been linked to the consumer price index. The Taskforce therefore proposes that the minimum be indexed to changes in the consumer price index. This indexation should date from 1999, when the minimum payment was first introduced. This would require an increase, projected to the end of this calendar year, to about \$6 per week.

Currently, where a payer is liable to support children with different carers, the \$5 weekly minimum rate is divided between the carers in proportion to the number of children each cares for. It is hardly worthwhile to distribute such small amounts. The numbers of such cases is relatively small<sup>195</sup>. The Reference Group advised that the minimum should be applied on a per case basis, and this recommendation was accepted by the Taskforce.

In keeping with the general principles of the income-shares approach, parents who are having regular contact with their child are contributing to the child by undertaking that care, and no payment should then be required. It can be assumed that these parents will be paying at least an equivalent to the minimum payment in caring for the child while having this regular contact. This is also the position where parents are sharing the care of the child.

#### **Recommendation 1.24**

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<sup>194</sup> Report of the House of Representatives' Committee on Family and Community Affairs, *Every Picture Tells a Story* (December, 2003) at 6.79.

<sup>195</sup> There are approximately 11% of cases where a payer is liable to more than one payee, and the proportion paying the minimum liability is likely to be even lower.

All payers should pay at least a minimum rate equivalent to \$5 per week per child support case, indexed to changes in the CPI since 1999. The increased amount should be rounded to the nearest 10 cents.

**Recommendation 1.25**

A minimum payment should not be required if the payer has regular contact or shared care.

Currently the system also permits a parent who has a significant reduction in income to notify the Agency, and have their assessment reduced to reflect their current income. Where the parent is in receipt of income support payments, the liability resulting will generally only be a minimum liability. Immediately the parent's income situation has improved, they are required to notify the Agency, and their assessment is increased.

The Taskforce is aware that there are financial disincentives to improve workforce participation at income levels low enough that income support is payable. The Taskforce considers that it is sensible to allow parents a short period during which their child support obligations remain low, while they manage the costs of resuming employment. People starting a new job usually have to wait a while before their first pay day, depending on the pay cycle. The period of time after which the CSA needs to be notified of the new income should not be too long, otherwise a disproportionate burden to support the children would fall on the other parent and the Government through family assistance. On balance, the Taskforce proposes a month beyond the usual time at which child support obligations would be increased.

**Recommendation 1.26**

Payers on the minimum rate should be allowed to remain on that rate for one month after ceasing to be on income support payments or otherwise increasing their income to a level that justifies a child support payment above the minimum rate.

### 9.11.2 *Fixed payments*

As reported in Chapter 6, more than 40% of all payers in the Child Support Scheme are paying \$260 per year or less due to having low incomes. Only about half of these are on Newstart, Disability Pension, or other income support. It is likely that the reported taxable incomes of many of the remainder do not reflect their real capacity to pay a reasonable amount towards the support of their children.

The use of taxable income as the basis of child support means that those people who legally or illegally manage to minimise their tax also pay unrealistically low levels of child support. The Committee noted that there are many opportunities for payers who are manipulating their taxable income to minimise or avoid taxation, to also avoid paying child support.<sup>196</sup> This is the case whether the manipulation is legal for the purposes of the tax laws or otherwise.

The Child Support Agency currently has powers to examine the taxable income of a parent on an individualised basis, and substitute an income that better represents that parent's capacity. However, this is via the Registrar-initiated change of assessment process, and so is individualised, slow and involves significant administrative effort. There is a more generalised

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<sup>196</sup> Every Picture Tells A Story, para 6.163.

way of identifying parents whose taxable income may not fairly represent their true income, by reference to income support eligibility. Where a parent is genuinely on a low income, they are entitled to Government support to meet basic needs. Parents who are apparently on a low income but not in receipt of Government benefits are likely to have access to other income which they do not, or need not declare as their taxable income.

The required child support payment should be \$20 per week per child for those who were not on income support during the tax year on which the current child support liability is calculated, and who report taxable incomes below the level of maximum Parenting Payment (Single).

Parents may apply to the Registrar for a reduction where they wish to argue they should not be subject to a fixed payment. The fixed payment may be reduced if the parent can demonstrate to the Registrar's satisfaction that they truly have a level of total financial resources not exceeding basic pension level. Total financial resources, in this context, includes their access to income from any source to meet their living expenses, including from another person. If the parent chooses to live off the income of a new partner, but has a capacity to earn for himself or herself, then the \$20 per week per child obligation, at least, should apply. This is consistent with the recommendation on capacity to earn in Chapter 12.<sup>197</sup>

In order to satisfy the Child Support Registrar that the fixed payment will not apply, parents will need to approach the Agency and lay open their finances to scrutiny. This may also trigger scrutiny by the Australian Taxation Office. In some cases, there will be a ready explanation for the parent's low income, despite not being on benefits, and once the explanation has been given and accepted, only a change in circumstances would result in any fresh inquiry or imposition of the fixed payment in future child support years. However, it would not be a sufficient explanation that the payer's financial affairs are organised mainly through companies or trusts. What may be legal for tax purposes will not necessarily be a good enough reason to fail to make an adequate contribution to the support of one's own children. This is consistent with the body of case law on capacity to pay, which allows the Senior Case Officers or the courts, on a change of assessment application, to go behind company and trust structures, and to impute an income if a person is likely to be engaging in cash transactions to avoid tax.

This fixed payment should not be reduced on account of regular contact because it is designed to ensure that those whose reported taxable income does not reflect their real capacity to pay child support make at least a modest contribution towards their children's upbringing. Should a parent in this situation wish to argue that they have contact costs, which they believe should be taken into account, they always have the option of permitting the Registrar to scrutinise their income and resources, and find a truly appropriate level of income for child support purposes, via the change of assessment process.

The \$20 fixed payment should not be applicable in shared care situations. In such cases there is no clear 'non-resident' parent who is not contributing sufficiently other than if they make a child support payment. Where a parent is sharing care, that parent is making a substantial contribution to the care of the child.

This fixed payment can be avoided if a self-employed parent reports taxable income just above the level of Parenting Payment (Single). However, the power to conduct a Registrar-initiated assessment will remain, and it can be expected that the Child Support Registrar might wish to

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<sup>197</sup> See below, 12.7.

target people who report taxable incomes between the level of Parenting Payment (Single) and the exempt amount under the formula, where there is reason to suspect that that income or capacity to pay is understated.

**Recommendation 1.27**

Parents who are not in receipt of income support payments but report an income lower than the Parenting Payment (Single) maximum annual rate should pay a fixed child support payment of \$20 per child per week and this should not be reduced by regular contact.

**Recommendation 1.28**

The fixed payment of \$20 per child per week should not apply if the Child Support Registrar is satisfied that the total financial resources available to support the parent are lower than the Parenting Payment (Single) maximum annual rate. In those cases, the minimum rate per child support case should apply.

**9.11.3 Indexation**

To maintain the current value of these payments into the future, both the minimum rate and the fixed payment should be increased annually in line with changes in the CPI and rounded to the nearest 10 cents.

**Recommendation 1.29**

The minimum rate and the fixed payment should be indexed to CPI from the end of the 2004–05 financial year. The increased payment should be rounded to the nearest 10 cents.

**9.12 Non-lodgement of tax returns**

The Child Support Scheme relies heavily on the lodgement of tax returns as the basis for child support assessment. In the absence of genuine taxable income information, the Agency has power to substitute a default income figure. However, both assessment and compliance are made significantly harder when parents do not comply with current taxation laws requiring them to lodge returns.<sup>198</sup> In the future, as for Family Tax Benefit purposes, both parents' incomes will be relevant to child support assessment, and so it would be anticipated that both resident and non-resident parents would be required to lodge tax returns.

The Agency has some means available of determining an appropriate default income where a tax assessment is not available. However, this relies upon information being available from some source. For a certain proportion of payers, the Agency has no information upon which to realistically calculate the level of their assessments.

As discussed in Chapter 6, the Agency has an administrative practice of assuming that a parent's income for an income year was nil, where that parent has not lodged a return, and the

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<sup>198</sup> Payers under a child support assessment are required to lodge a tax return, regardless as to other exemptions to tax return lodgement which might apply.

Agency has no other reliable source of income information after making all reasonable inquiries. This approach is taken for administrative and practical reasons.

If taxable income is to remain the basis of the Child Support Scheme, and payers are to continue to have a legal obligation to lodge tax returns irrespective of their incomes, then more needs to be done to ensure compliance with this obligation. If the Agency uses a default income in lieu of any other information, then the normal way in which this ought to be corrected by the payer is to lodge a tax return or at least to provide other reliable information about his or her earnings for the relevant period. The Taskforce considers that the legislation should stipulate an appropriate default income, indexed to average earnings.

As these cases can be difficult for the Agency to manage, it is reasonable that debt levels based on default incomes be reported separately, so that improvements in other areas resulting from the Agency's work will still be apparent.

**Recommendation 1.30**

Where a parent has failed to lodge a tax return for each of the last two financial years preceding the current child support period, and the Child Support Agency has no reliable means of determining the taxable income of the parent, the parent shall be deemed to have an income for child support purposes equivalent to two-thirds of MTAW. That income may only be changed if the parent files a tax return for the last financial year prior to the child support period to which the deemed income relates, or taxable income information is obtained from a reliable source.

**Recommendation 1.31**

The Child Support Registrar may report debts arising out of child support obligations based upon a deemed income separately from other accrued debts, but may not reduce a deemed income based on the parent's failure to meet the obligation.

## 10 Improving Assessment and Enforcement of Child Support

This chapter deals with a range of issues which are not directly raised by the Terms of Reference, but which are part of the context of the formula's operation in practice. These need to be addressed if public confidence in the Scheme is to be increased, and sources of discontent with its operation reduced.

### 10.1 Enforcement by the Child Support Agency

The Child Support Agency (CSA) provides the fundamental operative basis and service delivery of the Child Support Scheme. It is now part of the Department of Human Services.

Under the child support legislation, the Child Support Registrar is currently responsible for both the assessment and enforcement of child support. CSA has administrative links to tax return lodgement information from the ATO. This provides the information on taxable income which is the basis for the assessment of child support. Automated information exchange, at least for parents who lodge timely tax returns, enables a streamlined child support assessment process to operate, with minimal administrative intervention required by CSA officers.

#### 10.1.1 *The options for collection*

Once an assessment has been made, the payee parent has the right to choose either to arrange transfer of the liability privately directly with the payer, or to ask CSA to collect the child support on their behalf. If the payee chooses private collection, CSA retains a role in updating assessments for each new child support period, and in some cases, modifying an assessment in the light of information provided by one of the parents (for example, where a payer's income falls significantly as a result of losing a job). However, in private collect cases, CSA has no role in actual transfers. The payee has the failsafe of being able to apply for CSA collection if private collection arrangements are not working. If the payee chooses CSA collection, CSA will work with the payer parent as to their preferred means of payment of the liability, or enforce payments using available administrative mechanisms if the payer is not prepared to make voluntary payments.

#### 10.1.2 *Enforcement powers*

Enforcement powers akin to those available to the Australian Taxation Office (ATO) together with further specific powers directed to collection of ongoing liabilities are available to CSA. Where a payer is in ongoing employment, they or CSA may ask their employer to make regular deductions from their wages and forward them to CSA in satisfaction of their child support obligations. If the payer does not pay voluntarily, CSA can impose collection from wages and intercept tax refunds from the ATO. CSA can also collect from social security pensions or benefits, including from Family Tax Benefit in limited circumstances, give notices to third parties to garnishee money of the payer, and prohibit the payer from leaving Australia or seek bankruptcy of the payer. CSA has significant powers to require provision of information to assist in locating monies against which enforcement can occur. CSA can also seek a Court judgment for the debt, and undertake Court enforcement of the judgement.

### 10.1.3 Accurate assessment of capacity to pay

Reliance upon taxable income may be problematic in some parents' cases, despite its administrative convenience. The assumption justifying using tax return information is that such information will fairly reflect a parent's financial circumstances and capacity to support their child.

The purposes of taxation laws and child support laws are not the same. The tax treatment of particular types of income may be designed to encourage particular types of business activity or investment, or to improve competitiveness or economic or fiscal balance. Where a parent is engaged in a small business, runs their own company, or is self employed, a tax return which provides an accurate statement of taxable income for the purposes of taxation laws may in some cases understate the financial resources actually available to that parent to support a child. The parent may be allowed significant concessions and rebates because of the field in which they are conducting business. A parent who directs their own company may choose to draw little from the company in terms of income, but have access to significant resources and benefits that raise their standard of living. If the parents of the child were living together, the child would be sharing in the higher standard of living of that parent drawn from their business activities.

The Parliamentary Committee<sup>199</sup> received a number of submissions highlighting the inequity between the position of PAYE wage earners within the Scheme compared with self employed people or business people.

At present, the Child Support Agency has a range of methods by which it can assess the real capacity to pay of a self-employed person who has structured his or her financial affairs so as to minimise taxable income. It also has methods of estimating the real income of those who fraudulently conceal income derived from cash transactions. However, it normally relies on individual parents to initiate a change of assessment process on the basis that the other parent has a higher capacity to pay than is reflected in his or her taxable income.

Since 1999, the Agency has had the power to initiate changes of assessment of its own motion. This can be very useful in enabling the Agency to look at categories of child support cases that have shared characteristics and where a closer examination of the payer's finances is warranted. The Taskforce recommends increased resources for this work.

#### **Recommendation 2**

The Child Support Agency should be given increased resources to investigate the capacity to pay of those who are self employed, or who otherwise reduce their taxable income by organising their financial affairs through companies or trusts, and those who operate partially or wholly by using cash payments to avoid taxation.

<sup>199</sup> House of Representatives Standing Committee on Family and Community Affairs, Report of the Inquiry into Child Custody Arrangements in the Event of Family Separation, *Every Picture Tells a Story*, (December 2003).

#### 10.1.4 *Effective enforcement*

Making an appropriate assessment must be backed up by effective enforcement in circumstances where parents will not comply voluntarily. The Taskforce considers that the proper enforcement of child support obligations in relation to all child support payers is essential for popular acceptance of the Scheme. As has been recognised for many years, self-employed non-resident parents who do not meet their obligations to their children represent a particular challenge for the Agency, both in assessment and enforcement. The inequities between the way the scheme applies to PAYG wage earners compared to the self-employed or business people were noted by the House of Representatives Committee<sup>200</sup>, and the Committee concluded that CSA required extended enforcement powers to enable it to effectively address accumulating debt within the scheme<sup>201</sup>.

The Taskforce recommends that any enhancement of the Agency's enforcement powers should be focused on increasing its enforcement options in relation to self-employed parents who are defaulting on their obligations. CSA's powers in this area are currently directed at debt, once a parent has failed to pay and is accumulating arrears. This contrasts with the situation of a wage-earning parent, where collection of future liabilities can effectively be enforced before arrears have accumulated, when it is clear that this is the best method of ensuring the obligation is paid in a timely way. In many cases, self-employed people will have ongoing sources of revenue, despite not having an employment relationship with the provider of that income source. Appropriate powers need to be available to maintain ongoing collection in such cases.

In many cases, even payers with a minimum liability who are on income support accumulate arrears until CSA sets up ongoing collection of the liability from their income support entitlements. CSA currently has very limited ability to address collection of arrears while the ongoing liability remains, with the result that the debts of such payers are increased by legislatively imposed late payment penalties over time. It would be preferable for the children who have not received that support, and in order to avoid debt for the payer, that greater opportunities were available to CSA to collect such arrears from Centrelink benefits.

Many types of government payments cannot be intercepted to recover debts, including various veteran's entitlements, many superannuation funds and parliamentary pensions. This general prohibition may be for very valid reasons, including ensuring the individuals can support themselves, as well as recognising the service to the public or the nation that such individuals have provided. However, a parent's obligation to their children should not be treated as reduced by the fact that the parent has performed such service, and such parents placed in a different position from recipients of other sorts of government payments.

Such parents will generally meet their obligation to their children voluntarily. However, there have been instances of failure both by former parliamentarians and by veterans to pay their child support. When recipients of such payments do not comply, there should be means available to CSA to enforce their obligation against their Government payments. Everyone should be in the same position before the law. No-one who has the capacity to pay should be exempted from child support obligations or shielded from provisions designed to enforce those obligations when they fail to meet them voluntarily.

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<sup>200</sup> Every Picture Tells a Story at 6.163 and following.

<sup>201</sup> Ibid at 6.194.

One recommendation made by the Parliamentary Committee was that there should be the power to cancel driving licences for the non-payment of child support. The Reference Group counselled against this particular enforcement option, as it may impair a payer's earning capacity and therefore be self-defeating in terms of ongoing collection.

### **Recommendation 3**

3.1 The Child Support Agency should be given increased enforcement powers to the extent necessary to be able to improve enforcement in relation to people who are self-employed or who otherwise reduce their taxable income by organising their financial affairs through companies or trusts, in particular by:

- a) broadening the powers available to the CSA to make ongoing deductions from bank accounts to align enforcement measures for non salary and wage earners with those for salary and wage earners;
- b) aligning CSA powers with Centrelink powers to make additional deductions from Centrelink benefits to cover arrears; and
- c) providing the power to garnishee other government payments such as Department of Veterans' affairs pensions.

3.2 Enforcement powers should not be extended to the cancellation of driving licences for failure to pay child support, as this might reduce parents' capacity to earn income.

## **10.2 Court enforcement by payees**

Escalating debt in individual child support cases is a repeated cause of complaints and Ministerial correspondence from payee parents. Currently, a payee who has registered a child support liability for collection with CSA assigns responsibility for the debt entirely. Such payee has no continuing right to enforce the liability. If such payee is involved in court action to resolve the division of property, or other proceedings where the opportunity to seek enforcement of outstanding child support exists, they must ask the Child Support Registrar to become involved in the proceedings. Delays or difficulties in persuading the Agency to intervene can hinder opportunities for collection when they arise in this way.

Such a payee has no power to require the Registrar to take any particular step. If such a payee is prepared to undertake all enforcement themselves, they may opt to collect the liability privately and cease to have the debt registered with the Agency for collection. However, there is currently no middle ground, where the payee may take action to enforce a debt while the ongoing obligation is registered with the Agency for collection.

The Taskforce concluded on the basis of its consultations with judicial officers and professionals practicing in family law, that payees ought to be given concurrent enforcement powers as long as this did not conflict with action being taken by the Agency. This benefits payees, is efficient in terms of court time, and saves administrative costs for the Agency.

The Taskforce proposes that payees should be able to give the Registrar notice that they will pursue a one-off court opportunity of enforcing arrears themselves, whilst maintaining Agency

collection of the ongoing liability. The only issue is then ensuring that CSA is aware of the action being taken, the correct level of debt recorded and maintained and that no overlapping activity occurs to collect the same debt. A sufficient period of notice should generally be given, although with opportunity to abridge the period should the urgency of the circumstances require it.

#### **Recommendation 4**

Payees should be given all the same powers of application to a court as the Child Support Registrar has for orders in relation to the enforcement of child support, provided either that the payee gives 14 days notice to the Registrar of the application or the notice requirement is otherwise reduced or varied by the court, and that any money recovered under a payee enforcement action be payable to the Commonwealth for distribution to the payee.

### **10.3 Powers of courts determining child support matters**

#### **10.3.1 Powers in relation to information and discovery**

The Federal Magistrates Court, in which many parents will determine their family law proceedings, has only limited powers to make orders requiring disclosure of information by one party to another. This was deliberate, in order to ensure that this Court would provide a simpler and more accessible means of resolving disputes than the superior Federal courts. Formal information-determining processes such as discovery and interrogatories were seen as aspects of the procedure of superior courts that ought not generally to be replicated in the Federal Magistrates Court.

While this is generally appropriate, it is necessary, if payee enforcement is going to be effective, that the Federal Magistrates Court should have at least the same powers to obtain information and require evidence to be produced as the Agency has when enforcing a liability.

#### **Recommendation 5**

A Court hearing an application for enforcement of child support by a payee parent should have the same powers to obtain information and evidence in relation to either parent as the Child Support Registrar has when enforcing a child support liability.

#### **10.3.2 Powers of case management**

Systems for the resolution of family disputes and child support issues should be designed as far as possible to keep matters out of court, and to provide opportunities for the resolution of disputes without recourse to litigation.

However, if these diversion and dispute resolution strategies do not resolve the dispute, cases may have to be determined by a court. Once a matter is in the court, it is best that the Court manages the case according to its best judgment of the circumstances of the parents. The process of litigation allows for individualised determinations of the issues in dispute.

One important power that courts need to have, in relation to any dispute, is to maintain the financial position of the parties, pending the Court's final decision. In the context of child support, this needs to be balanced against the need of the children for ongoing financial transfers. Section 140 of the *Child Support (Assessment) Act 1989* gives the Court such powers in relation to change of assessment applications, but section 140 is not currently broad enough to deal with all the situations where it may be desirable to make orders staying or otherwise affecting the operation of the child support legislation pending final resolution of the case.<sup>202</sup> In particular, the court has very few powers in relation to registration and enforcement, particularly in relation to debt and the accrual of late payment penalties. Courts should have all necessary powers to maintain the status quo, or to balance the interests of the parties appropriately, pending the outcome of the case.

#### **Recommendation 6**

Pending the final outcomes of any application or appeal under Child Support legislation, whether in relation to assessment, registration or collection, the Court should have a wide discretion to make orders staying any aspect of assessment, collection or enforcement, including:

- a) implementing a departure from the formula on an interim basis;
- b) excluding formula components or administrative changes which might otherwise be available;
- c) suspending the accrual of debt, and/or late payment penalties, without necessarily having to substitute a different liability for a past period;
- d) discharging or reducing debt without needing to specify the changes to the assessment to effect this result;
- e) limiting the range of discretionary enforcement measures available to the Child Support Agency, or staying enforcement altogether; and
- f) suspending or substituting a different amount of available disbursement to the payee.

## **10.4 Rights to seek Agency collection**

Payee parents currently have limited rights to make a choice as to whether to use the Agency to collect child support. Initially, upon the raising of the liability, such parents have the right to ask CSA to collect on their behalf. However, CSA can require parents to collect child support privately, despite the parents not having made an election for CSA to end collection of child support, where it is satisfied that the parents involved can make their own sustainable private

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<sup>202</sup> The Taskforce notes that the Joint Select Committee on Certain Family Law Issues, in *The Operation and Effectiveness of the Child Support Scheme*, (1994) at 9.66, took a different view of section 140 of the legislation. It thought that by allowing child support payments to be held in trust when an application is made under s.107 (concerning paternity disputes), there would be no need for the stay power under s.140. However, s.140 does not apply only to s.107 cases.

collection arrangements.<sup>203</sup> This provision was inserted into the legislation on the recommendation of the Joint Select Committee on Certain Family Law Issues, which reported in 1994.<sup>204</sup>

While the Taskforce accepts the rationale for the Joint Select Committee's recommendation, concern was expressed about the operation of this provision in the Reference Group, and the Taskforce considers that the legislative enactment of this recommendation does not find the right balance between payer and payee interests.

Unlike an application for registration, CSA is not obliged to accept a payee's application to resume CSA collection<sup>205</sup>. CSA is only obliged to grant the payee's application when the criteria in the Act are satisfied, namely that:

- the payer has an unsatisfactory payment record, or
- the Registrar is satisfied that special circumstances exist in relation to the liability which make it appropriate to grant the application.

The onus is thus placed upon the payee to justify a return to Agency collection. CSA's policy is that "collection will be appropriate if there are exceptional difficulties in the relationship between the parents or between the payer and the children that may make private collection difficult to sustain".<sup>206</sup>

The Taskforce is concerned that there is a potential conflict of interest between the Agency and payees in the administration of this discretion, for while the Agency's mission is about collection of child support, resourcing constraints might lead it to seek to limit the numbers for whom it has a collection responsibility. The Taskforce considers that payees are in the best position to know whether, given the overall context of their relationship with the other parent, Agency collection is the better option for them. While this must be balanced with the interests of paying parents, the Taskforce proposes that the legislative position should be reversed. Instead of stating when the Registrar must accept a payee's application to resume collection, the legislation should set out the circumstances in which the application should be refused.

### **Recommendation 7**

Section 39(5) of the *Child Support (Registration and Collection) Act 1988* should be amended to provide that a payee's application to opt for agency collection after a period of private collection should not be refused unless it would be unjust to the payer because:

- a) the payer has been in compliance with his or her child support obligations;
- b) a failure in compliance has been satisfactorily explained and rectified; or
- c) there are special circumstances that exist in relation to the liability that make it appropriate to refuse the application.

<sup>203</sup> The Guide 5.6.2. Section 38B Child Support (Registration and Collection) Act 1988.

<sup>204</sup> The Joint Select Committee on Certain Family Law Issues, *The Operation and Effectiveness of the Child Support Scheme*, 1994, Rec 56.

<sup>205</sup> The Guide – 5.6.3 - Section 39(4)

## 10.5 Overpayments

Payers naturally have a keen interest in ensuring that overpaid amounts are ultimately repaid. Cases of disputed parentage are the most highly emotive, but overpayments can arise in many circumstances due to the general operation of the Act and administrative payment system.

### 10.5.1 *Overpayments through Agency error*

The situation sometimes arises where a carer is credited with an amount of child support to which they are entitled, but it is subsequently discovered that the payment was made in error, because no corresponding payment had been received from the payer. The CSA may recover the amount from the payer, but until then it is an overpayment, to be repaid by the carer. The carer may not have had any knowledge of the fact that the payment was made in error. Indeed, the parent may have spent the funds before being made aware of the overpayment. Such errors may cause stress to the carer, and adversely impact on the relationship between the payer and the carer and children. The CSA should carry the debt until it is recovered, as an outstanding payment, and not involve the carer in rectifying the error.

#### **Recommendation 8.1**

Where, as a result of administrative error, a payee has been paid an amount not paid by the payer as the result of administrative error, for example, as the result of the payer's cheque not being met, or as the result of an incorrect allocation of employer garnishee amounts, the Registrar should not require repayment by the payee.

### 10.5.2 *Payees affected by payers' non-compliance*

Currently, child support payers are required to lodge tax returns to provide a basis for administrative assessment. If there is no return, the Child Support Registrar will use available information to calculate an income as close as possible to the payer's actual income or, as a last resort, set it at a default level. This process is outlined further in Chapter 3. If the payer lodges their return, the assessment must be revised. This has the potential to result in an overpayment that the resident parent must repay unless they successfully apply for a retrospective change of assessment.

The payee parent has no control over the payer's compliance with tax laws. Hence, the responsibility for seeking adjustment to the assessment should be shifted from the resident parent to the payer. The Registrar should vary the payer's income from the time the income tax information was lodged, but the payer must demonstrate reasons why it should be changed for the whole period. One of the factors the Registrar should take into account is the effect on the resident parent of any overpayment.

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<sup>206</sup> The Guide, op. cit. [change this??]

### **Recommendation 8.2**

Where a payer lodges a late tax return for a child support period, and that return shows a taxable income lower than that used in the assessment, the Child Support Registrar shall vary that payer's income from the date the return was lodged, but not for the intervening period unless the payer can show good reason for not providing income information at the time the assessment was made. In making a decision whether to vary the payer's assessment, the Registrar will consider the effect on the resident parent of having to repay any overpayment thereby created.

### **10.5.3 Paternity disputes**

While a paternity challenge is pending, the Registrar may currently make a suspension determination under s.79A, under which the father would continue to pay child support, but the Registrar would pay nothing out to the resident parent until the dispute is finalised. A suspension determination will always be made unless the resident parent would not be able to provide day-to-day necessities for herself and the child<sup>207</sup>.

In the light of the research by the Taskforce on the costs of children in relation to the levels of family payments and ancillary benefits, it is difficult to imagine a situation under the current family payments regime in which a carer would experience such serious hardship. Consequently, the Taskforce considers it appropriate to legislate a default rule, subject to a court order to the contrary, rather than reposing a general discretion in the Registrar. Since the matter will be before the court in any event, it is in a good position to make a determination after hearing from both parents, if the payee parent makes an application that the money be disbursed before the case is resolved.

The effect of the default rule is to minimise the risk of unjustified payments. At least from the time the issue comes before a court until it is decided, child support payments should be held by the Registrar, to be repaid to the payer if the application is ultimately successful. This recommendation is consistent with the original recommendation made by the Joint Select Committee on Certain Family Law Issues.<sup>208</sup>

### **Recommendation 8.3**

Where a parent has made an application (under s.107 of the *Child Support (Assessment) Act 1989*) disputing an assessment on the basis that he is not the parent of the child, and informs the Agency of the application, the Child Support Registrar shall suspend payments of collected amounts to the payee until the application is finalised, unless the Court orders otherwise.

Once a court makes a declaration that a man is not a child's father under s.107, it is as if the child support assessment had never been made. Any child support paid under the assessment must be recovered from the carer by the payer. Currently, the "liable parent" must separately ask the Court to make that order for repayment. The Taskforce proposes that the decision about

<sup>207</sup> *The Guide*, at 5.5.4.

<sup>208</sup> Joint Select Committee on Certain Family Law Issues, (1994) Recommendations 46-48.

repayment should be part of the court's deliberation on the question of paternity, minimising court costs and uncertainty for both parties.

Courts considering cases in which paternity has been challenged successfully, have varied in their approaches to determining the amount of repayment due to the former payer. Relevant factors are set out in the decision of Federal Magistrate Riethmuller in the case of *DRP & AJL*.<sup>209</sup> These should be codified in child support legislation to assist in the clarity of the law. They allow the court to consider the situations of all parties, including the biological father, and to consider all aspects of the relationship between the former payer and the child in determining whether the 'child support' mistakenly paid, should be repaid.

#### **Recommendations 8.4 and 8.5**

8.4 Where a Court has considered a s.107 application, and has made a declaration that the assessment should not have been made, it should immediately proceed to consider whether an order should be made for repayment of any amount under s.143 of the Child Support (Assessment) Act.

8.5 When considering how much of the balance of money paid under a child support assessment should be repaid to a payer who has successfully disputed paternity, the court should have regard to:

- a) the knowledge of the parties about the issue of paternity;
- b) any acquiescence or delay by the payer after he had reason to doubt his paternity;
- c) the relationship between the payer and the child;
- d) the present financial circumstances of both parties; and
- e) the capacity of the biological father (if known) to provide child support in the future.

Even once a former payer has an order that support paid be repaid, their position in terms of enforcement of the order, by comparison with the position of the original payee, is subject to the resources of the payer. In contrast, the Registrar intervenes to recover debts from a payer under a child support assessment using powers to access bank accounts, tax returns and wages. The former payer should be put in the same position as a payee, where they are owed repayment of child support related debt.

#### **Recommendation 8.6**

Where a Court makes an order for repayment of an overpaid amount under s.143 of the Act, the amount of such payment may be registered with the Child Support Registrar as a registrable maintenance liability, for enforcement.

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<sup>209</sup> [2004] FMCAfam 440 (20 September 2004).

## 10.6 Designated payments

The Child Support Scheme should be so designed that it encourages appropriate agreements between the parents about how child support should be paid, and the sorts of expenses it will be intended to cover. The Family Relationship Centres will play a significant role here (see chapter 15).

However, there will always be a need for some facility for paying parents to pay amounts towards designated costs, for credit against their child support obligation where both parents cannot agree that the amounts should be so credited. Some non-agency payments have been prescribed in Regulations, and are able to be credited against the wishes of the payee parent. These payments are of amounts that clearly benefit the child or the household in which the child principally resides. They are:

- child care costs for the child who is the subject of the enforceable maintenance liability;
- fees charged by a school or preschool for that child;
- amounts payable for uniforms and books prescribed by a school or preschool for that child;
- fees for essential medical and dental services for that child;
- the payee's share of amounts payable for rent or a security bond for the payee's home;
- the payee's share of amounts payable for utilities, rates or body corporate charges for the payee's home;
- the payee's share of repayments on a loan that financed the payee's home;
- costs to the payee of obtaining and running a motor vehicle, including repairs and standing costs.

Importantly, a credit against each periodic monthly obligation as it arises is only available if the paying parent pays the remaining portion of the liability directly to CSA. Such payments allow the paying parent to be confident that the children are benefiting and some sense of control over how their child support is used, without impinging upon the payee's discretion about how most of the payment is applied. For those parents who make prescribed payments as part of satisfying their child support obligation, there is frustration with the slow rate of credit of the payments. The rate of credit is a balance between ensuring that the carer has sufficient ongoing cash-flow to cover the everyday requirements of the children, and adequately maintaining the paying parent's sense that they have an involvement in how their child support payments are expended.

Given the generous nature of the government contribution to children through Family Tax Benefit, there is less need now for a substantial majority of child support to be paid periodically. However, these are situations where parents cannot agree that the payments are to be credited as child support. If the parents agree, the payments may be credited for up to 100% of the periodic liability. On balance, the Taskforce is persuaded that the Parliamentary Committee's recommendation<sup>210</sup> of an increase in credit limit from 25% to 30% provides sufficient rebalancing of the rights of the parents in such cases.

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<sup>210</sup> Every Picture Tells a Story, 6.161.

However, there is a risk that in particular situations, the payee parent may be left with insufficient cash flow if prescribed payments are credited against their wishes, perhaps where a significant amount of the child support payment has already been transferred in a lump sum, or for other reasons. The Registrar should have a discretion to consider an application by the payee parent not to credit a prescribed payment, or to credit it only to a reduced extent, to allow individual adjustment in these situations.

Under the Taskforce proposals for a new formula in Chapter 9, the paying parent with regular contact will already have a credit of 24% of the costs of the child expended on the child whilst the child is in their care. The Reference Group advised that a further reduction in ongoing cashflow by allowing credit for payments in kind otherwise than by consent in such cases, together with the aggravation of any conflict in parenting arrangements, would have a very negative impact. In such cases, the Taskforce believes it is unnecessary to allow a further credit for payments in kind otherwise than by consent, for this would reduce to an unacceptable level the discretionary funds in the hands of the payee to meet expenses shared with the child such as rent and utility bills.

#### **Recommendation 20**

20.1 The limit on Prescribed Non-Agency Payments should be raised from 25 per cent to 30 per cent.

20.2 Prescribed Non-Agency Payments should not apply to parents whose child support liability reflects regular contact or shared care.

20.3 Section 71D of the *Child Support (Registration and Collection) Act 1988* should be clarified so that the Registrar's discretion not to credit a Non-Agency Payment or to reduce the level of credit should apply in circumstances where the payee would be left without sufficient funds to meet the reasonable needs of the child if the non-agency payments were credited, or credited in the normal manner.

# 11 Child Support and the Maintenance Income Test

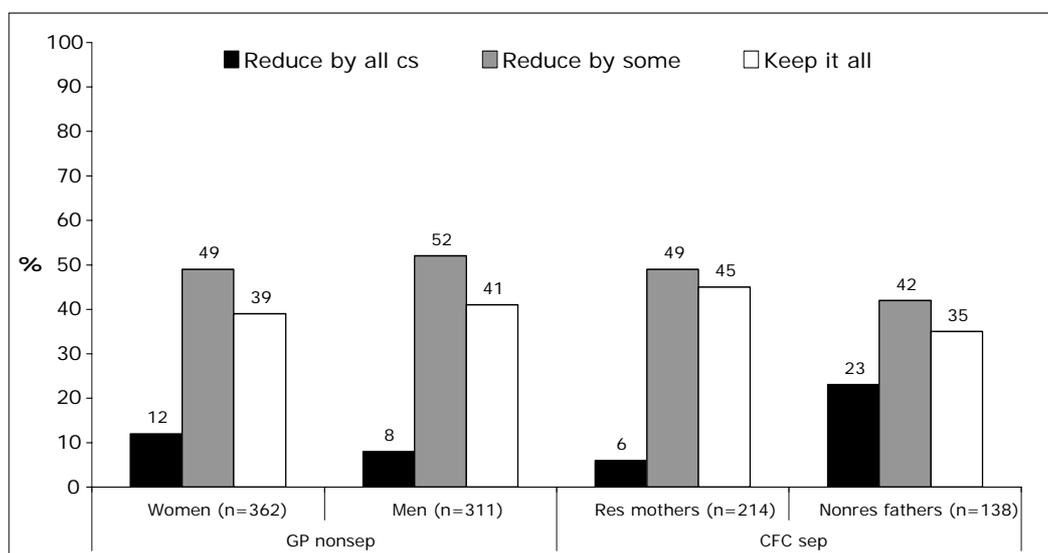
## 11.1 The rationale for the Maintenance Income Test

As noted in Chapter 4, the Maintenance Income Test (MIT) has the effect of reducing a resident parent's Family Tax Benefit (FTB) Part A by 50 cents for each dollar of child support above a prescribed threshold, usually \$1,150 per annum plus \$383 for each child after the first. It applies until FTB Part A has fallen to the base rate. Rent Assistance payable as a supplement to FTB Part A is also subject to reduction through the MIT.

The reason for the MIT is that when parents separate, the Government usually has to pay much more to support the primary caregiver and children than if the family had stayed together (in the form of increased FTB, Parenting Payment Single and Rent Assistance). Where the non-resident parent has the earning capacity to help support the former partner and the children, it has for many years been Government policy that those support payments should reduce Government expenditure on benefits.

As shown in Figure 11.1, the community attitudes survey conducted by the Australian Institute of Family Studies showed that most respondents believed mothers receiving government income support should keep all or some of these payments.

**Figure 11.1: If mothers are on government income support payments, should their government payments be reduced by the total amount of child support, just some of it, or should they be able to keep all of it?**



Notes. GP nonsep = general population non-separated sub-sample; CFC sep = *Caring for Children after Parental Separation* sample comprising separated/divorced parents with at least one child under 18;  $\chi^2(6) = 29.01, p < .001$ .

The Taskforce acknowledges the role of the MIT, and the percentages recommended by the Taskforce in the Costs of Children Table have been adopted after taking it into account.

However, the Taskforce identified two fundamental problems with the way the MIT currently operates.

## **11.2 Problems with the MIT**

### **11.2.1 *Application to non-child support children***

FTB is assessed on household incomes. The MIT operates to reduce the total of FTB Part A for all children in the resident parent's family, not just the child for whom the child support is paid. As a consequence, if the resident parent remarries and has a baby with the new spouse, or indeed there are children from a previous relationship living with them, the MIT will operate to reimburse the Government not only for the FTB payable in respect of the child for whom child support is paid but for all children in the resident parent's household for whom FTB Part A is paid.

This is a serious anomaly. It means in effect that child support paid by the liable parent is being used to reimburse the Government for its expenditure on a new biological child or step-child, of another parent, for whom the liable parent has no responsibility.

The MIT should operate only in relation to FTB payable for the child support children and should exclude other children living in the household. FaCS has advised the Taskforce that this reform is feasible and could be accomplished without undue fiscal impact.

### **11.2.2 *Misalignment with policy towards intact families***

The MIT is not aligned with FTB in any coherent policy framework. For separated parents whose combined income for FTB purposes is below \$32 485, the level of FTB paid to the primary caregiver as a consequence of the MIT is much lower than if the parents were still living together. In effect, the Government is reducing FTB payments to the family following separation that it would have paid in full when the parents lived together. This appears to be inequitable.

This situation may be illustrated by the example of where a parent liable for child support has a taxable income of \$32 484 and the other parent is on Parenting Payment Single. They have one child, aged six, for whom child support is being paid, and the liable parent has no new dependent children. They are not splitting FTB A on the basis of shared care.

If the two parents were still living together as a household, they would be entitled to \$4,095.30 in FTB A, which is maximum rate for one child of this age. Under the present Scheme, the liable parent would be paying \$3,516 child support per annum for that one child. The resident parent would be entitled to keep \$1,150 of that sum, and 50 cents in the dollar thereafter. As a consequence, \$1,183, or about one third, of the payer's child support goes to reimbursing the Government for FTB Part A expenditure that it would have incurred in any event if the parents had remained together.

## **11.3 The neutrality principle**

The Taskforce believes that the MIT should not claw back FTB Part A beyond the level paid to equivalent intact families. It has termed this the "neutrality principle".

In examining the issues around giving effect to the neutrality principle, the Taskforce considered a number of approaches. These fall into two categories: one is to adopt a totally

new methodology for recovering expenditure on post-separation income support. The other is to adjust elements of the existing MIT.

Two totally new methodologies considered and rejected were: the inclusion of maintenance income as ordinary income for income support purposes and in adjusted taxable income for the assessment of FTB; and the calculation of FTB Part A using a notional joint income assessment approach.

The first approach would involve assessing maintenance income as part of the existing income test for a payee's income support payment. This was rejected on two grounds – the inequity of maintenance payments for children being used to reduce income support for the resident parent and the workforce disincentives arising from applying maintenance income to the income free area and taper making it, potentially, unavailable for earned income. Furthermore, there would be a substantial cost to the Budget in treating maintenance income in the same way as other income for FTB purposes.

The second approach would hypothetically unite a separated couple and determine their notional rate of FTB as a couple compared to the actual FTB Part A they now receive, being separated. The difference in the notional and actual rates of FTB would be the amount available for recovery under the MIT. Although this approach gives practical effect to the neutrality principle on a conceptual level, it was rejected because it would lead to considerable complexities in implementation and administration and, accordingly, in public understanding and acceptance of the policy.

The Taskforce also consulted extensively with FaCS about further options to improve the fairness of the operation of the MIT by adjusting elements of the existing arrangements. Of these, the most attractive is to adjust the free area to the level where the MIT claws back only the amount of FTB A paid to separated parents, as a group, that is in excess of what these families would receive if they had not separated. This approach would deliver equity in the aggregate (equity at the individual level not being administratively feasible). It would also need to be updated alongside any future changes to FTB to maintain the fairness of its application.

## **11.4 The terminology of maintenance**

The Taskforce considers that terminology used in the current context is out of date. Maintenance may once have been a generic term for both spousal and child maintenance, but it is no longer. The term Maintenance should be replaced with Child Support for both the Maintenance Action Test and the Maintenance Income Test.

## **11.5 Reasonable maintenance action**

Flexibility and more choices need to be built in to the Child Support system to enable parents to agree on their parenting responsibilities following family separation. Currently, the operation of the FTB system is such that parents who seek more than base rate FTB A must apply for child support almost immediately, at a time when little discussion may have occurred between the parents about the parenting arrangements after separation.

To give parents more time to adjust to the separation and to discuss a parenting plan, the Taskforce proposes that there should be a moratorium on the requirement to apply for child

support (the Maintenance Action Test – or MAT) for 13 weeks. In that period, FTB should be determined as though the MAT has been satisfied. Further discussion on parenting plans is provided in Chapter 15 – Child Support and the Family Relationship Centres.

#### **Recommendation 9**

- 9.1 The mechanisms of the Maintenance Income Test (MIT) should be changed to ensure that it applies only to the children in a family for whom child support is paid.
- 9.2 The names of the Maintenance Action Test and the MIT should be changed to the Child Support Action Test and the Child Support Income Test in order to better reflect their roles.
- 9.3 The MIT’s free area, taper rate and scope should be reviewed in order to ensure that the operation of the MIT does not claw back FTB Part A beyond the level paid to equivalent intact families.
- 9.4 There should be an extension on the moratorium on taking reasonable maintenance action for FTB purposes from 28 days to 13 weeks, in order to give separated parents more time to negotiate a parenting plan. Child support should continue to commence from the date an application is made to the Child Support Agency.

## **11.6 Eligibility for income support of child support payers**

The position of the parent paying child support is currently adjusted for the purposes of calculating that parent’s entitlement to FTB. The child support paid is treated as “deductible maintenance expenditure” and the parent’s income is treated as less this amount for the purposes of calculation of their FTB. This is because that amount, once paid, is not available to the parent for the support of their current family. The Taskforce recognises that this amount is not available for the parent’s self support either. Accordingly, child support paid should be deducted from income considered for the purposes of calculating eligibility for income support payments in the same way as it is deducted to calculate FTB entitlement.

#### **Recommendation 21**

- 21.1 The Government should consider the deduction of child support payments from assessable income for the purpose of the assessment of the income support payment rate, (in line with deductible child support maintenance for FTB adjusted taxable income).
- 21.2 The Government should consider treating the eligibility for income support of each parent in a shared care arrangement (35% to 65% of nights each) more equally.

## 12 Change of Assessment

### 12.1 The current change of assessment process and reasons

Any child support scheme (CSS) based on a formula which is of general application needs to have the flexibility to deal with situations where the formula may operate unfairly due to particular circumstances. The Australian CSS has such a process. It is called “change of assessment”. Primarily, these cases are considered at an administrative level. However, a few cases are dealt with directly by the courts when there are proceedings involving other family law issues as well. Other cases go to the courts when a parent is dissatisfied with the outcome from the administrative process.

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. With the exception of Registrar-initiated change of assessment, the application for the change is made by an individual parent, and the parent is responsible for providing information to show that there is reason for a change. The decision maker must also be satisfied that the change is fair and appropriate in the circumstances.

The assessment may only be changed under this process on the basis of specified grounds or “reasons”. These grounds are set out in the relevant legislation, and are relatively narrow in scope. A parent applies for a change of assessment to the Child Support Agency (CSA), providing information about the reasons for which they seek the change. The information is sent to the other parent who has the opportunity to provide a written response. Senior Case Officers (either CSA staff or officers contracted to CSA) consider the application, including conducting a conference with each of the parents. If the Senior Case Officer (SCO) approves a change of assessment, it is essentially because in the circumstances, the formula does not produce a fair result. The decision is ultimately restricted by broad considerations relating to what is fair to all the parties and the child in the special circumstances, and the public policy objectives of the Act.<sup>211</sup>

If the SCO determines that a change is appropriate, he or she can essentially vary or remove any of the formula components, with the exception of the imposition and level of the minimum liability.<sup>212</sup> The SCO’s determination substitutes an individualised assessment, in some cases effected by creating an individualised formula. The formula component varied will depend upon procedural policies as to the best way to reflect the desired outcome in the individual circumstances, while avoiding restricting the parent’s future administrative options.<sup>213</sup>

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<sup>211</sup> Child Support Assessment Bill 1989, Explanatory Memorandum.

<sup>212</sup> A Court may make a determination going below the level of the minimum liability, even where the minimum liability would otherwise apply.

<sup>213</sup> For example, setting the child support liability will prevent administrative variation whilst the determination remains in effect to reflect responsibility for new dependent children, or a changed income reflected in the assessment.

Once the CSA has made a change of assessment, a dissatisfied parent must then object, before being free to apply to a Court for a fresh determination.<sup>214</sup> The Court process is not a review of the previous decision, but a completely new examination of the parent's circumstances and new decision.

The current legislated grounds for change of assessment have been expressed by the CSA as the following 10 reasons<sup>215</sup>:

Reason 1. The costs of maintaining a child are significantly affected by either parent's high costs of contact with the child.

Reason 2. The costs of maintaining a child are significantly affected by high costs associated with the child's special needs.

Reason 3. The costs of maintaining a child are significantly affected by high costs of caring for, educating or training the child in the way both parents intended.

Reason 4. The child support assessment is unfair because of the child's income, earning capacity, property or financial resources.

Reason 5. The child support assessment is unfair because the payer has paid or transferred money, goods or property to the child, the payee, or a third party for the benefit of the child.

Reason 6. The costs of maintaining a child are significantly affected by the payee's high child care costs for the child (and the child is under 12 years).

Reason 7. The parent's necessary expenses significantly affect their capacity to support the child.

Reason 8. The child support assessment is unfair because of the income, earning capacity, property or financial resources of one or both parents.

Reason 9. The parent's capacity to support the child is significantly affected by:

- their legal duty to maintain another child or person
- their necessary expenses in supporting another child or person they have a legal duty to maintain
- their high costs of contact with another child or person they have a legal duty to maintain.

Reason 10. The child support assessment is unfair because:

- the payer earns additional income for the benefit of their resident child (who is not the payee's child), or
- the payee earns additional income for the benefit of their resident child (who is not the payer's child).

The Terms of Reference necessarily required the Taskforce to review these grounds for change of assessment since they are integral to decision-making on the development of a fair formula.

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<sup>214</sup> The Child Support Legislation Amendment Bill 2004 contains a proposal to ease this requirement (Schedule 2).

<sup>215</sup> CSA Guide 2.6.2, explaining s.117 of the *Child Support (Assessment) Act 1989*.

In particular, the Terms of Reference require the Taskforce to consider the treatment of any overtime income and income from a second job, and also the issue of re-establishment costs.

## 12.2 Limiting retrospectivity

An application for change of assessment may currently be made for a virtually unlimited time<sup>216</sup>. This is highly undesirable, as it may open periods to re-examination which have long past, to the detriment of the other parent who finds past child support obligations being retrospectively reviewed. Particularly where a parent wishes to avoid complying with large outstanding child support debts, a belated application to reduce the assessment may be available, undermining the CSA's ability to enforce debt. In practice, most decisions are not retrospective<sup>217</sup>. However, the currently open discretion to make an application to vary past periods should generally be limited to the immediately preceding child support period.

However, there may be some exceptional circumstances where a parent has a legitimate reason for delaying their application for a change to a past assessment. One such reason is because information has only recently come to light about a payer's hidden income. In such cases, a process should exist to enable this general limit on retrospective applications to be eased. A Court is in the best position to consider the past "rights" of the parties, and determine whether making an exception is appropriate. For this reason the Taskforce proposes that an application should be made to a court, (in practice this would be the Federal Magistrates Court) to grant leave to apply out of time. This would be similar to the existing process under s.44 of the *Family Law Act 1975* in relation to property and spousal maintenance applications.

Where such application has been made to a court, and the court is inclined to grant it, the court may have before it much of the necessary information and evidence from the parents to consider making a departure order. It may be inefficient to require the parents to return to the CSA to seek administrative determination of the application. In such cases, the court should have a discretion on application by a parent to proceed to determine the substantive departure application itself.

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<sup>216</sup> An administrative application for change of assessment may only be made for periods starting after 1 July 1992.

<sup>217</sup> CSA advises that in practice, the majority of decisions are prospective in nature, or are backdated to the date of the application or the conference.

### **Recommendation 10**

10.1 Change of assessment applications should only be able to be made in relation to the immediately preceding and current child support periods, and future child support periods, unless the Court gives leave.

10.2 The Court may grant leave to the parent to make an application for change of assessment in accordance with the procedures of Part 6A of the *Child Support (Assessment) Act 1989* in relation to child support periods up to seven years prior to the current child support period.

10.3 In considering whether to grant leave, the Court should have regard to:

- a) the reason for the delay in bringing a change of assessment application;;
- b) the responsibility for that delay;
- c) the hardship to the applicant if leave is refused; and
- d) the hardship to the respondent if leave is granted.

10.4 If the Court grants leave to the parent to make the application, it may proceed to hear the matter itself on the application of either parent.

## **12.3 Streamlining jurisdiction for Court ordered departures**

A parent seeking a change of assessment generally must apply for the change administratively to the CSA. This is a non-adversarial process, conducted at no cost to the parents, with as few formalities as possible so that both parents have equal opportunity to present their positions. As outlined above, once the CSA has made a change of assessment, a dissatisfied parent must then object, before being free to apply to a Court for a fresh determination.<sup>218</sup>

A parent may currently apply directly to a court for a departure from the child support formula (court ordered change of assessment) where there are already matters before the court (such as property or parenting matters) and the parent wishes to seek a change to the child support assessment. However, a practical issue arises with the current wording of the jurisdiction of the Court in such cases, when the “proceedings pending” which give the court jurisdiction, settle, or are otherwise finalised. The ending of the non-child support proceedings may not prevent the parents from efficiently finalising their departure from the child support formula via the court. The jurisdiction of the Court in these circumstances should continue.

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<sup>218</sup> The Child Support Legislation Amendment Bill 2004 contains a proposal to ease this requirement (Schedule 2).

### **Recommendation 11**

Section 116 of the *Child Support (Assessment) Act 1989* should be simplified to provide that a court shall have jurisdiction to determine a child support application whenever the application is brought in conjunction with proceedings under the *Family Law Act 1975* (without needing to be satisfied that the child support application should be heard “at the same time” as the other proceedings), and that the Court does not cease to have jurisdiction only because the other matters are resolved before the child support application is heard.

## **12.4 High costs of contact**

The current formula makes no adjustment for contact of less than 30% of nights per year. As a result, parents who do not see their children at all are treated identically to parents who care for their children 29% of the nights per year. The only way otherwise that the costs of contact can be taken into account is through a change of assessment. Where costs are greater than 5% of the parent’s child support income, they can apply for a change to the formula assessment to recognise those costs.

As has been demonstrated<sup>219</sup>, a parent with regular face-to-face contact involving overnight stays incurs significant costs, particularly costs of an infrastructure nature. Costs of contact of 14% of the time or more are recognised in the proposed new formula, and an appropriate formula adjustment is made to allow for the average expenditure on a child provided by a non-resident parent. There will then be less need for a ground permitting further adjustment in individual cases, at least for the usual costs incurred by non-resident parents when children are in their care.

There still may be circumstances, particularly where parents reside some geographical distance apart, when the formula allowance may be inadequate. Costs of transport for the children to and from their non-resident parent’s home may be considerable. Where this cost is borne entirely by the non-resident parent, it may represent a significant proportion of the child support income of that parent, justifying an increased allowance beyond the allowance made in the formula for contact. If the resident parent is bearing this cost, the formula allowance for contact may actually be excessive. High costs of contact may thus be incurred by either parent.

Given the recognition of contact in the proposed formula, the Taskforce has concluded that the ground for change of assessment should be confined to high travel costs only. The CSA’s current policy is to consider a parent’s costs of establishing, modifying or enforcing contact orders under this ground. Consideration of such costs is not limited to established court costs, and is not excluded by a court order as to who should bear those costs<sup>220</sup>. This policy conflicts with the role of the Court to determine the allocation of costs resulting from matters before it on the merits of the case. The recommendation made by the Taskforce implicitly excludes this very broad view of the costs of contact.

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<sup>219</sup> See Chapter 8.

<sup>220</sup> *The Guide*, 2.6.7.

**Recommendation 12.1**

The current change of assessment ground in s.117 of the *Child Support (Assessment) Act 1989* based upon the high costs of contact should be replaced with a more limited ground in the light of the proposed recognition of the costs of regular contact in the formula. The ground should be that the capacity of either parent to provide financial support for the child is significantly reduced because of high travel costs borne by that parent in enabling him or her or the other parent to have contact with that child or any other child of the parent.

Another issue in relation to the costs of contact is that the legislation as currently drafted does not appear to provide relief for a non-resident parent who cannot afford to see their child. The parent may be meeting their child support obligations, and staying in contact with their child via means they can afford, such as telephone, letters, e-mail or other non-face to face avenues. The parent's remoteness from their child may be for reasons of economic necessity, such as work, or for reasons beyond their control, including relocation by the resident parent. Funds to pay expensive airfares to enable contact to occur may remain unavailable without some adjustment of the child support liability. The requirement of prior expenditure being incurred or an existing pattern of expenditure on contact in order to satisfy this ground should be eased, and information about available options for parents who are not having contact publicised more generally.

**Recommendation 12.2**

This ground should be available to a parent who is not currently exercising contact because he or she cannot afford to do so, and hence has not been able to incur the expenditure prior to making the application.

Of course, there is a risk that a parent who has had their child support adjusted on the basis of proposed contact arrangements then fails to follow through and have face-to-face contact as planned. A process of establishing the parent's detailed intentions and plans in order to establish the ground should minimise this risk. However, there can never be complete certainty, and plans may not be carried through for a range of reasons. There should be a "reversal" available to the payee parent where contact does not actually occur, or does not occur to the extent planned. However, this should be via the change of assessment process, in order to allow both parents opportunity to explain what has happened, and ensure fairness to both parents and the child.

**Recommendation 12.3**

A change of assessment on this ground should be reversible upon application by the payee if the payer does not in fact exercise the expected level of contact, despite a reduction in their child support obligations.

## 12.5 Overtime and second jobs

The Parliamentary Committee received many submissions arguing that parents' efforts to get ahead financially following separation were undermined, specifically identifying the impact of child support where additional income had been earned by parents taking on higher paying

jobs, overtime or second jobs.<sup>221</sup> Such income is automatically included in the income base for calculation of child support, as it forms part of a parent’s taxable income. This will remain the case with the new formula.

The principles underlying child support calculation as proposed, are that the cost of the child be based upon the likely expenditure of the parents on the child were they living together. The children should continue to benefit from the changes of standard of living of the parents despite the separation, as nearly as possible as though they were living with them. However, the fact that the parents are separated may affect a parent’s decisions about their workforce participation. A parent’s decision to take on a greater level of work, for example to undertake overtime or work a second job, may be motivated entirely by the need to re-establish themselves following the break-down of the relationship. If so, there is less basis for the cost of the child to be increased as the result of such additional earnings.

There is currently a change of assessment ground (Reason 10) relating to different treatment of additional income earned by a separated parent for the benefit of children in their new family. This ground sets out a detailed basis upon which the parent’s workforce participation prior to and following the establishment of a new family, should be compared to demonstrate that the amount is indeed “additional”. Additional income is defined in s.117A(3) of the Child Support (Assessment) Act as follows:

For the purposes of subparagraphs 117(2)(c)(iii) and (iv), an amount is taken not to be an additional amount in relation to a person in the following circumstances:

- (a) the amount is earned, derived or received in accordance with a pattern of earnings, derivation or receipt that was established:
  - (i) before the resident child became a resident child of the liable parent or the entitled carer; or
  - (ii) if the child was a resident child of the liable parent or the entitled carer immediately after the child was born—before the liable parent or the entitled carer could reasonably be expected to have been aware of the pregnancy that resulted in the birth of the child;
- (b) the amount is earned, derived or received other than in accordance with such a pattern, but the alterations to the pattern are of a kind that it is reasonable to expect would have occurred in the ordinary course of events.

The Taskforce proposal is that this ground for change of assessment should now apply also to parents who can establish that their purpose in earning additional income is to meet re-establishment costs following the breakdown of their relationship. However, this motivation would become less compelling as the time from separation increases. Accordingly, the reason should be subject to a time-limit, after which it will no longer apply.

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<sup>221</sup> House of Representatives Standing Committee on Family and Community Affairs Report, *Every Picture Tells a Story*, (2003), at 6.140 and following.

**Recommendation 13.1**

The current ground for exclusion of an “additional amount” of income (such as overtime or a second job) for a new child from the child support assessment should be expanded to allow payers and payees to apply for a change of assessment if the child support assessment is unfair, unjust or inequitable because they earn an “additional amount” of income to assist them with re-establishment costs following separation, with a limit of up to 5 years from separation.

**Recommendation 13.2**

The ground is established when the parent can show that the parents lived in one household prior to separation, and that the parent commenced earning the additional amount after the separation.

A parent’s situation may change markedly during the 5 years following separation. A parent may repartner, and take on responsibility for their partner’s children, or have further children in their new family. The purpose of their changed workforce participation arrangements may change. Provision of support for the children in their new family may become the primary purpose, although the initial motivation may have been solely re-establishment. However, this should not exclude the parent from using or substituting either ground, when either is applicable.

**Recommendation 13.3**

If it has been established that, in the first five years since separation, the parent earned the additional amount to meet re-establishment costs, and if during that time the parent has a child in a new family, the additional income can be claimed as specifically for the benefit of the resident child, beyond the first five years.

In practice, parents make workforce participation decisions on balance, having weighed up competing factors. The current reason requires the parent to demonstrate that their new family was their sole motivation for increasing their earnings. The fact that a parent has gone through a reasoning process in making their earning decision should not exclude them from applying under this ground, where they can establish that their major reason or motivation was either re-establishment costs or the support of a child in their new family.

**Recommendation 13.4**

The parent should be required to establish only that a major reason for their change in work arrangements resulting in the “additional amount” was re-establishment costs or the support of a dependent child, in order to make out this ground.

## 12.6 Recognition of responsibility for step-children

Second families may often include children who are not biologically related to the parent of the child support children. According to the Australian Bureau of Statistics,<sup>222</sup> there are approximately 176 700 families (or approximately 7 per cent of all families) where some of the

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<sup>222</sup> Family Characteristics Survey June 2003.

children are not biologically related to both parents. Of all children living separately from one parent, 22 per cent live in step or blended families.<sup>223</sup>

Children not living with both biological parents should receive support from their absent parent. The support provided will offset the contribution being made by the step-parent who is actually residing with the child. However, not all non-resident parents are in a position to contribute to the support of their child. The child's absent parent may be deceased, unknown or not locatable, or unable to earn an income from which to contribute to the support of the child. In this case, the step-parent is actually supporting the child.

Some acknowledgement within the CSS of the responsibilities of a step-parent has been made by reference to the parallel situation of ordering step-parent maintenance under the *Family Law Act 1975*.<sup>224</sup> A step-parent subject to an order for step-parent maintenance under the Family Law Act may have their legal responsibility to a step-child reflected by a reduction in their child support<sup>225</sup>. However, in practice, a Court can rarely declare that a step-parent has a responsibility to support a child where the step-child is living with the step-parent against whom the order is sought.

As existing measures provide little relief for step-parents, it is proposed that there should be a closely defined change of assessment ground available for cases where the support for a step-child is impacting upon a parent's ability to support their own child. The reason should essentially parallel the consideration process undertaken by the Family Court when considering whether to make a determination for step-parent maintenance. This would include considering the position and capacity of the partner of the child support parent (generally, the step-child's biological parent) and of the step-child's biological parent or parents, along with the impact of any change on the child support children and the payee.

This ground could only be established where neither of the parents is in a position to support the child. The fact that the non-resident parent is unable to pay child support is not in itself, sufficient. The parent with whom the step-parent lives must also be unable to earn an income to provide for the child's support.

In reaching a decision on whether an allowance should be made for a step-child to reduce a payer's obligations to his or her biological children, decision-makers will need to have regard to the Family Tax Benefit (FTB) and any other government benefits being paid to the household to help support the child.

The fact that a parent has sought recognition of their provision for a step-child for child support purposes should be strong evidence in favour of finding a continuing step-parent obligation to support the child under s.66M of the *Family Law Act 1975*, if the parent and the step-child's parent subsequently separate.

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<sup>223</sup> Step families (98,600 or 4 per cent of all families with children aged 0–17 years) are those formed when parents repartner following separation, and where there is at least one step-child of either member of the couple present. To be counted as a blended family, a family must contain a step-child but also have a child born to both parents. In 2003, there were 78,100 blended families representing 3 per cent of all families with children aged 0–17 years. Australian Bureau of Statistics (2004).

<sup>224</sup> Family Law Act 1975 s.66M.

<sup>225</sup> Section 5 includes a child for whom a parent has a responsibility declared by a court under s.66M as a 'relevant dependent child' of that parent, resulting in an increase in the parent's exempt amount.

**Recommendation 14.1**

It should be a new ground for change of assessment that the parent has a responsibility, although not a legal duty, to support a step-child.

**Recommendation 14.2**

The ground to support a step-child is not taken to exist unless:

1) The parent has lived continuously for a period of not less than two years in a marriage or de facto relationship with the parent of the step-child.

2) Neither parent of the step-child is able to support the step-child due to:

a) death;

b) ill health;

c) caring responsibilities for a child aged under five; or

d) caring responsibilities for a child aged over five with disabilities requiring additional assistance and care from the step-child's parent.

and

3) The needs of the step-child for assistance can be established, taking into account any income tested benefit, allowance or payment being paid for the benefit of that step-child.

## 12.7 'Capacity to earn'

"Capacity to earn" cases are amongst the most controversial of all issues in the CSS. Reason 8 of the grounds for change of assessment is that "the child support assessment is unfair because of the income, earning capacity, property or financial resources of one or both parents".

The "capacity to earn" is different from the "capacity to pay". A capacity to earn decision is one where although the decision-maker recognises that the parent's real income is as stated, he or she has a capacity to earn greater than is being exercised. The consequence of a finding of this kind is that a parent's child support may be assessed on the basis of a higher income than the parent is actually earning. In contrast, capacity to pay decisions usually involve arguments about whether the reported taxable income of the parent reflects his or her real income. Typically, the applicant alleges that the reported taxable income represents only a portion of the income the other parent actually earns, or that the parent's taxable income is minimised through use of companies or trusts through which income is channeled, or by the use of salary sacrificing.

The "capacity to earn" cases do not involve the CSA or the Court saying that a person must go back into the workforce, or increase his or her earnings. However, the assessment is based on the finding that the higher award is reasonable because he or she has a higher earning capacity than is being exercised.

The Taskforce has two main concerns about the capacity to earn cases. The first is that there needs to be a clearer legislative definition to limit when it is appropriate to deem a parent to have a higher capacity to earn than he or she is currently exercising. The case law indicates, for example, that a parent might be expected to engage in extensive overtime if that was the pattern of their work before the relationship broke down. In a 1998 decision,<sup>226</sup> the Full Court of the Family Court wrote that:<sup>227</sup>

a parent may be required or expected to work long hours or at more than one job if the parent has the capacity and opportunity to do so, and if the children need greater support than they would receive if the parent was only to work shorter hours.

The Full Court went on to indicate that it was within the discretion of a trial judge to conclude that a parent should continue to work 80 hours per week if there was a proven work history of such long hours.<sup>228</sup> This raises certain issues about human rights and occupational health and safety on which Parliament might be expected to have a view as a matter of policy.

The case law also indicates that a parent can be deemed to have a higher capacity to earn even when he or she has not been responsible for the loss of a job and is making bona fide efforts to develop a new business.<sup>229</sup>

The Taskforce considers that there needs to be a much clearer statutory definition of capacity to earn. No parent should be deemed to have a capacity to earn on the basis that he or she could work hours in excess of the level of normal full-time work for the occupation or industry in which he or she is employed, or that he or she could take on an additional job involving total working hours above the norm required by employment contracts for those in full-time work.

Furthermore, a parent should only have his or her child support assessed on the basis that he or she has a greater capacity to earn than he or she is exercising when there is evidence on the balance of probabilities that a major purpose for making employment decisions has been to reduce his or her child support liabilities, or to affect the child support liability of the other parent. The ground should not require the CSA or the courts to get involved in micro-managing people's lives on the basis that in the decision-maker's view, they might have made a better decision about employment than they did in fact make. In an intact family, assuming children are not neglected, there are no situations apart from unemployment where parents will be required to earn more, or to contribute more to their children.

Although a capacity to earn decision does not involve making an order that a parent obtains a certain kind of work or increases his or her working hours, there is an element of coercion that is tantamount to this in making a child support assessment on the basis of deemed income or

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<sup>226</sup> *DJM v JLM* (1998) FLC 92-816.

<sup>227</sup> *Id* at 85,272.

<sup>228</sup> *Id* at 85,273.

<sup>229</sup> For example in *B & P* [2003] FMCAfam 199, the payer had set up a business as an electrician three years previously after having being involuntarily retrenched from a position as an employed electrician. The Federal Magistrate remarked that even though the business was growing, it was not growing fast enough for the payer to meet his obligations to provide for his children. He found that, notwithstanding the hardship this would present to the payer, it would be just and equitable, and also otherwise proper, to calculate his child support responsibility on the basis of an income of \$30 000, just less than what he was receiving before retrenchment. He allowed the payer three months to make changes to his business or seek alternative employment.

financial resources that the person does not in fact have. The current law on child support may be contrasted with the view that the courts have long taken in the enforcement of employment contracts. A court will not compel a person to engage in work involving personal services pursuant to a contract. At the most, it will by injunction restrain a person from engaging in any other work that would be in breach of that contract. The circumstances in which it will exercise this indirect coercion are carefully limited.<sup>230</sup> The circumstances in which an administrative officer or a court should make such a decision as to income should be similarly limited to cases where a parent is deliberately taking action to affect their child support assessment.

The Taskforce considered whether capacity to earn decisions were of such sensitivity that they should be left only to courts to determine. It is apparent from a Report of the Ombudsman that there is cause for concern about the quality and consistency of decision-making in this area.<sup>231</sup>

The Ombudsman's investigation looked at 1156 decisions, made over a six-month period, under Reason 8. Of these, 58 per cent were initiated by payee parents and 41 per cent by payer parents. The Ombudsman found significant regional variations in the decision-making on this issue. States vary markedly on how they deal with situations where a parent does not appear to be earning at full capacity. NSW tends to disregard potential earnings altogether and to set a liability based on costs of children alone. Victoria and Tasmania used AWE, and WA largely used award earnings. There was also a difference in how States dealt with cases where the payer did not respond: in some cases, applications were refused or resulted in modest estimates of capability; in others, the details provided by the payee were accepted unless refuted by the payer (who could later lodge another application where any further evidence would be considered).

On balance, the Taskforce considers that if there is a clear statutory definition of the meaning of "capacity to earn", combined with guidance to SCOs to avoid regional differences in the light of that new definition, then this will resolve many of the problems of inconsistency in decision-making. The Agency may always decline to deal with a change of assessment application administratively. If a case were too complex to deal with administratively, and needed to go straight to court, the Agency could facilitate this by intervening in the case to lead evidence in a neutral way. This would take much of the burden of private litigation off the payee parent.

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<sup>230</sup> Meagher, Gummow and Lehane's, *Equity: Doctrines and Remedies*, (4th ed., by Meagher, Heydon and Leeming, Butterworths, 2002) at [20-055], [21-220]; P. Parkinson (ed) *The Principles of Equity* (2nd ed, LawBookCo, 2003) at [1723], [1806].

<sup>231</sup> Commonwealth Ombudsman, *CSA Change of Assessment Decisions*, May 2004.

### **Recommendation 15**

15.1 A parent's income for child support assessment purposes should only be able to be increased because he or she has a higher capacity to earn than he or she is currently exercising if the following conditions are satisfied:

- (a) the parent
    - (i) is unwilling to work when ample opportunity to do so exists; or
    - (ii) has reduced his or her employment below the level of normal full-time work for the occupation or industry in which he or she is employed;
  - (b) the parent's decisions in relation to employment are not justified on the basis of
    - (i) caring responsibilities or
    - (ii) the parent's state of health;
- and
- (c) On the balance of probabilities a major purpose for the parent's decisions in relation to employment was to affect the child support assessment.

15.2 Where the Child Support Agency declines to make an administrative determination in a capacity to earn case because the complexity of the issues makes it more appropriate for the matter to be dealt with by a Court, the Agency should exercise its statutory right to intervene in the case in order to lead evidence to assist the Court in reaching its decision.

## **12.8 Reviewing change of assessment processes**

The current change of assessment process is designed to fit neatly with the formula created by the original Consultative Group. Adjustments will be needed at a broad level in order to fit with the changed formula. In particular, modifications will be needed to take account of the inclusion of both parents' incomes in the formula routinely, that parental incomes determine both the cost of the child and the share of that cost as between the parents, and that care and contact levels are treated differently.

The changes may provide an important opportunity to make the availability of change of assessment better known, and the process clearer. The CSA is currently conducting a detailed review of the change of assessment process, including the accessibility of the process, and improving general satisfaction with outcomes. Simpler characterisation and presentation of the issues parents must understand in order to effectively navigate the process would assist greatly with this. Greater certainty, and information dissemination about the reasons, and the considerations used by decision-makers when considering an application should also assist with consistency, and acceptance of outcomes.

It is important also that there should be some system for reporting to lawyers and others the reasons why changes of assessment have been allowed or declined. It is impractical to do this for all individual cases, but some summation of decisions each year for external stakeholders may improve understanding of the process, and promote greater confidence in that process.

**Recommendation 16**

Section 117 of the *Child Support (Assessment) Act 1989*, which provides the legislative basis for changes of assessment, should be redrafted to:

- (a) Take account of the new formula for child support proposed by the Taskforce.
- (b) Take account of developments in the case law since 1989.
- (c) Reflect the simplification adopted by the CSA in its ten reasons for change of assessment.
- (d) Reduce the number of different categories, where reasons for a change of assessment could be combined and expressed at a higher level of generality.
- (e) Make clearer the different considerations that decision-makers must take into account.

## 13 Child Support Agreements

### 13.1 The importance of encouraging agreements

When relationships break down, parents need to work out a range of issues, in particular, the parenting arrangements, and the division of the property (or debts, as the case may be). It is a fundamental axiom of family law that the best arrangements are those that the parties negotiate for themselves. They are more likely to last where people feel responsible for the choices and compromises that have had to be made. Imposed solutions can breed resentment and dissatisfaction. For that reason, adjudication should always be a last resort.

Child support, however, is the one area of family law where there has not been much of a focus on negotiated arrangements and dispute resolution. The child support formula is applied in the great majority of cases. This is not necessarily because parents don't want to make their own agreements about child support. There are certain restrictions that stand in the way of parents entering into negotiated settlements about child support that depart from the formula. These restrictions arise from the interrelationship between the CSS and FTB.

A further problem with the current arrangements about child support agreements is the lack of even the most basic safeguards to ensure that agreements that have long-term financial consequences for the parents and children are freely and fairly made. The law on child support agreements stands in marked contrast to the family law rules on agreements concerning property division and spousal maintenance. The extent of the difference is surprising, for child support agreements dealing with the support of children until 18 may be of much greater financial significance in the long-term than agreements about property.

The availability of Family Relationship Centres to provide parents with information, support and guidance when negotiating parenting related issues will provide practical assistance when parents wish to explore an individualised child support arrangement to match their particular circumstances. This then needs to be matched with a system of handling such child support agreements within the CSS, that provides adequate protection for the parents and the child, whilst maintaining the balance between parent and taxpayer contributions.

### 13.2 Agreements under the existing scheme

Child Support legislation<sup>232</sup> allows parents to reach their own agreement on the amount of child support to be paid. A child support agreement has to meet the requirements of the legislation and has to include matters that can be dealt with in a child support agreement. A child support agreement must be in writing, and signed by both parents (section 85). An agreement must contain at least one of the following:

- provisions under which a parent is to pay child support for a child to another person in the form of periodic amounts paid to the other person

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<sup>232</sup> The Child Support (Assessment) Act 1989, Part 6. All further section references are to this Act unless otherwise stated.

- provisions varying the rate at which a parent is already liable to pay child support for a child to another person in the form of periodic amounts paid to the other person
- provisions agreeing on any other matter that may be included in an order made by a court under Division 4 of Part 7 (section 123))
- provisions under which a parent is to provide child support for a child to another person otherwise than in the form of periodic amounts paid to the other person
- provisions under which a parent's liability to pay or provide child support for a child to another person is to end from a specified day.

A document that forms a parenting plan, maintenance agreement, or financial agreement under the Family Law Act can also be an agreement for child support purposes if it contains at least one of the above types of provisions and complies with the other necessary requirements (section 85).

Once parents have made a child support agreement, either parent can apply to the CSA to have it accepted<sup>233</sup>. The only formal requirement for making a child support agreement is that it must be in writing, and signed by both parents (section 85). In many cases, the agreement will also need Centrelink approval.<sup>234</sup>

### 13.3 The requirement of Centrelink approval

Generally, acceptance of the agreement by Centrelink depends upon whether there are financial consequences in terms of increased FTB (A) payments flowing from the terms of the agreement. If the payee receives or has applied for more than the base rate of FTB Part A, CSA must refuse to accept the agreement unless there is a child support assessment in force immediately before the application is made (section 92(4)). If there is an administrative assessment in force on the day CSA received the application for acceptance of a child support agreement and the payee receives, or has applied for more than the base rate of FTB Part A, CSA must send a copy of the agreement to Centrelink.<sup>235</sup> Centrelink has to decide whether, if CSA accepts the agreement, the payee will have taken 'reasonable action to obtain maintenance' for the child (the Maintenance Action Test or MAT).<sup>236</sup>

If Centrelink decides that the agreement does not pass the Maintenance Action Test it must advise both parents in writing.<sup>237</sup> In this case, CSA must refuse to accept the agreement. Otherwise, if Centrelink decides the agreement is acceptable, CSA must accept the agreement.

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<sup>233</sup> CSA Guide 2.5.1 and following.

<sup>234</sup> If a parent has applied for a Change of Assessment, CSA may accept an agreement without requiring Centrelink approval. The decision to accept the agreement will be made by a SCO who is satisfied that the agreement is just and equitable and otherwise proper.

<sup>235</sup> CSAA ss 91A(1) and (2).

<sup>236</sup> CSAA s. 91A(3).

<sup>237</sup> CSAA s. 91A(5).

## 13.4 Centrelink approval as a safeguard

Generally, Centrelink will only give its approval to an agreement if the amount or value of child support in the agreement is at least 100 per cent of the amount that would be payable under the formula.

This provides little room for trade-offs to be made between levels of child support and other things that may be important to the parents. The provision for Centrelink approval is not there to protect the parents – or their children – from unfair agreements. Centrelink approval has a secondary effect of protecting payees from unfair agreements, but its purpose is to protect the taxpayer. Because the Government recovers some of its expenditure on separated families through the Maintenance Income Test, it needs to ensure that agreements about child support do not operate to reduce the amount that can be recovered for the Government.

It is not clear that the requirement for Centrelink approval protects either the children or taxpayers adequately. The requirement for Centrelink approval prior to an acceptance of an agreement only protects taxpayers based upon the circumstances in existence at that time. If the situation changes, the agreement remains in force, even if it would not have been acceptable if applied for on that day. Since agreements can last until the child turns 18, this creates a huge opportunity for manipulation and abuse. The Legal Aid Commission of NSW provided one example of how child support agreements can be misused to avoid child support:

The parties had separated when the child was still a baby and the carer was in receipt of Parenting Payment and FTB A and B at the time the agreement was entered into. The payer had a child support assessment using an income of \$30 000 per year. The payer lodged an estimate that resulted in a nil child support assessment, since this was before the minimum \$5 per week came in. The payer then placed some pressure on the carer parent to enter into a child support agreement requiring the payer to pay nil child support. The child was 8 months old when the agreement was made and it ended when the child attained 18 years of age. A delegate of the Secretary of the Department of Social Security had to check that the proposed agreement was for an amount equivalent to the amount payable under the child support assessment. As the agreement met this amount at the time the agreement was entered, the delegate approved the agreement. Legal action had to be taken to bring the agreement to an end.

Another problem is that an agreement may be entered into at a time when the payer's income is relatively low, and when the payer knows that those circumstances are likely to change. There is no requirement of full disclosure either to the payee or to Centrelink. The result may be that not only is child support lower than would be justified in the circumstances, but that the taxpayer is left to pay more of the support for the children through FTB than would be the case if the formula were applicable.

The Legal Aid Commission of NSW offers another example:

The payer in this case enjoyed a good income during the life of the marriage. Following separation, the payer went through a period of unemployment for approximately 18 months, and had a minimum child support liability. The carer struggled to support the two lower primary school aged children. The payer then offered the carer a child support agreement for \$50 per week, payable until the children each attained 18 years. This agreement was for more than the current assessment and the carer entered the agreement to keep the peace, not fully appreciating how difficult it could be to vary this agreement. The Social Security Secretary's delegate approved the agreement because it was for an amount higher than the current child support assessment. The carer then discovered three months later that the payer had returned to employment and was earning a similar income to the income earned during the marriage. This would have resulted in a child support assessment of \$250 per week. Legal action had to be taken to bring the agreement to an end.

At 30 June 2004, 2569 parents had an agreement for a minimum liability of \$260 per year with the other parent<sup>238</sup>. In some cases, the payee may have been given something substantial in return, such as a greater share of the property on separation. Some agreements reduce the payer's liability during periods of unemployment. However, the number of these minimum liability agreements is a cause for serious concern. It suggests that the cases cited above are not isolated examples.

### 13.5 Protecting the taxpayer

The present method of protecting the taxpayer from agreements that would be to the detriment of the revenue through Centrelink approvals, is neither the most efficient nor the most effective method of doing so.

A simpler and more effective way of ensuring that the agreements do not disadvantage taxpayers is to provide that wherever periodic child support liabilities are reduced as a consequence of the operation of an agreement, the parties' entitlement to FTB should be calculated on the basis that the person who is in receipt of the agreed child support is receiving the amount to which he or she would be entitled under the statutory formula.<sup>239</sup> Thus the Maintenance Income Test will be applied as if the parent was receiving the formula amount, while the actual amount transferred between the parents takes into account the terms of the agreement for child support.

This is the effect at the moment if a parent agrees that her or his FTB A payments should be based on the amount of child support to which he or she is entitled, rather than the amount which is actually received, and that there should be no reconciliation with actual receipt. This is universally the case where parents have a private collect arrangement, as the majority have. Neither the CSA nor Centrelink has any way of knowing whether in fact payees are receiving the child support to which they are entitled under the formula assessment since the transfer of money is a private one. The consequence of not having CSA collect the child support is that for FTB purposes, the payee is assumed to be receiving the level of child support stipulated in the assessment.

The Taskforce proposal obviates the need to make child support agreements subject to Centrelink approval requirements. Taxpayers are in no way disadvantaged by the agreement. By breaking the nexus between child support agreements and FTB payments, there will be more room for private agreements since parents will be able to make bona fide agreements for less child support than the formula would yield in exchange for other benefits that may be valued by a payee parent.

There will also be an increase in revenue to the Government by reducing the scope for abuse of such agreements. Taxpayers cannot be disadvantaged if child support agreements cannot affect FTB entitlements. The present processes of approval of child support agreements by Centrelink

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<sup>238</sup> Unpublished CSA data provided to the Taskforce, March 2005.

<sup>239</sup> Where the amount payable under an agreement is greater than the liability under an assessment, the entitlement to FTB would, on the existing policy, be calculated taking into account that higher amount. The logic of the Taskforce's recommendation is that an agreement should have no effect whatsoever on FTB entitlements, whether the agreement is for less or more child support than the formula provides.

based only on present circumstances cannot provide long-term protection for taxpayers and the system is wide open to manipulation.

## 13.6 A discretion to refuse registration

If Centrelink no longer has to approve agreements, then it will mean that one safeguard, albeit an ineffective safeguard, from unfair agreements, is removed. The Taskforce proposes that there should still be safeguards, but that these should be purpose-designed to protect payees and their children from unfair agreements, rather than being an accidental collateral effect of a process designed for other purposes.

At present, the Child Support Registrar has no discretion to refuse to register a child support agreement that has been made in the proper form. The Taskforce proposes that as one safeguard, the CSA should have discretion to delay registration of an agreement in order for a parent to seek legal advice.

The procedure could be similar to the present process of Centrelink approval in situations where the parents have not both had independent legal advice. A formula assessment would need to be carried out and the agreement compared with the operation of the formula.<sup>240</sup> If the process is genuinely to check 'adequacy' for the parents, the comparison may need to be broader, comparing the amount produced by the agreement with something of the nature of an 'average' assessment, looking at the parents' average rate of child support during a number of previous periods. Any past rate changes the agreement makes, and the level of child support provided for into the future would also be relevant. Also relevant is the value to the parents of any substituted benefits. If the Child Support Registrar concludes on the basis of this comparison that the agreement does not provide an adequate amount of child support for the child's needs or otherwise that the agreement is not proper, because it is prima facie unfair or unjust to the child given the parents' financial circumstances, then he or she may advise the parents accordingly by letter or phonecall. The parent who is likely to be disadvantaged by an agreement should be encouraged to seek legal advice and be given the addresses of Legal Aid or a community legal centre if appropriate.

If that parent declines to seek legal advice, or persists in seeking registration of the agreement after receiving legal advice, then he or she must indicate this in writing to the Agency.

Further safeguards proposed by the Taskforce relate to powers of the court to set aside agreements. The proposed safeguards will make the child support legislation consistent with the policy of the *Family Law Act 1975*.

## 13.7 Enforceability of agreements

Once accepted by the Registrar, an agreement has effect under the Act as though it is an order of a Court (s.95). An administrative assessment must be made, or the terms of any existing assessment varied in accordance with the terms of the agreement. Any administrative processes that might otherwise apply to vary an administrative assessment are excluded if their operation would conflict with the terms of the agreement.

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<sup>240</sup> In considering the "value" of an agreement to compare it with the outcome of a formula assessment, Centrelink currently takes into account 3<sup>rd</sup> party payments, lump sums and in-kind payments.

For example, if the agreement sets an amount of child support per child, any variations to the parent's incomes, care of children in a second family or change in care levels will not affect the payments of child support due. If the carer parent ceases to care for some of the child support children, the liability may be reduced if the agreement was specific as to the liability for each child. However, if the agreement was general, providing an aggregate amount only, no reduction in the payments will occur unless the carer parent no longer provides care for any of the children.

An agreement may be varied by further agreement, or by order of a Court (s.98). After the agreement has been registered in a Court, the provisions may be discharged, suspended, revived or varied by the court in the same manner as the court could discharge, suspend, revive or vary a court order of that kind (s. 98).

The rules on child support agreements can lead to serious disadvantage either to payers or to payees depending on the circumstances. First, payers or payees may make significant concessions to the other parent without any legal advice.

Secondly, agreements may be unlimited in duration, lasting until the time when child support is no longer payable under the Act. An example of the problem was also provided by the Legal Aid Commission of NSW.

In this case, involving a high-income employed payer, the parties entered a child support agreement in 1998 when the payer was earning in excess of the cap. The agreement required the payer to make periodic payments over and above the capped amount for two children of the marriage. The agreement allowed for no changes in circumstances of either party. The payer was made redundant in 2003. The payer continued to make the child support payments out of his redundancy payout for one year, until the redundancy payout expired. The payee did not respond to the payer's request then to end the agreement, resulting in the need for a court application.

This case example illustrates a third problem – that agreements, once entered into, are very difficult to get out of. Unless there is a subsequent agreement of the parties, a court order is required. The *Child Support (Assessment) Act 1989* does not specify the circumstances in which a court may terminate the operation of a child support agreement or the factors to which it should give consideration. Case law indicates that a court should apply the same three stage process which is required under section 117 of the *Child Support (Assessment) Act*.<sup>241</sup>

The lack of safeguards contained in the rules for child support agreements contrasts with the safeguards that operate under the *Family Law Act 1975* in relation to binding financial agreements. This requires both parties to have independent legal advice on:

- the effect of the agreement on the rights of that party and
- the advantages and disadvantages, at the time that the advice was provided, to the party of making the agreement.

The terms of child support agreements may be no less significant, in financial terms, than a binding financial agreement. The lack of protections for the parties under the CSS compared to the *Family Law Act* is notable. It is surprising in particular that when agreements may have a

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<sup>241</sup> Decisions of the Full Court of the Family Court in *Gilmore* (1995) FLC 92-591, *Liesert v Nustch* (1996) FLC 92-665 and *Bryant* (1996) FLC 92-690.

significant adverse effect on the wellbeing of children, there are not adequate safeguards in place.

## 13.8 Reforming the rules concerning child support agreements

The Taskforce proposes two strands to the reform of the law on child support agreements.

First, parents should be able to make binding financial agreements in relation to child support on the same basis as they can do for property, superannuation and spousal maintenance under the *Family Law Act 1975*. Binding financial agreements are only valid if the parties to it have independent legal advice. This brings the rules on child support agreements into harmony with financial agreements concerning property division and spousal maintenance.

In order to ensure that binding financial agreements are available to any parents, and not only to those who were married to another, the relevant legislative provisions should be placed in the child support legislation. The legislative provisions would not need to be identical to the Family Law Act. Indeed, since financial agreements under the Family Law Act are limited to those who are or have been in marital relationships, or preparing to enter marriage, the text could not be identical. What is important is that the substantive rules for the making of agreements, setting aside agreements and enforcement should be the same to the extent that they are applicable to agreements in relation to child support. Parents who have had a marital relationship ought also to be able to include provisions on child support in binding financial agreements made under the Family Law Act.

Secondly, there should be safeguards for parents who make agreements without both having independent legal advice. The child support agreement should be of limited duration, and the agreement should be able to be set aside or varied in defined circumstances.

Unless the parents have made an agreement by way of a binding financial agreement, the Taskforce proposes that agreements should only be binding for a three-year period; that is, the agreement should be terminable by either party on one month's notice at any time after the first three years of the agreement. If the parents choose to enter into a fresh agreement, then it would have a binding effect for a further three years. The reason for this three year period is that it is very hard to anticipate more than three years in advance what the circumstances will be.

It may of course, be appropriate in some cases that agreements are established to be binding for longer than three years and even until the children reach 18. In families where there is very high conflict, or there may be difficulties in enforcing ongoing obligations against a payer, it may be in the best interests of the children that a long-term agreement is made. The safeguard is that they will need to do this by means of a binding financial agreement, with both parents having independent legal advice.

Having two forms of agreement, one that requires independent legal advice, and one that does not require this, is a way of ensuring parental choice while ensuring that there are appropriate safeguards in place.

The proposal that binding financial agreements concerning child support should not be subject to the same restrictions as agreements made without legal advice, does not mean that a change in circumstances would be entirely irrelevant to binding financial agreements. However, the

test would be stricter. One of the grounds for setting aside binding financial agreements under s.90K of the *Family Law Act 1975* is that:

Since the making of the agreement, a material change has occurred in the circumstances of either parent or the child and as a result of the change, either parent or the child will suffer hardship if the court does not vary the agreement or set it aside.

This, and other relevant grounds for setting aside binding financial agreements under the Family Law Act, would also apply to binding financial agreements made under the CSS.

### **Recommendation 17**

- 17.1 Agreements between the parents concerning child support should have effect on the condition that entitlement of the payee to FTB A shall be assessed on the basis of the amount of child support that would be transferred if the agreement had not been made.
- 17.2 The Child Support Registrar should have a discretion to advise a parent to obtain legal advice about the agreement if the Registrar considers that the agreement provides for a level of child support that in all the circumstances, and taking account of the current financial circumstances of the payer and payee, is not proper or adequate. The Registrar may delay the registration of the agreement until the parent confirms in writing either that he or she has sought legal advice or that he or she wishes to have the agreement registered without seeking legal advice.
- 17.3 Parents should be able to make binding financial agreements under the *Child Support (Assessment) Act 1989*, registrable with the Child Support Agency, under the same conditions and with the same effect as binding financial agreements under the *Family Law Act 1975*.
- 17.4 Child support agreements made where one or both parents do not have independent legal advice should:
  - 1) Be terminable by either party on one month's notice at any time after the first three years of the agreement
  - 2) Be able to be set aside by the court on the following grounds
    - a) fraud or non-disclosure
    - b) undue influence, duress, unconscionable conduct or other behaviour in the making of the agreement that would make it unjust to maintain it
    - c) that there has been a significant change of circumstances for the payee, the payer or the child that would make it unjust to maintain the agreement
    - d) that the agreement provides for a level of child support that in all the circumstances, and taking account of the current financial circumstances of the payer and payee, is not proper or adequate.

## **14 Child Support and Re-Establishment Costs After Relationships Break Down**

### **14.1 The issue of re-establishment costs**

The Terms of Reference require the Taskforce to examine, inter alia, “the costs for both parents of re-establishing homes for their children and themselves after separation” and how these should be reflected in the Child Support Scheme.

One of the issues lying behind this aspect of the Terms of Reference is to examine whether and how the Child Support Scheme can take account of the transitional difficulties for parents in the first few months and years after separation. Depending on the circumstances, one parent or both may need to find a new house to live in. If they were renting the house before the separation, one will have to find new accommodation. If they were owner-occupiers, then often, as a consequence of the breakdown of the relationship, the house will have to be sold. In other situations, the property settlement may provide for one to keep the house, with or without a mortgage, while the other one has to start again in building up capital assets.

The circumstances of parents after separation are infinitely variable. What is common is that one or both has re-establishment costs and for the first year or two after separation, there are particular financial pressures. New furniture and appliances have to be acquired and there are many other costs associated with the transition from one household into two.

### **14.2 Taking account of re-establishment costs under the formula**

It is not easy to take account of re-establishment costs under the basic formula, for two reasons.

First, the costs of re-establishment vary enormously from one situation to the next, and cannot easily be factored into a generic formula which is applicable across the population. Where children are born to parents who have never lived together, re-establishment costs do not apply in the same way as they do when parents who have lived together split up.

Secondly, the most severe financial pressures arise in the aftermath of the separation. A formula must be applicable from the time of separation until a child reaches 18. It is difficult to take account of re-establishment costs in the first months and years after separation in a formula which is applicable for all children whenever their parents separate.

The Taskforce considered a mechanical way of factoring re-establishment costs into the formula. A suggestion had been made to increase the allowance for each parent’s own living expenses for the first 12 months of their child support assessment by, say \$3 000.

The Taskforce did not adopt this approach for two reasons. First, although it may appear to treat the parents equally, the payer’s increased living allowance would reduce his or her child support at the expense of the payee. Given that significant re-establishment costs may arise for either the payer or payee (or both), it would not appear to be just and equitable in every case for one to get an allowance for re-establishment costs at the expense of the other. Secondly, the

taxpayer might also be affected, if as a result of the increased living allowance, less money was recovered through the Maintenance Income Test<sup>242</sup> than would otherwise be the case.

The Taskforce considered that it was preferable to make re-establishment costs a ground for change of assessment. In Chapter 12, it is proposed that a parent may request that overtime or a second job should not count in the assessment of income for the purposes of the formula for up to five years if this represented a new pattern of work in order to meet re-establishment costs.

The Taskforce also considered that it would be desirable to create a lot more flexibility for parents in making property settlements to balance the division of the property under the Family Law Act with the sharing of income through the Child Support Scheme in appropriate cases. In particular, the Taskforce recommends that much more flexibility should be allowed to parents to make their own agreements about this than they can at present. This could have benefits for both parents.

### **14.3 Re-establishment costs and the use of lump sum child support**

One way in which parents can balance their need for capital against their need for income, particularly in the first few years after separation, is to have a lump sum cash payment as part of the property settlement, so that the payee receives more of the capital, while the payer's income is freed up to rebuild assets after the separation. While only a minority of separating families may be in a position to take advantage of this interaction, there is nonetheless great value in making this option more available to those able to use it.

#### **14.3.1 *The utility of lump sum child support***

There may be a number of different situations where it is in the interests of both parents to be able to pay child support in advance as a lump sum, either in lieu of periodical payments entirely, or in exchange for lower child support payments for a period.

One example is where the children are going to live primarily with the mother, and she is very keen to keep the matrimonial home either without a mortgage at all or with modest mortgage payments that she can afford on her existing income. For example, the situation may arise that following negotiations between the parents, they agree that the mother should receive 65% of the net assets and that each should keep their superannuation entitlements. However, this is insufficient to allow her to keep the matrimonial home.

In this situation, it may well be worthwhile to the mother to have less ongoing child support for five years than the formula would produce, given the father's current and expected future income, so that in return she can remain in the matrimonial home. This could be done if the parents could agree that the father would pay some child support out of the property settlement as a lump sum. This sum could then be credited against his child support assessment in the ensuing years. If she did not need any ongoing child support at all for five years, then the lump sum could displace the obligation. Alternatively, it could reduce the child support payable by a percentage, such as 50%.

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<sup>242</sup> See Chapter 11.

Such an arrangement may be in the interests of both the payer and the payee. It would allow the payee to keep the home and help the payer to afford to purchase a house with a new mortgage by reducing his ongoing child support liabilities. Lump sum payments may also be advantageous in a range of other circumstances, for example where there may be problems with compliance with periodic payments or the liable parent is planning to move overseas.

The issues involved go beyond the financial circumstances of the parents. How property and child support issues are sorted out in the aftermath of separation may have a material effect on the arrangements for maintaining the involvement of the non-resident parent with the children, including the feasibility of shared care arrangements. If one parent keeps the matrimonial home and the other can afford to buy or rent in the same locality then it may make possible much closer involvement by the non-resident parent than if one parent is forced by their financial situation to move some considerable distance from the other to an area where housing costs are lower.

### **14.3.2 *The problems in making lump sum child support arrangements***

The difficulty with making lump sum agreements or orders is that the existing child support legislation acts as a deterrent to such an arrangement. The current child support legislation demonstrates a preference for child support in periodic form. Freedom to make agreements about lump sum child support (or to obtain orders that achieve such outcomes) is constrained by legislative provisions which have their origin in the need to ensure that periodic child support is not reduced at the expense of taxpayers.

The objective of ensuring that the support of children does not fall unduly on taxpayers remains as important as it was when the Scheme was introduced. Parents should not be permitted to make agreements about child support that have the effect of giving one of them an entitlement to more Government support than he or she would otherwise be entitled to receive, and courts should not make orders to this effect without considering the interests of taxpayers. However, some of the legislative provisions that were designed to achieve these objectives are no longer either necessary or appropriate in 2005. There are simpler ways now of protecting the interests of taxpayers.

## **14.4 Overcoming the obstacles to lump sum child support**

### **14.4.1 *The problem of s.128 of the Child Support (Assessment) Act 1989***

The most significant obstacle to private agreements or orders that allow for the payment of child support as a lump sum arises from the operation of s.128 of the *Child Support (Assessment) Act 1989*. One effect of this provision is that if a court orders the provision of child support by payment of a lump sum in substitution for periodical payments under s.124 of the Act, and subsequently, the payee becomes entitled to an income-tested pension, allowance or benefit, then the situation may arise that the lump sum paid reduces the child support he or she receives by no more than 25%. Section 95(3) of the Act extends the same rule to agreements.

This makes the payment of child support in a lump sum risky for the payer. While the parents may want to agree that five years' worth of child support, based on current income, should be capitalised into a lump sum so that the resident parent is able to keep the matrimonial home, if the mother's circumstances change then the operation of s.128 may have the effect that only

25% of the value of the lump sum paid can be credited against the periodic assessment based on the formula.

There are ways around this provision. The Child Support Agency, in conjunction with the Family Law Council and the Family Law Section of the Law Council of Australia, publishes a Guide for legal practitioners, which discusses this issue.<sup>243</sup> It remains the case nonetheless, that the legislation deters lump sum payments of child support rather than facilitating them.

#### **14.4.2 Is section 128 still required?**

It would appear that while section 128 was necessary at the time the Child Support Scheme was introduced, the objective of protecting government revenue can now be achieved by more than one means without the need for s. 128.

Section 128 was included in the original Child Support legislation for reasons linked to the social security regime at that time. An amendment to social security legislation was introduced as part of the Child Support package. Prior to the amendment, in-kind and capital maintenance were treated in the same way as other forms of income of a social security beneficiary, and such income had not consistently been taken into account. The amending Act (*Social Security and Veterans' Entitlements (Maintenance Income Test) Act 1988*) provided for a maintenance income test which applied to maintenance income separately from the general income of the recipient, and covered all forms of maintenance income. Both the general income test and the maintenance income test were applied to the basic income support of the recipient.

The amending Act singled out special maintenance income, which was treated differently from other forms of maintenance income. 'Special maintenance income' included all in-kind maintenance received in the first 6 months of separation, maintenance in the form of housing, and maintenance intended to cover costs arising directly from the needs of a child with a disability. Special maintenance alone could not reduce the benefit or pension below 75% of the maximum rate of the pension or benefit.

This operated in parallel to s.128 of the Assessment Act, so that a carer parent in receipt of an income tested pension allowance or benefit would always be entitled to at least 75% of the assessed rate of child support by way of periodic amounts (provided this did not result in their no longer being entitled to the pension, allowance or benefit).

A fundamental change occurred from 1 January 1993, after the passage of the *Social Security (Family Payment) Amendment Act 1992*. This Act substantially restructured family payments, bringing together all social security payments for children into the categories of 'basic' and 'additional' family payment. The maintenance income test now applied exclusively to additional family payment. It no longer affected pensions or allowances, and could not reduce a recipient's entitlement below base rates of Family Payment.

However, anomalously, the restrictions upon the effect of 'special maintenance' remained, so that recovery by the Government remained limited in cases of housing or other in-kind maintenance. This was subsequently addressed by the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999*, which removed the ceiling on the effect of

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<sup>243</sup> Child Support Agency, Family Law Council and Family Law Section of the Law Council of Australia, *Legal Practitioners' Guide – Precedents for Child Support Agreements and Court Orders* (2004) p. 29.

non-cash maintenance, allowing such maintenance to reduce a carer's entitlement to additional family payment to nil.

The full reduction of additional family payment flowing from receipt of non-periodic maintenance now applies, without restriction. While the processes for imputing capital or lump sum maintenance as income for family payment beneficiaries are complex, processes nonetheless exist to translate non-periodic amounts into periodic equivalents, where parties have not agreed as to the periodic rate of maintenance a lump sum or capital payment represents. Hence, there is no need any longer for Government revenues to be protected by means of s.128.

The proposal discussed in chapter 13 (at 13.5) provides a simpler way of protecting the taxpayer. The proposal is that wherever periodic child support liabilities are reduced as a consequence of the operation of an agreement, the parties' entitlement to Family Tax Benefit should be calculated on the basis that the person who is in receipt of the agreed child support is receiving the amount to which he or she would be entitled under the statutory formula. The same rule could readily be applied to agreements for lump sum child support, and to court orders that provide for lump sum payments in lieu of periodic child support.

#### **14.4.3 Child support based on current capacity to pay**

Another reason for placing constraints upon the use of lump sum payments is the principle embedded in the Child Support Scheme that parents should contribute to the support of their child according to their capacity to pay.<sup>244</sup> This, by implication, means *current* capacity to pay, and that capacity will vary with changes in the situation of each parent over time.<sup>245</sup> Consequently, child support ought to allow children to share in the standard of living of each parent in any given year. Lump sum payments made in relation to child support for a number of years into the future are likely to be based upon the earning capacity of the liable parent at the time of the lump sum arrangement. Unanticipated changes to those circumstances may at times seriously disadvantage the payer and at other times, it may disadvantage the payee.

However, these problems do not need to arise. It depends upon how the lump sum amount is credited against the assessment. If, for example, the lump sum payment operates to give the payer a nil assessment for a period of five years, this may work unfairly to the payer or the payee depending on whether the actual amounts of money earned during those ensuing years were more or less than anticipated at the time of the agreement. Where, however, the lump sum is merely expressed as representing an annual sum to be credited against the assessment, then the same difficulties of having to anticipate future earnings do not arise.<sup>246</sup>

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<sup>244</sup> CSAA s.4(2)(a).

<sup>245</sup> CSAA s.4(2)(d).

<sup>246</sup> In order to give effect to this in the proposed new legislation when people want to provide an estimate of their child support income, there would be a need to amend s. 60 of the *Child Support (Assessment) Act 1989* concerning 'income amount orders'. This should be amended to allow payers to be able to provide estimates of their income in relation to a child support period when their obligations for that period are affected by an agreement for lump sum child support.

## 14.5 Lump sum child support as providing a credit balance

In order to make lump sum payments more available to parents as an option if it is appropriate in their circumstances, the Taskforce proposes that there should be a set of default statutory rules that would apply in the absence of a binding agreement to the contrary. These default rules would treat the lump sum child support payment as giving the payer a credit balance from which the assessed annual periodic child support amount would be deducted until the credit is exhausted.

### 14.5.1 *The use of default rules*

The value of a default statutory rule is that it is easy for parties to adopt as a way of managing a lump sum payment. Many things are possible under the existing legislation if people are properly advised and agreements or orders are carefully drafted. However, the Act does not facilitate such arrangements. Rather, it is an impediment to sensible arrangements and there are many traps for the unwary. With default rules expressed in legislation, people can be readily advised, at a modest cost, about how to structure a lump sum arrangement effectively and about possible alternatives to the default provisions. Similar default rules are used in other areas of private law, for example, the rules governing trusts under Trustee Act legislation in the States and Territories.<sup>247</sup> Such rules operate unless the parties make different arrangements.

It would remain open to the parents to make an agreement concerning the crediting of lump sum child support in a way that departs from the default rules. The agreement could make provision for a lump sum payment by way of capital transfer to be credited against future child support liabilities in ways similar to the options available under the current legislation (as adapted in the light of the proposed new formula).

### 14.5.2 *The operation of the credit balance*

The default statutory rule should be that the lump sum should act as if it were a fund, which is drawn upon each year by being credited against the child support obligation of the liable parent for that year in full. The annual value would not need to be specified in advance. If the agreement or order is that the lump sum payment should operate to extinguish the child support liability for as long as the 'fund' is in credit, then the position will be that the child support liability will continue to be assessed annually based upon the current circumstances of the parents, but the liability considered satisfied as soon as it is raised, until the total available credit is exhausted.<sup>248</sup>

If it is preferable that the lump sum payment be credited only to a certain percentage of the annual assessment so that there remains an entitlement to ongoing periodic support, then the order or agreement would stipulate that the appropriate fraction (say 50%) would be taken as having been provided from the virtual fund with the remaining 50% payable as periodic

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<sup>247</sup> See for example, *Trustee Act 1925 (NSW)* Part 2, Division 2, which sets out the powers and duties of trustees subject to contrary provision in the trust instrument.

<sup>248</sup> Under the existing legislation, it is possible to do something of this kind if the parents agree that a non-agency payment should be credited as representing 100% of the child support obligation (s.71B, *Child Support (Registration and Collection Act 1988)*). This section does not apply to partial credits. The Taskforce proposes that s.71B should be amended to allow for maximum flexibility.

support. In the absence of such specification, it will be assumed that the full annual child support liability is intended to be treated as paid out of the fund.

### **14.5.3 Recognising the opportunity costs in making lump sum payments**

In order to create an incentive for the payer to pay child support in advance as a capital sum, there ought to be a default rule in the absence of agreement to the contrary, that the fund should be increased by a rate which is expressed in Regulations. The annual increase in the value of the fund ought to be commensurate with the after-tax value of what would be obtainable if instead the money had been invested rather than paid out as a lump sum. That increase should be applied on every anniversary of the date of the order or agreement.

The purpose of such an automatic increase is to recognise that if the lump sum payment had not been made, and the payer had retained the use of the monetary value of the asset, then he or she might have invested it for gain. While the after-tax value of an investment will vary depending on the tax circumstances of a taxpayer, the rate ought to be set at a level appropriate to give recognition to the forgone opportunity costs in providing a lump sum payment.

### **14.5.4 What if the fund is not exhausted by the time child support ceases to be payable?**

The circumstance may arise, perhaps because of the untimely death of a child, because of a change in the residential arrangements which lasts until the time the child reaches 18, or because of the paying parent's ongoing low income over a number of years, that there remains credit in the fund at the time the child support ceases to be payable.

The Taskforce proposes that in order to address this issue, the credit balance in the fund should create a statutory charge which is registrable under the laws of the States and Territories. The charge should crystallise when a terminating event occurs within the meaning of the *Child Support (Assessment) Act 1989*, that is, when something occurs that brings the payer's child support obligation to an end.

If the credit balance is not registered as a charge against property to which the payee has title, then the proposed default rule is that there is no obligation to return the balance of the lump sum fund.

## **14.6 The need for legal advice**

### **14.6.1 Availability of lump sum child support payments**

While the availability of lump sum child support payments may assist some parents in some circumstances to resolve their financial affairs following separation, the risks and benefits need to be clearly understood and the agreement or orders tailored appropriately to the circumstances of the parents. In particular, if a payee's entitlement to Family Tax Benefit is to be calculated on the basis of the amount of periodic child support that would be payable under the formula, disregarding the agreement or order for lump sum child support, then parents ought to realise this. Appropriate provisions can be included in the agreement or court order for some periodic support to become payable, and therefore for the capital sum to be eroded more slowly, if a payee is unable to work or if in some other way the parent's financial circumstances necessitate the payment of some periodic child support.

For this reason, the Taskforce proposes that the same conditions should apply to agreements or orders concerning lump sum payments as to capital transfers and other aspects of property settlements under the *Family Law Act 1975*. That legislation provides for financial agreements to be binding without the involvement of a court if both parties have independent legal advice about the agreement. Property and maintenance matters may also be resolved through court orders made by consent, and this is the usual way in which property matters are resolved. If both parties have independent legal advice, then there is a simple procedure for having the agreement translated into consent orders. If one or both parties does not have legal advice, then it is probable that the court will scrutinise the draft consent orders and may ask questions of the parties concerning their understanding of what is agreed.

In order to ensure consistency between the child support legislation and the *Family Law Act 1975*, and to provide appropriate protection to parents, the Taskforce proposes that lump sum arrangements or capital transfers that exceed the current year's child support assessment and are to be credited against future years should only be made by binding financial agreement or by court order. It would be expected that if such arrangements were enshrined in consent orders, and one or both parents did not have legal advice, then the court would exercise its independent responsibility to be satisfied that the proposed orders were just and equitable.<sup>249</sup>

This still allows smaller scale capital transfers to be subject to a child support agreement that does not require legal advice subject to the safeguards stipulated in chapter 13. Parents would also not need to have legal advisers in order to obtain consent orders from a court. The Taskforce considers that this provides an appropriate balance between the freedom to make agreements without needing legal advice, and the protection of parents from entering into disadvantageous agreements involving substantial amounts of money or property without a full appreciation of their consequences.

Binding financial agreements for lump sum child support ought to be capable of being varied or set aside on the same grounds as an agreement under the *Family Law Act*.<sup>250</sup> This includes the provision that "since the making of the agreement, a material change has occurred in the circumstances of either parent or the child and as a result of the change, either parent or the child will suffer hardship if the court does not vary the agreement or set it aside." A similar variation power ought to be included in relation to orders of the Court, whether made by consent or otherwise.

## **14.7 Administration of agreements or orders for lump sum payments**

The parties would need to lodge any agreement or court order with the Agency for it to be given effect. The lump sum would then operate rather like a mortgage account does, with debits and credits being calculated formulaically and an account given to the parents of the state of the credit balance.

An annual child support assessment should continue to be made, and all administrative adjustments normally available to parents to maintain the currency of the assessment should be available. This includes the ability for parents to update income as it changes, including lodging and updating estimates of income. Change of assessment, general short term

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<sup>249</sup> *Harris v Calladine* (1991) 172 CLR 84.

<sup>250</sup> *Family Law Act 1975* s.90K.

agreements and court-ordered variations should also be available, unrestricted by the existence of the advance lump sum payment.

## **14.8 Jurisdiction to make lump sum child support orders**

If one of the objectives of making it easier to pay child support in a lump sum is to allow a trade-off between capital and income as part of a property settlement, then consideration needs to be given to the issue of jurisdiction of state courts. Most property matters are dealt with in the District Court or County Court of the States, with some matters being dealt with at Supreme Court level. If jurisdiction for the limited purpose of making lump sum child support orders as part of a property order is not conferred on all state courts whether or not they can otherwise exercise family law jurisdiction, then it will be necessary for litigants to go to two courts to resolve their affairs unless they can make an agreement about the child support aspect of their dispute.

Consideration should therefore be given to allow State courts to make lump sum child support orders when exercising any of their powers under Acts which would be specified in Regulations. These Acts would be those governing the division of property of de factos such as the *Property (Relationships) Act 1984* (NSW). The problem of jurisdiction may be resolved over time if more States refer their powers over the property rights of de factos to the Commonwealth, and the Commonwealth enacts legislation to give effect to such a reference of powers.

## **14.9 Crediting of other in-kind payments by consent**

There is already facility within the Child Support Scheme for parents to agree that particular payments should be credited as child support, known as non-agency payments. The crediting of such payments is always against 100% of the ongoing liability, until the credit is exhausted. Parents may wish to use some more minor payments of child related expenses even when they have already allocated a substantial capital or lump sum amount as credit against child support. For example, the lump sum credit may only be against 50% of the ongoing liability, and the remaining 50% is to be paid on a periodic basis. In this case, the parents may prefer to agree that a payment, for example, of a child's music lesson fees, is to be credited only against 25% of the liability, to retain some ongoing cash flow. This flexibility should also be included in the Scheme.

## **Recommendation 18**

18.1 Parents should be able to make agreements for lump sum child support payments only by means of a binding financial agreement or by consent orders if the payment of lump sum child support exceeds the total of the annual assessment of child support and is to be credited against payments for future child support years.

18.2 Agreements or orders for lump sum child support should have effect on the condition that entitlement of the payee to Family Tax Benefit A shall be assessed on the basis of the amount of child support that would be transferred if the agreement or order had not been made.

18.3 Section 128, of the *Child Support (Assessment) Act 1989*, permitting a carer parent in some circumstances to seek an assessment of child support for up to 75% of the then formula liability, despite an agreement or order to the contrary, should be repealed.

18.4 Default rules for the treatment of lump sum child support payments that exceed the total of the annual assessment of child support and are to be credited against payments for future child support years should be included in the child support legislation and these default rules should apply in the absence of provisions of an agreement or court order to the contrary.

18.5 The default rules shall be as follows:

- a) The parents should continue to have an annual assessment of periodic child support made based upon their then current income and circumstances.
- b) The lump sum should be treated as providing the payer with a credit balance, to be credited against the periodic child support assessment as each annual assessment is made.
- c) 100% of the annual assessed rate of child support should be credited annually from the balance of the lump sum, until the balance is exhausted.
- d) The balance in the fund should be increased annually upon the anniversary of the creation of the fund, by a rate that is expressed in Regulations, to produce a value commensurate with the after-tax value if the money had been invested.
- e) If there is a balance remaining to the payer after the child support liability has ended, then there should be no obligation to repay this amount unless the balance is registered as a statutory charge.

18.6 The balance of a lump sum child support payment should create a statutory charge that is registrable under the property legislation of the States and Territories.

18.7 Section 60 of the *Child Support (Assessment) Act 1989* (concerning ‘income amount orders’) should be amended to allow payers to be able to provide estimates of their income in relation to a child support period when their obligations for that period are affected by an agreement for lump sum child support.

18.8 Section 71A and 71B of the *Child Support (Registration and Collection) Act 1988* should be amended to allow in-kind payments to be credited by consent against less than 100% of the liability in the child support period.

## 15 Child Support and the Family Relationship Centres

In response to the House of Representatives Standing Committee on Family and Community Affairs Report in 2004,<sup>251</sup> the Government decided to establish a system of 65 Family Relationship Centres (FRCs) designed to provide information, advice and dispute resolution to help separating parents reach agreement, including the development of a parenting plan.<sup>252</sup>

As part of its Terms of Reference, the Taskforce has been asked to consider:

- how the Child Support Scheme can play a role in encouraging separating couples to reach agreement about parenting arrangements; and
- how FRCs may contribute to the understanding of and compliance with the Child Support Scheme.

The first issue has been addressed in particular through the recommendations concerning the recognition of contact in the formula (see Chapter 9) and the related changes to FTB splitting. However, child support issues are also important to consider when negotiating post-separation parenting arrangements, and close collaboration between the Child Support Agency, Centrelink and the FRCs may help parents to work out sustainable parenting arrangements in which the relevant financial issues are properly considered. In this way also, the Child Support Scheme can play a role in encouraging separating couples to reach agreement about parenting arrangements. The FRCs can also play a major role in promoting understanding of and compliance with the Child Support Scheme.

### 15.1 Interactions between child support, family law and parental conflict

There is strong evidence that dealing with separating parents through the legal system alone can entrench conflict, rather than resolve it. A recent UK study<sup>253</sup> shows that, unless the underlying reasons for parental conflict are addressed, the expectation that parents should agree over their parenting arrangements following family separation is unlikely to be fulfilled. This is mainly because the legal system cannot easily deal with the essentially non-legal problems associated with disputes over children.<sup>254</sup>

Issues with the family law system and the Child Support Scheme featured prominently in the submissions provided to the House of Representatives Inquiry. In their decision-making, neither the courts with family law jurisdiction nor the Child Support Agency (CSA) can take into consideration the underlying reasons for conflict between separating parents. Conflict

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<sup>251</sup> House of Representatives Standing Committee on Family and Community Affairs, Report of the Inquiry into Child Custody Arrangements in the Event of Family Separation, *Every Picture Tells a Story*, (December 2003).

<sup>252</sup> Australian Government, "A New Approach to the Family Law System – Implementation of the Reforms" Discussion Paper, 10 November 2004.

<sup>253</sup> Smart, C. & May, V. "Why Can't They Agree? The Underlying Complexity of Contact and Residence Disputes", (2004) 26(4) *Journal of Social Welfare and Family Law*, 347-360.

<sup>254</sup> *Ibid*, p.348

between separated parents is often exacerbated by interaction with the family law system and the Child Support Scheme.

The Family Relationship Centres (FRCs) offer a new and different way of helping parents to resolve these conflicts. Managing the difficult transition from parenting together to parenting apart is a critical time to help parents focus on the needs of their children. FRCs can assist families to reduce long-term conflict and establish sustainable post-separation parenting arrangements. They will also provide valuable support to a range of proposed reforms that the Taskforce is recommending for the Child Support Scheme.

## 15.2 The role of Family Relationship Centres

The FRCs will be highly visible and accessible to the public, thereby encouraging families to use them for relationship and separation issues. FRCs will be an early intervention initiative to support intact families experiencing relationship difficulties. They will also be well positioned to provide relationship education, for example, through parenting seminars. FRCs will also play a support and counselling role for parents going through separation, with the goal of helping parents to work out post-separation parenting arrangements and to focus upon the children's needs. In addition, they will be able to provide initial information to separating parents about child support and ways that Centrelink can assist them.

The FRCs will provide both an information and referral service and an intake assessment process. FRCs will be an integral part of the Family Relationship Services Program and a "gateway" to many other services that can assist them to resolve the issues between them. This includes the family law system, if a legal intervention is the most appropriate means of resolving the issues. Desirably, many parents who cannot resolve their disputes immediately will go on to other kinds of services rather than going to courts. These include continuing efforts at mediation, seeking legal advice about issues, or going to other appropriate services such as anger management courses, drug and alcohol programs, and financial counselling.

The Taskforce expects that FRCs will help achieve a change in the pathways separated couples take after separation. A UK study in 1999 found that the majority of people experiencing family or relationship difficulties chose to visit a solicitor.<sup>255</sup> The same is true for Australia, where a great many people visit a solicitor before any other professional about separation matters. This can have the unfortunate effect of entrenching adversarial attitudes, depending on the approach taken by the solicitor.

While many parents may still wish to seek legal advice at some stage in working out the post-separation parenting arrangements, the FRCs will offer another pathway for assistance. In particular, when all 65 centres have been established, they will offer a readily available source of free advice and assistance to the majority of the Australian population. Parents will be encouraged to make contact with them as a first step towards negotiating the post-separation parenting arrangements and the related financial issues. Outcomes for parents and their children are generally substantially better where parents can reach agreement, through parenting plans, for example, rather than having arrangements imposed upon them by courts. FRCs will provide mediation services to help parents reach agreements.

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<sup>255</sup> 81 per cent of people experiencing family or relationship difficulties chose to visit a solicitor: Genn H et al, *Paths to Justice: What People Do and Think About Going to Law* (Hart, Oxford, 1999).

FRCs will not only have a pivotal role in alternative dispute resolution in the aftermath of separation. They will also have a role in dealing with ongoing conflicts between the parents. Where entrenched conflict makes resolution within the centre unlikely, FRCs may refer the family to the Contact Orders Program, or to other specialist Family Relationship Service Program providers. While parents cannot be ordered to use these programs (only a court can do that), they will be strongly encouraged to do so as a better way of dealing with the issues than going to court.

## **15.3 How Family Relationship Centres may contribute to the understanding of and compliance with the Child Support Scheme**

### **15.3.1 *An educational role***

The educational role of the FRCs is particularly important in terms of the way in which FRCs may contribute to parents' understanding of the Child Support Scheme, and therefore promote voluntary compliance. The information sessions and other educational programs of the FRCs should explain in outline about the Child Support Scheme, the basis on which child support obligations have been calculated and the way in which regular contact and shared care are dealt with in the formula.

Initial information sessions do not need to give detailed information – that is perhaps best done through Child Support Agency staff offering special information sessions or through legal advisers. However, material on child support should be included in the general information sessions about post-separation parenting. Explanation should be given about how it is that the government seeks to protect children from the reduced living standards flowing from separation in a way that is as fair as possible to both parents. In particular, if parents can be helped to understand that the formula is based on the amount that each parent would be likely to spend on child-related expenses if the parents were together, some of the controversy about child support may be reduced.

Specific provision of information to parents about their child support obligations and entitlements should include highlighting of areas where the scheme has considerable scope for parental agreement, and the tailoring of child support arrangements. Parents considering substituting their own agreed child support for the formula outcome need a good understanding of the likely consequences, in terms of both child support outcomes, and FTB interactions (as discussed in Chapter 13). The reasons for change of assessment (as described in Chapter 12) should be made known, so that parents can use the information in their negotiations. There will be more freedom to make lump sum child support arrangements under Taskforce proposals (discussed in Chapter 14).

If a non-resident parent is concerned about whether the child support will be utilised to meet the expenses of raising the child, or would particularly like child support payments to be used for particular purposes, then the parents ought to be encouraged to agree about some in-kind payments. Importantly, the extent to which both parents consider that expenses such as fees for extra-curricular activities, haircuts and educational costs should be credited against a formal child support assessment can be agreed.

FRCs have the potential to streamline and tailor the provision of information to parents, promoting a greater understanding of child support and, by making opportunities available to

parents to become involved in their child support arrangements, including both the amount and use of payments, improve compliance and overall satisfaction.

### **Recommendations 19.1 and 19.2**

19.1 The Family Relationship Centres should encourage voluntary agreements between parents on in-kind payments.

19.2 *Information sessions and seminars conducted under the auspices of the Family Relationship Centres should provide information on the Child Support Scheme and draw attention to the flexibility provided in the Scheme through the change of assessment process, as well as the possibilities for private agreements and in-kind payments.*

### **15.3.2 Negotiating other financial aspects of post-separation parenting**

Child support issues are also relevant to developing workable parenting arrangements in other respects. Once parents have reached an agreement about basic parenting arrangements, such as where the child will live, there is often a need to resolve secondary issues as well, including financial ones. Parents may need to address practical matters such as transport costs, clothing and the provision of other personal items as well as any other matter that is likely to be contentious.

Three areas in particular that it may be important to discuss are any financial issues about where the parents will live, child care costs and educational plans. In some cases, it may be important for parents to see child support obligations as a minimum rather than a fixed sum, and discussion of appropriate levels of child support may assist in helping parents to reach agreement over parenting issues. For example, if the parents have been living in an area of a city where housing is expensive, and the parent who is likely to have to pay child support wants to be involved in a shared parenting arrangement, then it may be necessary to explore the financial issues to see whether it is realistic for both the parents to stay in the same area following separation. The price of remaining close to one another geographically may be that the parent with the greater income has to pay more than the formula amount of child support in order to help the other parent meet the costs of renting or mortgage instalments for a home in the same area.

Childcare costs are another area that may need to be the subject of specific negotiation. Taskforce examination of the costs of children revealed significant variations in child care costs. Child care expenses were specifically not included in costs of children data for this reason. Allowances have been made within the formula to address childcare and other related costs for younger children, in that the costs of children in the 5-12 age bracket have been extended to younger children. However, this is a prime area in which individual discussion between parents may result in agreement about the handling of child care expenses, particularly where these are substantial, or parents agree that such costs will provide a significant barrier to the resident parent increasing their paid workforce participation following the separation.

Children's education costs are also highly individual, with significant variation depending upon the provider of the tuition. Educational costs are one ground for a change of assessment, and one common basis for a decision that a payer should be required to contribute an additional sum towards private school fees is that this was the parents' intention when they were together. However, a couple's mutual understanding as to children's future education is

often affected by separation and resulting financial pressures. Conflicts about money in the future may be best avoided if parents are encouraged to turn their minds to this issue in the course of developing a parenting plan. FRCs are in a good position to prompt necessary discussions in these cases.

These discussions on shared parenting responsibilities could then form the basis of the development of a comprehensive parenting plan that deals both with parenting and ongoing financial issues. The plan could contain anything that the parents thought relevant such as:

- a child's living and contact arrangements;
- the time a child might spend with other people such as grandparents;
- how parents will exercise their parental responsibility;
- child support payments;
- costs of transportation for contact visits;
- childcare and educational costs where these are high;
- in-kind contributions to the costs of the child and prescribed payments;
- how hand-over will be managed;
- holiday arrangements; and
- ways of resolving any future disputes.

#### **Recommendation 19.3**

Family Relationship Centres and other organisations providing counselling and mediation services to parents who are negotiating parenting arrangements after separation should encourage parents to discuss child support issues including childcare costs and the future education of the children, especially where a private school education has been contemplated.

## **15.4 Collaboration between Family Relationship Centres, the CSA, Centrelink and other organisations**

The majority of separated parents who are CSA clients also deal with Centrelink. The two agencies perform different but complementary functions, and parents need information and support from both to fully understand their financial situation. Centrelink and the CSA already have a close working relationship and refer parents to each other's services. Both agencies also refer to other government and non-government agencies within the community on a regular basis. The FRCs will have an important role in providing initial information and advice to people who may not have an understanding of the range of services available to assist them in the transition to post-separation parenting, including child support.

In response to a request by the Taskforce for information on how CSA and Centrelink can work with FRCs, both agencies have committed to working closely with FRCs. The CSA and Centrelink have advised that they are keen to support FRC staff working with parents. The Taskforce supports Centrelink's and the CSA's view that this could contribute to improving compliance with the Child Support Scheme and assist with determining FTB entitlement especially in regard to child support exemptions.

The Taskforce believes that CSA and Centrelink are well placed to support FRCs to work with separating families and to assist parents to establish parenting plans. Both agencies are keen to be involved in developing services in a range of ways, balancing the needs of parents and children and the efficient use of resources. Other possibilities include:

- Centrelink staff located in FRCs could have on-line access to the Centrelink computer system and provide real time information and processing. CSA uses tax data systems and due to security issues has no remote access to their computer system. CSA has an internet based child support calculator which is widely used in the community sector now to inform clients of the impacts of their decisions and could be accessed from FRCs;
- using telephone technology to make ‘warm transfers’ between agencies to support FRC staff dealing with a range of issues for parents;
- having Centrelink and CSA staff conduct training and information sessions for FRC staff;
- availability of ‘hotline’ telephone support to FRC staff if Centrelink and/or CSA staff are not present in person;
- sharing of information regarding complex cases with families already known to either or both agencies, as appropriate within the context of privacy legislation;
- using an interagency joint case management approach for parents with very complex issues. This approach is being trialled now between CSA and the Family Court, and is used by Centrelink as part of their interventions with families;
- utilisation of national strategies already developed by Centrelink and CSA on domestic and family violence to assist in early identification and service delivery responses by all agencies;
- using remote servicing options such as Centrelink’s network of social workers based in Community Support and Call Centres to support families in rural and remote locations;
- regular exchange of information between FRC staff and Centrelink and CSA staff to identify issues affecting parents in the local area and provide timely and appropriate responses;
- provision of Centrelink and CSA information products in FRCs; and
- regular sharing of best practice to enhance national service delivery.

The Taskforce believes that the more FRCs can be integrated appropriately within the service environment of Centrelink and the CSA and network with other family relationship services, the more families will benefit from services that address their needs, both before and after separation.

Planning for FRCs should involve close collaboration with both the CSA and Centrelink. Both agencies have particular experience in being able to provide advice and assistance to a range of diverse groups who do not have ready access to face-to-face services, including families living in rural and remote areas, Aboriginal and Torres Strait Islanders, families from diverse cultural and linguistic backgrounds and people with a disability.

Many families and individuals may fall into more than one of these groups, creating multiple disadvantages when accessing services. The Taskforce considers that establishment of a ‘virtual’ FRC through telephone, website and video conferencing capabilities would have special benefit for servicing families with special needs or who are too remote to access face-to-face services. The Centres could facilitate the referral of clients *directly* with Centrelink, CSA or the other Family Relationship Service Program service providers. Experience shows that clients who are put into direct contact with a service at the time of the referral are more likely to follow through with the referral.

**Recommendation 19.4**

Planning for Family Relationship Centres should involve close collaboration with the Child Support Agency and Centrelink, particularly on ways of serving the needs of regional and rural Australia.

Centrelink and CSA are not the only organisations that may be able to work collaboratively with the FRCs. The interactions between family law, Government family payments and child support are intricate and complex. It would not be expected that FRCs would themselves have available expertise in all relevant areas. The FRCs should take advantage of such assistance and government and community based sources of legal advice to make opportunities to receive specialist advice more accessible to parents using the FRCs.

**Recommendation 19.5**

Organisations selected to run Family Relationship Centres should be encouraged to invite the Child Support Agency, Centrelink, Legal Aid and community legal centres to conduct regular advice and information sessions on the premises of the Centre.

## 15.5 Family Relationship Centres and Change of Assessment

FRCs will be available to separated families to help reduce ongoing conflicts and difficulties emerging as their circumstances change. This availability should extend to difficulties with broader parenting responsibilities, particularly including child support arrangements. Mediation services should be available to assist with any areas of re-negotiation of child support agreements or payment arrangements.

In addition, to promote better outcomes, FRCs could also play a role in the existing processes within the Child Support Scheme to vary assessments. Currently, a very small proportion of change of assessment applications made to CSA are settled by parents without the need for the Senior Case Officer to make a determination<sup>256</sup>. Some proportion of parents may have entered into an agreement, varying their child support based upon change of assessment grounds, although without actually making the application.

Although not appropriate for every case, alternative dispute resolution ought to be as much a feature of the change of assessment process as any other family law dispute. The CSA should have the discretion to encourage separated parents to negotiate the often contentious issues around change of assessment applications through a FRC or other mediation or counselling organisation, prior to determining an application.

**Recommendation 19.6**

The Child Support Agency should have a discretion to encourage parties to change of assessment applications to negotiate the issues through a Family Relationship Centre or other mediation or counselling organisation, prior to determining the application.

<sup>256</sup> In 2003-2004, of CSA's active Stage 2 caseload 3.8% involved change of assessment applications, and of these, only 0.1% were finalised by parental agreement.

## 16 Modelling the Outcomes of the Proposed Formula

### 16.1 The modelling tool

The Taskforce commissioned the National Centre for Social and Economic Modelling (NATSEM) at the University of Canberra to build a highly sophisticated modelling tool to facilitate the development of options for a new formula. The model helped the Taskforce to:

- better understand the effects of the current child support formula;
- examine the characteristics of alternative new formulae; and
- comprehensively test the operation of the proposed formula, using a wide variety of family types and circumstances.

The modelling tool allows the input of a broad range of initial settings and assumptions. It uses an enhanced version of NATSEM's tax and transfer modelling tool, STINMOD, to calculate not only child support payments but also income support and family payments, income tax and other flows. Finally, it produces a range of charts and tables showing detailed analysis of changed outcomes for both the payee's and payer's families, including scenarios where there is contact and shared care, where there are new biological or adopted children, and where one or both parents have re-partnered. A strength of the model is its ability to hold one parent's private income constant while incrementing the income of the other parent, enabling ready analysis of 'what if?' scenarios and of how the various elements of income and expenditure interact.

The tool enabled the Taskforce to assess both the functioning of the current Scheme and the proposed changes to a level of precision that had not previously been possible. The marked improvement in computing power in recent years has helped enormously in this pursuit.

In this chapter, output from the model (calibrated with the settings contained in Recommendation 1) is used to demonstrate key features of the proposed formula. Broadly speaking, the model simulates the 2005–06 policy and economic environment. The results are only indicative at this stage, as the changes in the Consumer Price Index and Average Weekly Earnings that will be used to index social security payments and child support formula components in 2005–06 are not yet known. Further, changes to income tax, income support and family payments announced in the 2005–06 Budget (which have not been passed by the Senate at the time of writing) have not been incorporated. In essence, the modelling simulates the rules of the various taxes and programs as they were expected to be in 2005–06 at the point when the modelling was undertaken in early 2005.

Modelling of outcomes for the largest parent groups is presented in the following graphs, together with tables comparing outcomes at a glance.

It should be noted that in all of the following results it has been assumed that resident parents with low to medium levels of private income receive Parenting Payment (Single) and that non-resident parents with low levels of private income receive Newstart Allowance. (In both cases, the rules of the relevant income tests in 2005–06 — prior to the announced 2005 Budget changes — have been replicated.) This is why the results do not show any non-resident parents with private incomes below \$18 000 paying the \$20 per child minimum payment proposed by the Taskforce for those non-resident parents whose taxable incomes fall below the maximum

annual rate of Parenting Payment (Single) *and* who are not on any form of income support. Thus, in all of the following charts non-resident parents with private incomes below this level are assumed to be receiving Newstart Allowance — and therefore paying only the \$6 minimum payment when their level of contact is below 14%.

Four key types of distributional output are presented in the following sections:

- Section 16.2 compares child support liabilities under the proposed new scheme with those payable under the current Child Support Scheme. This is done for a range of illustrative family types and ages and numbers of children.
- Section 16.3 shows the change in effective marginal tax rates for four non-resident parent categories.
- Section 16.4 examines how the costs of children and child support liabilities vary, for both resident and non-resident parents, at four income levels – very low (zero private income), low (\$26 000), middle (\$52 000) and high (\$78 000).
- Section 16.5 analyses the outcomes of the scheme for five hypothetical sets of parents.

## 16.2 Child support outcomes by income level

### 16.2.1 Non-resident parent's income increasing

This section shows the outcomes of the proposed new scheme for non-resident parents with progressively increasing levels of private income, where the private income of the resident parent is held constant at zero (and as a result, although the resident parent is assumed to be receiving Parenting Payment (Single), their adjusted taxable income is below the self-support threshold).

**Figure 16.1: Child support paid – resident parent's private income \$0, non-resident parent's private income increasing, 1 child support child aged 0–12 years**

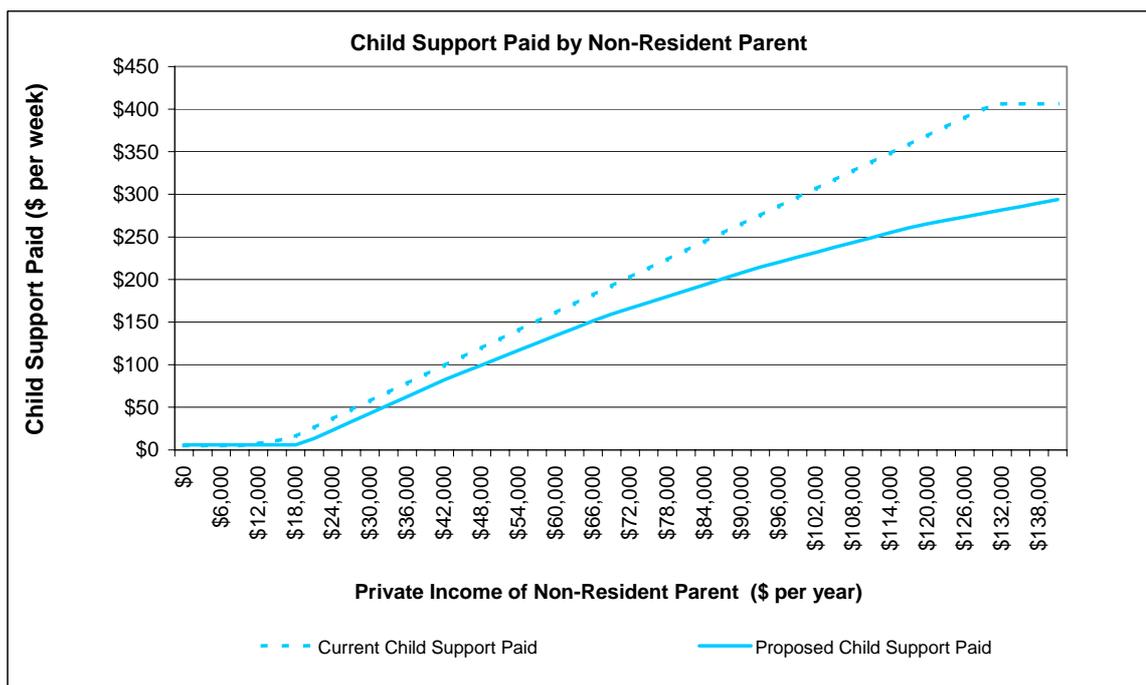


Figure 16.1 shows a common scenario: the resident parent’s taxable income is less than the self-support amount, there is one child aged 0–12 years, no sharing of care and no new biological/legal children. The non-resident parent’s private income is increasing from \$0 to \$141 000, in \$3000 increments of private income.

In this figure (and in figures 16.2 and 16.3) the resident parent has income below the self-support amount, so that the costs of the child are fully met by the non-resident parent. This amount is shown in the solid blue line, which represents child support liabilities under the proposed formula.

Up to approximately the proposed new individual self-support amount of \$16 883 in 2005–06, the non-resident parent is required to pay only the minimum payment under the proposed new scheme. At \$18 000 of private income the non-resident parent ceases to receive any Newstart Allowance, so their private income at \$18 000 and above is the same in this scenario as their adjusted taxable income.

Under the proposed scheme, the cost of the child begins to increase immediately either parent’s private income increases above their individual self-support income amount. The rate of increase slows at higher income levels, in line with the reduced marginal child cost rates at higher income thresholds proposed by the Taskforce. This is why the solid line of child support liabilities shown in Figure 16.1 does not continue to increase at the same rate as income.

Figure 16.1 shows that the Taskforce’s suggested child support liabilities for a child aged 0–12 years are less than the current formula at all income levels, but particularly so at higher income levels.

**Figure 16.2: Child support paid – resident parent’s private income \$0, non-resident parent’s private income increasing, 1 child support child aged 13–17 years**

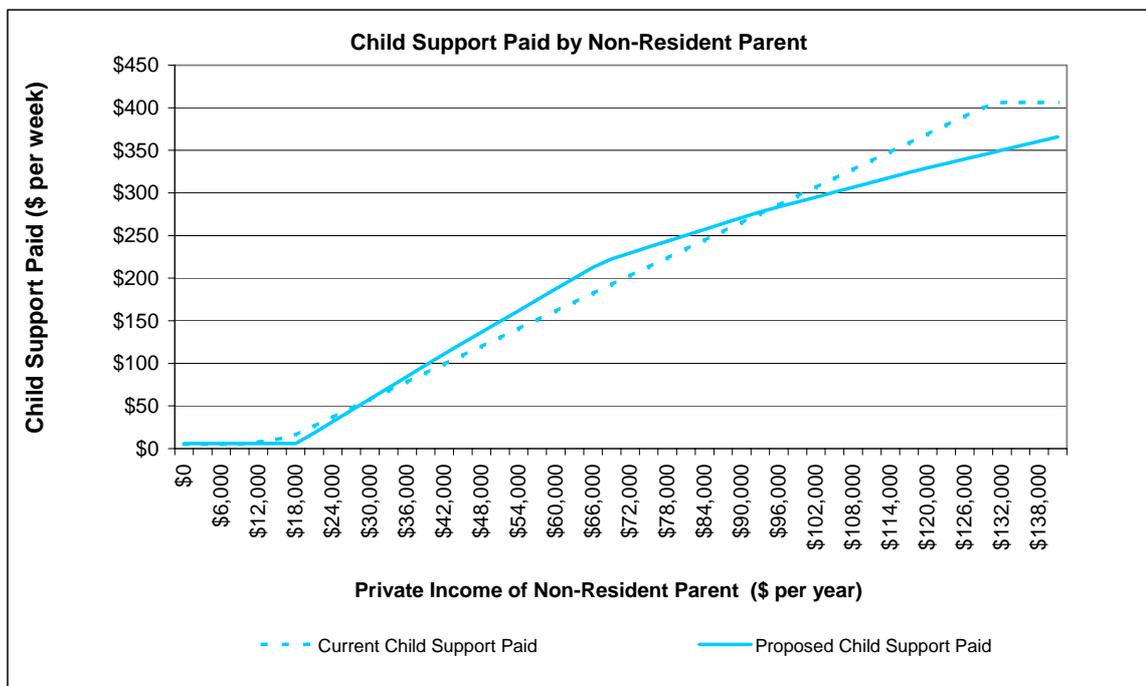
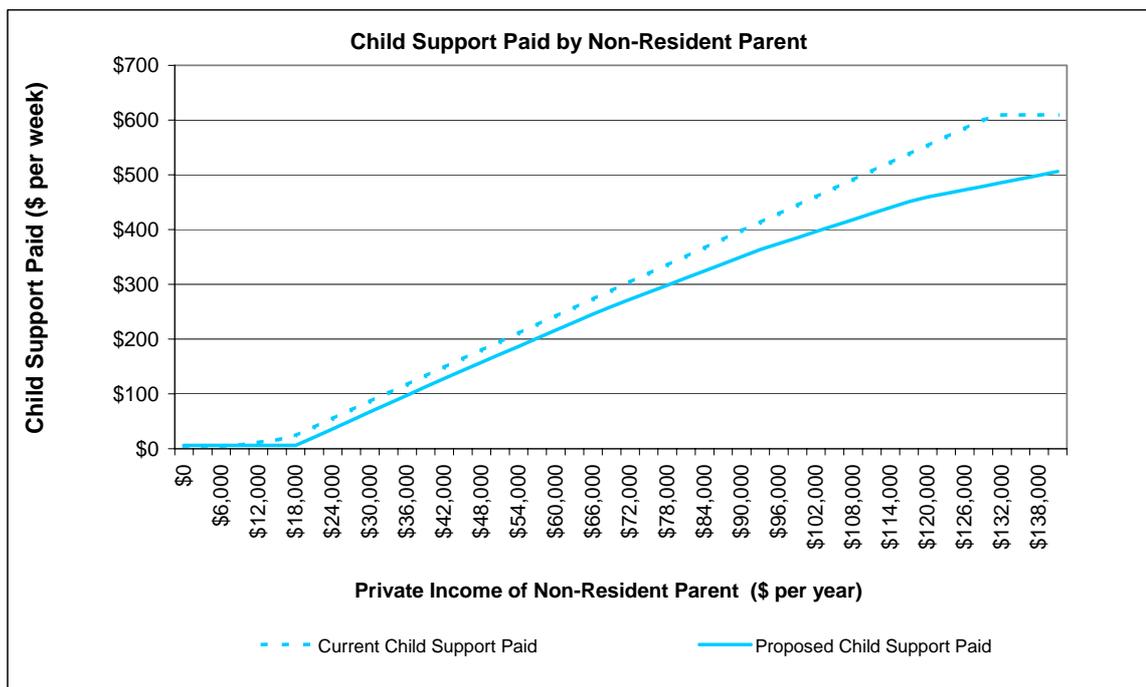


Figure 16.2, like Figure 16.1, shows a scenario where the resident parent’s income is less than the self-support amount, there is no sharing of care, no new biological/legal children and the non-resident parent’s income is increasing from \$0–\$141 000. The difference is that the sole child is aged 13–17 years rather than 0–12 years. Again, the non-resident parent is meeting the full cost of the child, so that the solid blue line of the proposed child support to be paid by the non-resident parent coincides with estimated child costs (not shown separately).

Figure 16.2 shows that the Taskforce’s proposed liability for a child of this age is slightly less than the current formula at the lowest levels of income, higher than the current formula across a large range of incomes, and again lower at high income levels.

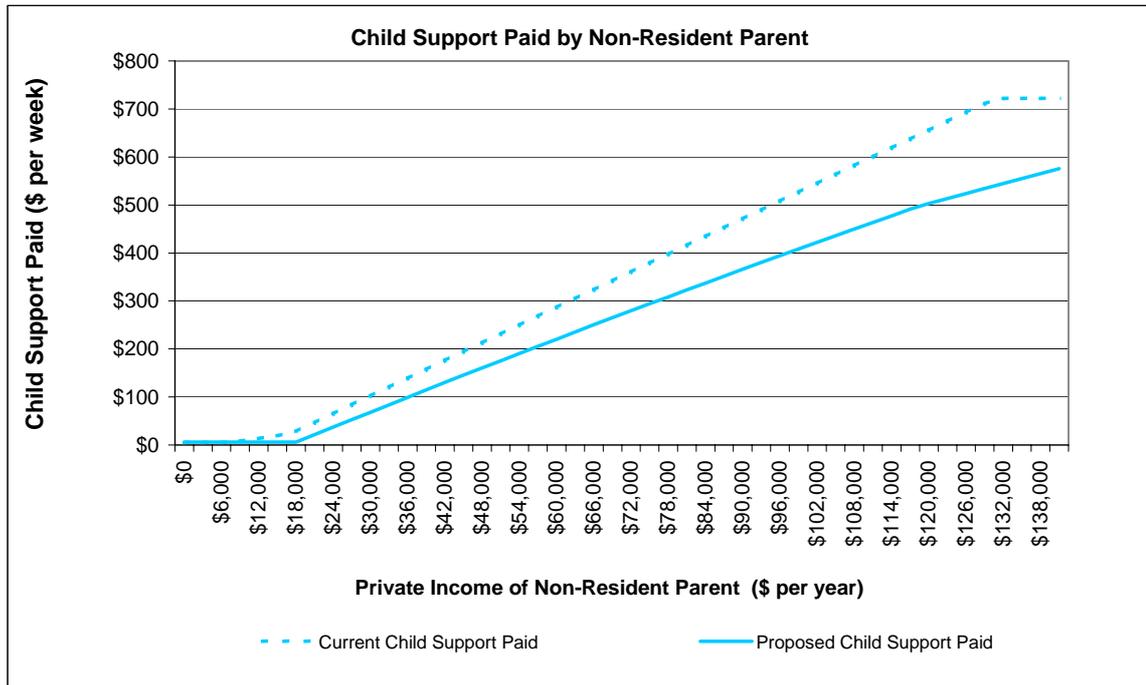
**Figure 16.3: Child support paid – resident parent’s private income \$0, non-resident parent’s private income increasing, 2 child support children (1 aged 0–12 years, 1 aged 13–17 years)**



Once again, Figure 16.3 shows a scenario where the resident parent’s income is less than the self-support amount, there is no sharing of care, no new biological/legal children and the non-resident parent’s income is increasing from \$0–\$141 000. However, in this scenario there are two child support children, one in each of the proposed two age groups.

As shown in Figure 16.3, the current formula amount for the two children is higher than the Taskforce’s proposed estimated costs and child support payments at all income levels. As the two children span both of the age ranges proposed by the Taskforce, the net costs are higher than would be applicable for two children aged 0–12 years and lower than those that would be applicable for two children aged 13–17 years.

**Figure 16.4: Child support paid – resident parent’s private income \$0, non-resident parent’s private income increasing, 3 child support children (all aged 0–12 years)**



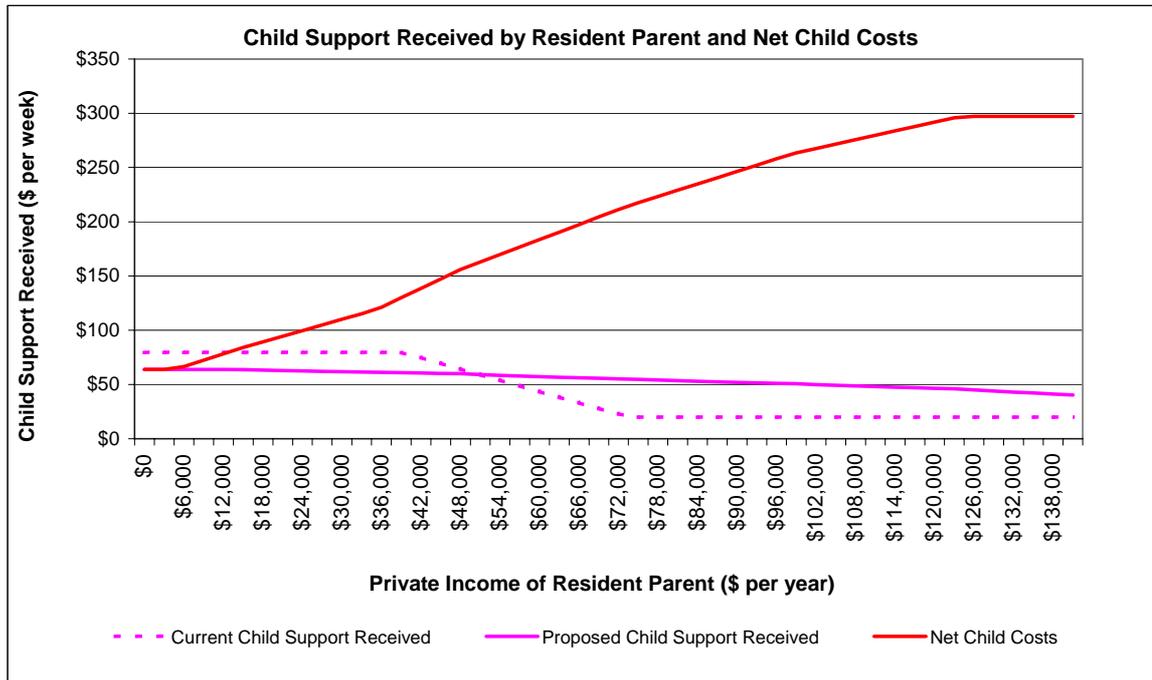
Once again, in this scenario the resident parent’s income is less than the self-support amount, there is no sharing of care, no new biological/legal children and the non-resident parent’s income is increasing from \$0–\$141 000. However, in this scenario there are three child support children, all in the younger age group.

The current child support formula amounts are considerably higher than the Taskforce’s estimated costs and proposed child support paid for three younger children. As shown in Chapter 8, estimates of the gross costs of additional children after the first reflect the effect of economies of scale. This effect is further accentuated when net costs are calculated, as the Government pays the same amount of FTB A for each child.

### 16.2.2 Resident parent’s income increasing

The figures in section 16.2 examined the impact of the new scheme where the resident parent’s income is held constant and the income of the non-resident parent is increased. In contrast, the figures in this section show what happens when the non-resident parent’s income is held constant, and the resident parent’s income is increasing.

**Figure 16.5: Child support received - resident parent's private income increasing, non-resident parent's private income \$700 pw, 1 child support child aged 0–12 years**



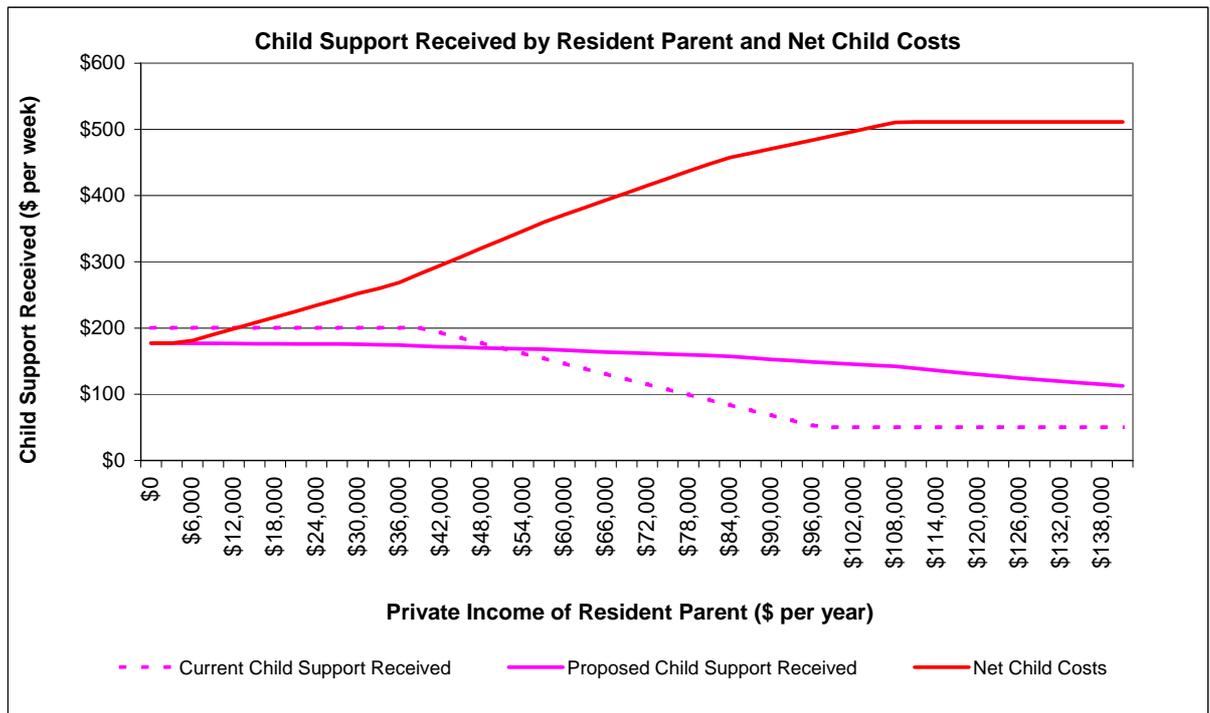
The scenario in Figure 16.5 illustrates the impact of the proposed new scheme on the child support received by resident parents where the non-resident parent has \$700 per week of taxable income.

In this scenario the costs of the child are not zero when the resident parent's income is below the self-support amount, because the non-resident parent has income above the self-support amount. When the parents' child support incomes are equal, they each pay half the costs of the child under the proposed formula. Thus, when the resident parent's income reaches about \$36 000, the proposed child support of about \$61 per week represents half of the net child costs of \$121 per week. The gap between the two unbroken lines represents the resident parent's expenditure on the child from his or her own resources.

Note that the resident parent's rising income has only a small effect on the non-resident parent's liabilities at the lower levels of income. This is because net child costs, which increase as combined family income increases, are rising almost as fast as his or her income. However, under the current formula, the resident parent's rising income has no effect whatsoever on liabilities until it exceeds \$39 312, as shown by the broken line in the figure.

At higher levels of combined income, the "income shares" effect of the proposed formula becomes more pronounced, and each additional dollar of income earned by the resident parent decreases the child support liability by an increasing amount. This figure (and figure 16.6) also suggest that non-resident parents whose former partners have middle-to-high incomes have not been paying their fair share of the costs of children under the current formula.

**Figure 16.6: Child support received - resident parent's private income increasing, non-resident parent's private income \$1,000 pw, 2 child support children (1 aged 0–12 years, 1 aged 13–17 years)**



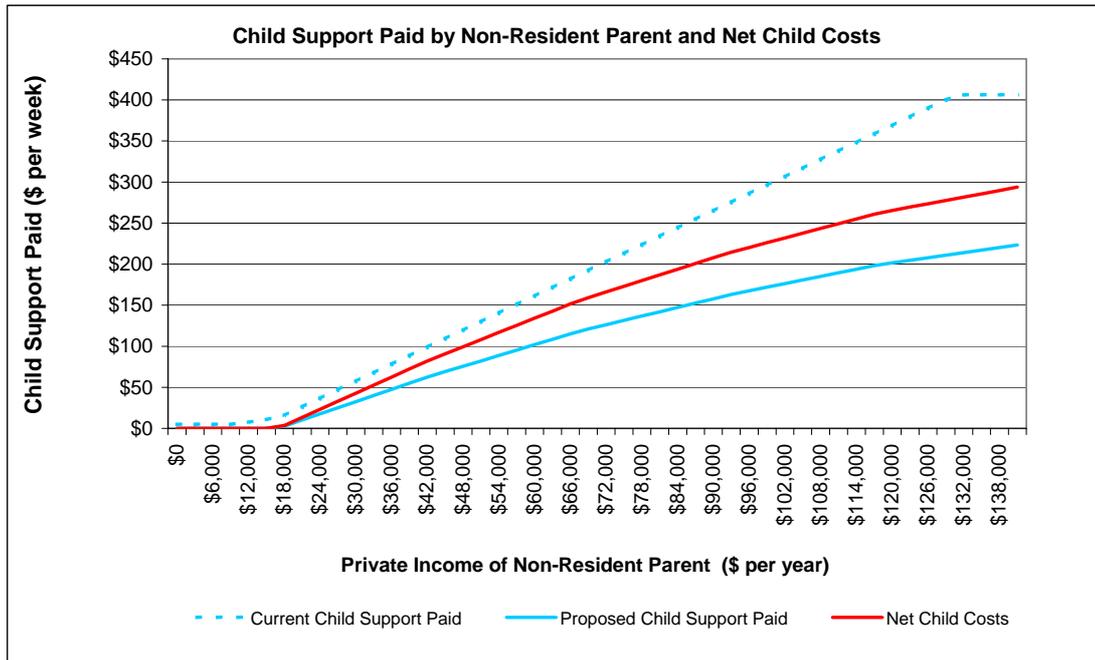
In this scenario the income of the non-resident parent is again held constant, this time at \$1000 per week, while the income of the resident parent is increasing in \$3000 increments. This scenario illustrates the impact of the proposed new scheme on middle-income non-resident parents as the income of the resident parent increases. Similarly, it shows resident parents with a middle-income non-resident parent the likely impact of the proposed new scheme upon their child support received.

Higher income payers whose former partners earn above about \$39 000 would see a significant rise in child support liabilities under the proposed formula. This is shown by the solid line of child support received under the proposed new scheme being higher than child support received under the current scheme. As with the previous scenario, resident parents at lower levels of private income would experience a slight fall in child support received.

### 16.2.3 Regular contact and shared care

The figures in this section illustrate the impact of the proposed new scheme where there is regular contact or shared care.

**Figure 16.7: Child support paid – resident parent’s private income \$0, non-resident parent’s private income increasing, 1 child support child aged 0–12 years, non-resident part has 20% care**

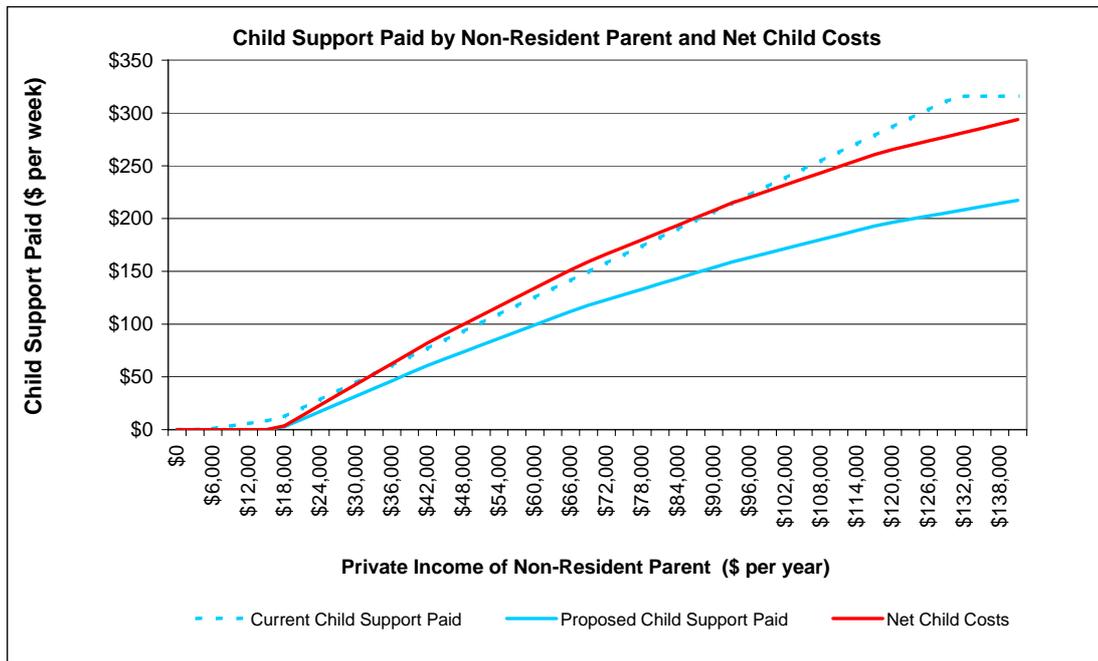


It is useful to compare this figure with Figure 16.1: the situation is identical except that the non-resident parent in this case has care of the child for 20% of nights. The solid blue line (representing child support paid under the proposed formula) is well below the dotted line (representing child support paid under the current formula) because the current formula does not take account of contact at this level. The figure reflects the Taskforce’s recommendation that regular contact or shared care at or above the level of 14% of nights per year by a parent should result in that parent being taken to incur some proportion of the costs of the child.

The gap between the two unbroken lines represents the non-resident parent’s expenditure on the child during the 20% of time that the child is in his or her care. As in Figure 16.3, because the resident parent has taxable income below the self-support amount, the non-resident parent is meeting the full net cost of the child. However, the non-resident parent is paying some of that cost in child support (the amounts shown in the solid blue line) and an increasing amount in direct expenditure while the child is in his or her home as income rises (represented by the gap between the red and solid blue lines).

Where the non-resident parent’s income is below the self-support amount, these examples assume that he or she receives Government income support payments and is therefore not subject to the fixed payment of \$20 per week per child. In addition, non-resident parents who have care of 14% or more are not liable for the minimum payment. Therefore, as the figure shows, there is no minimum liability or fixed payment imposed under the proposed formula in this example.

**Figure 16.8: Child support paid – resident parent’s private income \$0, non-resident parent’s private income increasing, 1 child support child aged 0–12 years, non-resident parent has 35% care**



In the preceding scenario there was a significant difference between the current and proposed child support liabilities, in part because under the current scheme shared care of less than 30% does not affect child support liabilities. This scenario, in contrast, shows the outcomes of the proposed scheme where the non-resident parent has 35% of care, the resident parent still has zero private income, and there is still one child aged 0–12 years. There is less of a difference between current and proposed child support liabilities in this scenario than in Figure 16.7 because the current child support system also reduces child support liabilities when care is shared at this level.

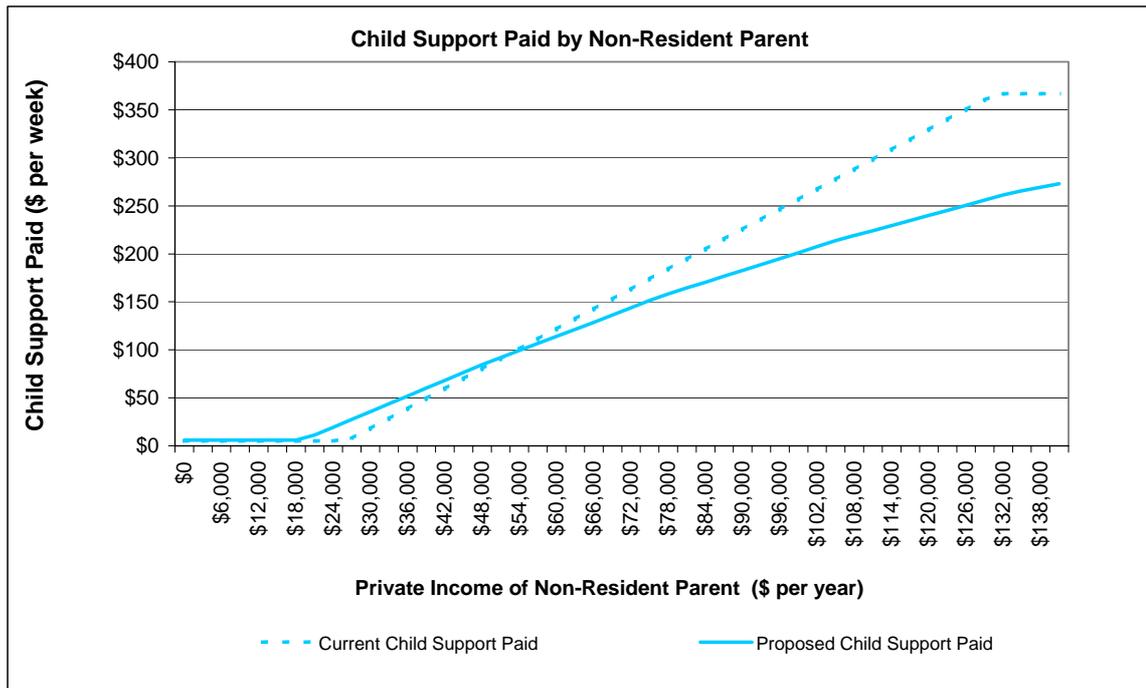
In this scenario the blue dashed line of child support paid under the current system is lower than the blue dashed line in Figure 16.7 because, as noted above, the current scheme reduces child support liabilities when the non-resident parent has 35% care. The solid red lines, of the net costs of the child, are the same in both this figure and Figure 16.7. The solid blue line shows the proposed new child support payments by the non-resident parent to the resident parent, while the gap between the solid red and solid blue lines shows the estimated child costs incurred by the non-resident parent when the child is in his or her care.

This example shows that the proposed formula takes into account, to a greater extent than the current formula, the non-resident parent’s expenditure when the child is in his or her care.

## 16.2.4 Second families

The figures in this section illustrate the impact of the proposed new scheme on non-resident parents with second families.

**Figure 16.9: Child support paid – resident parent’s private income \$0, non-resident parent’s private income increasing, 1 child support child aged 0–12 years, non-resident parent has a new biological child aged 0–12 years**



An important issue for any child support scheme is how new biological children are treated in comparison to existing child support children. This scenario shows the impact of the proposed and current schemes on a non-resident parent who has a new biological child aged 0–12 years and a child aged 0–12 for whom they are paying child support from a previous relationship. In this example, the resident parent’s taxable income is below the self-support amount, as their private income is zero.

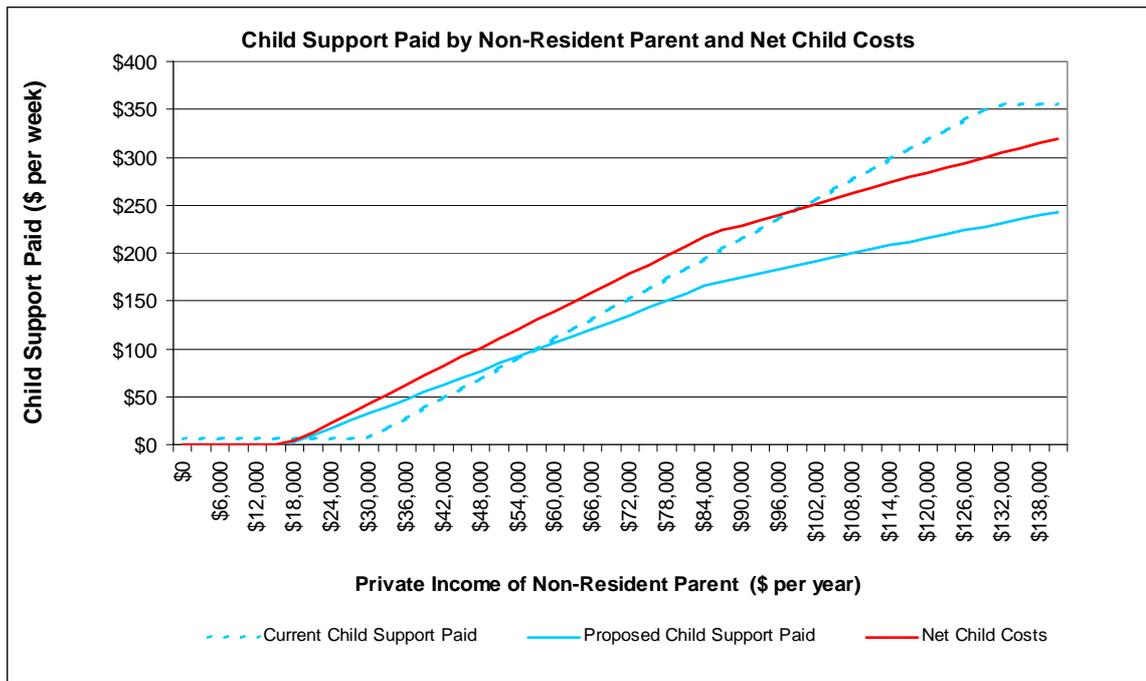
The key difference between the current and proposed systems is that the current system allows a flat-rate deduction for new biological children, whereas the proposed scheme allows a ‘percentage of income’ deduction. At middle-to-higher income levels, the proposed percentage of income represents more dollars than the current flat-rate deduction.

For a non-resident parent with a new biological child aged 0–12 years, the impact of the Taskforce’s recommendations is to increase the child support paid at low levels of private income and decrease the child support paid at upper middle-to-higher levels of private income.

The increase in child support paid by the non-resident parent at low income levels is because the proposed reduction in the ‘child support income’ of the non-resident parent due to the new biological child represents a lower dollar amount than the current scheme exemption for new biological children. Conversely, the reduction in child support paid by non-resident parents with taxable incomes above about \$55,000 is due to the percentage reductions in ‘child support

income’ at this income level because of the new children representing a higher dollar amount than the current flat-rate deduction for new biological children. The generally lower child support percentages at higher income levels also contribute to the reduction for these non-resident parents.

**Figure 16.10: Child support paid – resident parent’s private income \$0, non-resident parent’s private income increasing, 1 child support child aged 13–17 years, non-resident parent has two new biological children, one aged 0–12 years and one aged 13–17 years, non-resident parent has 25% care**



In this scenario, the non-resident parent has one child support child aged 13–17 years from an earlier relationship and has regular contact. The non-resident parent also has two new biological children, one aged 0–12 years and the other aged 13–17 years.

Here the proposed amount of child support to be paid lies above the current child support liabilities for low-to-middle income non-resident parents. There are two reasons for this. First, the child support child is aged 13–17 years and the proposed child support payments are therefore higher than the current non-age-related CSS rate for one child. Second, the current flat-rate deduction from taxable income applicable for two new biological children is a higher dollar amount than the proposed percentage reduction in child support income until well up the income distribution. However, the effect of this is moderated because the non-resident parent has regular contact.

### 16.3 Effective marginal tax rates (EMTRs)

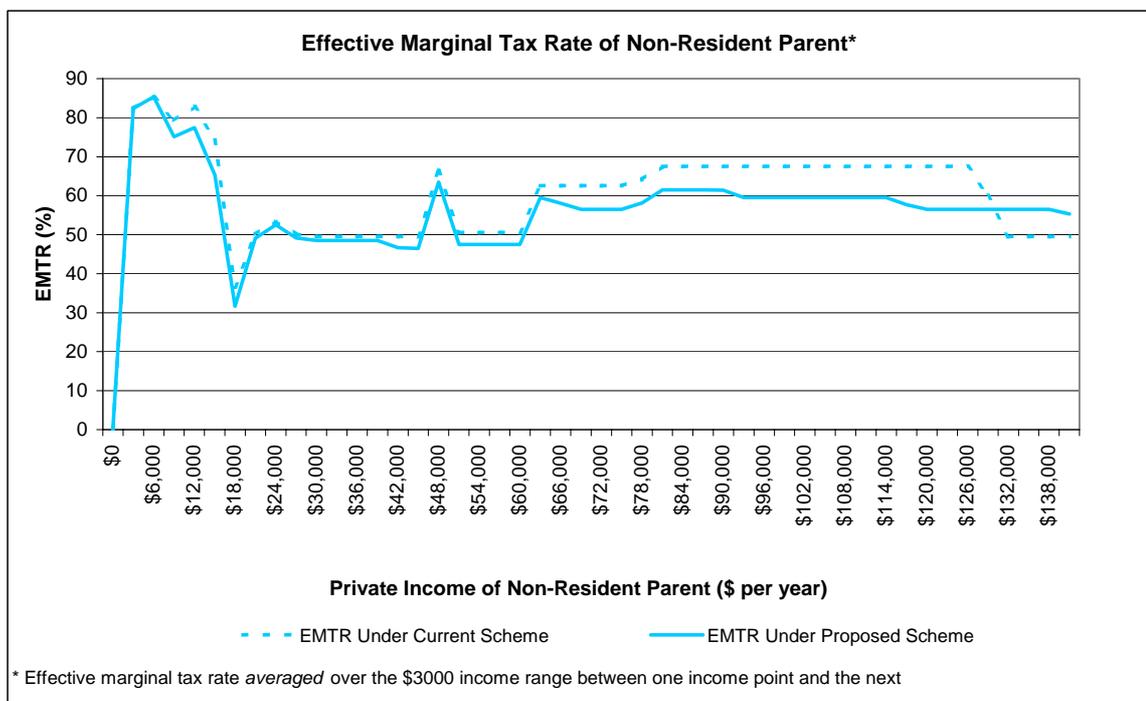
This section examines the impact of the proposed new scheme on effective marginal tax rates (EMTRs). An EMTR measures the increase in income available to a person to spend after their private income (e.g. from earnings) has increased. Thus, an EMTR of 70% means that, out of a one dollar increase in private income, a person has a 30 cent increase in the income that they have available to spend, in this case after taking full account of any possible reductions in

income support or family payments, payment of income tax, and changes in child support paid or received.

It should be noted that the figures in this section do not show the EMTR facing parents on their next dollar of private income, but instead show the averaged EMTR that they will face on the next \$3000 of private income. (Thus, the calculation is the increase in effective disposable income after allowing for child support, income tax, family payments and income support changes, expressed as a percentage of the \$3000 increase in private income. An EMTR of 50% therefore means that the parent can expect to retain half of a \$3000 increase in private income.)

Using output from the NATSEM model, this section examines EMTRs produced under the current and proposed new systems. These figures show EMTRs resulting from income tax and from taper rates for income support and (where applicable) family payments, as well as those resulting from the operation of both the current and proposed child support schemes.

**Figure 16.11: EMTRs – resident parent’s private income \$0, non-resident parent’s private income increasing, 1 child support child aged 0–12**



This example is for the scenario presented earlier in Figure 16.1, where the resident parent has no private income, the non-resident parent therefore meets the full estimated costs of the children, there is one child aged 0–12 years and the non-resident parent’s income is incremented in \$3000 amounts up to \$141 000.

At low levels of private income (below \$18 000) this non-resident parent is assumed to be in receipt of Newstart Allowance (the most common case). When the non-resident parent is on Newstart Allowance and has some private income that takes their total taxable income above \$13 462, there is a modest reduction in EMTRs due to the increase in the self-support threshold from the current \$13 462 to the proposed scheme level of \$16 883.

At \$18 000 of income and above, EMTRs for the non-resident parent are reduced across almost all income ranges, with significant reductions at higher income levels up to the level of

the current cap. This is due to the proposed child support percentages for younger single children being lower than the 18% embodied in the current scheme. Workforce disincentive effects of child support are thus reduced under the proposed scheme. Above the level of the current cap of around \$131 000, EMTRs under the proposed scheme are somewhat higher than at present.

**Figure 16.12: EMTRs – Resident parent’s private income \$0, non-resident parent’s private income increasing, 1 child support child aged 13–17 years**

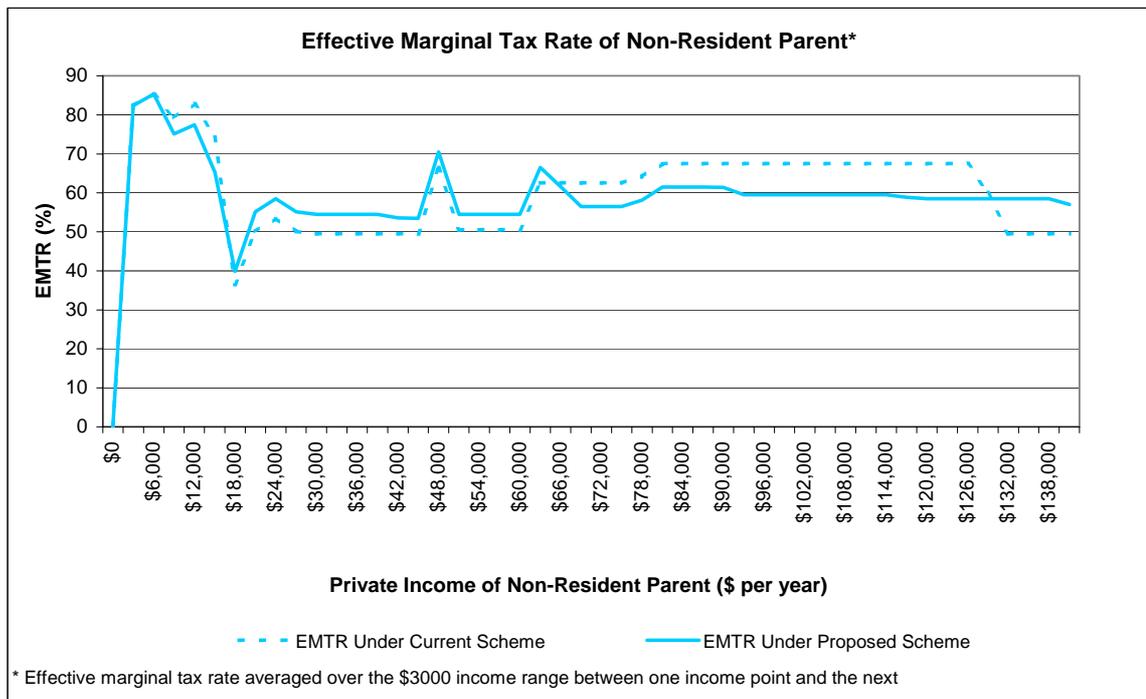
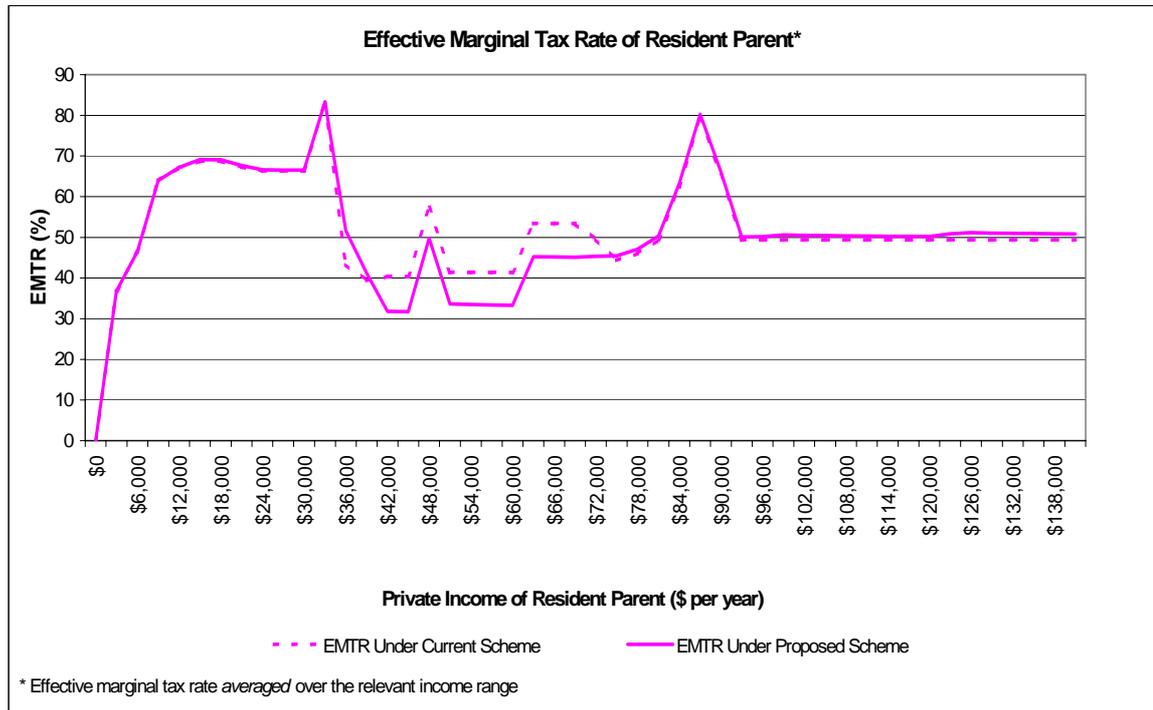


Figure 16.12 shows the outcomes for the families represented earlier in Figure 16.2. This is a very similar example to that shown in Figure 16.11, with the single exception that the child support child is aged 13–17 years, rather than 0–12 years. In this example, while the payer is initially in receipt of Newstart Allowance, EMTRs are high and fall slightly under the proposed scheme due to the increase in the self-support threshold. At \$18 000 of private income and above, by which time the non-resident parent is not receiving any Newstart Allowance, EMTRs are initially higher under the proposed new scheme because of the higher rate applicable to an older child. This reflects the higher rate of net child costs and therefore child support paid for older children, relative to the current system. While EMTRs are around 5 cents in the dollar higher for lower and middle income earners, they are significantly reduced at higher income levels up to the level of the current cap.

**Figure 16.13: Child support received – resident parent’s private income increasing, non-resident parent’s private income \$700 pw, 1 child support child aged 0–12 years**



This graph shows the EMTRs facing resident parents with increasing incomes and with a non-resident parent whose income is \$700 per week (the example shown earlier in Figure 16.5). The EMTRs facing resident parents fall here at taxable incomes of about \$39,000 to \$78,000, due to the removal of the provision in the existing child support scheme that sharply reduces child support received once the income of the resident parent exceeds this level. Thus, work incentives for resident parents at middle-to-high incomes who have a non-resident parent with some private income will be improved under the new scheme. The reduction in child support paid under this scenario when the resident parent’s income is below this \$39,000 threshold results in a very slight increase in the resident parent’s EMTR, although the increase is so marginal that it can barely be seen in the graph. Similarly, the proposed new scheme has little impact upon the EMTRs faced here by resident parents with taxable private incomes above about \$78,000.

## 16.4 Contributions to the Cost of the Child

This table, and those on the following pages, show liabilities under the current and proposed schemes, Taskforce agreed net costs of the child/ren, and the average expenditure by the resident parent, for various numbers and ages of children and at various levels of parents' incomes. The tables show the outcomes for resident parents and non-resident parents each at four different private income levels — namely very low (\$0), low (\$26,000), middle (\$52,000) and high (\$78,000).

Private Income of Non-Resident Parent	Private Income of Resident Parent <sup>(1)</sup>			
	\$0 (\$500 pw)	\$26000 (\$1000 pw)	\$52000 (\$1500 pw)	\$78000 (\$1500 pw)
<b>One child support child aged 0 to 12 years</b>				
<b>\$0</b>				
Current CSS payment by non-resident to resident parent	5	5	5	5
Proposed new system				
Costs of child	0	42	111	180
Non-resident parent contribution <sup>(2)</sup>	6	6	6	6
Resident parent contribution	0	36	105	174
Change in non-resident parent contribution	1	1	1	1
<b>\$26,000</b>				
Current CSS payment by non-resident to resident parent	43	43	21	11
Proposed new system				
Costs of child	30	72	137	201
Non-resident parent contribution <sup>(2)</sup>	30	30	28	26
Resident parent contribution	0	42	109	175
Change in non-resident parent contribution	-13	-13	7	15
<b>\$52,000</b>				
Current CSS payment by non-resident to resident parent	133	133	111	66
Proposed new system				
Costs of child	111	148	201	253
Non-resident parent contribution <sup>(2)</sup>	111	109	101	92
Resident parent contribution	0	39	100	161
Change in non-resident parent contribution	-22	-24	-10	26
<b>\$78,000</b>				
Current CSS payment by non-resident to resident parent	223	223	201	156
Proposed new system				
Costs of child	180	210	253	291
Non-resident parent contribution <sup>(2)</sup>	180	173	161	146
Resident parent contribution	0	37	92	145
Change in non-resident parent contribution	-43	-50	-40	-10

(1) This is the private income of the resident parent. In all of these examples the resident parent is assumed to be receiving Parenting Payment (Single), which is taxable and can therefore affect the estimated costs of the children if it takes the taxable income of the resident parent above the self-support amount.

PPS received is \$250 a week at \$0 of private income, \$74 at \$26,000 of private income, and zero at \$52,000 of private income and above. This is why the resident parent's contribution is greater than the non-resident parent's contribution when their private incomes both equal \$26,000 (because the resident parent's taxable income equals \$29,848, which is greater than the non-resident parent's taxable income of \$26,000). All figures in table rounded to nearest \$.

(2) In this example, this is the amount that the non-resident parent has to pay the resident parent in child support

Private Income of Non-Resident Parent	Private Income of Resident Parent <sup>(1)</sup>			
	\$0	\$26000 (\$500 pw)	\$52000 (\$1000 pw)	\$78000 (\$1500 pw)
<b>Two child support children, one 0 to 12 years &amp; one 13-17 years</b>				
<b>\$0</b>				
Current CSS payment by non-resident to resident parent	5	5	5	5
Proposed new system				
Costs of child	0	66	177	299
Non-resident parent contribution <sup>(2)</sup>	6	6	6	6
Resident parent contribution	0	60	171	293
Change in non-resident parent contribution	1	1	1	1
<b>\$26,000</b>				
Current CSS payment by non-resident to resident parent	65	65	32	16
Proposed new system				
Costs of child	47	112	222	338
Non-resident parent contribution <sup>(2)</sup>	47	47	46	44
Resident parent contribution	0	65	176	294
Change in non-resident parent contribution	-18	-18	14	28
<b>\$52,000</b>				
Current CSS payment by non-resident to resident parent	200	200	167	100
Proposed new system				
Costs of child	177	225	338	437
Non-resident parent contribution <sup>(2)</sup>	177	176	169	159
Resident parent contribution	0	49	169	278
Change in non-resident parent contribution	-23	-24	2	59
<b>\$78,000</b>				
Current CSS payment by non-resident to resident parent	335	335	302	235
Proposed new system				
Costs of child	299	341	437	502
Non-resident parent contribution <sup>(2)</sup>	299	294	278	251
Resident parent contribution	0	47	159	251
Change in non-resident parent contribution	-36	-41	-24	16

(1) This is the private income of the resident parent. In all of these examples the resident parent is assumed to be receiving Parenting Payment (Single), which is taxable and can therefore affect the estimated costs of the children if it takes the taxable income of the resident parent above the self-support amount.

PPS received is \$250 a week at \$0 of private income, \$74 at \$26,000 of private income, and zero at \$52,000 of private income and above. This is why the resident parent's contribution is greater than the non-resident parent's contribution when their private incomes both equal \$26,000 (because the resident parent's taxable income equals \$29,848, which is greater than the non-resident parent's taxable income of \$26,000). All figures in table rounded to nearest \$.

(2) In this example, this is the amount that the non-resident parent has to pay the resident parent in child support

Private Income of Non-Resident Parent	Private Income of Resident Parent <sup>(1)</sup>			
	\$0	\$26000 (\$500 pw)	\$52000 (\$1000 pw)	\$78000 (\$1500 pw)
<b>One child support child aged 0 to 12 years, non-resident parent has new child aged 0-12 years</b>				
<b>\$0</b>				
Current CSS payment by non-resident to resident parent	5	5	5	5
Proposed new system				
Costs of child	0	42	111	180
Non-resident parent contribution <sup>(2)</sup>	6	6	6	6
Resident parent contribution	0	36	105	174
Change in non-resident parent contribution	1	1	1	1
<b>\$26,000</b>				
Current CSS payment by non-resident to resident parent	5	5	5	5
Proposed new system				
Costs of child	25	67	133	197
Non-resident parent contribution <sup>(2)</sup>	25	25	24	22
Resident parent contribution	0	42	109	175
Change in non-resident parent contribution	20	20	19	17
<b>\$52,000</b>				
Current CSS payment by non-resident to resident parent	94	94	72	27
Proposed new system				
Costs of child	94	131	188	242
Non-resident parent contribution <sup>(2)</sup>	94	91	86	79
Resident parent contribution	0	40	102	163
Change in non-resident parent contribution	0	-3	14	52
<b>\$78,000</b>				
Current CSS payment by non-resident to resident parent	184	184	162	117
Proposed new system				
Costs of child	158	188	235	279
Non-resident parent contribution <sup>(2)</sup>	158	151	140	128
Resident parent contribution	0	37	95	151
Change in non-resident parent contribution	-26	-33	-22	11

(1) This is the private income of the resident parent. In all of these examples the resident parent is assumed to be receiving Parenting Payment (Single), which is taxable and can therefore affect the estimated costs of the children if it takes the taxable income of the resident parent above the self-support amount.

PPS received is \$250 a week at \$0 of private income, \$74 at \$26,000 of private income, and zero at \$52,000 of private income and above. This is why the resident parent's contribution is greater than the non-resident parent's contribution when their private incomes both equal \$26,000 (because the resident parent's taxable income equals \$29,848, which is greater than the non-resident parent's taxable income of \$26,000). All figures in table rounded to nearest \$.

(2) In this example, this is the amount that the non-resident parent has to pay the resident parent in child support

## 16.5 Cameo illustrations of the operation of the formula

This section provides five worked examples of the operation of the proposed new scheme.

### Tom and Meng

Tom and Meng have 3 children, all under 12. They separate. All of the children live with Meng. They stay with Tom for 25% of the nights per year (generally alternate weekends and half of school holidays).

#### *Step 1-Find Tom and Meng's Child Support Incomes*

Tom has an adjusted taxable income of \$51,500 and Meng has an Adjusted Taxable Income of \$27,000. Deducting the self-support component (\$16,883) from each gives Tom a Child Support Income of \$34,617 and Meng a Child Support Income of \$10,117.

*Step 2-Calculate the costs of the children*

Tom and Meng's Combined Child Support Income is \$44,734. The cost of the children is calculated by taking 27% of the first \$25,324 of this and 26% of \$19,410 (the remainder of the Combined Child Support Income).

27% of \$25,324 is \$6,837, and 26% of \$19,410 is \$5,047, giving a total of \$11,884. (In the Costs of children Table, this is shown as \$6,837 plus 26 cents for each dollar over \$25,324.) This is the cost of the children.

*Step 3-Apportion this cost between the parents*

This cost is apportioned according to each parent's capacity to pay. A parent's capacity to pay is determined by the proportion that they have of the Combined Child Support Income. Tom has 77.38% of the Combined Child Support Income, so Tom is responsible for 77.38% of the cost and Meng is responsible for 22.62% of the cost.

Under the formula, Tom is given credit for incurring 24% of the children's costs by caring for the children. Therefore only the balance of Tom's obligation must be contributed through his child support payment. Tom's payment is his total obligation (77.38% of the children's cost) less his credit due to care (24%). His payment is 53.38% of the costs of the children.

53.38% of \$11,884 is \$6,344. Tom must pay this to Meng.

*Other outcomes*

Tom's payment to Meng equals 12.3% of his adjusted taxable income of \$51,500. This reflects the self-support threshold, as well as the sharing of care between Tom and Meng. Tom's payment equals 15.9% of his post-income-tax income. (It should be noted that this estimate is based on the currently promulgated income tax scales for 2005-06, not the tax scales put forward for 2005-06 in the May 2006 Budget, which at the time of writing this report have not yet been passed by the Senate.)

**Ali and Leila**

Ali and Leila have 2 children, one is 14 and one is 16. They separate. They share care of the children equally.

*Step 1-Find Ali and Leila's Child Support Incomes*

Ali has an Adjusted Taxable Income of \$54,000 and Leila has an Adjusted Taxable Income of \$67,000. Deducting the self-support component (\$16,883) from each gives Ali a Child Support Income of \$37,117 and Leila a Child Support Income of \$50,117.

*Step 2-Calculate the cost of the children*

Ali and Leila's Combined Child Support Income is \$87,234. The cost of the children is calculated by taking 29% of the first \$25,324 of this, 28% of the next \$25,324, 25% of the next \$25,324, and 20% of \$11,262 (the remainder of the Combined Child Support Income).

29% of \$25,324 is \$7,344, 28% of \$25,324 is \$7,091, 25% of \$25,324 is \$6,331, and 20% of \$11,262 is \$2,252, giving a total of \$23,018. (In the Costs of Children Table, this is shown as \$20,766 plus 20 cents for each dollar over \$75,972.) This is the cost of the children.

*Step 3- Apportion this cost between the parents*

This cost is apportioned according to each parent's capacity to pay. A parent's capacity to pay is determined by the proportion that they have of the Combined Child Support Income. Leila has 57.45% of the Combined Child Support Income, so she is responsible for 57.45% of the cost of the children and Ali is responsible for 42.55%.

Under the formula, Leila is given credit for incurring 50% of the children's costs by caring for the children. Therefore only the balance of Leila's obligation must be contributed through her child support payment. Leila's payment is her total obligation (57.45% of the children's cost) less credit due to care (50%). Her payment is 7.45% of the costs of the children.

7.45% of \$23,018 is \$1,715. This is the amount that Leila is required to pay to Ali.

*Other outcomes*

Leila's payment to Ali equals 2.6 per cent of her adjusted taxable income of \$67,0000. This reflects the self-support threshold, as well as the sharing of care between Leila and Ali. Leila's payment equals 3.4 per cent of her post-income tax income. (It should be noted that this estimate is based on the currently promulgated income tax scales for 2005-06, not the tax scales put forward for 2005-06 in the May 2006 Budget, which at the time of writing this report have not yet been passed by the Senate.)

**Peter and Kate**

Peter and Kate have 2 children, one is 8 and one is 15. They separate. Both the children live with Kate 100% of the time.

*Step 1-Find Peter and Kate's Child Support Incomes*

Peter has an Adjusted Taxable Income of \$50,000 and Kate has an Adjusted Taxable Income of \$24,000. Deducting the self-support component (\$16,883) from each gives Peter a Child Support Income of \$33,117 and Kate a Child Support Income of \$7,117.

*Step 2- Calculate the costs of the children*

Peter and Kate's Combined Child Support Income is \$40,234. The cost of the children is calculated by taking 26.5% of the first \$25,324 of this and 25.5% of \$14,910 (the remainder of the Combined Child Support Income).

26.5% of \$25,324 is \$6,711, and 25.5% of \$14,910 is \$3,802, giving a total of \$10,513. (In the Costs of Children Table, this is shown as \$6,711 plus 25.5 cents for each dollar over \$25,324.) This is the cost of the children.

*Step 3- Apportion this cost between the parents*

This cost is apportioned according to each parent's capacity to pay. A parent's capacity to pay is determined by the proportion that they have of the Combined Child Support Income. Peter has 82.31% of the Combined Child Support Income, so Peter is responsible for 82.31% of the cost, and Kate is responsible for 17.69% of the cost. Kate spends her share of the cost in paying for day-to-day expenses from her money and Peter pays Kate his share to meet the remaining expenses of the children.

82.31% of \$10,513 is \$8,653. Peter must pay this to Kate.

#### *Other outcomes*

Peter's payment to Kate equals 17.3 per cent of his adjusted taxable income of \$50,000. This reflects the self-support threshold, which results in child support paid as a percentage of taxable income being lower than the 26.5 per cent net costs of children rate embedded in the proposed new formula for income immediately above the self-support threshold. Peter's payment equals 22.3 per cent of his post-income tax income. (It should be noted that this estimate is based on the currently promulgated income tax scales for 2005-06, not the tax scales put forward for 2005-06 in the May 2006 Budget, which at the time of writing this report have not yet been passed by the Senate.)

#### **Jack and Sharon**

Jack and Sharon have one child aged nine years. They separate. The child lives with Sharon 100% of the time.

#### *Step 1-Find Jack and Sharon's Child Support Incomes*

Jack has an Adjusted Taxable Income of \$26,000 a year. Sharon has no private income of her own and is paid the maximum rate of Parenting Payment (Single), giving her an estimated Adjusted Taxable Income in 2005-06 of \$12,979. Deducting the self-support component (\$16,833) from each gives Jack a Child Support Income of \$9,117 and Sharon a Child Support Income of zero.

#### *Step 2-Calculate the costs of the children*

Jack and Sharon's Combined Child Support Income is \$9,117. 17% of \$9,117 is \$1,550. (In the Costs of Children Table, this is shown as 17 cents for each dollar.) This is the cost of the child.

#### *Step 3-Apportion this cost between the parents*

This cost is apportioned according to each parent's capacity to pay. A parent's capacity to pay is determined by the proportion that they have of the Combined Child Support Income. Jack has 100% of the Combined Child Support Income, so he is responsible for all of the cost of the child. Jack pays Sharon \$1,550.

#### *Other outcomes*

Jack's payment to Sharon equals 6 per cent of his adjusted taxable income of \$26,000. This reflects the self-support threshold, which results in child support paid as a percentage of taxable income being lower than the 17 per cent net costs of children rate embedded in the proposed new formula for income immediately above the self-support threshold. Peter's

payment equals 7 per cent of his post-income tax income. (It should be noted that this estimate is based on the currently promulgated income tax scales for 2005-06, not the tax scales put forward for 2005-06 in the May 2006 Budget, which at the time of writing this report have not yet been passed by the Senate.)

Living standards are often compared by using equivalent income measures, which essentially reflect the number of people that have to be supported by each parent's income. The OECD equivalence scale is widely used and gives a value of 1 to the first adult in the family and 0.3 for each child. Under the proposed new scheme, Sharon's disposable income (after receiving Parenting Payment, FTB, and child support) would be \$397.70. If this is divided by 1.3, to take account of the fact that she is supporting herself and her child with this income, then her equivalent disposable income is \$305.90 a week. Jack's disposable income, after paying child support and income tax, is \$387.40. As he is only supporting himself with this income, his equivalent disposable income is the same, at \$387.40.

### *Stephen and Vimia*

Stephen and Vimia have two children aged six and four. They separate. The children spend some school holidays with Stephen, so that Vimia's share of care is 90%.

#### *Step 1-Find Stephen and Vimia's Child Support Incomes*

Stephen has no private income of his own and is receiving Newstart Allowance, giving him an estimated Adjusted Taxable Income of \$10,462 a year. Vimia has no private income of her own and is paid the maximum rate of Parenting Payment (Single), giving her an estimated Adjusted Taxable Income in 2005-06 of \$12,979. Deducting the self-support component (\$16,833) from each gives both Stephen and Vimia a Child Support Income of zero.

#### *Step 2-Calculate the costs of the children*

Stephen and Vimia's Combined Child Support Income is zero. There is therefore no cost to be apportioned between the parents.

#### *Step 3-Calculating the child support obligation*

As Stephen is receiving income support and has less than 14 per cent care of the children, he pays Vimia the minimum payment of \$6 a week in child support.

#### *Other outcomes*

After taking account of the new higher payments of FTB received by Vimia under the proposed new scheme, her income is about \$451 a week (made up of Parenting Payment (Single), FTB, and the \$6 child support paid by Stephen, and with no income tax paid in this case). Using the OECD equivalence scale (which is  $1 + 0.6$  for two children reduced to 0.54 because Vimia has the children only 90 percent of the time) gives Vimia an equivalent income of \$293 a week (that is, \$451 divided by 1.54).

Stephen also pays no income tax and thus has a disposable income of about \$195 a week after paying his \$6 a week of child support to Vimia. As he has the two children for 10 per cent of the time, this gives him an equivalent income of \$184 a week (that is, \$195 a week divided by 1.06).

Vimia's equivalent income is higher than Stephen's, which is largely a result of PPS and associated benefits being significantly higher than Newstart Allowance.

## 17 Other Issues Related to Administration of the Scheme

This chapter deals with some broader issues of the future sustainability and public understanding of the scheme, and with matters consequential upon the broad changes recommended by the Taskforce. Successful reform cannot occur without these matters being addressed, in support of the central recommendations. Matters relating to consistent treatment of the support of young people more generally complete the coverage of the reforms.

### 17.1 Suspension while parents are reconciled

Currently, if parents reconcile, the payer parent continues to be liable under an existing assessment until the payee parent advises the CSA that she or he wishes it to end. If the parents separate again, having previously ended the assessment, the payee must apply for a new assessment.

Parents should be able to suspend child support payments when they get back together, but be allowed a period of six months before the child support assessment is terminated. Since the payer parent is making contributions in kind to the support of the child while the family is living together, their child support liability would be suspended. If the reconciliation fails, the payee parent can reinstate the assessment without having to make a new application. The assessment would only come back into force from the date the parents again separate, so that no debt accrues for that period.

#### **Recommendation 22**

22.1 Where parents reconcile, their child support assessment should be suspended during the reconciliation, such that no debt accrues for this period.

22.2 If the reconciliation continues beyond six months, the assessment should be terminated.

### 17.2 External Review

An important aspect of providing a system that is well accepted in the community is to provide consistency and quality of result, with decisions subject to external scrutiny and independent review.

#### 17.2.1 *Review under the Child Support Legislation*

The Child Support legislation was originally designed without a significant internal review system.<sup>257</sup> The Registrar had power of a limited nature to correct errors, but the predominant source of review was by appeal to the court. The AAT was also given jurisdiction to review a

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<sup>257</sup> There was a process under the *Child Support (Registration and Collection) Act 1988* for objecting to the Registrar about a decisions relating to the registration of a liability under that Act: ss 80-87. However, The *Child Support (Assessment) Act 1989* contained no similar provision.

limited number of decisions.<sup>258</sup> The review process has been extended several times, but always with the focus on internal rather than external review. The result has been piecemeal and the need for external review remains.

### 17.2.2 Recommendations of Other Inquiries

Since its introduction, the Child Support System has been scrutinized by a number of specialist bodies, including three parliamentary reviews (as outlined in Chapter 2). Each body has concluded that an external review process should be established for reviewing CSA decisions.

The Child Support Evaluation Advisory Group observed that few appeals had been taken under the original legislation, probably because potential applicants were discouraged by a perception of the high costs of legal representation. It recommended that an informal appeals process be established, before the Family Court Registrar or an Administrative Tribunal.<sup>259</sup>

The Joint Select Committee on Certain Family Law Issues (1994) recommended the establishment of external review process, independent of the environment and culture of the CSA, by officers appointed for this purpose by the Minister, with publication of all decisions (although without naming the parties). It envisaged this would operate alongside extensive review of all administrative decisions by a Child Support Claims Tribunal within the Registry of the Administrative Appeals Tribunal, with no filing fee.<sup>260</sup>

The government responded by increasing the range of decisions for now mandatory internal review.<sup>261</sup> The “Objections” procedure under new Part 6B<sup>262</sup> applied to most decisions made by the CSA, including Part 6A Change of Assessment decisions. However, external review has remained available only by appeal to the courts.

Despite this response, the 2003 *Every Picture Tells a Story* report highlighted continued concerns that the system was not providing an outcome that was perceived by parents to be fair, although the report did acknowledge that the internal review processes were an improvement on a solely court-based process. The Parliamentary Committee recommended establishing a proper external review process<sup>263</sup>.

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<sup>258</sup> The AAT has jurisdiction to review decisions relating to remission of penalties under ss 54 and 68 of the *Child Support Registration and Collection Act* 1988 (see s.95). In 1998 it was also given jurisdiction to review decisions in the *Child Support (Assessment) Act* 1989 relating to extension of time (s.98ZE) and remission of penalties (ss.64A, 98ZF).

<sup>259</sup> CSEAG *Child Support in Australia*, Commonwealth of Australia 1992 Vol.1 250-264.

<sup>260</sup> The Joint Select Committee on Certain Family Law Issues, *The Operation and Effectiveness of the Child Support Scheme*, (1994) Recs.77-84.

<sup>261</sup> Schedule 13, Child Support Legislation Amendment Act 1998.

<sup>262</sup> Schedule 12.

<sup>263</sup> House of Representatives Standing Committee on Family and Community Affairs, Report of the Inquiry into Child Custody Arrangements in the Event of Family Separation, *Every Picture Tells a Story*, (December 2003) 6.133.

A recent own motion report of the Ombudsman found significant areas of concern with CSA decision making, at least in the highly discretionary change of assessment process<sup>264</sup>. The continuing absence of an accessible administrative review process external to the Agency appears unsustainable.

### 17.2.3 An Alternative Procedure

In discussing what process would be most appropriate, all reports have emphasized the importance of providing an expeditious, less formal and less expensive procedure.

A recent paper, “External Review of Child Support Agency Decisions: The Case for a Tribunal”<sup>265</sup> puts a case for review of child support decisions by the Social Security Appeals Tribunal (SSAT). The paper argues that SSAT members already have some expertise in child support matters. Appellants to the SSAT currently comprise income support and family payment recipients, many of whom are also clients of the CSA. Given the significant interrelatedness of child support with social security, particularly FTB, the conduct of reviews by members with expertise in both areas may improve the quality of decisions. Although it may be necessary to make minor adaptations to the Tribunal’s procedure to handle child support matters, the paper concludes it is well-suited to take on this jurisdiction.

Currently, a parent who appeals to a court must bring their action against the other parent in an adversarial process. The legislation makes the carer and liable parent, rather than the Registrar, parties to the appeal.<sup>266</sup> The House of Representatives Standing Committee on Family and Community Affairs was particularly swayed by evidence before it in the family law context that the adversarial nature of the legal system as it currently operates amplifies animosity between separated parents, and looked to a more inquisitorial process for determination of disputes. An external administrative Tribunal could review the reasons given for a decision by the Registrar, with the aggrieved parent as the other party, joining the other parent in the child support case if necessary. Inexpensive, expeditious external review in a non-Court based, less adversarial, multi-disciplinary style fits well with the new approach that will unfold with the development of the Family Relationship Centres.

There are nonetheless some advantages in allowing the courts to deal with departure applications otherwise than as a review of a tribunal decision. These costs and benefits need to be fully explored, but it was outside of the Terms of Reference for this Taskforce to do so.

#### **Recommendation 23**

The Government should consider the introduction of an external mechanism for reviewing all administrative decisions of the Child Support Agency, either by establishing a new Tribunal or by conferring jurisdiction on an existing Tribunal.

<sup>264</sup> Commonwealth Ombudsman, *Child Support Agency: Change of Assessment Decisions: Administration of Change of Assessment decisions made on the basis of parent’s earning capacity, property, and financial resources*, Office of the Commonwealth Ombudsman, Report No.1/2004 Canberra at p.1.

<sup>265</sup> Wolffs, T, “External Review of Child Support Agency Decisions: The Case for a Tribunal”, AIAL Forum No. 43 p.55 (2005) CHECK.

<sup>266</sup> *Child Support (Assessment) Act 1989* ss.110(4), 116(3), 123(4), 132(3).

## 17.3 Revision of the Legislation

The Child Support legislation should be rewritten, as far as possible, in plain English. The current wording is highly complex and difficult to understand, with an excessive reliance on technical language and complex phraseology. Legislation of this kind must be usable beyond the Agency entrusted with its implementation. Lawyers and other advisers, as well as courts, are significant users of the legislation and it is important to its utility that it be written without undue complexity.

This recommendation was also made by the Joint Select Committee on Certain Family Law Issues in 1994. It considered also that the two Acts should be combined into one.<sup>267</sup> The complexity of the drafting was criticised by the Family Court, the Family Law Council and the Law Council of Australia in submissions to the Joint Select Committee. The Joint Select Committee considered back in 1994 that there was an urgent need for the legislation to be redrafted, and it was the first recommendation that the Committee made.<sup>268</sup>

### **Recommendation 24**

The *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989* should be replaced with new legislation written, as far as possible, in plain legal language.

## 17.4 Transition

Most of the recommendations of the Taskforce will need legislative amendment, substantial administrative change to the systems of both CSA and Centrelink, and extensive re-training and information dissemination. The legislative basis of the Child Support Scheme for unmarried parents in Western Australia creates further issues<sup>269</sup>.

The recommendations are mutually interconnected, and represent component parts of a unified reform. Piecemeal implementation may have unanticipated and undesirable consequences. Further, the definition and interaction of the elements of the proposed formula are conceptually different from the workings of the current formula. No measure standing alone will operate as an interim approach without changing the character of the full implementation. For example, Recommendation 1.3 sets a new, higher self-support amount. To implement this before introducing the new method for calculating income would result in change to some liabilities, which may be reversed once the complete formula is introduced.

Necessary administrative groundwork may delay implementation of the complete package. However, this is unavoidable. No interim change to the elements of the existing formula will duplicate the results of the balanced package the Taskforce is recommending. However, when the full package is prepared, the government may wish to give consideration to the position of

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<sup>267</sup> Joint Select Committee, op. cit. Rec. 1.

<sup>268</sup> Op cit, paras 3.34 to 3.43.

<sup>269</sup> Unlike all other States, WA has not referred its powers in relation to the maintenance of children of parents who are not married to the Commonwealth, preferring instead to adopt Commonwealth child support legislation, including amendments, from time to time.

those whose liability or entitlement will vary to a large extent as a result of the recommendations, to avoid causing hardship in the short term.

**Recommendation 25**

The government should recognise that full implementation of these recommendations will affect a range of existing child support clients, and should comprehensively consider the management of transitional issues, including the resources that the Child Support Agency will need to ensure an effective transition to the new Scheme.

## **17.5 Public Education Campaign**

The proposed changes to the Scheme will naturally require some explanation, mainly to clients of the Agency but also to others who have an interest in the Child Support Scheme including legal and financial advisers. This provides an opportunity for the Department of Human Services to explain the practical implementation of the new Scheme in positive terms and to draw a line underneath the negative associations of the existing Scheme.

One of the important aspects of the Scheme that needs better emphasis is its flexibilities. Some of the dissatisfaction expressed towards the Scheme to MPs and others would be dissipated if clients of the Agency were aware of solutions that already exist, and which continue under the new Scheme. The change of assessment process is particularly important (see chapter 12). The grounds allow a lot of individual circumstances to be taken into account. The Agency also has a ways of dealing with changes in income during the course of a child support year. The provisions concerning non-agency payments and prescribed payments are also significant ways in which payers' concerns about the use of child support transfers can be addressed.

**Recommendation 26**

26.1 There should be a public education campaign to explain the changes to existing clients of the Agency, and adequate resources to deal with inquiries about the new arrangements.

26.2 A public education campaign about changes to the Scheme should include information about the flexibility of the Child Support Scheme, especially in relation to the grounds for changes of assessment.

## **17.6 The Courts and the Costs of Children and Young Adults**

### **17.6.1 *The Lovering and Lee Tables***

When making an order for child maintenance, the Family Court must consider the needs of the child given the child's age, standard of living and any special needs, and may take into account

findings of published research in relation to the maintenance of children<sup>270</sup>. The Court has been assisted by the research of Kerry Lovering<sup>271</sup> and Donald Lee<sup>272</sup>. Lovering's analysis priced a limited basket of goods, which provided a useful indication of how much parents would spend on their children if the child were to enjoy the benefits of those goods. Lee used the 1984 ABS Household Expenditure Survey to estimate what parents were actually spending on children. The Court has preferred the Lee figures as representing a more accurate guide to the costs of children.<sup>273</sup>

Until 1999, AIFS published updated figures to the Lee and Lovering Tables. In light of research that proposed new approaches to calculating cost of children, the Institute discontinued those updates.<sup>274</sup> Courts and practitioners continue to update the Lee and Lovering tables using CPI and AWE figures, respectively.

The Child Support Taskforce was directed specifically to research the costs of children.<sup>275</sup> The Taskforce utilised three different methodologies to reach the best and most up-to-date estimates possible of the costs of children in intact Australian families: details are contained in Chapter 8. Apart from providing the most current information on the costs of children, the research results take account of government benefits in assessing how much ought to be transferred in child support.

The Court may only make a maintenance order for a child in relation to whom an application for administrative assessment could be not made.<sup>276</sup> To ensure equivalent treatment of children in both systems, the Court should refer to the research relied on by the Taskforce and to the way in which government benefits are included in the calculations. This research ought also to provide the most reliable basis for decision-making if the costs of children need to be considered in the exercise of the Court's discretion when a ground for a departure application is made out. Given the age of the Lovering and Lee research now, and that it has been superseded by much more recent research, it is perhaps time for the updating of the Lovering and Lee figures to cease. This is, of course, a matter for the courts and legal publishers, rather than the Government.

### **Recommendation 27**

The Federal Magistrates Court and the Family Court of Australia should utilise the costs of children research of the Taskforce as the basis for decision-making on child support issues, and should have regard to the impact of government benefits in working out the costs of children.

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<sup>270</sup> Family Law Act 1975 s. 66J.

<sup>271</sup> Lovering, K. *Cost of Children in Australia*. Working Paper 8, 1984, AIFS, Melbourne.

<sup>272</sup> Lee, D. (1989). A program for calculating the direct costs of children based on the 1984 ABS Household Expenditure Survey. Floppy Disk, AIFS, Melbourne.

<sup>273</sup> *Streets and Streets* (1994) FLC, pp. 92-509.

<sup>274</sup> Australian Institute of Family Studies, *Family Matters* No.53 Winter 1999 p.2.

<sup>275</sup> Every Picture Tells a Story op. cit Recommendation 26.

<sup>276</sup> Children of parents who separated before 1 October 1989, children of whose parents one lives overseas in a non-reciprocating jurisdiction, dependent children who are over 18 and either studying full-time or have a disability.

## 17.6.2 Child support for Young Adults

The parent of a child aged 18 years or over continues to be eligible for child support assessment only for a child in full-time secondary education, until the end of the school year in which the child turns 18.<sup>277</sup> The Family and Federal Magistrates' Courts have a broader power, being able to make a maintenance order for a young person aged 18 or over if the Court considers that maintenance is necessary for the child to complete his or her education or because of a physical or mental disability.<sup>278</sup>

When ordering maintenance for a child over 18, a court should consider the Taskforce research, particularly that relating to the costs of children, and base its calculations on the costs of the child – net of relevant government benefits such as FTB and Youth Allowance.

### Recommendation 28

28.1 The Federal Magistrates Court and the Family Court of Australia should have regard to the Taskforce research on the costs of raising adolescent children, and any applicable government benefits, in working out child support liabilities in respect of young people over the age of 18.

28.2 The government should consider the development of a formula or guidelines for the assessment of maintenance in respect of young people over the age of 18 in circumstances where maintenance may be ordered under s.66L of the Family Law Act 1975.

## 17.7 Research and Monitoring

Previous reviews of the Child Support Scheme have commented on the lack of relevant research. The Taskforce had available to it independent and comprehensive Australian research on which to base recommendations. However, many issues still remain unexplored, particularly given the fast pace of social change. Work needs to continue in this area.

The Australian Institute of Family Studies<sup>279</sup> research program includes research into families and children after separation. Such research provides an essential background for the government to make informed policy decisions and maintain the currency of the scheme and its interactions with other areas.

The Child Support Agency has a number of means of receiving feedback from its clients and stakeholders. As part of delivering its service, the CSA is advised by the Registrar's Advisory

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<sup>277</sup> Section 151B *Child Support (Assessment) Act* 1989. The child must be in full-time secondary education in the year of turning 18. Child support will continue until the end of that year.

<sup>278</sup> *Family Law Act* 1975 s.66L.

<sup>279</sup> An independent statutory authority which originated in the Family Law Act (1975). It was established by the Commonwealth Government in February 1980 to promote the identification and understanding of factors affecting marital and family stability in Australia. and is located within the Family and Community Services portfolio.

Panel. Many of the members of the Reference Group which supported this Taskforce participate in this panel, providing input and guidance on operational issues. A similar body with appropriate expertise needs to be set up to provide input and guidance to the Department of Family and Community Services on broader child support policy development and reform.

CSA also collects operational data that is published in its annual Report. As discussed in chapter 5, such data need to be more meaningfully and fully presented, particularly in the area of compliance, and of greater depth and scope to support ongoing policy monitoring. The government should not be entirely reliant on published Agency data for its assessment of the operation of the Scheme.

The Taskforce is aware that ongoing policy analysis and monitoring of policy administration is crucial to ensuring policy settings that are responsive to emerging policy needs. In order to develop its oversight of the current scheme and to consider future development of the child support system, the Department of Family and Community Services should maintain an active area solely responsible for ongoing child support policy analysis and development and for monitoring the outcomes of service delivery by CSA.

## **Recommendation 29**

- 29.1 The Department of Family and Community Services should undertake or commission periodic updates to research on:
- a) the costs of children;
  - b) the circumstances of payers and payees;
  - c) the interaction of the Scheme with related policy on tax, income support, family payments, and family law;
  - d) the impact of the Child Support Scheme (in combination with effective marginal tax rates) on workforce participation;
  - e) compliance amongst CSA collect and private collect payers; and
  - f) community perceptions of the fairness and effectiveness of the Scheme, and of the way it is administered.
- 29.2 The Department of Family and Community Services should take such steps as are necessary to ensure that it has a continuing expertise in child support policy and is capable of providing advice to government on the operation of the Scheme independently of the data provided by the Child Support Agency.
- 29.3 The Department of Family and Community Services should consider the establishment of an advisory body to provide advice on issues of child support policy and on the impact of the Scheme. Such a body should comprise recognised experts in all relevant fields, including family law, family relationships counselling, child development, social and economic research, and taxation.
- 29.4 The Department of Family and Community Services in collaboration with the Australian Institute of Family Studies should promote research on and discussion of child support policy by such means as the provision of research funding, the organisation of conferences, and the promotion of dialogue with child support experts from other countries.

## 17.8 Currency of the Scheme

At the heart of the currency of the child support system is its capacity to respond to social change. Equally, it must respond to legislative change. Alterations to social security, tax or other legislation impacting on social policy may change the operation of the formula, creating undesired outcomes at points where two legislative schemes intersect. The formula must be monitored to ensure it keeps pace with these changes.

### **Recommendation 30**

The currency of the scheme should be monitored, with reference to significant changes to child-related payments, and in the light of ongoing research on child support issues.

## **Part D: Conclusion**

## 18 In the Best Interests of Children

This final chapter synthesises the main themes of the report, and sets out the practical implications of the Taskforce's recommendations for children, resident parents, non-resident parents, and government.

It should be borne in mind that, like other areas of family law, child support is an area heavily imbued with competing interests. As a consequence, difficult choices have had to be made on the basis of the best evidence available to the Taskforce.

### 18.1 Outcomes of the proposed changes to the formula

Any changes at all to the Child Support Scheme will necessarily mean changes to the amount of money that some payees receive in child support and that some payers must pay. The Child Support Scheme is about legally enforced private transfers between parents for the well being of their children. It follows that, for every payer who pays less, there is a payee who will receive less. For every payer who pays more, there is a payee who will receive more.

Overall, the effect of the proposed formula will be that the majority of payers will pay less than they do at present, but a substantial minority will be required to pay more. Furthermore, improvements in compliance will mean that more children receive the child support that they ought to receive.

#### 18.1.1 *When child support payments will increase*

In some cases, the child support paid will increase as a result of these reforms if the Government chooses to accept them. Recommendations that will have this effect include:

- the provisions for minimum payments,
- recognition of the higher costs of teenagers,
- different treatment of the earnings of resident parents above average weekly earnings, and
- measures to improve compliance.

The minimum payment will rise to \$6 per week based upon the CPI increases since 1999 and to the end of 2005. That minimum payment will continue to be indexed from now on. This increase is modest, and reflects the Taskforce's (and Reference group's) concern for parents with a weak economic base to support themselves and their children.

Resident parents will also receive more realistic levels of child support when the children are teenagers, in recognition of the greatly increased expenditure that is necessary in comparison with younger children.

Resident parents who are qualified for jobs that pay more than about \$40,000 per year on a full-time basis (in 2005 dollars) will have more incentive to take such positions or to increase their working hours. This is because these earnings will improve their children's living standards without the substantial reductions in child support that result from the existing formula. A significant disincentive to workforce participation for resident parents is therefore removed.

The Taskforce also recommends that more resources be given to the Agency to enable it to determine a realistic and fair level of child support for those who structure their financial arrangements, legally or illegally, in a way that artificially minimises their tax obligations, and therefore also their child support.

Addressing the same problem, the Taskforce proposes a significant new measure aimed at those who appear to be under-reporting their real income, claiming to have an income lower than the maximum rate of Parenting Payment without being on income support. While there may be genuine reasons to explain how the parent is able to support himself or herself without any apparent means of support, he or she will be initially assessed to pay a fixed payment of \$20 per week per child. The onus will be on parents for whom this assessment is made to show that they genuinely do not have the financial resources available to them to meet that level of payment for their child. It will not be a sufficient answer that their taxable income is reduced to a minimal level through the operation of family companies or trusts.

The Taskforce also proposes more powers to improve the compliance of people who are self-employed and avoiding their obligations.

Resident parents will also benefit in many cases from receiving all the FTB A and B and not having to split it with the non-resident parent other than when care is being shared. Family Tax Benefit provides a guaranteed and regular income to the resident parent, whereas child support may not always be paid in full and on time, as Chapter 5 shows.

### **18.1.2 When child support payments will decrease**

In other cases, the child support received by payees will decrease as a result of the proposed reforms. Recommendations that may have this effect include:

- recognition in the formula that expenditure on children declines as a percentage of household income as incomes increase,
- the provision for recognition of regular face-to-face contact in the Child Support Scheme (offset by the limitation of FTB splitting to shared-parenting families), and
- the lower percentages applicable to children aged 0-12.

The recognition in the formula that expenditure on children is not fixed across the income range and that it declines as a percentage of income represents a recognition that the payments of many parents are too high under the present formula. Payers that are required to pay more than the full cost of the child may effectively be paying the difference as spousal maintenance rather than support for children. If the principle is accepted that the fairest way of working out child support obligations is to look at the best available evidence about what the payer would be contributing in child-related costs if the parents were living together, then the existing percentages as they apply to higher-income earners cannot be justified. While, on the basis of the recommendations in this Report, child support obligations will fall significantly for higher-income payers, it should be recognised that this is a relatively small group compared to the majority of child support payers.

The proposed reforms also address the issue of regular face-to-face contact. The Taskforce recognises that the costs incurred by one parent who has regular contact are not matched by a corresponding significant decrease in expenditure for the resident parent. It is more expensive for children to live in two homes than one. The recommendations of the Taskforce are designed to share this increased cost as fairly as possible between the two parents. As a

consequence, there is a recognition in the proposed formula that parents who have regular care of their children for 14% or more nights per year incur substantial costs, and there is provision to recognise the costs of extensive daytime contact where these are commensurate with the costs of having children stay overnight.

The proposed reforms also mean lower child support payments for younger children in particular. Given the substantial increases in family payments since 1988 (see Chapter 7), the amount that parents need to spend out of their own incomes in an intact family has declined. Inevitably therefore, this must flow through to lower child support payments if the continuity of expenditure principle (also discussed in Chapter 7) is to remain the basis for the Scheme.

The level of payments now made to families through Family Tax Benefit is such that it has been appropriate to bring down the percentages of income required to support two and three children under 13. This is because FTB A is paid as a flat rate per child, without taking into account any economies of scale. This inevitably flows through again to child support payments. The difference in FTB amounts between payments for a child 0-12 and a child 13-15 is not so great as to offset the increased costs of raising teenagers, and for this reason child support payments for teenagers will generally increase rather than decline.

### **18.1.3 “Second” families**

The position for second and subsequent families under the proposed reforms is mixed. Second families are often seen as being disadvantaged by the current Child Support Scheme, but, as discussed in Chapter 6, for many payers in low-income families, the effect of the increased exempt amount is to give much greater priority to children in the new family than to the children of the first family. Because this is a flat rate allowance, the proportionate benefit from this exempt income declines further up the income scale. Some, but not all, second families have cause for complaint under the existing formula.

Second families will benefit in general from the proposed reforms’ greater recognition of step-children who have no biological parent able to support them, and from the provisions concerning change of assessment in relation to overtime and second jobs (see Chapter 12).

The Taskforce proposes, consistent with the aim of the original Scheme, that children in first and second families be treated as equally as possible. While some payers with second families may receive a reduced allowance for a new child or children on the basis of this principle compared to the present provisions, the effect of this recommendation needs to be considered together with the impact of all the other recommendations, including a greatly increased self-support amount, fairer recognition of the costs incurred in contact, recognition that the same percentages of before-tax income should not be applied across the income range, and other changes to the way in which child support obligations are calculated. The availability of FTB to the second family should also be taken into account. For low-income families, the Taskforce research shows that the maximum level of FTB meets most of the measured costs of children in intact households.

Taking all these factors into account, the impact of the proposed reform on second families will depend upon the payer’s income level, the age of the child support children and new children, whether the payer has regular contact with, or shared care of, the child support children, whether there are any step-children who may be treated as dependents on a change of assessment, and whether any income from overtime or a second job is excluded.

### **18.1.4 The effect of the Maintenance Income Test**

The operation of the Maintenance Income Test (see Chapters 4 and 11) means that for most families, the gains by one parent will not be matched exactly by the losses for another. Where less child support is paid, the effect of this may be cushioned by the fact that above a free area, the payee only keeps 50 cents in the dollar of child support paid in any event. Conversely, where child support payments go up, not all of this will necessarily be transferred to the resident parent because the Maintenance Income Test operates to recoup some costs to taxpayers.

## **18.2 The Child Support Scheme and the Best Interests of Children**

In undertaking the review, the central concern of the Taskforce was with the wellbeing of children after separation. It might be argued that any reform that is in the best interests of children will lead to increases in child support, but not decreases. On such a view, the changes that will lead to increases in child support payments will be welcomed, and the changes that lead to reduced payments will be criticised as contrary to the best interests of children.

This position assumes, of course, that the existing percentages used in the Scheme have some intrinsic validity. The Taskforce has reached the conclusion that they cannot be justified, given the best available evidence in 2005 and taking into account the substantial increases in government payments to support children over the last fifteen years. Decreases in child support are proposed where this adjustment is necessary because people are currently paying more than they would be contributing to the support of the children if the parents were living together.

The Taskforce has also taken a much wider view of the best interests of children. Children's wellbeing cannot be measured only in financial terms, nor can it be measured by the living standards a child experiences in only one home. While the great majority of children have one primary caregiver, children usually have two parents and, where there is regular contact, they live for periods of time in both their parents' homes.

### **18.2.1 Reducing conflict**

One of the central issues for the Taskforce and the Reference Group was how to reduce conflict between parents over money, because research shows that children suffer most when there is ongoing high conflict between the parents long after separation. Arguments about child support are one source of such ongoing conflict.

The Taskforce believes that the proposed reforms have the potential to reduce conflict and to promote co-operation between parents in a number of ways.

Firstly, the changes proposed to take account of regular contact and to confine FTB splitting to families where there is shared care (as defined in this Report) are designed to reduce substantially the level of conflict over parenting arrangements. While child support payments initially drop if contact reaches the threshold of 14% of nights, or on average one night per week over the year, there will be no further changes to child support until contact reaches 35% of nights, on average 5 nights per fortnight, in a year. This will mean that minor variations in contact levels around an agreed level will not affect child support payments. The recommendations also address the issue of daytime face-to-face contact.

Arguments about FTB splitting based upon the exact number of days, nights, or even hours that each parent spends with the child will be greatly reduced. Similarly, the incentive to negotiate parenting arrangements that ensure that the non-resident parent has the care of a child for at least 110 nights is also addressed. Conversely, there will be no disincentive to agreeing to such an arrangement if it is in the best interests of the child.

There will be a new threshold at 35% of nights per year for the shared care formula (Table B), but the transition from regular contact to shared care in the formula does not involve any “cliff effect” – that is, any substantial change in child support payments because that threshold is crossed. There is a very modest increase for each additional night the non-resident parent has the care of the child above 34% of nights, rising to a position where they are deemed to be providing an equal share of the costs of the child for approximately equal levels of care.

Secondly, the Taskforce believes that the proposed reforms should minimise all reasonable argument about the formula used in the Child Support Scheme and therefore reduce the level of criticism of the Scheme both in private and in public arenas. There is no objective answer to the question of how much children cost, and therefore how much child support ought to be paid. However, the Taskforce has endeavoured to rely on the best available evidence after the most substantial and thorough investigation ever conducted into this question in Australia. Furthermore, it has sought to clearly document and be as open and transparent as possible in the way that it reached its policy recommendations. It has also paid close attention to community values as revealed in the survey conducted by the Australian Institute of Family Studies for the Taskforce, to recent empirical data on post-separation patterns of parenting in Australia, and to the views of the Reference Group.

No doubt the Child Support Scheme will continue to cause controversy. The proposed new formula cannot and will not address all the grievances that people have about the Scheme. Sometimes grievances about child support reflect concerns about other aspects of family law, such as resentment about the difficulties in enforcing contact orders, or disagreement with the “no-fault” basis of Australian divorce law. The Child Support Scheme cannot address these issues. However, in the long term, children will benefit most if the proposed formula is seen to be fairer and more explicable than the existing Scheme.

Thirdly, the proposed reforms deal with some of the most serious complaints about the current Scheme. These include the issue of “capacity to earn” income that a parent is not actually earning, the problem of overpayments, and the issue of overtime and second jobs in order to re-establish oneself after separation.

### **18.2.2 *The Child Support Scheme and shared parental responsibility***

The proposed formula recognises explicitly the responsibility of both parents to support their child or children. Child support assessments will be based upon an allocation of the cost of the child (given the parents’ combined income level) according to the parents’ respective capacities to pay.

It also provides explicit recognition in the Child Support Scheme of the shared parental responsibility of parents following separation and that many of these children have two homes rather than one. Where, as a result of these recommendations, child support payments decrease rather than increase, this does not necessarily mean a decline in living standards for children. Changes in child support obligations will not significantly alter the financial resources

available to the children across the two homes. They will only impact on the *distribution* of those resources between the two homes.

That distribution of resources needs to be as fair as possible, without creating disincentives to participate in the workforce. The majority of child support payers, as well as payees, are on modest incomes. Comparisons of the disposable income of each parent in low-income families needs to take proper account of the impact of government benefits, including the value of pension concessions and rent assistance where it is payable.

### **18.2.3 Child support and children's living standards**

Because the majority of child support payers have modest incomes, child support payments are not necessarily very substantial under the present Scheme. Indeed, 40% of all payers on the Child Support Agency's caseload have a minimum liability of \$5 per week. There is also a significant gulf between the numbers of payers who have child support obligations and the numbers of children who benefit from full and timely compliance with those obligations.

Consequently, changes to those obligations, whether by way of an increase or decrease, are only part of the picture in assessing living standards of children. The government has done much to improve children's living standards both in intact and separated families through the increases in Family Tax Benefit and other payments. Children's living standards are also affected by the resident parent's workforce participation, and whether the resident parent is living with any other adults in a common household. Where a parent has re-partnered, and one or both of them is in the workforce, the loss of living standards consequent upon separation may be substantially ameliorated.

## **18.3 Reforming the Child Support Scheme – A Matter of Principle**

The Taskforce has identified many anomalies in the existing Scheme. The correction of those anomalies requires that child support obligations must go up or down. The Taskforce believes that its recommendations can best be assessed by reference not to a comparison between the outcomes of the current and proposed formulae, but by reference to the principles and evidence upon which these recommendations are based.

As far as possible, the Taskforce has sought to base its recommendations on the best evidence available to it about the costs of children, and the most defensible principles for the allocation of those costs between the parents. It is with children's interests as the paramount consideration that these recommendations for reform of the Scheme are made to the Government.



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# Appendices

# Appendix 1: Definitions and abbreviations

## *Income definitions*

<b>Term:</b>	<b>Definition:</b>
<i>Taxable income (or pre-tax income):</i>	As defined for Australian Taxation Office purposes
<i>Gross income:</i>	Income from all sources (both taxable and non-taxable)
<i>Net income (or post-tax income):</i>	Taxable income minus income tax
<i>Disposable income:</i>	Net income plus non-taxable income (for example, FTB A and FTB B)
<i>Child Support income:</i>	Adjusted taxable income less self-support amount (differs from Child Support Income Amount in the current scheme, which does not have the self-support amount deducted)
<i>Adjusted taxable income:</i>	Taxable income, with various deductions added back, plus reportable fringe benefits and exempt foreign income.

## *List of acronyms*

AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
AIFS	Australian Institute of Family Studies
ANAO	Australian National Audit Office
AP	Age Pension
ATO	Australian Taxation Office
AWE	Average Weekly Earnings
CP	Carer Payment
CPI	Consumer Price Index
CS	Child Support
CSA	Child Support Agency
CSAA	<i>Child Support (Assessment) Act 1989</i>
CSC	Customer Service Centre (Centrelink)
CSCG	Child Support Consultative Group

CSEAG	Child Support Evaluation Advisory Group
CSS	Child Support Scheme
DFISA	Defence Force Income Support Allowance
DSP	Disability Support Pension
DSS	Department of Social Security
DVA	Department of Veterans' Affairs
EMTR	Effective Marginal Tax Rate
FaCS	Department of Family and Community Services
FAO	Family Assistance Office
FRC	Family Relationship Centre
FTB	Family Tax Benefit
HILDA	Household, Income and Labour Dynamics in Australia Survey
JSC	Joint Select Committee
LC	Low Cost
MAT	Maintenance Action Test
MBA	Modest but Adequate
MIT	Maintenance Income Test
MTAWE	Male Total Average Weekly Earnings
NATSEM	National Centre for Social and Economic Modelling
NH&MRC	National Health and Medical Research Council
NRP	Non-resident Parent
NSA	Newstart Allowance
PA	Partner Allowance
PAYG	Pay As You Go
PPP	Parenting Payment (Partnered)
PPS	Parenting Payment (Single)
RP	Resident Parent
SCO	Senior Case Officer
SRDP	Special Rate Disability Pension
SSAT	Social Security Appeals Tribunal
STINMOD	NATSEM's population model
WP	Wife Pension

## Appendix 2: Membership of the Taskforce and Reference Group

### *Membership of the Taskforce*

**Prof. Patrick Parkinson (Chair)**, Professor of Law, University of Sydney, and Chairperson of the Family Law Council.

**David Stanton (Deputy Chair)**, Consultant Social Security Planner and Policy Analyst and Visiting Fellow, Asia Pacific School of Economics and Government at the Australian National University. Formerly, Director of the Australian Institute of Family Studies (AIFS).

**Dr Matthew Gray**, Research Fellow, Centre for Aboriginal Economic Policy Research, ANU.

**Prof. Ann Harding**, Director of the National Centre for Social and Economic Modelling (NATSEM).

**Dr Paul Henman**, Lecturer in the School of Social Work & Applied Human Sciences, University of Queensland.

**Wayne Jackson**, Deputy Secretary of the Department of Family and Community Services.

**Prof. Deborah Mitchell**, Director of the Australian Consortium for Social and Political Research, Australian National University. Prof. Mitchell had to resign due to family circumstances in January 2005.

**Bruce Smyth**, Research Fellow, Australian Institute of Family Studies.

### *Membership of the Reference Group*

**Patrick Parkinson** (Chair)

**David Stanton** (Deputy Chair)

**Bettina Arndt**, Social commentator and member of the former Family Law Pathways Taskforce.

**Michael Green QC**, Author of the book *Fathers After Divorce*.

**Dr Elspeth McInnes**, Lecturer in the School of Education, University of South Australia, Deputy President of ACOSS and Co-executive Officer of the National Council of Single Mothers and their Children.

**Tony Miller**, Founder and Director of Dads in Distress.

**Jocelyn Newman**, Former Senator for Tasmania and former Minister for Family and Community Services.

**Clive Price**, Executive Director of Unifam Counselling and Mediation, NSW.

**Judy Radich**, National President of the Early Childhood Association.

**Kathleen Swinbourne**, President of the Sole Parents Union of Australia.

**Barry Williams**, Founder and National President of the Lone Fathers' Association of Australia.