

# A COMPARATIVE STUDY OF CHILD MAINTENANCE REGIMES

## Questionnaire for national informants

### **Focus of questionnaire**

The questionnaire concerns your child maintenance (child support) regime. By this we mean the overall system in your country under which parents meet their financial obligations in respect of children with whom they do not live. These financial obligations arise when parents live apart following a divorce or separation, or when parents have never lived together.

### **Scope**

The questionnaire is primarily concerned with regular payments for financial support, which we call here child maintenance. There are other forms of financial transactions between parents who do not live with each other including spouse maintenance (or alimony), lump sum payments, transfers of property, assets and pension rights. We are interested in these other forms of support only in so far as they affect child maintenance. We do not define a child. Please use those age related definitions of a child or children that are relevant in your country, throughout the questionnaire, with appropriate explanations when necessary.

The child maintenance regime includes arrangements for determination, enforcement and revision of payments. In most countries, the child maintenance regime will be some combination of private voluntary arrangements, formal arrangements made by courts, and formal arrangements made by other organisations or agencies. We seek information about all these.

The questionnaire is primarily concerned with entitlements to and liabilities for transfers of private resources. There are a few additional questions about the interaction of child maintenance with public resource transfers (for example maintenance guaranteed by the state and social benefits).

This questionnaire is not concerned with children for whom the state has assumed responsibility, and/or who live in foster homes, children's homes or other institutions. We seek information about child maintenance in respect of children living at home with one parent.

We are interested in three different groups of parents:

- separated married parents (whether formally divorced or not)
- separated cohabiters
- parents who have never lived together.

### **Core terms**

We call the parent who has the main day-to-day responsibility for the child(ren) concerned, the parent with care. We call the parent who is not currently living with the child(ren) and their other parent, the non-resident parent. The amount of money the non-resident parent is required to pay (or agrees to pay) the parent with care is called the obligation. (In some literature or countries this may be called the award or the obligation.) Definitions of other terms are provided below.

### **Organisation of questionnaire**

The questionnaire is organised in the following way.

- Part One seeks information about the history and general objectives of your child maintenance regime.
- Part Two asks how families enter the child maintenance system, including the general framework for divorce, separation, and the establishment of paternity for nonmarital children.
- Part Three covers detailed information about the determination of maintenance due. We ask how obligations are set, looking at rules, guidelines and discretionary components.
- The procedural aspects of collection and enforcement, and the implications of non-compliance are covered in Part Four.
- Part Five asks about the interactions of receipts and payments with other policies.

- *Administrative costs and quantitative data on outcomes are covered in Part Six.*
- *Part Seven asks you to draw on existing research in a brief evaluation of the child maintenance regime in your country; it also asks for the main topics of research and debate in your country.*
- *Part Eight presents two vignettes, or cases, in which we describe the circumstances of parents and children, and ask you to describe how they might be dealt with under your child maintenance regime.*

*There are further instructions on how to fill in the questionnaire at the beginning of each part (with instructions presented in shaded text). We suggest that you read through the whole questionnaire thoroughly before you begin. We assume you will find it more convenient to complete the questionnaire directly onto the file. If you would prefer a paper copy, with space allowed after each question, please let us know.*

*We ask that you provide us with a list of the sources you consulted most frequently when answering this questionnaire.*

*When we ask for current information, this relates to the situation at 1 July 2006.*

<b>TERMS AND DEFINITIONS</b>	
<i>Advance maintenance</i>	<i>Program in which child maintenance money is provided in advance of any payment made by the non-resident parent. In effect this guarantees an amount of child maintenance.</i>
<i>Child</i>	<i>We do not define a child. Please use those age related definitions of a child or children that are relevant in your country throughout the questionnaire.</i>
<i>Child maintenance</i>	<i>This refers to the money due to children from their liable parent (following the breakdown in the parental relationship). It may be paid to the parent with care or the child(ren); this varies by country.</i>
<i>Child maintenance regime</i>	<i>We include here all arrangements under which non-resident parents provide financial support for their children. We include voluntary arrangements, arrangements through the legal system, and arrangements through governmental agencies. We include both explicit and implicit governmental policies.</i>
<i>Cohabitees</i>	<i>We use this to refer to unmarried parents who live together</i>
<i>Guaranteed maintenance</i>	<i>Same as 'Advanced Maintenance' (see above)</i>
<i>New child or children</i>	<i>Where parents move on after separation or divorce and produce another child/children with a new partner.</i>
<i>New family</i>	<i>Where parents move on after separation or divorce and develop family relationships with a new partner. This may or may not also include children.</i>
<i>New partner</i>	<i>Where parents move on after separation or divorce and develop an intimate relationship with a new adult.</i>
<i>Non-resident parent</i>	<i>Refers to the parent with whom the children do not live a majority of the time. In many countries this is commonly the father.</i>
<i>Nonmarital child or children</i>	<i>Refers to a child or children from a relationship in which the parents are not married.</i>
<i>Obligation or 'child maintenance obligation'</i>	<i>This refers to any award of money made for child maintenance only. We use it as a general term to refer to all official and unofficial arrangements.</i>
<i>Prior child or children</i>	<i>Some parents have children from more than one relationship. We use "prior children" to refer to children from a previous relationship.</i>
<i>Parent with Care</i>	<i>This is the parent who has the main day-to-day responsibility for the children and the child(ren) live with this parent the majority of the time. In many countries this is commonly the mother.</i>
<i>Social assistance</i>	<i>By this we mean programs that provide income to low-income individuals or families. These programs have an income test, and often also have asset limits. This is one type of social benefit.</i>
<i>Social benefit</i>	<i>We intend this to be a very broad term. It includes all programs that provide income to individuals and families. This includes social assistance programs and programs that do not have an income test.</i>
<i>Step child</i>	<i>Where a parent has responsibility for a child living in their household who is not related to them biologically.</i>
<i>Tax benefit</i>	<i>We use this term broadly to refer to special features of the tax system that allow individuals in certain circumstances to pay less taxes. We also include programs that provide income through the tax system.</i>

<b>SUMMARY OF CONTENTS</b>	
	<i>Content Areas and Question Numbers</i>
<b>Part One</b>	<b><i>Development of Child Maintenance Regime (Questions 1.1-1.4)</i></b>
<b>Part Two</b>	<b><i>Entering the Child Maintenance System</i></b>
2.1	<i>Child maintenance arrangements for couples who have been married (Questions 2.1.1-2.1.3)</i>
2.2	<i>Child maintenance arrangements for couples who have lived together without being married (Questions 2.2.1-2.2.3)</i>
2.3	<i>Child maintenance arrangements for those who have never lived together (Questions 2.3.1-2.3.3)</i>
<b>Part Three</b>	<b><i>The Determination of Child Maintenance Due</i></b>
3.1	<i>Overview (Questions 3.1.1-3.1.5)</i>
3.2	<i>Voluntary agreements about child maintenance (Questions 3.2.1-3.2.2)</i>
3.3	<i>Court determination of child maintenance (Questions 3.3.1-3.3.10)</i>
3.4	<i>Problems and revisions for court determinations (Questions 3.4.1-3.4.4)</i>
3.5	<i>Agency determination of child maintenance (Questions 3.5.1-3.5.10)</i>
3.6	<i>Problems and revisions for agency determinations (Questions 3.6.1-3.6.5)</i>
3.7	<i>Review and summary (Questions 3.7.1-3.7.5)</i>
<b>Part Four</b>	<b><i>Collection, Payment, and Enforcement of Child Maintenance</i></b>
4.1	<i>Direct arrangements for collecting maintenance (Questions 4.1.1-4.1.4)</i>
4.2	<i>Mediated arrangements for collecting maintenance (Questions 4.2.1-4.2.5)</i>
4.3	<i>Non-compliance (Questions 4.3.1-4.3.3)</i>
4.4	<i>Guaranteed maintenance programs (Questions 4.4.1-4.4.6)</i>
<b>Part Five</b>	<b><i>Financial Interactions</i></b>
5.1	<i>Treatment of maintenance received (Questions 5.1.1-5.1.3)</i>
5.2	<i>Treatment of maintenance paid (Questions 5.2.1-5.2.3)</i>
<b>Part Six</b>	<b><i>Costs and Quantitative Data on Outcomes</i></b>
6.1	<i>Costs of the child maintenance regime (Questions 6.1.1-6.1.6)</i>
6.2	<i>Quantitative data on child maintenance (Questions 6.2.1-6.2.6)</i>
<b>Part Seven</b>	<b><i>The Overall Context</i></b>
7.1	<i>Topics of debate and research (Questions 7.1.1-7.1.5)</i>
7.2	<i>Your evaluation of the child maintenance regime (Questions 7.2.1-7.2.3)</i>
<b>Part Eight</b>	<b><i>Two Vignettes (Questions 8.1.1-8.8.3)</i></b>

## PART ONE: DEVELOPMENT OF CHILD MAINTENANCE REGIME

*This part of the questionnaire seeks a broad overview of your current system.*

*Please remember that we are interested in three groups of parents:*

- *separated married parents (whether formally divorced or not)*
- *separated cohabitantes*
- *parents who have never lived together.*

### **1.1 Consider the overall arrangements in your country for determining, enforcing and revising child maintenance payments. What are the broad policy objectives of these arrangements? We are interested in both explicit and implicit objectives.**

The current Child Support scheme, which was instituted in 1989, in part grew out of the Labor government's promise to eradicate child poverty (of which poverty among children in single parent families was identified as particularly severe), and in part was a response to the perceived ineffectiveness of the court system in managing maintenance for children. The first goal of the 1988 Child Support act was therefore to improve the enforcement of maintenance payments through the establishment of a Child Support Agency, while the Child Support Act Stage 2 introduced a formula for determining amounts of child support payable (Ridge, 2005).

The principal explicit objective (as written into the Child Support Act, 1989) of the Child Support system in Australia is to ensure that children receive a proper level of financial support from their parents.

Other explicit objectives (as written into the Child Support Act, 1989) include:

- (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;
- (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;
- (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;
- (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;
- (e) that Australia is in a position to give effect to its obligations under international agreements or arrangements relating to maintenance obligations arising from family relationship, parentage or marriage.

It is the intention of the Parliament that this (the 1989) Act should be construed, to the greatest extent consistent with the attainment of its objects:

- (a) to permit parents to make private arrangements for the financial support of their children;
- (b) to limit interferences with the privacy of persons.

As noted above, *policy goals* of child support in Australia include reducing child poverty, encouraging parents to take financial responsibility for their children, and reducing financial dependence of families with children on the state.

The Court is still important to the Australian system principally because it have the power to decide on care ratios between parents where parents cannot agree between themselves. Care ratios in turn determine support levels. Except in the case of parents who separated before 1 October 1989, the Court now has almost no role in determining maintenance or child support. This is now carried out by the Child Support Agency. However, parents can appeal to the Court for a variation in child support ordered by the CSA.

All children aged under 18 are covered by child support legislation, as are children aged 18 who are still in secondary school. However, children under 18 who are part of a couple appear to be excluded.

## 1.2 Please explain briefly the history and development of the current regime.

Prior to the introduction of the Child Support (Assessment) Act 1989 child maintenance was determined by the courts on a case-by-case basis. Financial support for children was determined under the Family Law Act 1975 along with other issues arising from family breakdown including spousal maintenance. As noted above, concerns with child poverty, the ineffectiveness of the court based child maintenance system and a concern with large and increasing government income support payments for lone parent families prompted the Labor government to set up the Child Support Consultative Group (CSCG) chaired by the Hon. Justice Fogarty of the Family Court of Australia. Its report and recommendations, submitted to the Government in May 1988, contained the blueprint for the child support system as it currently exists in Australia. Its main recommendations included the setting up of a Child Support Agency with wide legal powers to enforce payment by NRPs of child support, and the determination of child support levels according to a simple and fair formula, making it an administrative rather than a judicial procedure. Parkinson (2005) further argues that the underlying philosophy of the report, and the scheme that grew out of it, was a shift in the balance towards private parental responsibility for the financial well-being of children, rather than government-funded programmes.

IN 1988 the Child Support Agency was established to enforce existing court orders on child maintenance. From 1 October 1989, a new child support system, administered by the CSA and based on a formula for determining level of child support, came into being. Parkinson (2005) states that "...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 CSCG 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." (Parkinson, 2005, p.45) Burgess (2005) argues that from the start, the CSA took a robust approach to ensuring that NRPs paid support in respect of their children. To this end, the CSA was set up as an agency within the Australian Taxation Office "and could call upon a wide range of enforcement tools, including wage withholding and interception of tax refunds, rental income and dividends." (Burgess, 2005, p.51). Burgess further argues that child support enforcement generated minimal debate in Australia, at least originally, but does not offer any clear reasons for this.

Ridge (2005) on the other hand argues that one factor in the efficient start-up of the CSA also engendered a significant degree of inequity for several years. From the start (and still today) CSA clients were divided into Stage 1 and Stage 2 groups, the first consisting of those who separated prior to 1 October 1989, and the second to subsequent cases. While the CSA did take on responsibility for collection of maintenance for Stage 1 cases, the court remained responsible for determining maintenance amounts. With Stage 2 cases on the other hand, the CSA took on responsibility for both assessment of child support, and for collection from NRPs.

While the CSA was established as an enforcement agency with strong legal powers for accessing individuals' tax and social security records and for ensuring payment of child support, Burgess (2005) argues that over the years, the way in which the agency approaches its clients has been transformed, with the emphasis on enforcement gradually replaced with one on encouraging cooperation and voluntary compliance. For example, even though the CSA has the right to garnishee child support from NRPs' earnings as a default, it began in the 1990s to make more extensive efforts to encourage NRPs to pay voluntarily, and to enter into 'private collect' arrangements with PWCs for the transfer of child support.

Although the basic scheme today is recognisably that recommended in the 1988 Report of Mr Justice Fogarty, there have been numerous adjustments over the intervening years, most of them arguably resulting in less onerous obligations for the NRP, or in encouraging a more cooperative approach between NRP and PWC (indeed, several commentators note that the Fathers' lobby has been

particularly vocal and effective in Australia).

- From 1992, instead of using a very high default figure where the NRPs taxable income was not known, the CSA was to use all available information to derive a reasonable estimate of the NRP's income.
- In 1993, shared care provisions were amended, and the threshold (in terms of percentage responsibility for care of children) for a shared care assessment was reduced from 40% to 30%. Shared care provisions were further amended in 1999 for NRPs with other dependent children.
- Whereas in the original formula the NRP's Exempted Income Amount (see Section 3.5.4 below) was equal to the relevant single rate of social security pension (with additions for dependent children living with the NRP), from July 1999 it was increased to 110% of the relevant pension rate, and where there were dependent children it was increased even further.
- In 1999, the PWC's disregarded income (see Section 3.5.4 below) was reduced, and child care costs incurred by the PWC were no longer permitted to be added to it.
- In 1999, a minimum liability for NRPs of \$260 per year was introduced (this is now \$320).
- In 2001, the Maintenance Income Test for Family Tax Benefit (see Section 5.1.2 below) received by the PWC was made more generous.

In addition following the Report of the Ministerial Task force on Child Support (Parkinson, 2005), a series of reforms are being implemented:

- From 1 July 2006:
  - (1) Parents who care for their children for 14% of the time and over (that is, one night a week) will be able to claim the higher 'with child' rate of Newstart Allowance (Australian unemployment assistance). Prior to this, the care threshold was 30%.
  - (2) The cap on maximum NRPS income above which no additional child support is payable is reduced from \$139,347 to \$104,702 (this amount is indexed to average earnings).
  - (3) The percentage of child support that NRPs can nominate to pay for particular items (eg., school fees) is increased from 25% to 30%.
- From January 2007:
  - (1) The role of the Social Security Appeals tribunal will be widened to include review of CSA decisions.
  - (2) PWCs will be able to pursue non payment of debt from NRPs through the courts. Currently only the CSA can do this on behalf of the parent.
- From July 2008:
  - (1) Following recommendations in the Report of the Ministerial Taskforce on Child Support, a new formula will be introduced. This will be based on the principle of apportionment of costs between parents. First, total Child Support Income will be calculated from both parents' incomes (this amount will fall as total income of the parents increases), and then apportioned to each parent on the basis of their respective incomes and shared care. In addition, the percentage applied to payments for children aged 0-12 will be reduced, while it will be increased for children age 13-17. Shared care arrangements will also be adjusted, so that care for a child for one night a week is recognised in terms of reduced child support obligations. Note that these are complex changes, and cannot be easily explained in the format here.
  - (2) For the first three years after separation, parents will be able to have income from second jobs excluded from child support calculations.
  - (3) More step-children will be treated as dependants of the NRP.
  - (4) Legal protection of parents entering into long term child support agreements will be strengthened.
  - (5) Lump sum arrangements (for example transfer of property) will be taken into account in the calculation of child support.
  - (6) Arrangements regarding suspension (and if necessary reinstatement) of child support will be made easier for parents who wish to reconcile.

**1.3 If there has been a major transfer of administrative responsibilities or any major change in approach since 1997, please describe the policy context and the process of creating and implementing the initiative. Were the changes controversial? (an example here might be the establishment of a new agency)**

See also 1.1 and 1.2 above.

In 1999 (I think) responsibility for the CSA was transferred from the CSA to the Department of Family and Community Services (FaCS).

As noted above too, the approach of the CSA has become one of more encouraging voluntary agreements and voluntary payments between parents, and relying less on its legal powers of enforcement.

**1.4 Which of the following were explicit objectives of the change?**

- Limiting public expenditures
- Enforcing obligations to biological children
- Reducing child poverty
- Influencing relationship formation and dissolution behaviour
- Influencing employment of lone parents
- Increasing voluntary arrangements for maintenance
- Other – reducing obligations of NRPs.

## PART TWO: ENTERING THE CHILD MAINTENANCE SYSTEM

*In this part of the questionnaire we are interested in entrance into the child maintenance system, considering arrangements for couples who have been married, those who have cohabited, and those who have not lived together.*

### 2.1 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE BEEN MARRIED

#### 2.1.1 In your country, who has primary responsibility for divorce proceedings?

**Courts** The Federal Magistrates Court, or in Western Australia, the Family Court of Western Australia

**Other (please list and describe)**

#### 2.1.2 Please explain briefly the legislative, administrative and procedural framework for divorce in your country.

Divorce can be applied for (through the Court), usually only after a minimum period of two years' marriage, the most recent year of which the couple was separated. In the case of marriages of less than two years, a couple must obtain a 'counselling certificate' in addition to being separated for a least a year in order to apply for a divorce.

Procedure:

- Either spouse can apply for a divorce, or both spouses can make a joint application.
- The persons(s) seeking divorce make(s) a written application to the Court for divorce, including details on the respondent (other spouse) and children. The application needs to be affirmed in front of a justice of the peace, notary public or lawyer (and copied to the respondent, who must sign it and return it to the applicant).
- The application form includes details on all children of the divorcing couple, including those born before marriage, adopted or non-biological children treated as family members. Details requested on the form include the children's current living arrangements: adults and children they live with, their housing situation (eg., does the child have own room), supervision when parent is working, child's contact with non-cohabiting parent, financial support including maintenance and child support, the child's health, and education arrangements.
- If sufficient information is supplied and the spouse agrees, the divorce will be granted.
- The respondent can object to the granting of a divorce, one possible ground being that arrangements for children are not proper.

#### 2.1.3 Explain how decision-making about child maintenance fits around the divorce process. Who has the main responsibility for deciding whether and how much child maintenance should be paid when a couple divorce?

In general, maintenance of children is not directly dealt with by the court anymore, except in the case of children born or parents separated before 1 October 1989 (these amounted to 10,000 cases in 2005, as against over 700,000 cases dealt with under the Child Support legislation). However, divorcing parents can register a Parenting Plan with the Court (as can parents who never married), and this in turn can influence how child support will be calculated by the Child Support Agency.

Where children were born or parents separated after 1 October 1989, the children are covered by the Child Support Acts 1988-1989 (updated and amended several times since then) which are administered by the Child Support Agency, and not the Family Court. Payments are called 'child support'.

In all cases where parents agree about child support arrangements they can make their own arrangements, except where one party is in receipt of income support payments from Centrelink (the Government's front-line social security agency).

## **2.2 CHILD MAINTENANCE ARRANGEMENTS FOR COUPLES WHO HAVE LIVED TOGETHER WITHOUT BEING MARRIED**

### **2.2.1 Please explain briefly the legislative, administrative and procedural framework (if there is one) in which unmarried parents who had lived together separate.**

Same as above

### **2.2.2 Explain how decision-making about child maintenance fits into this framework. Who has the main responsibility for deciding whether and how much child maintenance should be paid when an unmarried couple separate?**

Same as above

### **2.2.3 Please explain briefly what happens if paternity is disputed in couples who have lived together.**

(this area of legislation is quite complex in Australia. The excerpt below is from the CSA website [www.csa.gov.au](http://www.csa.gov.au)):

In child support legislation, the term a 'parent' includes both natural and adoptive parents.

When a carer applies for a child support assessment CSA can be satisfied that the person they seek child support from is a parent of a child only in 8 fact situations (section 29(2)):

1. the child was born while the person was married to the child's mother or father. A child is born during a marriage even if the parties to the marriage have separated as long as a divorce is not finalised (i.e. before the decree absolute).
2. the person is named as the child's parent in a register of births or parentage information kept under Australian law or the laws of a prescribed overseas jurisdiction. CSA needs to sight a copy of the birth certificate or the applicant must provide a statutory declaration stating that the person they named as the liable parent is recorded as a parent on the child's birth certificate.
3. an Australian court, or a court of a prescribed overseas jurisdiction has expressly found that the person is a parent of the child, or has made a finding that could not have been made unless the person was a parent of the child (and that finding has not been set aside, altered or reversed).
4. the person has executed an instrument under an Australian law, or the law of a prescribed overseas jurisdiction (See chapter 1.5), such as a statutory declaration under the Oaths Act of an Australian state, acknowledging that they are the child's father or mother, and that instrument has not been annulled or set aside.
5. the person has adopted the child.
6. the person is a man and the child was born within 44 weeks of his marriage to the child's mother, which has since been annulled.
7. the person is a man who was married to the child's mother and they separated, then resumed cohabitation for 3 months or less, and the child was born within 44 weeks of the end of that last period of cohabitation but after they divorced (after the date of the decree absolute).
8. the person is a man who cohabited with the child's mother at any time during the period beginning 44 weeks and ending 20 weeks before the child was born, but they were not married at any time during that period. Cohabitation involves living together in a domestic relationship. CSA can consider the financial and social aspects of the relationship, the nature of the household and the sexual relationship between the 2 people, in deciding whether they cohabited.

CSA cannot be satisfied that a person is a parent of a child solely on the basis of the results of paternity tests, or a person's verbal acknowledgment of parentage. Only a court may determine that it is satisfied of a child's parentage on the basis of other evidence.

*Conflicting evidence*

CSA does not need to conduct enquiries or make investigations. However, if evidence is available under more than one of the paragraphs in section 29(2) and the evidence conflicts, CSA can choose which person is more likely to be a parent of the child (section 29(3)). CSA does not have to be satisfied a person is a parent when one of the 8 fact situations exists if there is conflicting information which casts doubt on a child's parentage.

CSA can take into account other types of evidence when making a decision about conflicting evidence. CSA is not making a finding of parentage, but an administrative decision as part of a decision whether or not to accept an application for assessment.

If either parent believes that CSA should not have accepted an application, as there is no evidence that the payer is a parent, they can object to the decision to accept the application.

A payer who believes that they are not a parent of a child can apply directly to a court for a declaration under section 107 of the Assessment Act (See chapter 4.3).

Once CSA has accepted an application, it cannot cancel an assessment because the payer and payee agree that the payer is not a parent (Child Support Registrar and Z and T [2002] FamCa 182) or have better evidence. If a payer or payee later advises CSA that they have more evidence about the parentage of a child they should be advised of their right to object, to apply for an extension of time to object and/or to apply to a court. Alternatively, the payee may be able to elect to end their assessment.

An applicant can object to CSA's decision to refuse to accept the application (See chapter 4.1). If dissatisfied with the objection decision they can apply to the court for a declaration under section 106 of the Assessment Act and orders for parentage testing (See chapter 4.3).

*A child born as the result of an artificial conception procedure*

A person who is a parent under section 60H of the Family Law Act is also considered a parent for the Assessment Act.

Section 60H applies to children born as a result of artificial conception procedures. A woman who gives birth to a child following an artificial conception procedure is legally that child's mother. If she was married and her husband consented to the procedure, he is the child's father. If she lived with a man as husband and wife on a genuine domestic basis, and he consented to the procedure, he is the child's father. A woman's husband or partner is presumed to consent to the procedure unless it is proved, on the balance of probabilities that he didn't.

In Western Australia, state laws provide for a woman's same-sex partner to be recognised as the other parent of a child born as a result of an artificial conception procedure. The birth mother is a parent in the ordinary meaning of the word, however, the same-sex partner is not a parent under section 60H of the Family Law Act and is therefore not a parent for the purposes of the Assessment Act. The same sex-partner may apply to a court in Western Australia for an order for child maintenance under the Family Court Act 1997 (WA).

**2.3 CHILD MAINTENANCE ARRANGEMENTS FOR THOSE WHO HAVE NEVER LIVED TOGETHER**

**2.3.1 In couples who have not lived together, explain how decision-making about child maintenance is made. Who has the main responsibility for deciding whether and how much child maintenance should be paid?**

As 2.2.1 above

**2.3.2 Please explain briefly the process for establishing legal paternity in couples who have not lived together when paternity is not in dispute. (For example, legal paternity is presumed if the father's name is on the birth certificate.)**

see 2.2.3 above

**2.3.3 Please explain briefly what happens if paternity is disputed in couples who have not lived together.**

see 2.2.3 above

## PART THREE: THE DETERMINATION OF CHILD MAINTENANCE DUE

*Part Three of the questionnaire is concerned with determination of the child maintenance obligation and entitlement - the decision-making process by which child maintenance is agreed between parents, or decided by Courts or Agencies. This part of the questionnaire does not ask about arrangements for collection or enforcement of maintenance, which is dealt with in Part Four.*

*After an initial overview (Questions 3.1.1-3.1.5), we ask for detailed information about the determination of child maintenance due in three sections which address separately:*

- *voluntary agreements between parents (Questions 3.2.1-3.2.3)*
- *obligations determined by Courts (Questions 3.3.1-3.4.4)*
- *obligations determined by other agencies/organisations (Questions 3.5.1-3.6.5)*

*One of these three sections may not be relevant in your country (for example, if Courts are not involved in determination of maintenance obligations). Please complete the sections which are relevant to your country, and if you leave out a section please explain why.*

*Please remember that we are interested in three groups of parents:*

- *separated married parents (whether formally divorced or not)*
- *separated cohabittees*
- *parents who have never lived together.*

### 3.1 OVERVIEW

#### 3.1.1 **Are parents who were married allowed to make a voluntary agreement as to the amount of maintenance? Are separated cohabittees? Are parents who have never lived together? For each group, please briefly discuss the circumstances in which they are allowed to make a voluntary agreement.**

No distinction is made in Australian child support legislation between separated married parents, divorced parents, separated cohabittees or parents who never lived together.

Court orders are no longer used to determine child support costs, except in the case of couples who separated before 1 October 1989. However, court orders can still be made with respect to maintenance for spouses, and for maintenance to be paid by step-parents, if the court judges this to be appropriate.

However property settlements between parents are determined by courts.

*Where parents freely make a private agreement and the caring parent is not dependent on government income support payments*

All parents are entitled to agree their own child support arrangements between themselves, so long as both are happy with the arrangement, and so long as the PWC is not dependent on government income support payments other than the minimum rate of Family Tax Benefit (\$70.42 per week for one child aged under 13 in July 2006).

All child care agreements, including those where parents make a voluntary agreement can be registered by parents with the CSA so long as it is between an eligible carer and the parent or parents of the child; and is in relation to an eligible child who is under 18 years of age, not a member of a couple, and who is an Australian citizen or ordinarily resident in Australia or a reciprocating jurisdiction. The agreement must include a provision covering at least one of the following matters:

- payments for a child in the form of periodic amounts;
- variations to the payments for a child in the form of periodic amounts for which a payer

- is already liable;
- payments to third parties;
- payments in kind; and/or
- ending a child support liability.

(An agreement can contain other clauses, but these are not relevant for the purposes of the Assessment Act)

Voluntary agreements can be registered through completion of a special form which allows for

- periodic payments of a set amount, paid to the person entitled to receive child support (the Payee). For example, \$100 per child per month.

OR

- payments calculated after modifying the formula assessment. Parents can choose to modify parts of the child support formula assessment. For example, they can agree to change the incomes applied to calculate the assessment.

AND (but not necessarily)

- non-periodic payments including lump sum payments and payments to third parties. For example, school fees paid directly to a school; or mortgage payments for the house where the children and the Payee live.

In practice, it is Centrelink (government income support payments agency) must also approve a large percentage of child support agreements (which the CSA will refer to it) because of the potential interactions between child support and the government income support system. Parkinson (2005) reports that nearly 25% of payers and 60% of payees are in receipt of some form of income support payments through Centrelink, the government income support payments agency. The CSA will refuse to accept any agreement which might result in a higher level of income support being paid to the PWC than would be the case under the CSA's own formula.

Where parents enter into a voluntary agreement that is registered with the CSA, the CSA can if desired collect money from the payer, and pass it on to the payee. The CSA does not take a commission or 'cut' for this service.

Unlike Child Support Periods for which CSA assessments are made (maximum period is 15 months) it appears that there is no time limit to voluntary agreements, which can nonetheless be difficult to change or terminate. The Report of the Ministerial Taskforce on Child Support gives the following example that was brought to the attention of the Legal Aid commission of NSW which it notes may not be an isolated case:

"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." (Parkinson, 2005, p.210)

*Where parents cannot agree to a private arrangement and the caring parent is not dependent on government income support payments*

If parents cannot agree an arrangement among themselves (including after the intervention of lawyers

and mediators), they can ask the CSA to be involved, and the CSA can impose its own formula, and if desired collect money from the payer, and pass it on to the payee. Again, the CSA does not take a commission or 'cut' for this service.

*Where the caring parent is dependent on government income support payments*

If the PWC is dependent on government income support payments over and above the minimum rate of Family Tax Benefit Part A (from 1 July 2006 \$70.42 per week for one child aged under 13), then the CSA is very likely to become involved in applying the Maintenance Action Test. Under the Maintenance Action Test most separated people claiming the higher rate of FTB Part A must take 'reasonable action' to obtain child support:

- to lodge an 'Application for Child Support Assessment'
- to have the payments collected by the Child Support Agency (CSA); or privately collect 100% of the CSA-determined assessment; or
- lodge a 'Child Support Agreement' for an amount no less than the formula assessment.

Some PWCs are exempt from the Maintenance Action Test. The Report of the Ministerial Task force on Child Support states that the main grounds for exemption from the Maintenance Action Test 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)." (Parkinson, 2005, p.

**3.1.2 If parents can make a voluntary agreement, does it have to be approved by someone else? By whom? What criteria are used? How often is the agreement approved, and what happens if it is not? (Again please answer each part of this question for separated married parents, separated cohabittees, and those who have never lived together.)**

Voluntary agreements have to be approved by the CSA (which may refer them to Centrelink) if the caring parent is dependent on government income support payments other than the minimum rate of Family Tax Benefit.

All voluntary agreements can be registered with the CSA, and the CSA can refuse to register an agreement where the agreed amount of child support is less than it would be under its formula, and there are consequences for income support. Once an agreement is registered with the CSA, it attains the status of a court order. This means that "any 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." (Parkinson, 2005, p.212). In other words, any variations in a parent's income or other circumstances would not necessarily affect the payment of child support due.

**3.1.3 Do courts play a role in determining maintenance amounts? If so, is it a primary role, or residual? Please briefly explain the circumstances and the types of cases in which the court is involved.**

Not generally. Except in the case of parents who separated prior to 1 October 1989, or in the case of maintenance for step-children where the CSA generally does not play a role. However, courts can play a role in determining care ratios between parents (which in turn can impact on the amount of child support paid) and in property settlements between separating parents. Parents can also appeal to the Court to review an assessment made by the CSA.

**3.1.4 Do agencies other than the court play a role in determining maintenance? If so, which agency/agencies? Please describe its functions, both in terms of functions related to child maintenance and functions related to other areas of responsibility. Please explain the circumstances and the types of cases in which the agency is involved.**

The Child Support Agency is the only government agency with whom the vast majority of child support

agreements can be registered, and is the only agency that can impose a child support agreement on parents (except in the case of parents who separated prior to 1 October 1989).

The main purpose of the CSA is to 'ensure that children of separated children receive the financial support that both their parents are responsible for providing'. This includes ensuring payments are made in a timely manner, that financial support is in accordance with parents' capacity to pay, and that parents are encouraged to take financial responsibility for their children without the CSA's intervention.

As noted in 3.1.1 above, the CSA becomes involved where parents cannot make a voluntary child support agreement, and where the caring parent is dependent on government income support payments other than the basic rate of Family Tax Benefit. However, voluntary agreements can also be registered with the CSA, which can also facilitate payments from one parent to the other.

**3.1.5 For children of formerly married parents, is the child maintenance obligation in the child's name or in the name of the parent with care? Is this different for separated cohabitantes or for children of parents who have never lived together? Does it differ depending on whether it is a voluntary agreement versus being determined by the court or an agency?**

In all cases where the CSA is involved, the award is made to the parent with care.

---

*We now ask more detailed questions about the three types of arrangements, voluntary, court-determined, and agency-determined.*

## **3.2 VOLUNTARY AGREEMENTS ABOUT CHILD MAINTENANCE**

**3.2.1 Please provide information on voluntary agreements: are lawyers, agencies or other organisations involved in mediating or helping to negotiate voluntary child maintenance agreements? If so, please explain the processes. Are there any formal guidelines on deciding the amount?**

Where the PWC is not dependent on government income support payments above the basic Family Tax Benefit, parents are free to make voluntary agreements among themselves about child support. If they choose to put these an agreement in writing, they can register it with the CSA, without the involvement of lawyers, or anybody else (although lawyers and mediators can help parents draw up an agreement). The CSA issues informal guidelines for voluntary agreements but does not attempt to impose its own formula.

**3.2.2 What happens if parents attempt to reach a voluntary agreement but are unable to do so?**

If parents are unable to agree, also for example after the intervention of mediators or lawyers (but they are not obliged to go to lawyers) then either parent can apply to the CSA for as assessment by completing appropriate Child Support Assessment (paying parent) or Child Support Assessment (payee) forms. Then the CSA will assess according to its own formula.

## **3.3 COURT DETERMINATION OF CHILD MAINTENANCE**

*This section seeks detailed information about child maintenance determined by Courts. If Courts are not involved in determination of maintenance in your country, please go on to the section on agency determination (after question 3.4.4). If courts are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below.*



If there is a maximum, please also provide information on its level and the circumstances in which it is used.

**3.3.4** These questions deal with how the Court takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.

**A.** How much of the non-resident parent's earnings are considered?

- All
- Some (explain)
- None (go to 3.3.4 C)

**B.** If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?

- Gross
- Net (What is deducted?)

**C.** Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?

- All ignored
- All considered
- Some ignored, some considered. Which ones?

**D.** Are the non-resident parent's basic living expenses taken into account?

- No
- Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
- Yes. Please describe the way it which it affects the obligation.

**E.** Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?

How?

**F.** Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?

**3.3.5** The following questions deal with how the Court takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?
  
- B. Is the obligation affected by whether the non-resident parent had prior children? In what way?
  
- C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?
  
- D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?

**3.3.6** These questions deal with how the Court takes account of the parent with care's resources in determining whether there is an obligation and its amount.

- A. How much of the parent with care's earnings are considered?
  - All
  - Some (explain)
  - None (go to 3.3.6 C)
  
- B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?
  - Gross
  - Net (What is deducted?)
  
- C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?
  - All ignored
  - All considered
  - Some ignored, some considered. Which ones?

- D. Are the parent with care's basic living expenses taken into account?
- No
  - Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.
  - Yes. Please describe the way in which it affects the obligation.
- E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?

**3.3.7** These questions deal with how the Court takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.

- A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?
- B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?
- C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?

**3.3.8** These questions deal with how the Court takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.

- A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?
- B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?

**3.3.9** These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.

- A. Does the child's age affect the amount of the obligation? If yes, what are the age groups? Do obligations increase or decrease with age?
- B. Does the number of children affect the amount of the obligation? How?
- C. Is there a minimum desirable amount set per child?
- D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).
- E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)

**3.3.10** These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)

- A. Please explain how the Court treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.
- B. Please explain how the Court treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:
- lump sum payments
  - previous voluntary child maintenance payments
  - spouse maintenance (alimony) or other financial transfers to ex-partners
  - transfer of pension rights
- 

#### **3.4 PROBLEMS AND REVISIONS FOR COURT DETERMINATIONS**

**3.4.1** Please discuss any problems that arise in gathering information necessary for the Court to determine maintenance, and how such problems are dealt with.

**3.4.2** Approximately how long does it usually take for the Court to make the financial decisions about child maintenance?

**3.4.3** When does obligation for and entitlement to Court-determined child maintenance end for divorced and separated parents and their children?

Please explain with reference to:

- \$ child's age/education level
- \$ marriage/cohabitation of child
- \$ any other characteristics of child
- \$ cohabitation/remarriage of parent with care
- \$ cohabitation/remarriage of non-resident parent
- \$ any other characteristics of either parent.

#### 3.4.4 These questions deal with revisions to the amount due.

- A. Does the Court do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take account of inflation.)
- B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?
- C. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?

### 3.5 AGENCY DETERMINATION OF CHILD MAINTENANCE

*This section seeks detailed information about child maintenance determined by agencies or organisations other than the Court. In some countries there are no such agencies involved in the determination of child maintenance liabilities and entitlements, because such matters are handled solely by the Court. If this applies to your country, please go straight on to Question 3.7.1. If agencies are involved, please provide copies of formulae, standards, schedules, tables or guidelines as appropriate in addition to answering the questions below. If the agency uses discretion to address any of the questions below, please discuss the criteria that are typically taken into account. As you answer questions in this section, please remember that we are interested in three groups of parents (separated married parents, separated cohabitantes, and parents who have never lived together).*

#### 3.5.1 Please explain how lawyers, agencies or organisations are involved in mediating, supporting or helping parents involved in Agency decisions about regular child maintenance. Does this differ for separated married parents, separated cohabitantes, and parents who have never lived together?

The CSA acts as a sole decisionmaking authority in the child support cases referred to it, either because parents cannot agree among themselves (or with the help of lawyers and mediators), or because the parent with care is in receipt of government income support payments other than the basic rate Family Tax Benefit.

There are no differences in how separated, divorced or ex-cohabiting couples are treated by the CSA.

#### 3.5.2 How would you describe the main method of Agency determination of the amount of maintenance on the following continuum:

- Full discretion
- Mostly discretion, but with informal guidelines
- Formal guidelines
- Rules/rigid formulae

**If more than one method is used, please describe the circumstances that could lead to different methods.**

Only one method is used

**Please report any differences between separated married parents, separated cohabitants, and parents who have not lived together.**

None

**3.5.3 Is there a minimum amount of maintenance required?**

- No
- Yes. How much? What are the circumstances in which it is used?

The minimum assessment is \$320 from 1 July 2006 (it was \$260 in 2005). This is the default. However, payers can apply using a special procedure to have their assessment reduced to zero if they can demonstrate that their total income will be less than \$320 for the 12 months after start of the child support period.

The following payments can be used by the CSA to determine whether the payer can pay the minimum amount:

- Government income support payments
- compensation payments
- Lotto wins
- net amounts from dividends
- gifts or allowances

But the following payments are excluded:

- a prisoner's allowance, used to purchase minor personal items
- a disability support pension, used mainly to support the person receiving it
- a support pension payment to a veteran who is totally and permanently incapacitated.

**If there is a maximum, please also provide information on its level and the circumstances in which it is used.**

From 1 July 2006 a payer's income is 'capped' at 2.5 times the annual equivalent of all employees average weekly total earnings for the child support period (EAWE) – \$41,881 in 2006 (see Table at the end of Section 3.5.4). If a payer's child support income amount exceeds the cap their adjusted income amount is reduced to 2.5 times the annual equivalent of the relevant EAWE less the exempted income amount. This would give a maximum of \$16,329 for one child, given the above EAWE (example from [www.csa.gov.au](http://www.csa.gov.au)).

**3.5.4 These questions deal with how the Agency takes account of the non-resident parent's resources in determining whether there is a child maintenance obligation and its amount.**

**A. How much of the non-resident parent's earnings are considered?**

- All

- X\_\_\_ **Some (explain)**  
 \_\_\_ **None (go to 3.5.4 C)**

What is taken into account by the CSA is *taxable* income, as assessed by the Australian Taxation Office. This is usually the last relevant year of income assessed by the Australian Taxation Office (the tax year runs from 1 July to 30 June). Where a payer estimates his annual income to have dropped by more than 15 per cent compared with the most recent Tax Office assessment, he can apply to the CSA for a revised estimate based on his current income.

Where a person has a taxable income of \$0, that is the amount used for assessment of child support.

Where the payer does not have information on their taxable income, or where they have not lodged a tax return, they can give the CSA an assessment of their income, which the CSA will generally use.

If the person refuses to give income information to the CSA, the CSA "will decide on an appropriate amount to be used in the assessment." ([www.csa.gov.au](http://www.csa.gov.au))

A parent who receives an assessment based on a default income (decided by the CSA) can give CSA their income details. CSA will amend an assessment made using a default income if it receives or obtains better information at any time after the assessment is made.

CSA can decide on a default income by seeking information from sources such as Centrelink (the government income support payments agency), Australian Taxation Office employment and audit information, an employer, or information previously provided to the CSA. Where CSA has information for part of a year, it will base a default income on that information and a pro rata amount of median income. A median income is the mid-range income of child support customers.

If necessary CSA will use income information for up to 3 years prior, and will inflate an income from a previous year by using the appropriate inflation factor. CSA can also use statistical information about the average wage for the parent's occupation to determine an appropriate amount. The Australian Bureau of Statistics publishes tables of average weekly earnings for major occupations and industries.

In the absence of any other information, CSA will use the specified median income for child support customers for the last relevant year of income as the default income.

**B. If some or all of the non-resident parents earnings are considered, is this based on gross or net earnings?**

- X\_ **Gross**  
 \_\_\_ **Net (What is deducted?)**

Gross, pre-tax, but after deductions that are allowable under the Australian taxation system.

**C. Are other sources of income (for example, benefit income, asset income, etc.) of the non-resident parent considered?**

- \_\_\_ **All ignored**  
 \_ **All considered**  
 X\_\_\_ **Some ignored, some considered. Which ones?**

So long as they are assessable for taxation purposes (as for example most income support payments are) then they are counted.

In addition to those that are taxable, some non-taxable income is included in the income calculation for child support purposes. This includes any foreign income exempt from tax, plus any rental property losses (that can be offset against tax obligations) plus any reportable fringe benefits for the relevant tax year.

The following income support payments are ignored for taxation purposes:

- Advance pharmaceutical supplement
- Age pension and other allowance and payments supplementary amounts – rental assistance, remote area allowance, pharmaceutical allowance, incentive allowance.
- Carer allowance
- Carer payment (where both taxpayer and person receiving care are under pension age)
- Disability support pension (where pensioner is under pension age)
- Disability wage supplement
- Disaster relief payment
- Double orphan pension
- Employment entry payment
- Fares allowance
- Mobility allowance
- Pension bonus
- Pensioner education supplement
- Special needs disability support pension (where pensioner is under pension age)
- Special needs wife pension (where pensioner and wife are under pension age)
- Telephone allowance

**D. Are the non-resident parent's basic living expenses taken into account?**

**No**

**Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.**

**Yes. Please describe the way in which it affects the obligation.**

The amount of exempted income depends on the number of children in the non-resident parent's care. In 2006 it is \$13,983 for a non-resident parent with no dependent child, \$23,349 for an NRP with one dependent child, with additional exemptions of \$2,424 for each child under 13 years, \$3,380 for each child aged 13-15 years, and \$5,307 for each child aged 16 years and over. Please also see the table at the end of this section "Basic values used in child support assessment".

**E. Are the non-resident parent's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered?**

Only to the extent that they are considered by the tax system.

**How?**

**F. Are any allowances made for expenses involved in maintaining a relationship with the child? (For example, consider transportation, housing, etc.) How are these expenses considered?**

Yes. Legislation specifically allows that where costs associated with maintaining contact with a child (for example transportation, telephone, internet, costs) exceed 5 per cent of the parent's child support income amount (the sum of a parent's taxable income plus any supplementary income – see 3.5.4C) in a given child support period, then the CSA can increase a parent's exempted income amount to reflect the amount that that person would have to earn to meet the costs that exceed the 5% threshold.

***Basic formula for assessment of child support***

- (1) Taxable Income + Supplementary Amounts = Child Support Income Amount
- (2) Child Support Income Amount – Exempted Income Amount = Adjusted Income Amount
- (3) Adjusted Income Amount x Child Support Percentage = annual child support payable

Child Support Percentage is as follows:

1 child	18%
2 children	27%
3 children	32%
4 children	34%
5 or more children	36%

(this basic formula assumes that the NRP's child support income is less than 2.5 times average employee weekly earnings (see table below) and that the parent with care's taxable income is less than the Disregarded Income Amount, also on the table below)

**Basic values used in a child support assessment***(taken from the CSA's online guide Table 2.4.2: [www.csa.gov.au](http://www.csa.gov.au))*

Child support period starting in:	2003	2004	2005	2006
Exempt income amount - no relevant dependant child	\$12,315	\$12,950	\$13,462	\$13,983
with relevant dependant child	\$20,557	\$21,622	\$22,480	\$23,349
Additional exempt income amount for relevant dependant child, or child in shared care of payer and payee:				
Child under 13 years*	\$2,235	\$2,307	\$2,362	\$2,424
Between 13 and 15 years*	\$3,119	\$3,219	\$3,296	\$3,380
16 years and over*	\$4,672	\$4,914	\$5,109	\$5,307
<i>* child's age 12 months after the start of the child support period.</i>				
Disregarded annual income amount	\$36,213	\$38,168	\$39,312	\$41,881
Inflation factor	3.75	4.00	4.00	6.20
2.5 x average annualised weekly earnings (Payer's income cap prior to 1 July 2006)	\$119,470	\$126,659	\$130,767	\$139,347
2.5 x all employees average annualised weekly total earnings (Payer's income cap from 1 July 2006)			\$98,280	\$104,702
Minimum annual rate of child support	\$260	\$260	\$260 (\$320 for any part of child support period after 1 July 2006)	\$260 (\$320 for any part of child support period after 1 July 2006)
Median income	\$22,172	\$23,059	\$23,981	\$25,468

**Note:** Before the end of each calendar year CSA must publish the following amounts in the Australian Government Gazette for all child support periods starting in the following calendar year (section 155 of the Assessment Act): (1) the yearly equivalent of the Employee Average Weekly Earnings amount; (2) the relevant partnered rate of Social Security pension; (3) the relevant unpartnered rate of Social Security pension; (4) the amounts used to calculate exempt income; and (5) the minimum annual rate of child support.

**3.5.5** The following questions deal with how the Agency takes account of the non-resident parent's family relationships in determining whether there is an obligation and its amount.

**A. Is the obligation affected by whether the non-resident parent has a new partner with whom he lives? How does it affect the obligation? Do a new partner's resources (income) matter? How? Does a new partner's own child (the non-resident parent's stepchild) matter to the obligation? How?**

No. Whether the NRP has a new partner is not generally relevant, nor is the new partner's income.

**B. Is the obligation affected by whether the non-resident parent had prior children? In what way?**

If the NRP is liable for children in more than one family, the total amount of support the NRP must pay is the same as if all the children lived in one family, but the support is pro-rated according to the number of children in each family. For example, if there are 2 children in family A and 1 child in family B for whom the NRP is liable, the NRP's liability is still 32% of adjusted income (taxable income + supplementary income – exempted income). The children in Family A should receive 21.35% of adjusted income, while the child in family B should receive 10.65%.

**C. Is the obligation to the children affected by whether the non-resident parent has a new child that he lives with? In what way?**

Yes, where the NRP has a relevant dependent child, the NRP's liability is reduced. See the table at the end of Section 3.5.4 above. The amount of exempted income that is deducted from taxable + supplementary income is increased according to the number and ages of dependent children that the NRP lives with. With one child (of any age) the amount of exempted income increases from \$13,983 to 23,349 in 2006. For each additional child aged between 12 months and less than 13 years, this increases by \$2,424. for each additional child aged 13-15, it increases by \$3,380, and for each child aged 16+ it increases by \$5,307.

But note: "A step-child is not a payer's relevant dependent child unless the payer has a duty to maintain that child by order of a court under section 66M of the Family Law Act or section 124 of the WA Family Court Act"

**D. Is the obligation to the children affected by whether the non-resident parent has a new child that he does not live with? In what way?**

Yes. See B above.

**3.5.6** These questions deal with how the Agency takes account of the parent with care's resources in determining whether there is an obligation and its amount.

**A. How much of the parent with care's earnings are considered?**

All

Some (explain)

None (go to 3.5.6 C)

If the PWC's taxable income + supplementary amounts (eg., foreign income, etc. – same as for NRP) exceeds the Disregarded Income Amount (equal to average weekly total earnings - \$41,881 in 2006 – see table at end of Section 3.5.4), then the NRP's adjusted income (used for the calculation of child support liability) is reduced by 50% of the excess. Therefore, if the PWC has an income of \$50,000 in 2006, this would reduce the NRP's Adjusted Income Amount by \$4060  $((50,000-41,881)*50\%)$ .

However, the annual rate of child support cannot be less than 25% of the annual rate that would be payable if the PWC's income was less than the disregarded income amount

**B. If some or all of the parent with care's earnings are considered, is this based on gross or net earnings?**

- Gross**  
 **Net (What is deducted?)**

PWC's income is based on taxable income + supplementary income, just like the NRP's income (see 3.5.4C above)

**C. Are other sources of income (for example, benefit income, asset income, etc.) of the parent with care considered?**

- All ignored**  
 **All considered**  
 **Some ignored, some considered. Which ones?**

If it is taxable, it is considered (as is the case with the NRP – see 2.4.5C above). Most government income support payments are taxable. See 3.5.4C above for a list of payments that are not taxable.

**D. Are the parent with care's basic living expenses taken into account?**

- No**  
 **Only in certain circumstances. Please describe the circumstances in which this would occur and the way in which it affects the obligation.**  
 **Yes. Please describe the way in which it affects the obligation.**

**E. Are the parent with care's other personal expenses considered? (For example, work expenses, sickness/health expenses). In what type of circumstances? Are debts considered? How?**

No

**3.5.7 These questions deal with how the Agency takes account of the parent with care's family relationships in determining whether there is an obligation and its amount.**

**A. Is the obligation affected by whether the parent with care has a new partner? How is the obligation affected? Do a new partner's resources (income) matter? How? Does a new partner's own child (the parent with care's stepchild) matter to the obligation? How?**

No

**B. Is the obligation affected by whether the parent with care had children prior to this relationship? In what way?**

No.

**C. Is the obligation affected by whether the parent with care has a new child that she lives with? In what way?**

No.

**3.5.8 These questions deal with how the Agency takes into account the amount of time the non-resident parent spends with the child in determining whether there is an obligation and its amount.**

**A. If a child will spend approximately equal time living with each parent, how would this affect the maintenance obligation?**

The maintenance obligation for the NRP is calibrated according to the level of care undertaken by the NRP and PWC. Two types of care are recognised by the CSA: actual care – the care that each parent can prove that they have (most assessments are based on actual care); and lawful care – care which is set out in a court order or registered parenting plan. Where this exists, the CSA must generally base its assessment of support on this.

The CSA can determine four levels of care: sole, major, shared and substantial. The more care the NRP undertakes, the lower the NRP's liability, so that for one child where caring is shared between parents (PWC cares for 146-219 nights), the NRP's liability is 12% of their Adjusted Income Amount, compared with 18% if the PWC was the sole carer (256 nights or more).

Level of care (in PWC's care)	Number of nights in child support period	Child support for one child (%)
Sole	256 nights or more	18
Major	220-255 nights	14
Shared	146-219 nights	12
Substantial	110-145 nights	8

Note: a child support period is a period of time to which a child support assessment applies. The date of the start of the child support period determines which financial year of income CSA uses to make the assessment. The actual length of the child support period is flexible (depending on individual circumstances) but cannot exceed 15 months.

**B. If a child will not spend equal time living with each parent, would the amount of time spent with the non-resident parent affect whether there is an obligation and its amount? How?**

See 3.5.8 A above.

**3.5.9 These questions deal with the way the obligation relates to characteristics of the child/children and special expenses for them in determining whether there is an obligation and its amount.**

**A. Does the child's age affect the amount of obligation? If yes, what are the age groups? Do obligations increase or decrease with age?**

Only the ages of second and subsequent dependent children of the NRP (that is, those living with the NRP, as opposed to those for whom the NRP is liable to pay support to the PWC). These children affect the Exempted Income Amount (which is deducted from taxable+supplementary income to arrive at the Adjusted Income Amount to which child

support percentages are applied. The table below gives figures for 2006.

Number and ages of relevant dependent children of NRP	Exempted income amount
0 children	\$13,983
1 child (any age)	\$23,349
For each addition child aged 12 months to under 13 years	\$2,424
For each addition child aged 13-15 years	\$3,380
For each addition child aged 16+ years	\$5,307

**B. Does the number of children affect the amount of obligation? How?**

Yes – in two ways. The number of relevant dependent children of the NRP can affect the NRP's Exempted Income Amount as noted in 3.5.9A above, and the number of children for whom the NRP is obliged to pay the PWC affects the final child support assessment as follows:

Number of children of NRP and PWC for whom child support is payable	Percentage of NRP's Adjusted Income Amount payable as child support	
1	18	
2	27	
3	32	
4	34	
5+	36	

**C. Is there a minimum desirable amount set per child?**

No. But there is an annual minimum amount of child support which is set at \$320 from 1 July 2006.

**D. What other characteristics of the child/children can affect the amount? (An example may be a child with a disability).**

From the CSA's Guide (Section 2.6.8 – [www.csa.gov.au](http://www.csa.gov.au)):

"If a child has special needs CSA will consider whether the costs of maintaining the child are higher because of the costs related to the special needs. The special needs must involve a cost that is additional to the normal needs of a child that are expected to be met from the child support assessment. For an assessment to be changed the costs must result in a need for additional financial support in addition to that provided by the child support assessment.

The fact that the child suffers from a severe disability or a special ability does not, in itself, mean that an assessment should be changed. The overall test is whether the costs of supporting that child are significantly different from those faced by most other parents. If the costs are only slightly higher than usual they might not be considered to significantly affect a parent's ability to provide financial support for the child.

In some cases, a child may suffer from an illness that is easy and relatively inexpensive to treat but, because of complications, the expenses associated with that condition are significant in the short-term. In other cases, the child may have a disability but the costs associated with that disability are nominal in terms of the parent's out-of-pocket expenses. This may be because the parent receives significant subsidies from the government in relation to medication, therapy or treatment or because another person meets the expenses associated with the condition."

In addition, the Carer Allowance, paid to parents to help support dependent children with a disability, is not taken into account in the assessment of taxable income for either the NRP or the PWC.

**E. What expenses for children can affect the amount of the obligation? (For example, child care expenses, school expenses, special health expenses, etc.)**

The CSA has quite a wide scope to alter an assessment if parents request one on grounds of justice and equity. CSA must be satisfied that it would be just and equitable as regards the child, the liable parent, and the carer entitled to child support before a decision to change the assessment is made. CSA may give more weight to some factors than to others depending on the case. The factors include:

- the nature of the duty of a parent to maintain a child,
- the proper needs of the child,
- the income, earning capacity, property and financial resources of the child and of each parent,
- the commitment of each parent to support himself or herself, and any other child or person that they have a duty to maintain,
- the direct and indirect costs incurred by the payee in providing care for the child,
- any hardship that would be caused to the child or the parents by the making of, or the refusal to make, a determination,
- any other relevant matters.

In making a re-assessment, the CSA must in particular consider:

- The nature of the duty of a parent to maintain a child and, in particular, the fact that it is the parents of a child who have the primary duty to maintain the child; and
- the effect that any proposed change would have on the child or payee's entitlement to an income-tested pension, allowance or benefit.

The CSA Guide (Section 2.6 [www.csa.gov.au](http://www.csa.gov.au)) lists 10 possible reasons for re-assessment of the amount of obligation:

Reason 1. The costs of maintaining a child are significantly affected by either parent's high costs of contact with the child (see also 3.5.4F).

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).

If one of the 10 reasons for a change of assessment exist, CSA must also consider whether changing the assessment would be 'just and equitable' and 'otherwise proper' (see above). In certain circumstances, there are fairly exact guidelines on what constitutes grounds for a re-assessment, and how that reassessment should be done. See for example in relation to costs of contact, 3.5.4F above.

**3.5.10 These questions deal with the way the obligation is related to other financial circumstances of the parents. (Please note that we are only interested in these issues as they relate to child maintenance.)**

**A. Please explain how the Agency treats owner-occupied housing owned by parents, and other assets, such as land and vehicles, in making decisions about regular child maintenance.**

Not relevant. Only taxable income + certain supplementary income as outlined above is taken in to account.

**B. Please explain how the Agency treats other financial transactions and settlements that may be made in making decisions about regular child maintenance. We include here:**

- lump sum payments
- previous voluntary child maintenance payments
- spouse maintenance (alimony) or other financial transfers to ex-partners
- transfer of pension rights.

In general, these are not relevant. However, the NRP or PWC can ask for a reassessment for a number of reasons outlined in 3.5.9E above

## **3.6 PROBLEMS AND REVISIONS FOR AGENCY DETERMINATIONS**

**3.6.1 Please discuss any problems that arise in gathering information necessary for the Agency to determine maintenance, and how such problems are dealt with.**

The CSA does not publish regular data on compliance, and therefore it is difficult to give a picture of the problems that regularly arise in information gathering. As noted in Section 3.5.4 above, the CSA can use a number of sources to make up for a lack of information, for example on the income of the NRP.

**3.6.2 Approximately how long does it usually take for the Agency to make the financial decisions about child maintenance?**

The CSA publishes the following targets on its website ([www.csa.gov.au](http://www.csa.gov.au)), but does not appear to publish outcomes:

SERVICE	TARGET
Child support application electronically registered within 21 days of lodgement	90%
Child support application (prior to electronic) will be registered within 21 days of lodgement	80%
CSA will decrease the amount of time it takes to get the first payment to new	Decrease in

customers	average number of days from lodgement to disbursement
CSA will respond by phone or letter within 28 days	85%
CSA will provide high quality advice and answer telephone call within 2 minutes	90%
Change of Assessment conference will be scheduled within 90 days of application	90%
CSA will make any changes required within 21 days of Change of Assessment conference	95%

### **3.6.3 Please explain any circumstances in which Agency-determined child maintenance obligations are overridden by other legal requirements.**

The CSA Guide Section 2.7.1 states: "A parent can apply to a court if they are dissatisfied with most CSA decisions under the Assessment Act. It is usually necessary for CSA to have dealt with an objection about the decision before the parent can make their court application.

Courts can make a range of orders which affect a child support assessment.

A parent can appeal to a court about the particulars of their child support assessment as well as particular CSA decisions. A parent can also apply to a court for a change of CSA's assessment because of special circumstances.

The court can make other orders affecting a child support case including stay orders and orders against a payee for the repayment of overpaid child support."

### **3.6.4 When does liability for and entitlement to Agency-determined child maintenance end for divorced and separated parents and their children?**

**Please explain with reference to:**

**§ child's age/education level**

When child turns 18, or finishes secondary school at age 18

**§ marriage/cohabitation of child**

It may be the case that children who are members of a couple are excluded from child maintenance regulations, since the CSA will only accept as valid child support agreements between couples that cover children who are not members of couples.

**§ any other characteristics of child**

No

**§ cohabitation/remarriage of parent with care**

No

**§ cohabitation/remarriage of non-resident parent**

No

**§ any other characteristics of either parent.**

No

### **3.6.5 These questions deal with revisions to the amount due.**

- A. Does the Agency do an automatic adjustment of existing obligations? If so, what adjustment mechanism is used? (An example would be updating annually to take**

**account of inflation.)**

No. there is a regular review, at least every 15 months, but it can be more frequent. However, where new information is not forthcoming (for example most recent annual taxable income of NRP), the CSA can adjust the most recent data available, for example for the previous year, according to wage or price inflation.

**B. If there is not an automatic adjustment, is there a regular review? How often? What criteria are used to determine if the obligation should be changed?**

A review is carried out at least every 15 months. Main criteria which can alter obligations include changes in taxable income of NRP and PWC, changes in number of dependent children of NRP and or PWC, changing ages of children.

However, reassessments can also take place at the request of the PRC or the PWC mainly on the basis of one of the 10 reasons outlined at 3.5.9E above.

**C. Can all parents (parents with care and non-resident parents) request an adjustment? If not, are there any types of parents who can? What factors are considered in whether an adjustment is made?**

Both NRPs and PWCs can request an adjustment, for reasons including changed financial or family circumstances (eg, the birth of a new child of the NRP).

Parents can also request an adjustment for other reasons. See 3.5.9E above.

*This ends the sections of the questionnaire that have detailed questions on the way maintenance amounts are determined in voluntary, Court-based, and agency-based arrangements. The final section of this part asks broader questions.*

### 3.7 REVIEW AND SUMMARY

**3.7.1 Please review all your answers in Part Three, “The Determination of Child Maintenance Due.” Please summarize the key differences in the ways in which separated married parents, separated cohabiters, and parents who have never lived together are treated differently. What is the rationale for these differences in treatment?**

No major differences

**3.7.2 What are the perceived advantages associated with voluntary agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages and problems, and by/for whom?**

The CSA strongly supports voluntary agreements between NRPs and PWCs as a means of fostering individuals' responsibility for their children.

**3.7.3 What are the perceived advantages associated with Court-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived disadvantages, and by/for whom?**

Not applicable

**3.7.4 What are the perceived advantages associated with Agency-based agreements about child maintenance, and by/for whom are these perceived? What are the perceived**

### disadvantages, and by/for whom?

#### **3.7.5 Please comment on the way that voluntary agreements, Court agreements and Agency agreements interact. What happens if later a voluntary agreement breaks down? Can the parent with care seek assistance from the Court or Agency? Would they recalculate the amount of the obligation?**

Once registered with the CSA (when it attains the force of a court order), a voluntary agreement cannot be varied except by:

- a subsequent agreement between the parents that is accepted by CSA
- a court

If a voluntary agreement breaks down, a parent can seek the assistance of the CSA in enforcing that agreement. However, the CSA cannot recalculate the amount of obligation unless the agreement is superseded by another agreement or otherwise ended through legal action.

The 2005 Report of the Ministerial Taskforce on child Support makes the following recommendations regarding child support agreements:

“17.1 Agreements between the parents concerning child support should have effect on the condition that entitlement of the payee to FTB Part 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 CSA, under the same conditions and with the same effect as binding financial agreements under the Family Law Act 1975. [That is, in particular only if both parties have independent legal advice]

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.”

(Parkinson, 2005, pp.31-2)

## **PART FOUR: COLLECTION, PAYMENT AND ENFORCEMENT OF CHILD MAINTENANCE**

*This part of the questionnaire is concerned with the way in which child maintenance monies are transferred from the non-resident parent to the parent with care and/or child. For some people, this may be achieved entirely by their own arrangements, including the direct transference of monies from non-resident parent to the parent with care, or arrangements through a bank. For others, transfer of monies may involve an intermediary (for example, a collecting agency), which has responsibility for receiving child maintenance from non-resident parents, and forwarding payments to parents with care/children. We seek information on collection and forwarding, non-payment, and guaranteed or advance payment schemes.*

### **4.1 DIRECT ARRANGEMENTS FOR COLLECTING MAINTENANCE**

#### **4.1.1 Under what circumstances may non-resident parents choose to pay child maintenance directly? We mean direct transfers of money from the non-resident parent to the parent with care or a private bank transaction.**

The CSA encourages private child support arrangements between parents, and even where the CSA makes the assessment or the child support agreement is registered with the CSA, the CSA still encourages what it terms 'private collect' arrangements, where the parents make their own arrangements for the transfer of money. This is the case for all child support cases, including those where the PWC is in receipt of government income support payments. The PWC can end a 'private collect' arrangement by writing to the CSA and asking for 'CSA collect'. However, the PWC has to show that there are grounds for ending the 'private collect' arrangement (for example, continued non-payment of child support).

In cases where the CSA administers the transfer of payments, the CSA can decide to stop collecting child support on behalf of a PWC (or as Parkinson, 2005, puts it "require parents to collect child support privately") if it is satisfied that the parents involved can make their own sustainable private collection arrangements, that is, where the payer has a satisfactory payment record for the past 6 months, where the CSA believes that the payer will continue to pay their child support on time, and where the CSA is satisfied that private payment arrangements are appropriate for the parents involved (for example, there is no history of violence or disputes, or physical or mental illness that would make a private arrangement difficult for either parent).

However, Parkinson (2005) also points out that where the PWC applies again for CSA collect, the CSA is not obliged to accept that application. Rather, the PWC has to prove the need for it.

#### **4.1.2 Are these direct payments monitored, and if so, how?**

No. Even where agreements are registered with the CSA, if the parents agree 'private collect' then these are not monitored. The CSA assumes they are made unless it hears otherwise, and Centrelink takes these into account in assessing the level government income support payments to be made to the PWC.

It is interesting to note that CSA statistics on child support payments assume that all private payments are made, and the CSA does not appear to make any attempt to estimate arrears or non-payments in private collect cases. Parkinson (2005) argues that this assumption by the CSA considerably boosts its overall collection rate (payments as a percentage of liabilities of NRPs).

#### **4.1.3 If direct payments are not made, can parents with care seek enforcement of payment? How? What steps would occur?**

Yes, but only with agreements that are registered with the CSA. Where an agreement is not registered

with the CSA it does not have legal standing, and the CSA can assess the amount that the NRP is liable to pay at the request of the PWC. Alternatively, an agreement (signed by both parents) can be registered with the CSA, and the PWC can ask the CSA to enforce this through 'CSA collect', where the CSA takes responsibility for the transfer of payments between NRP and PWC.

If the NRP is not voluntarily paying child support, the CSA can take the following steps to recover payment:

- (1) seek a negotiated arrangement with the NRP which can include payment of the debt in instalments
- (2) Salary deduction at source. This is the default method for the CSA to collect registered child support liabilities from the NRP where it is practicable to do so. However, CSA can accept a payer's election to make payments directly to CSA if it is satisfied the payments will be made on time, and then revoke this if the payments are not made.
- (3) CSA can also deduct at source minimum liability directly from government income support payments, or in some circumstances reduce any Family Tax Benefit due to the NRP to 0 in order to clear debt to the CSA.
- (4) CSA can also deduct child support debts from any income tax refund due to the NRP,
- (5) CSA can deduct child support debt from a third party, such as a superannuation fund.
- (6) CSA can also make a departure prohibition order preventing a child support debtor from leaving Australia.
- (7) CSA can seek to enforce a child support debt through the court (indeed only the CSA can seek to enforce agreements that are registered with it). In practice, however, the CSA already has many of the powers available to the court for enforcement of payment of a debt, for example garnishing of earnings. The court has some more extreme options available, such as seizure of land or assets, or issuing contempt orders.

In addition, the CSA can impose a late payment penalty on a payer whenever they fail to pay their child support debt by the 7<sup>th</sup> of the month. The purpose of a late payment penalty is to encourage payers to comply voluntarily with their obligation to pay child support and discourage late payment, and the rate is tied to the rate of payment for non-payment of income tax. Late payment penalties are passed on by the CSA to the commonwealth government, and not to the PWC.

#### **4.1.4 Please discuss the perceived advantages of direct payment arrangements, and the perceived problems.**

In general, the CSA appears to strongly encourage a voluntary approach and direct payment arrangements, and so it will only intervene directly (at the request of the PWC) where it is clear that direct payments are not being made.

## **4.2 MEDIATED ARRANGEMENTS FOR COLLECTING MAINTENANCE**

### **4.2.1 Is there an organisation/agency that has primary responsibility for collecting and forwarding child maintenance? Which organisation? If this is a different organisation than the agency that assesses maintenance, please provide information on its functions.**

The CSA.

### **4.2.2 Please provide information about the administrative and procedural arrangements for collecting and transferring maintenance. If you have more than one scheme, please deal with these separately. Please explain any difference in arrangements for different groups of parents (separated married parents, separated cohabitantes and parents who have never lived together). Please explain any differences for whether the amount was set voluntarily, through a Court, or through an Agency.**

Voluntary agreements, or registered agreements where the parents agree on 'private collect' can involve a wide range of payment methods and timings.

In CSA registered agreements with CSA collect, the CSA collects payments from the NRP and transfers them to the PWC. The NRP is usually required to make direct payments to CSA by the seventh day of each month, but they can if they wish pay weekly, fortnightly or four weekly. Payments that are received on time are passed on to the PWC on the third Wednesday of each month.

When these payments are received after the 7<sup>th</sup> day of the month, the PWC receives the payments late. The CSA only pays out the child support it has received.

There are no differences for separated married parents, separated cohabiters and parents who have never lived together.

**4.2.3 Please describe any types of circumstances in which payments are automatically withheld from wages (that is, prior to any problem with non-payment).**

As noted in 4.1.3 above, salary deduction at source is the default method for the CSA to collect registered child support liabilities from the NRP where it is practicable to do so. However NRPs can apply to the CSA for an election to make payments directly to CSA if the CSA is satisfied the payments will be made on time.

**4.2.4 In Section 4.4 below we ask for information on schemes that forward maintenance due in advance of collection. Other than these schemes, what is the usual timescale for delivering payments to parents with care/children?**

NRP pays by the 7<sup>th</sup> day of the month, PWC receives on the 3<sup>rd</sup> Wednesday of the month.

**4.2.5 What are the perceived advantages of your collection and forwarding scheme(s), and what are the main problems?**

Private arrangements are strongly encouraged (and can even be imposed) by the CSA. The Ministerial Task Force on Child Support (Parkinson, 2005) argues that the burden of proof for PWCs who seek 'CSA Collect' is currently too high, and that where the PWC seeks 'CSA Collect' the burden of proof should be on the CSA to show that it is not necessary.

One problem with 'CSA Collect' highlighted by the Task Force is that of overpayments, which the PWC is always liable to repay, even where they are made as a result of an administrative error of the CSA. This, the Task Force argues, can cause hardship to the PWC, and it recommends that where the CSA is at fault, it should not seek to recover refunds from the PWC.

The Task Force also highlights the relative lack of powers that the CSA has to enforce payments from self-employed persons who do not have a regular wage or income support payment from which child support payments can be deducted, and recommends that the CSA be given extra powers to make deductions from bank accounts of self-employed people.

**4.3 NON-COMPLIANCE**

**4.3.1 For parents with mediated arrangements for collecting and transferring maintenance, we are interested in what happens when non-resident parents do not pay the amount due. Which of the following could happen?**

Attachment of earnings

- Deductions from bank accounts/savings/pensions**
- Deductions from benefits**
- Recovery through tax** (only tax rebates to the the NRP)
- Seizing and selling assets**
- Driving licenses revoked**
- Passport confiscation** Departure Prohibition Order
- Criminal prosecution**
- Imprisonment**
- Interest charged on debt**
- Other**

**4.3.2 Of the interventions marked in 4.3.1, which are most likely? Please comment on whether these typically occur in a particular sequence, that is, differentiate between any that are routinely used at the first instance of non-payment and those only used for persistent non-payment. Finally, please comment on the timing of collection interventions; how soon after non-payment would something happen? (If different types of cases have different steps or different timing, please explain.)**

Deduction at source from earnings, income support payments, tax rebates, superannuation. A penalty (described at 4.1.3 above) can be applied where a due payment is late, but the CSA may try to negotiate with the NRP to pay voluntarily before imposing deduction at source.

(in early 2006, the CSA made a limited period offer to NRPs with outstanding debts that all late penalties would be waived where NRPs and the CSA agreed a plan for the repayment of all debts within 2 years, and where that plan was fulfilled>

**4.3.3 When parents with care and their children do not receive the child maintenance due to them as a result of non-compliance by non-resident parents, what steps could the parent with care take? Who would they complain to? What happens when a complaint is made? (Arrangements by which child maintenance due (or some part of it) is guaranteed by the state are covered in the next section, so do not need to be covered here.)**

Where there are CSA registered agreements, PWCs can request 'CSA collect' from the CSA, and the CSA can use the methods described above.

---

#### **4.4 GUARANTEED MAINTENANCE PROGRAMS**

**4.4.1 We are specially interested in schemes which forward maintenance due to the parent with care/child in advance of collection from the non-resident parent, thus guaranteeing that something is received. (We do not include here general social assistance programs available to all low-income parents.) Does your country have such a guaranteed maintenance program?**

- Yes (continue)**
- No (go to Part Five)**

**4.4.2 Please describe eligibility for the guaranteed maintenance program. For example, are all parents with care eligible, or only those in which non-payment has occurred? Is there an income test? Is this available only for those with certain court or agency agreements, or can**

**those with voluntary agreements also participate?**

**4.4.3 Please describe the amount guaranteed. Is this a proportion of the amount owed or a flat amount? Is there a minimum or a maximum? Does the amount vary across parents? Is the amount ever adjusted (for inflation or for changes in individual situations)? Under what circumstances is it adjusted?**

**4.4.4 We are interested in the interaction between the guaranteed maintenance program and other parts of your social benefits system. Is the guaranteed maintenance program intended to be an alternative to other benefits or is it intended to supplement them?**

**4.4.5 Please describe the administration of the program. Who administers it? Who is responsible for recovery of the amounts forwarded?**

**4.4.6 What are the perceived advantage and disadvantages of the scheme?**

## PART FIVE: FINANCIAL INTERACTIONS

*This part of the questionnaire is concerned with the interactions between child maintenance amounts and other policies in your country.*

### 5.1 TREATMENT OF MAINTENANCE RECEIVED

**5.1.1 Do child maintenance payments received by the parent with care/child count as taxable income, for purposes of both central and local taxation? How? If, in your child maintenance regime, child maintenance is in the child's name (rather than the name of the parent with care), please explain how this income is dealt with for tax purposes. Does it matter if child maintenance was agreed on a voluntary basis, or determined by the Courts or Agency? How? Please also explain any differences in tax treatments which depend on the current marital status of the parent with care (whether married to a new partner or not).**

Most child support or spouse maintenance payments to the PWC are exempt from the PWC's taxable income.

**5.1.2 Do child maintenance payments received affect any social benefits of the parent with care and/or child? How? If maintenance counts as assessable income for purposes of social assistance, please explain any disregards that operate. Also, if some portion of child maintenance is retained by the government and not sent to the parent with care, please explain this as well.**

Child support or spouse maintenance payments to the PWC are subject to a Maintenance Income Test for Family Tax Benefit Part A purposes. The Maintenance Income Test reduces Family Tax Benefit Part A by 50 cents for every dollar in child support received by the PWC above a minimum threshold:

Status	Minimum threshold for Maintenance Received (per year)
Single parent, or one of a couple receiving maintenance	\$1215.45
Couple, each receiving maintenance	\$2430.90
For each additional child	\$405.15

Maintenance over these amounts may reduce Family Tax Benefit Part A by 50 cents in the dollar, until the base rate of Family Tax Benefit Part A (equal to \$1828.65 per child per year) is reached. (this in turn is no longer paid where family income is greater than \$94,718 for a family with one child). Any child support received does not appear to be included in this larger family income amount (all figures valid from 1 July 2006).

For other allowances such as Newstart Allowance (for the unemployed) child support received is not counted as income.

**5.1.3 Do child maintenance payments received affect any tax benefit for the parent with care and child? Do they affect any other formal financial liability or entitlement for the parent with care and child?**

Not other than the above at 5.1.2.

---

## **5.2 TREATMENT OF MAINTENANCE PAID**

**5.2.1 How does child maintenance paid interact with the tax system, in both central and local tax regimes? Can the amount paid be deducted from income, thereby lowering tax liabilities? Does the amount paid affect any tax benefits for the non-resident parent? If there are different tax treatments according to whether the child maintenance is agreed on a voluntary basis, or determined by the Courts or Agency, please explain this. Explain any differences in tax treatments which depend on the non-resident parents' current marital status (whether married to a new partner or not).**

Child maintenance paid by the NRP can be deducted from taxable income.

**5.2.2 Does child maintenance paid (or not paid) affect any social benefits of the non-resident parent?**

It does not appear to.

**5.2.3 Does child maintenance paid (or not paid) affect any other formal financial liability or entitlement of the non-resident parent?**

No

## PART SIX: COSTS AND QUANTITATIVE DATA ON OUTCOMES

*The first section focuses on costs of the child maintenance regime, beginning with governmental costs of any targeted child maintenance agency (if any). We then also ask you to estimate, if possible, costs for court and agencies that may deal with assessment and enforcement. The final section asks for quantitative data on outcomes that are available in your country.*

### 6.1 COSTS OF THE CHILD MAINTENANCE REGIME

**6.1.1** If your country has an agency (or more than one agency) that is primarily responsible for assessing, collecting or enforcing child maintenance, what are its administrative costs? If possible, identify any categories of costs, either by function (costs of assessment versus enforcement) or for different types of cases. Please provide information about the types of costs included and not included (for example, whether these costs are net of any fees or any amounts retained by the government). Finally, if the amount of maintenance collected per unit of administrative cost is available in your country, please provide this information here.

The table below, reproduced from an official CSA report, gives quite full financial information for the costs of the Child Support Scheme up to 2002-3, spread mostly across 3 government agencies, the CSA, the Department of Family and Community Services, and the Attorney General's Department. Estimated savings of the scheme are also noted:

Savings and Costs of the Child Support Scheme (\$ million) <sup>1, 2</sup>

Agency/Dept	1995-6	1996-7	1997-8	1998-9	1999-00	2000-1	2001-2	2002-3
Child Support Agency	114.8	160.6	169.7	108.1	198.2	203.7	214.0	233.2
Dept of Family and Community Services	12.4	8.6	10.4	2.7 <sub>3</sub>	3.0	2.3	2.3	1.4
Attorney General's Dept.	4.3	4.7	7.5	7.8	7.8	7.8	5.3 <sub>4</sub>	5.5 <sup>4</sup>
Scheme Costs	131.6	173.9	187.7	190.6	209.0	213.8	221.6	240.1
Savings in government income support payments	283	318	378	419	425	380	423	433.5
Net Savings	151	144	191	228	216	166	201	193

Source: Attorney General's Department (2005) "Child Support Scheme Facts and Figures 2004-05", Canberra. ([www.csa.gov.au](http://www.csa.gov.au)), Table 7.2

Notes to table: 1. The 1999-00 savings attributable to the Child Support Scheme are not comparable with data for earlier years. The increase in savings reflects steps taken by Centrelink to streamline the process for private collection customers.

2. Attorney-General's Department 1996-97, 1997-98 and 1998-99 costs for its responsibilities within the Child Support Scheme are not comparable with data for earlier years. The 1996-97, 1997-98 and 1998-99 figures are the actual amounts that A-G's spent administering its child support work: earlier figures are amounts that were allocated by the Department of Finance for those CSS responsibilities.

3. With the creation of the Department of Family and Community Services in the 1998-99 year and the establishment of Centrelink as an entity separate to FaCS, a decision was taken by FaCS to remove Centrelink costs in relation to the Child Support Scheme.

4. Expenditure by Legal Aid Commissions on Commonwealth matters is undertaken by Commissions in accordance with Commonwealth legal aid priorities. As such the Attorney-General's Department does not set funding levels to be expended by Legal Aid Commissions on particular areas of law. In 2002-03, Legal Aid Commissions (excluding Tasmania, ACT and NT) expended \$4.169 million on child support representation. Expenditure excludes resources dedicated to the provision of advice/information for child support matters. In addition, Community Legal Centres expended \$1.303 million on the provision of services for child support matters.

Total estimated administrative costs of the CSA in 2005-6 were \$286.4m (Department of Human Services, 2005). In 2005-6 the CSA was expected to oversee the transfer of \$2.4b between parents for the benefit of 1.1 million children. The cost per case administered was estimated at \$352, and the cost per dollar transferred was estimated at 12 cents.

These amounts of money should not include any fines collected by the CSA from NRPs for the late payment of child support, since any income from fines goes direct to the Commonwealth government.

A total of 3,125 staff were employed by the CSA in 2005-6.

**6.1.2 If your country has any child maintenance functions within the courts, please provide, if possible, estimates of the administrative costs associated with assessing, collecting or enforcing child maintenance. Note that we are interested only in the portion of court costs directly related to the assessment, collection and enforcement of child maintenance, not to divorce or separation in general.**

n/a

**6.1.3 If your country has any child maintenance functions within an agency other than an agency primarily responsible for child maintenance, please provide, if possible, estimates of the administrative costs associated with these functions. Again, note that we are interested only in the portion of costs directly related to child maintenance, not to other benefits due to all children or even all low-income children.**

n/a

**6.1.4 If your country has an advanced or guaranteed maintenance programme, please provide any details of costs that are available. If possible, differentiate between administrative costs and monies paid to parents with care that are not reimbursed.**

n/a

**6.1.5 Please list any financial costs to parents that are associated with assessing, collecting, or enforcing child maintenance (for both parents with care and non-resident parents). For example, there may be legal fees associated with enforcement, fees for a mediator who assists with voluntary arrangements, fees charged to non-resident parents for forwarding child maintenance to the parent with care, or interest charged to non-resident parents who are behind in their payments. (We do not intend for you to include financial debt that parents with care incur because of non-payment.)**

In theory, it should be possible to make a child care agreement without the involvement of lawyers or mediators, although the CSA does advise parents to draw up agreements with the advice of a lawyer. The CSA itself does not charge either NRP or PWC for its services. The transfer of funds should also be cost free (whether conducted through the CSA or privately) except for any applicable bank fees.

Where an agreement is not working satisfactorily for the NRP or the PWC, legal action can be necessary to alter it.

**6.1.6 Are there any programs that assist parents in meeting any of these costs? Please provide a short overview of these programs and any estimates of the costs of these programs.**

Legal Aid is available in all states and territories. However, it is means tested. A senate inquiry in 2004 into legal aid in Australia noted the following:

“A submission from Professor Rosemary Hunter and Associate Professor Jeff Giddings of Griffith University, who conducted the research commissioned by National Legal Aid, noted that their research showed a significant income difference between those who met the means test and those who were able to afford private representation. Those eligible for legal aid earned less than \$25,000 p.a. after tax, yet people only became able to afford private representation once they earned over \$45,000 p.a. after tax. Professor Hunter and Associate Professor Giddings noted that those between these income

levels may have had financial commitments that were not taken into account in the income test. They also pointed out that low income people often met the income test but failed the assets test, despite not having access to those assets being assessed.” (Report of the Senate Inquiry into Legal Aid and Access to Justice, 8 June 2004, paragraph 2.56)

The Senate report also noted the lack of statistical information in Australia on unmet need for legal aid.

## 6.2 QUANTITATIVE DATA ON CHILD MAINTENANCE

*In this section, please provide information on child maintenance outcomes. (Note that we will be conducting analyses of the Luxembourg Income Study, so you do not need to report these here.) We are interested in information collected by the government as part of the administrative records of courts or agencies, information that comes from household surveys that include questions on child maintenance, and information that comes from any other source. Please provide information from all sources that are available.*

**6.2.1 Please provide the percentage of parents with care who have child maintenance agreements. Of those that have agreements, what percentage of parents have voluntary agreements; what percentage have court agreements, and what percentage have agency agreements? If you can provide these answers separately for separated married parents, separated cohabitantes, and parents who have never lived together, please do so.**

There appears to be relatively little information on the proportion of PWCs overall who have an agreement to receive child support (that is, the proportion of separated or divorced parents of children aged under 18, where both are alive, who have some sort of agreement to transfer child support). However, the majority of PWCs who are dependent on government income support payments do have an agreement or assessment for child support. Data from the CSA shows that it had an active caseload of 732,634 in 2005, of which 10,440 were governed by earlier courts-based legislation (known as Stage 1 cases, dating from before 1 October 1989). A further 20,992 cases were international. The CSA notes that the number of international cases has increased greatly since 2000 due to regulatory reforms, and Australia’s entry into three international maintenance agreements.

There is no breakdown on these data by former marital or partner status of the parents.

The table below, reproduced from an official CSA report, gives a breakdown on the types of assessments of child support used for Stage 2 cases (cases after 1 October 1989) that were current in 2005:

**Stage 2 Caseload by Assessment Type and Collection Method, June 2005**

Assessment Type	CSA Collect		Private Collect		Total	
	Number	%	Number	%	Number	%
<b>Formula</b>	318,506	93.1	357,343	94.7	675,849	94.0
<b>Agreements</b>	9,553	2.8	17,658	4.7	27,211	3.8
<b>Change of Assessment</b>	12,986	3.8	1,921	0.5	14,907	2.1
<b>Court Orders</b>	933	0.3	441	0.1	1,374	0.2
<b>Total</b>	341,978	100.0	377,363	100.0	719,341	100.0

Source: Attorney General’s Department (2005) “Child Support Scheme Facts and Figures 2004-05”, Canberra. ([www.csa.gov.au](http://www.csa.gov.au)), Table 3.4

### 6.2.2 What is known about the main reasons a parent with care would not have an agreement?

There does not appear to be much information on this for Australia.

### 6.2.3 Please provide whatever information is available on amounts paid by non-resident parents, including the proportion paying anything, the proportion paying the full amount due, and the proportion paying part of the amount due.

*Payer Liability by % paid in 2004-05 for CSA collect active clients (excluding nil liabilities), June 2005*

Payer liability (\$A)	Paid 0%		Paid 1 - <25%		Paid 25 - <50%		Paid 50 - <75%		Paid 75 - <100%		Paid 100%		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
260	25,472	25.4	2,594	2.6	3,768	3.8	5,293	5.3	12,642	12.6	50,514	50.4	100,283	100.0
261-1,000	4,470	9.1	4,294	8.8	4,932	10.1	5,378	11.0	11,682	23.9	18,138	37.1	48,894	100.0
1-2,000	4,207	12.7	4,342	13.1	2,423	7.3	2,773	8.4	5,197	15.7	14,096	42.7	33,038	100.0
2-3,000	2,226	8.1	2,866	10.5	1,843	6.7	2,299	8.4	5,579	20.4	12,510	45.8	27,323	100.0
3-4,000	1,260	5.7	1,792	8.1	1,405	6.4	1,743	7.9	4,963	22.5	10,904	49.4	22,067	100.0
4-5,000	713	4.1	1,343	7.7	950	5.4	1,351	7.7	4,297	24.5	8,866	50.6	17,520	100.0
5-10,000	1,570	3.7	2,753	6.4	2,173	5.1	3,014	7.0	10,779	25.1	22,651	52.8	42,940	100.0
10-30,000	735	4.4	1,458	8.8	991	6.0	1,158	7.0	4,178	25.2	8,057	48.6	16,577	100.0
30,001 +	124	16.5	211	28.1	67	8.9	46	6.1	109	14.5	195	25.9	752	100.0
Total	40,777	13.2	21,653	7.0	18,552	6.0	23,055	7.5	59,426	19.2	145,931	47.2	309,394	100.0

Source: Attorney General's Department (2005) "Child Support Scheme Facts and Figures 2004-05", Canberra. ([www.csa.gov.au](http://www.csa.gov.au)), Table 5.10

Notes: 1. CSA collect cases are the only ones monitored by the CSA, and amounted to 48% of all CSA administered cases in 2005. These tables relate to customers rather than cases and exclude those customers who had nil liabilities during the year.

2. The liability and payment amounts used to calculate compliance in these tables refer to the entire twelve months covered by each table, not for the life of the Scheme.

### 6.2.4 What is known about the characteristics of the non-resident parents who are not making payments or who are paying only a portion of the amount due? What is known about reasons for non-payment?

There appears to be little information on the characteristics of NRPs who are not making payments. The CSA appears to assume 100% compliance among 'Private Collect' cases (52% of all cases in 2005) on the basis that PWCs would ask the CSA to collect if the NRP was not paying. This assumption is strongly criticised by the Report on the Task Force on Child Support (Parkinson, 2005).

### 6.2.5 Is there data available on the proportion of cases in which children spend roughly

**equal time with both parents? What is known about the types of cases that have this type of arrangement?**

The table below gives a breakdown according to the CSA's classification (see 3.5.8A above):

*Stage 2 Caseload by Care Code, June 2005*

Time children spend with payee		CSA Collect		Private Collect		Total	
Care code	% of Nights	Number	%	Number	%	Number	%
Substantial	30.0-39.9	1,346	0.4	3,167	0.8	4,513	0.6
Shared	40.0-59.9	8,453	2.5	28,677	7.6	37,130	5.2
Major	60.0-69.9	7,204	2.1	13,227	3.5	20,431	2.8
Sole	70.0 and over	324,975	95.0	332,292	88.1	657,267	91.4
Total		341,978	100.0	377,363	100.0	719,341	100.0

Source: Attorney General's Department (2005) "Child Support Scheme Facts and Figures 2004-05", Canberra. ([www.csa.gov.au](http://www.csa.gov.au)), Table 3.6

**6.2.6 Consider parents with care who have an agreement in which child maintenance is to be paid. In what proportion are payments to be made directly (that is, directly from the non-resident parent to the parent with care, rather than through a collecting agency)?**

See 6.2.1 above.

**Please provide references to any sources you consulted for this part of the questionnaire.**

*The list of references below is for all references in the text.*

Burgess, A (2005) "Bringing fathers back in: Child support in Australia", *Public Policy Research*, March 2005: 49-55.

Child Support Agency (2005) *Child Support Scheme Facts and Figures 2004-05*, Canberra: Australian Government Attorney General's Department. [www.csa.gov.au](http://www.csa.gov.au)

Fehlberg, B and B Smyth (2000) "Child support and parent-child contact", *Family Matters*, 57: 20-25. [www.aifs.gov.au](http://www.aifs.gov.au)

Harding, A and A Szukalska (1999) "Trends in child poverty in Australia: 1982 to 1995-95", *Discussion Paper* no.42, NATSEM, University of Canberra. [www.natsem.canberra.edu.au](http://www.natsem.canberra.edu.au)

Parkinson, P, chairperson (2005) *In the Best Interests of Children – Reforming the Child Support Scheme: Report of the Ministerial Taskforce on Child Support*. Canberra: Attorney General's Department. [www.facsia.gov.au](http://www.facsia.gov.au)

Parliament of Australia: Senate Legal and Constitutional Committee (2004) Report of the Senate Inquiry into Legal Aid and Access to Justice, 8 June 2004. [www.aph.gov.au](http://www.aph.gov.au)

PIR Investment Research (2004) "child Support: The Financial Cost to the Taxpayer", Melbourne: Property Investment Research Pty Ltd. [www.pir.com.au](http://www.pir.com.au)

Ridge, T (2005) "Supporting Children? The Impact of Child Support Policies on Children's Wellbeing in the UK and Australia", *Journal of Social Policy*, 34(1): 121-142.

Smyth, B and A Ferro (2002) "When the difference is night and day: Parent-child contact after separation", *Family Matters*, 63: 54-59. [www.aifs.gov.au](http://www.aifs.gov.au)

Smyth, B and R Weston (2005) "A snapshot of contemporary attitudes to child support", *Research Report*, No.13, Melbourne: Australian Institute of Family Studies. [www.aifs.gov.au](http://www.aifs.gov.au)

## PART SEVEN: THE OVERALL CONTEXT

*In this section we examine two topics: current topics of debate and research, and your own evaluation of how well the regime works along several dimensions.*

### 7.1 TOPICS OF DEBATE AND RESEARCH

#### 7.1.1 Consider the following potential topics of research:

- the impact of your child maintenance regime on relationships between the parents, and relationships of the parents with their children
- the impact of your child maintenance regime on 'new' relationships or marriages, or stepchildren
- the impact of child maintenance on the labour market behaviour of parents with care
- the impact of child maintenance on the labour market behaviour of non-resident parents
- (if there is a guaranteed maintenance program) the effect of guaranteed maintenance on non-resident parents payment of child maintenance
- (if some or all child maintenance is retained by the state for parents with care that receive means-tested benefits) the effect of this retention on non-resident parents payment of child maintenance?

**On which of these topics has there been research? What are the main conclusions of this research? Are there any other main areas of research on child maintenance in your country? Please provide citations of what you view as the 2-5 most important pieces of published research.**

*The impact of your child maintenance regime on relationships between the parents, and relationships of the parents with their children*

Smyth and Ferro (2002) state that there are considerable gaps in general in knowledge about contact between non-resident parents and their children. Their brief examination of the relationship between payment of child support and contact between children and an NRP suggests that there appears to be no strong relationship between payment and contact. However, their dependent variable (children who stayed overnight with the NRP at least once in the past year) may not be the best one for elucidating such as relationship.

Fehlberg and Smyth (2000) and Ridge (2005) argue that "As in the UK, research has tended to focus on fathers and the 'direct' costs of contact visits, and there has been little research which looks at the 'direct' or 'indirect' costs born by lone mothers caring for their children and the relationship between the two sets of costs." (Ridge, 2005, p.132)

It is also interesting to note that mothers and fathers tend to give very different assessments of levels of contact between the other parent and their children, and the level and regularity of child support payments (Fehlberg and Smyth, 2000). Thus research in this area needs to be seen as tentative.

*The impact of child maintenance on the labour market behaviour of non-resident parents*

This has been the subject of much debate, and some research. One example of research is PIR Independent Research Group (2004), which argues the point in terms of economic efficiency – that NRPs have very low incentive to increase earnings. This is based on the treatment of child support as income tax, and estimating Effective Marginal Tax Rates on NRPs at

different levels of income. PIR Independent Research Group (2004) also argues (somewhat poorly in my view) that the child support system may be associated with suicide among men.

In addition, the Ministerial Task Force on Child Support (Parkinson, 2005) carried out extensive modelling of the EMTRs associated with the current child support system, and the one proposed by it.

As noted in Section 1 above, there is evidence that the NRP lobby has been listened to by policymakers, and that reforms currently being instituted (including a change of the formula to make it less onerous for NRPs, the introduction of a lower income ceiling for NRPs above which income does not count for the calculation of child support, and the discounting of income from second jobs) may be related to their influence.

*The impact of child maintenance on the labour market behaviour of parents with care*

The Ministerial Task Force on Child Support (Parkinson, 2005) models the EMTRs associated with the current child support system (and the new one proposed by it) for PWCs. However, the Report does not discuss what might be acceptable levels of EMTRs.

### **7.1.2 What are the current main topics of interest and debate about your child maintenance regime?**

As noted above, the biggest issue appears to be that of fairness between PWCs and NRPs, with the NRPs having the ear of the government. This can be seen for example in the Report of the Ministerial Task Force on Child Support (Parkinson, 2005). This is a large and comprehensive review of child support that raises several important issues about child support in Australia. However, it is the Task Force's recommendations for a change in the formula (discussed in Section 1.2 above) that have been particularly taken on board.

### **7.1.3 Please describe any impending changes in legislation, or policy developments that are likely to affect your child maintenance regime in the coming five years.**

See Section 1.2 above

### **7.1.4 What are the public's attitudes towards your child maintenance regime? Please refer to any evidence for your replies.**

The Ministerial Task Force (Parkinson, 2005) commissioned research from PWCs and NRPs on their evaluation of the child support scheme. This was carried out by the Australian Institute for Family Studies in early 2005. Results find that resident mothers tend to be more satisfied that the child support system is working well (49% agree, 45% disagree), while non-resident fathers tend to be more dissatisfied (33% agree, 62% disagree) (see Smyth and Weston, 2005). Three quarters of non-resident fathers moreover think that the scheme is unfair.

Fathers and mothers disagree with regard to many other aspects of the scheme

### **7.1.5 Please describe any organised opposition in your country to the determination and enforcement of child maintenance, and the issues of contention.**

Men's lobby groups. Single Parents. Others?

## **7.2 YOUR EVALUATION OF THE CHILD MAINTENANCE REGIME**

*This section provides several criteria that one might use to evaluate the child maintenance regime as*

*a whole. We ask for your expert assessment of areas that your regime is working well and not working well.*

**7.2.1 Please consider the following criteria that could be used to evaluate a child maintenance regime.**

**a. Maintenance is regularly provided to children and/or parents with care**

True

**b. Children who need (or desire) maintenance have a formal entitlement**

True

**c. Maintenance policies do not negatively influence relationships between children and their non-resident parents**

There is no relationship at all (overall, or in policy intent) between maintenance and relationships between children and NRPs

**d. Those in similar circumstances are treated similarly**

More research is required on this. Most existing research has been carried out by supporters of NRPs, and more research is required on the best interests of children, their needs, and the needs and interests of PWCs.

**e. Those who need more child maintenance, receive more**

No they do not. Child maintenance in Australia is based on the NRP's capacity to pay.

**f. Parents easily understand how amounts of maintenance are calculated**

This is doubtful. While the scheme in its 'pure' form is simple enough, its interactions with the social security system are incredibly complex. For NRPs with obligations for more than one family too, obligations are difficult to determine.

**g. Child maintenance obligations are determined promptly**

Yes. In general this is true.

**h. Parents with care feel the amount of maintenance is adequate**

Interestingly, a recent study by the Australian Institute for Family Studies (Smyth and Weston, 2005) on contemporary attitudes to child support does not appear to have explored this issue. However, the Survey does show that about equal proportions of PWCs think the current child support system is 'fair' and 'unfair'. The majority of both men and women believe child support obligations should be based on both the NRP's and the PWC's incomes. The National Council for Single Mothers does not believe arrangements as they stand are adequate for PWCs.

**i. Nonresident parents feel the amount of obligation is affordable given their costs of living**

Smyth and Weston's (2005) study does show that most non-resident parents (two thirds)) believe that the current system is unfair.

**j. The child maintenance regime is administered efficiently and effectively**

Yes

**k. Non-compliance with maintenance obligations does not add a substantial amount to governmental costs**

No it does not add a substantial amount to government costs.

**Select one or two of these in which your assessment is that your regime is performing well. (If your assessment is that your regime works well on multiple criteria, please select the most important one or two.) In one paragraph, explain.**

The most positive points about the Australian CS system relate to its efficiency. It is clearly effective in persuading NRPs to pay, and in transferring payments to PWCs. This is a very positive point, and research suggests that the CS system in Australia has had a notable impact on child poverty (see Harding and Szukalska, 1999).

**7.2.2 Select one or two of the above criteria in which your assessment is that your regime is not performing well. (If your assessment is that your regime does not work well on multiple criteria, please select the most important one or two.) In one paragraph, explain.**

Child support in Australia is concerned only with ability to pay, and not with the needs and well-being of children. There is scope to broaden the debate, but this has not happened.

The current child support system is also very complex, and more research is needed on the extent to which PWCs and NRPs actually understand the system.

**7.2.3 Is there another criteria (not listed) on which you think your regime does particularly well or is a particular problem? What? In one paragraph, explain.**

Most disappointingly, in spite of a considerable amount of policy debate about child support in Australia in recent years, the needs of children have not been placed centrally on the agenda. Emphasis has more been on the balance of care and financial support between NRPS and PWCs.

Moreover, in spite of an emphasis by the CSA (and by policy generally) on encouraging parents to cooperate in making arrangements for their children, care appears to fall in the vast majority of cases on just the mother, with fathers playing mostly marginal roles (although as reported in Section 1, most NRPs do report at least some contact with their children). The notion of 'shared care' does not really appear to have taken off.

On the plus side, however, the CSA does not appear to use its extensive powers lightly in persuading NRPs to pay child support, preferring to secure voluntary cooperation, and voluntary agreements between partners.

*This concludes Parts 1-7 of the questionnaire. If you have additional comments, please write them here:*

## PART EIGHT: VIGNETTES

*In these vignettes, we provide a basic situation and ask the likely outcome given the child maintenance policies in your country. We then vary a selected characteristic and ask whether the outcome would differ. We then ask you to report on what would happen if various circumstances changed over time.*

### 8.1 BASE CASE 'A': MISS FIELD AND MR HILL

*Miss Field is 25 years old and has never been married. She has a daughter, Susan, who is three months old. Miss Field lives with Susan in a small rented flat in the town centre. Miss Field has not had paid work since Susan's birth, and is claiming the social benefits available to a person in her position.*

*Susan's father, Mr Hill, is 27 years old. He has never lived with Miss Field. He lives locally and sees Miss Field and Susan quite often. He is fond of his daughter, and remains a friend of Miss Field's, although they do not want to set up a home together. He bought baby clothes and equipment when Susan was born but he makes no regular financial contribution.*

*He is unemployed but sometimes takes temporary, low-paid work. He currently depends on the out-of-work social benefits available to a person in his position. He rents a small flat. He has no other children, or major financial responsibilities. He has begun to talk recently about a serious effort to re-train, possibly in engineering.*

*Miss Field knows he has very little money. However, she feels that, in view of Mr Hill's interest in re-training, and the possibility that he will be able to earn more in the future, she thinks it might be sensible to make a formal arrangement regarding child maintenance.*

#### 8.1.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, explain whether Miss Field has a free choice in deciding to seek a formal arrangement.

Since she is receiving social benefits, Miss Field does not really have a real choice in deciding to seek a formal arrangement.

- A. **If she has free choice, please describe the options available to her in establishing a formal child maintenance arrangement. Which of these options would be most likely? What is the likely time-scale for a decision being reached if she decides to go forward?**
  
- B. **If she does not have free choice, please describe what happens, explaining the likely procedures and time-scale for a decision on child maintenance being reached.**

When she applies to Centrelink for Parenting Payment (single), Family Tax Benefit and perhaps Rent Assistance after the birth of Susan, she will have to include details on the amount of support she receives from Mr Hill, and the amount of care she provides for Susan (only parents with the majority of care can apply for Parenting Payment and Family Tax Benefit. An unemployed NRP who cares for the child for some of the time may be entitled to Newstart Allowance (Australian unemployment assistance) at the higher 'With Child' rate; although Parkinson (2005) notes that the administration of Newstart Allowance for NRPs with some care responsibility appears to lack consistency).

If she does not already have a suitable agreement already registered with the CSA, she is likely to be referred to the CSA, who may advise her to make an agreement with Mr Hill. If Mr Hill provides all his details to the CSA (including the amount of time he cares for Susan), the CSA may then inform both of them of the minimum support that Susan should expect from Mr Hill, based on its formula (it is on this amount that entitlement to Family Tax Benefit would be calculated).

**Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.**

- (1) number and ages of dependent children of Mr Hill (apart from Susan).
- (2) Mr Hill's income, and whether he receives government income support payments
- (3) Ms Field's income, and whether she receives government income support payments.
- (4) Number of nights Susan spends with Ms Field and with Mr Hill

The above are the basic parameters for the standard formula. Mr Hill could claim that due to excessive travel costs to maintain contact with Susan (unlikely in this particular case), he cannot afford the formula rate of child support, and could apply for a reduction. Or he could apply on the basis that he needs to maintain a home big enough so that Susan can stay the night (perhaps that would also more likely apply when Susan is older).

**In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.**

**Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.**

Problems might relate to Mr Hill's income, if he did not submit an income tax return in the most recent financial year.

In addition, the interaction between government income support payments and child support is quite complicated, so that either changes in care arrangements or in Mr Hill's or Miss Field's financial circumstances will trigger a reassessment of liabilities (and well explained in Parkinson, 2005, pp. 69-76).

**8.1.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. (Please provide the amount in your own currency.) It may be necessary to introduce quantitative information or new facts into your account. For example, you may need to introduce amounts of money, for rent or living expenses, in order to demonstrate the use of standard guidelines. Please use those amounts that would be typical in your country, and explain the basis for these decisions.**

The formal child maintenance obligation would be the minimum - \$320 per year, or \$6 per week.

**8.1.3 If an obligation for child maintenance is set, please describe how monies be collected from Mr Hill? How would the money be transferred to Miss Field or Susan (if at all)?**

The preference of the CSA would be for a private arrangement, whereby Mr Hill and Miss Field make their own arrangements for the transfer of money.

**8.1.4 If Mr Hill does not pay, what would happen?**

Nothing, unless Miss Field notifies the CSA that she is not getting payments. Then the CSA will as a first step ask Mr Hill to pay the amount outstanding and to continue paying the regular amount. (As I understand things) The CSA will not automatically move from 'Private Collect' mode to 'CSA Collect' mode – only if non-payment of debt and regular amounts continues. However, the CSA will charge fines on any unpaid amounts, and may move to deduct payments from Mr Hill's social benefits.

## 8.2 BASE CASE 'A', VARIANT 1: MR HILL HAS REGULAR EMPLOYMENT

*We would like to understand how the outcomes would change if one of the circumstances in this case were slightly different (Variant 1).*

*The situation is exactly the same as Base Case A except that at the time Miss Field pursues maintenance, Mr Hill has just completed his training course, and just gotten a job at which he earns 75% of median full-time male earnings.*

### 8.2.1 Would the maintenance obligation differ from what you reported in 8.1.2? Please explain.

Assume median male earnings of \$900.00 per week in 2005 (ABS Employee Earnings, Benefits and Trade Union Membership Australia, August 2005 Catalogue No.6310.0, Table 2 – Employees in main job, weekly earnings in all jobs(a)—By full -time or part-time status).

(CSA calculations are actually based on the parents' earnings in the previous financial year which runs from 1 July to 30 June in Australia, so annual earnings for 2006-07 would be estimated in the first instance, and actual earnings in 2006-07 would be used for calculation of child support in 2007-8 if circumstances appeared stable).

Therefore 75% of the male median is \$675.

The basic formula for assessment of Mr Hill's child support obligation is as follows:

- Taxable income (\$675) + supplementary amounts (\$0) = child Support Income (\$675)
- Child support income (\$675) – exempted income ( $\$13,983/52 = \$269$ ) = adjusted income (\$406)
- Adjusted income (\$406) x child support percentage (18% for one child) = weekly child support payable: \$73 per week.

If it turns out at the end of the financial year that Mr Hill under- or over-estimated his taxable income, then this amount of child support payable would be adjusted retrospectively, with either him paying Miss field the difference, or in Miss field refunding Mr Hill the difference.

### 8.2.2 Would any other outcomes likely differ? Please explain.

Miss Field's entitlement to Family Tax Benefit Part A (not including any Rent Assistance that might be added on – in this case, RA would be unaffected) would be reduced from \$70.42 per week to \$45.67 per week – a reduction of 24.85. This sum is calculated as follows:

Miss Field's entitlement for one child = 140.84 per fortnight or \$70.42 per week from July 2006. She is entitled to receive up to \$1215.45 per year (or \$23.37 per week) in child support before it begins to affect her Family Tax Benefit. Any child support over that amount results in a withdrawal of FTB Pt A and Rent Assistance at a rate of 50 cents in every dollar. Therefore  $(\$73 - \$23.37) \times 0.5 = 24.82$

(see also 5.1.2 above)

(all yearly amounts converted to weekly by dividing by 52)

### 8.3 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 1: MR HILL FINDS EMPLOYMENT THREE YEARS LATER

*We now explore how your system would deal with a change in Mr Hill's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.*

*Three years later, Mr Hill completes the training course, and accepts a job at which he earns 75% of median full-time male earnings. Miss Field feels the maintenance amount should be increased.*

#### 8.3.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation would change? To what? Please explain.

This depends on how arrangements are agreed between Miss Field and Mr Hill in the first place. Since Mr Hill was unemployed and therefore had no income, it is likely that the CSA would only register an agreement that ensured recalculation of Mr Hill's obligation should he find employment. In which case, the recalculations as at 8.2.1 and 8.2.2 above would be made by the CSA and Centrelink.

#### 8.3.2 Would any other outcomes likely differ? Please explain.

It might be that the CSA would strongly encourage or even impose a 'private collect' agreement between Mr Hill and Ms Field, if it had not already done so.

### 8.4 BASE CASE 'A', CHANGE IN CIRCUMSTANCES 2: MISS FIELD FINDS EMPLOYMENT THREE YEARS LATER

*We now explore how your system would deal with a change in Miss Field's circumstances. Return to the base case (Mr Hill is currently unemployed but is considering training), and assume the maintenance obligation has been set as you have described in 8.1.2.*

*Three years later, Miss Field finds employment. She begins to work part-time and earns median female wages for part-time work. Mr. Hill feels his obligation should be reduced if not eliminated, now that she is working.*

#### 8.4.1 Please explain the options and procedures for adjustment to the previous child maintenance arrangement. Is it likely the maintenance obligation change? To what? Please explain.

This would not change the assessment for two reasons. First, Mr Hill is already paying the minimum. Second, Miss Field's earnings are below the median for all persons (the female median is below the overall median), the threshold at which some account can be taken of her income in calculating child support payable by Mr Hill.

#### 8.4.2 Would any other circumstances likely differ? Please explain

Miss Field's entitlement to government income support payments would be affected. Female part-time median earnings = \$330 per week. (Earnings data from ABS Employee Earnings, Benefits and Trade Union Membership Australia, August 2005 Catalogue No.6310.0, Table 2 – Employees in main job,

weekly earnings in all jobs(a)—By full -time or part-time status).

Ms Field's entitlement to Parenting Payment would be reduced.

Again, the CSA might encourage or impose a 'private collect' arrangement between Mr Hill and Ms Field if it had not already done so.

---

## 8.5 BASE CASE 'B': MR AND MRS COAST

*Mrs Coast is about to start divorce proceedings after having been married for ten years. The couple are in their early 40s, and have two children, Anne aged six years and John, aged nine years. Both children attend school.*

*Mrs Coast and the children have remained in the rented accommodation they shared when they were together, while Mr Coast has moved away to another town 100 km away where he rents a small flat.*

*Mr Coast has a secure job, and earns one-and-a-half median male full-time earnings. Mrs Coast has a part-time job, earning median female part-time earnings. There are no child care expenses.*

*Mr Coast collects both children every other weekend, and cares for them in his new home from Friday evening to Sunday evening. This involves a long journey by car (100km each way). While the children are in his home he has full financial responsibility, and has bought stocks of clothes, bedding, equipment and toys, which he keeps at his home.*

*Mrs Coast believes her husband should make significant child maintenance payments. She feels that most of the additional expenditure made by Mr Coast for the children (on clothes and toys) only benefits them when they are at his home. She finds she cannot meet her fuel and telephone bills. She welcomes the chance to formalise their financial situation, and believes it will be in her favour.*

*Mr Coast points to his additional housing expenses, his need to run a car in order to share the care of his children, and the money he already spends on their weekend stays. He does not want to be divorced, anyway, and he is bitter about what has happened. He very much wants to maintain relationships with his children, and is worried that a formal financial arrangement will be made that will leave him in financial difficulties.*

### 8.5.1 Please discuss the process by which decisions about child maintenance would be made in this type of case. First, what are the options for formalising arrangements about child maintenance, under the circumstances described above. Explain the likely procedures and timescale for reaching a decision.

Mr and Mrs Coast could make an informal arrangement among themselves, or could draw up a formal arrangement, perhaps with the help of mediators or lawyers. Or if they cannot agree this, they could ask the CSA to apply its formula. If on separation from Mr Coast however, Mrs Coast applies for more than the base rate of Family Tax Benefit (to which she would be entitled, given her earnings) then a child support agreement would have to be registered with the CSA, or the CSA would impose an arrangement, and Mrs Coast's Family Tax Benefit would be calculated as if she received the CSA formula amount (see 5.1.2 above).

Mr Coast's earnings : (male full-time median \$900x1.5)=\$1350 per week

Mrs Coast's income:

Female part-time median=\$330 per week

+ Family Tax Benefit Part B for 2 children (\$84.28, not including an additional supplement of \$313.90 per child, paid at the end of each tax year)

+ Family Tax Benefit Part A of \$140.84 for 2 children, not including another annual supplement of \$646.05 per child, paid at the end of the tax year)

+ Parenting Payment (single) of \$107.85 (less than the maximum because of her earnings).

= \$662.97

Since Mrs Coast is living in rented accommodation, she might also be entitled to Rent Assistance, but this is not counted for taxation purposes or child support purposes.

(Earnings data from ABS Employee Earnings, Benefits and Trade Union Membership Australia, August 2005 Catalogue No.6310.0, Table 2 – Employees in main job, weekly earnings in all jobs(a)—By full -time or part-time status)

(CSA calculations are actually based on the parents' earnings in the previous financial year which runs from 1 July to 30 June in Australia, so the above numbers are roughly correct for the financial year 2005-06)

The basic formula for assessment of Mr Coast's child support obligation is as follows:

- Taxable income (\$1350) + supplementary amounts (\$0) = Child Support Income Amount (\$1350)
- Child Support Income Amount (\$1350) – Exempted Income ( $\$13,983/52=\$269$ ) = Adjusted Income Amount (\$1081)
- Adjusted Income Amount (\$1081) x Child Support Percentage (27% for two children) = weekly Child Support payable: \$292.

Since Mrs Coast's income is below the Disregarded Annual Income Amount Threshold (\$39,312 or \$756 per week in 2005; \$41,881 or \$805 per week in 2006), it is ignored for the purpose of the calculation.

Since the nights the children sleep with Mr Coast (two nights every fortnight or 52 nights a year) still leaves Mrs Coast caring for them for more than 256 nights in the year, she is deemed sole carer for child support purposes. She is also the only parent who can apply for Parenting Payment.

However, since Mr Coast provides care for the children for greater than 10 per cent of the time (this is calculated not in nights as in the case with child support, but in hours for FTB purposes), he may be entitled to a part of the Family Tax Benefit (Parts A and B) that Mrs Coast receives. Centrelink will judge eligibility of the NRP to Family Tax Benefit on the basis of care agreements that are registered with the Court, or retrospectively on the basis of acceptable proof. FTB is then pro-rated according to the amount of care each parent undertakes. Parkinson (2005) notes that "a small proportion" of parents choose to split their FTB payments, but that this proportion has grown in recent years. The impact of the splitting of Family Tax Benefit is shown in more detail in Section 8.6 below.

The CSA does not appear to publish timescales for reaching decisions, only that a child support application will be registered within 21 days of application. But this does not guarantee that the process will be finalised and that payment of child support can begin.

On receipt of the CSA's formula-based judgement, Mr Coast could appeal for a reduction in costs, based on the costs he has to pay in keeping contact with his children, notably driving them 100km and back every second weekend. He estimates his total outlay for keeping in contact with his children is \$45 a fortnight (or \$22.50 per week), which includes the cost of driving 100km back and forth (\$30 including some car depreciation), and telephone contact (\$15). However, since \$22.50 is considerably less than the 5% of his Child Support Income (basically the NRP's taxable income – 5% would be \$67.50 in Mr coast's case) which CSA guidelines suggest as a threshold for reducing child support payments, it is unlikely that Mr Coast would be successful in his application for a reassessment.

However, if Mr Coast can show that his accommodation costs were also much higher so that his children could stay over, then he might be successful in his application for a reassessment. Suppose he rents a three bedroom unit instead of a one bedroom unit so that his children can stay over for two nights a fortnight. The CSA guide states "Any costs relating to a parent's self-support must be separated from their overall costs. CSA will consider the proportion of the accommodation that relates to the children and the frequency of the contact." This suggests to me that the CSA would estimate the extra costs of rent for a three bedroom unit as follows. If the rent for a typical 3 bed unit is \$400, and for a typical single bed unit is \$250, and the children stay in the three bed apartment for 2 nights out of 14, then the extra weekly cost of maintaining contact with children that can be applied to the rent for the three bedroom unit is

$$(400-250) \times 2/14 = \$21.43$$

Even when added to transport and telephone costs above, the total would still be significantly less than 5% of Mr Coast's weekly Child Support Income of \$1350.

It may (or may not) be possible to add something to this amount for clothing for the children (this is not discussed in the guidelines) if the costs of food and entertainment for children while they are in the case of Mr Coast are explicitly excluded.

(all yearly amounts converted to weekly by dividing by 52)

**Discuss the criteria considered in reaching decisions, referring to the information you have already provided in the questionnaire about guidelines or discretion.**

See Sections 3.5.4 and 3.5.5 above. Earnings of Mr and Mrs Coast, number of children of Mr and Mrs Coast, sharing of care between Mr and Mrs Coast, and number of children of Mr Coast (either living with him, or living in other households where he has a child support obligation for them).

**In your account please explain what further information might be needed to determine the obligation level, and how this would be collected.**

See 3.5.9E above. To appeal for a reassessment of the basic formula amount, Mr coast would need to show information for example of costs of contact and accommodation associated with contact and care of the children.

**Please indicate what kind of problems might arise in setting an obligation, and how these might be tackled.**

Problems might arise if Mr and Mrs Coast make a private arrangement for a very long or indefinite period for a fixed formula based amount of \$292 per week (this appears unlikely, given Mrs Coast's entitlement to Family Tax Benefit above the minimum rate before child support is taken into account). If over this time Mr Coast's income increases greatly, the children could not benefit from this unless Mr Coast voluntarily agreed to change the agreement, or Mrs Coast sought legal action to change the agreement. Equally, if Mrs Coast increased her earnings greatly over the threshold beyond which her income begins to reduce Mr Coast's obligation, then Mr Coast would not be able to change the agreement either without Mrs Coast's agreement, or legal action.

**8.5.2 Please discuss the outcome in terms of whether there would be a formal child maintenance obligation, and if so, the amount that would be awarded. As before, it may be necessary to introduce quantitative information or invent new facts or life circumstances for the couple. You may need to decide how much Mr Coast now pays to rent his new flat. Please use those situations and amounts which would be typical in your country.**

See above. Formula based obligation would be \$292 per week. Given the implications for receipt of means tested income support, there is likely to be a formal obligation. There appear to be few grounds in Mr coast's case for a reassessment of this amount.

**8.5.3 If an obligation for child maintenance is set, how would monies be collected from Mr Coast? How would the money be transferred to Mrs Coast or the children?**

Either 'private collect' or 'CSA collect' is possible. CSA would strongly encourage (or even impose) the former. In the case of the latter, CSA would start from the point of deducting child support at source from Mr coast's earnings. However, Mr Coast could ask that he pays the CSA directly.

**8.5.4 If Mr Coast does not pay, what would happen?**

CSA would automatically deduct the child support from Mr Coast's earnings at source, and fine him for late payments.

**8.6 BASE CASE 'B', VARIANT 1: CHILDREN LIVE WITH BOTH PARENTS EQUALLY**

*We would like to understand how the outcomes would change if one of the circumstances in this case were different (Variant 1).*

*The situation is exactly the same as Base Case B except Mr Coast lives in the same town as Mrs Coast and the children. The Coasts decide that the children will spend an equal amount of time living with each parent, alternating one week with Mrs Coast and one week with Mr Coast.*

**8.6.1 Would the maintenance obligation differ from what you reported in 8.5.2? Please explain.**

Mr and Mrs Coast would in effect both be treated as PWCs and NRPs, which means both are liable for child support, and both eligible to apply for Family Tax Benefit. The child support percentage is now 18% for each child, and applied to both Mr and Mrs Coast's Child Support Income Amounts (see also 3.5.8A above).

Since they share care equally for the children, Mr and Mrs Coast must share entitlement to FTB:

*Mr Coast:*

FTB Part A entitlement: \$22.68 per week (=45.36 for two children divided by 2). This is the minimum entitlement, since Mr Coast's annual taxable income is above \$64,893, the threshold at which payments above the minimum cease.

FTB Part B entitlement: \$42.14 per week (=84.28 for two children aged 5 and over divided by 2). This is not subject to a means test for lone parents.

Total FTB = \$64.84

- Taxable income (including FTB of \$65 and earnings of \$1350) = \$1415 + supplementary amounts (\$0) = Child Support Income Amount (\$1415)
- Child support income Amount (\$1415) – Exempted Income ( $\$18,831/52 = \$362$ )\* = Adjusted Income (\$1053)
- Adjusted income Amount (\$1053) x Child Support Percentage (18% with shared care) = weekly Child Support payable: \$189.48.

*Mrs Coast:*

FTB Part A entitlement: \$70.42 per week (=140.84 for two children divided by 2). This is the maximum entitlement since Mrs. Coast's total income is less than \$40,000

FTB Part B entitlement: \$42.14 per week (=84.28 for two children aged 5 and over divided by 2). This is not subject to a means test for lone parents.

Total FTB = \$112.56

(She also still gets Parenting Payment Single of \$107.85 per week).

- Taxable income, including earnings (\$330), Family Tax Benefit (\$113) and Parenting Payment (\$108) = \$551 + supplementary amounts (\$0) = Child Support Income Amount (\$551)
- Child support income Amount (\$551) – Exempted Income ( $\$18,831/52 = \$362$ )\* = Adjusted Income (\$189)
- Adjusted income Amount (\$189) x Child Support Percentage (18% with shared care) = weekly Child Support payable: \$34.02

Therefore, Mr Coast must pay Mrs Coast weekly Child Support of  $\$189.48 - \$34.02 = \$155.46$  or \$8094 per year.

**8.6.2 Would any other outcomes likely differ? Please explain.**

Changes Family Tax Benefit payments noted above.

---

## 8.7 BASE CASE 'B', CHANGE IN CIRCUMSTANCES 1: MRS COAST HAS A NEW PARTNER THREE YEARS LATER

*We now explore how your system would deal with a change in Mrs Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.*

*Three years later, Mrs Coast tells her husband that she has a new partner who has moved into the house. Mr Coast knows the man personally, and knows he has earnings comparable to his own. He feels that the arrival of this new partner for Mrs Coast should count in the financial decisions that have to be made during the divorce.*

### 8.7.1 How would Mr Coast go about trying to change the obligation?

He cannot.

### 8.7.2 What would result -- is it likely the obligation would change? To what? Please explain.

Mr Coast's obligation would not change.

### 8.7.3 Would any other outcomes likely differ? Please explain.

Mrs Coast's entitlement to means tested payments (also in respect of her children) would change. The new partner does not count for child support purposes, but his earnings will count in terms of Mrs Coast's eligibility for Family Tax Benefit Part A and Parenting Payment.

---

## 8.8 BASE CASE 'C', CHANGE IN CIRCUMSTANCES 2: MR COAST HAS A NEW PARTNER AND NEW CHILD THREE YEARS LATER

*We now explore how your system would deal with a change in Mr Coast's family circumstances. Return to the base case (Mr Coast lives in another town and has the children with him every other weekend; Mrs Coast does not have a partner). Assume the divorce is final and that the maintenance obligation has been set at the amount you have described in 8.5.2.*

*Three years time later, Mr Coast has formed a new relationship with a woman and they have a ten month old child. He wants to maintain contact with his own children, whom he loves dearly, but his own household expenses have now gone up considerably. His new partner does not have paid work herself.*

### 8.8.1 How would Mr Coast go about trying to change the obligation?

He can contact the CSA to explain his changed family circumstances.

### 8.8.2 What would result -- is it likely the obligation would change? To what? Please explain.

Yes. Under the CSA formula, Mr Coast's obligation would fall, because his Exempted Income would be

\$25,773.

The basic formula for assessment of Mr Coast's child support obligation is as follows:

- Taxable income (\$1350) + supplementary amounts (\$0) = Child Support Income Amount (\$1350)
- Child Support Income Amount (\$1350) – Exempted Income ( $\$25,773/52=\$496$ ) = Adjusted Income Amount (\$854)
- Adjusted Income Amount ( $\$854 \times$  Child Support Percentage (27% for two children) = weekly Child Support payable: \$231.

**8.8.3 Would any other outcomes likely differ? Please explain.**

No. As regards child support, other factors would remain the same.

***This concludes the vignettes (Part Eight). If you have additional comments on either of these vignettes, please write them here:***