

## **Submission by the Commonwealth Ombudsman**

# **PARLIAMENTARY INQUIRY INTO THE CHILD SUPPORT PROGRAM**

**CONDUCTED BY  
HOUSE STANDING COMMITTEE ON SOCIAL POLICY AND  
LEGAL AFFAIRS**

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## TABLE OF CONTENTS

<b>INTRODUCTION .....</b>	<b>3</b>
Background.....	3
Complaints to the Ombudsman about Child Support .....	4
The issues that people complain about .....	5
<b>RESPONSE TO TERMS OF REFERENCE.....</b>	<b>7</b>
Overview .....	7
Working out a child support assessment.....	7
Reliance on income information from the ATO.....	8
Non lodgement of income tax returns .....	8
Child Support's power to obtain income information other than from the ATO.....	9
Collecting (or transferring) child support.....	9
Child Support collection .....	10
Starting salary deductions.....	10
Monitoring deductions.....	12
Garnishee notices .....	13
Tax refund intercepts .....	15
Enforcing collection in difficult cases .....	15
Obtaining information about the payer's financial situation .....	17
Failure to act on advice received and keep payee informed.....	18
Compensation for missed collection opportunities.....	18
General administrative problems affecting payers and payees .....	19
Complex rules that make it difficult to correct errors.....	19
Poor quality letters and notices sent to customers .....	20
Problems with CSAonline and online services generally .....	20
Overpayments of child support.....	20
Payee overpayments .....	20
Overpayments that were not made by the payer.....	22
Recovering money after court declares the payer is not the child's parent .....	22
The interaction of Child Support and Family Tax Benefit .....	23
Decisions about which parent has the actual care of a child .....	23
The maintenance income test for FTB, especially for private collect payees.....	23
The maintenance action test for FTB .....	25
The MAT for a child who has turned 18.....	27
<b>Conclusion.....</b>	<b>28</b>
How we receive Child Support complaints .....	30
Further assessment and investigation.....	30
Finalisation - complainant .....	31
Review.....	31
Finalisation – agency .....	32
<b>Annexure two: analysis of closed Child Support complaints, 2012-13 .....</b>	<b>33</b>
Table 1: Child Support complaints closed during 2012-13.....	33
Table 2: Issues in closed complaints.....	33
Table 3: Complainant's state of residence .....	33
Table 4: Outcome of issues closed during 2012-13.....	34
<b>Annexure three: Relevant published submissions and reports.....</b>	<b>35</b>

## INTRODUCTION

### Background

The office of the Commonwealth Ombudsman was established in Australia by the *Ombudsman Act 1976* (the Ombudsman Act). The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability
- reviewing statutory compliance by agencies.

The Commonwealth Ombudsman opened for business in 1977 with jurisdiction to investigate complaints about the administrative actions of Australian Government departments and agencies. Since then, the Ombudsman's role has grown and diversified as Parliament has expanded the jurisdiction to address issues in particular areas of administration. Currently, the *Ombudsman Act 1976* confers six specialist roles on the Ombudsman:

- Defence Force Ombudsman: to investigate action arising from the service of a member of the Australian Defence Force
- Immigration Ombudsman: to investigate action taken in relation to immigration (including immigration detention)
- Law Enforcement Ombudsman: to investigate conduct and practices of the Australian Federal Police and its members
- Overseas Students Ombudsman: to investigate complaints from overseas students about private education providers in Australia
- Postal Industry Ombudsman: to investigate complaints against private postal operators
- Taxation Ombudsman: to investigate action taken by the Australian Taxation Office (ATO).<sup>1</sup>

The Commonwealth Ombudsman also has a significant role in the scheme under the *Public Interest Disclosure Act 2013* to encourage public officials to report suspected wrongdoing in the Australian public sector. We provide general information and guidance to agencies about their management of the Public Interest Disclosure (PID) scheme, and advice to people who are thinking about making a disclosure of wrongdoing. In addition to promoting awareness and understanding of the PID scheme; the Ombudsman is responsible for monitoring and reporting on its operation to Parliament.

The Commonwealth Ombudsman's unique position in the Australian administrative law landscape provides us with an understanding of many individual experiences of members of the public, who are dissatisfied with the way that government has dealt with their issue. The Commonwealth Parliament has given the Ombudsman's office the power to investigate those complaints by obtaining records and information from the agency that would not ordinarily be available to a

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<sup>1</sup> In the 2014 Federal Budget, the Treasurer announced that the responsibility for complaints about the ATO would move to the Inspector-General of Taxation from 1 July 2014. This change is subject to the passage of legislation. The Treasurer also announced that from 1 July 2015, the Commonwealth Ombudsman would absorb the functions of the Private Health Insurance Ombudsman. Again this is subject to the passage of legislation.

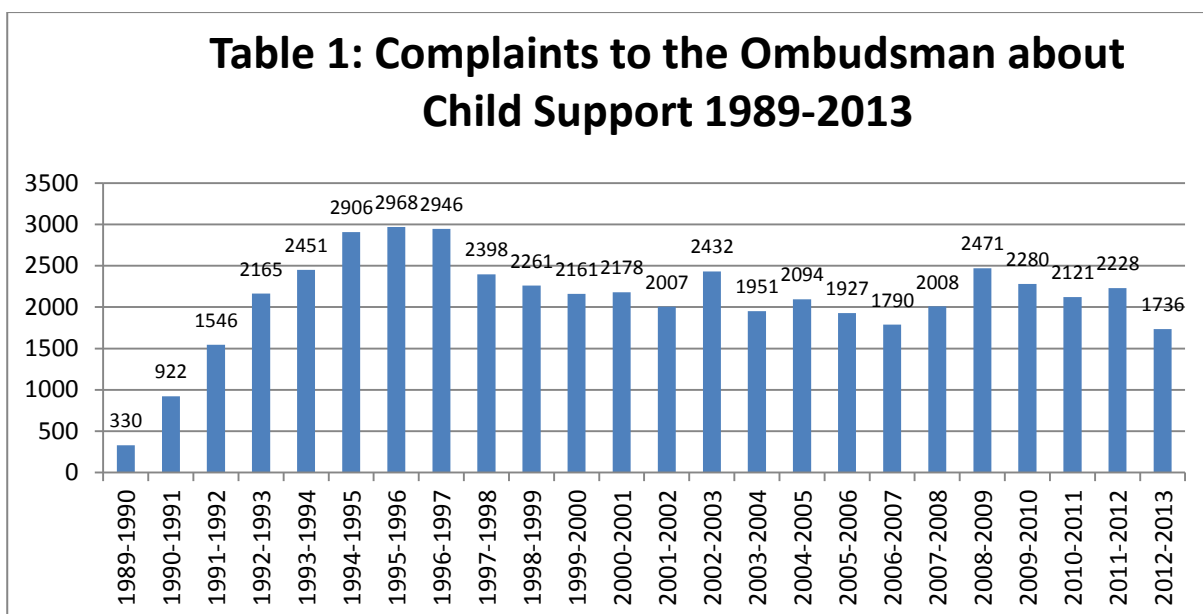
Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

person acting on their own behalf. Over time, through investigating complaints about the actions of a particular Commonwealth department or agency; the Ombudsman's office is able to build up a detailed picture of an agency's operations. This includes information about new complaint trends and also about the persistent problems that repeatedly crop up, despite changes intended to address them.

## Complaints to the Ombudsman about Child Support

The Child Support scheme commenced on 1 June 1988, with the establishment of the Child Support Agency within the Australian Taxation Office (ATO). Child Support has continued to operate since then, in substantially similar configurations, but located within the Department of Family and Community Services (FACS), and then moving to the Department of Human Services (DHS), where it is now referred to, internally, as the Child Support Program. The Ombudsman began receiving complaints about Child Support almost as soon as it commenced operation, with 330 complaints received in the first year.

**Table 1: Complaints to the Ombudsman about Child Support 1989-2013**



Complaint numbers increased steadily over the following years, peaking at around 2,900 for the years between 1994-95 and 1996-97. Approaches to our office about Child Support settled into the low- to mid-2000s in the subsequent five years, before again jumping to 2432 in 2002-03, the same year that Child Support introduced its Cuba case management system. The number of Child Support complaints reduced in the following four years before again climbing into the low- to mid-2000s and remaining steady between 2007-08 and 2011-12.

In 2012-13 the number of complaints received about Child Support reduced significantly to 1,736. This was 28% fewer than in 2011-12, when we received 2,228 Child Support complaints. We believe this reduction primarily resulted from our decision to introduce a recorded message on our complaints telephone number, which tells people calling the office to complain about Child Support (or any other DHS program) that we are unlikely to be able to help them unless they have already tried to resolve their complaint by calling DHS Feedback and Complaints. We estimate that during the period 1 July 2013 and 10 June 2014, it is likely that around 1,000 people who called the Ombudsman's office to complain about Child Support have listened to our auto-attendant message and then made a call to DHS Feedback and Complaints to try to resolve their problem.<sup>2</sup>

<sup>2</sup> As our auto-attendant system only identifies whether people are calling about "the Department of Human Services, including Centrelink, Child Support, or Medicare, we have apportioned the total number of diverted calls about DHS to each program in the same ratio as the DHS complaints that we actually receive.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

The trend of reducing complaints to the Ombudsman about Child Support is continuing. In the period 1 July 2013 to 31 March 2014, we received 1,102 complaints, compared to 1,369 in the first three quarters of 2012-13. Although the number of Child Support complaints has trended down since 2008-09, Child Support remains one of the top five agencies that members of the public contact the Commonwealth Ombudsman to complain about.<sup>3</sup>

Annexure one to this report contains a detailed explanation of our office's arrangements for managing the complaints that we receive about Child Support. We estimate that we currently devote between 4 and 5 full time equivalent staff to managing complaints about Child Support and associated complaints about its interaction with Centrelink and the Australian Taxation Office.

We record and analyse complaints and issues in Child Support complaints according to whether they are from payers or payees. In 2012-13, approximately 70% of the complaints that we finalised were made by payers (that is the parent liable to pay child support), with the remaining 30% of complaints made by payees (the carer entitled to receive payments). The split between payer and payee complaints has remained fairly consistent since we started recording the 'role' of the complainant on 1 July 2011.

Section 6 of the *Ombudsman Act 1976* provides the Ombudsman with discretion not to investigate certain complaints. In deciding whether to investigate a complaint, we consider the subject matter; the other avenues for redress available to the person; and that person's capacity to use them. For example, we would usually decide not to investigate a complaint about a decision that the complainant can have reviewed by lodging an objection with Child Support, or apply to have reviewed by the Social Security Appeals Tribunal. Also, we generally expect the complainant to have tried to resolve their complaint with the DHS Feedback and Complaints before we would start an investigation. In some cases, we transfer the person's complaint to the DHS Feedback and Complaints, so that one of its specialist Child Support complaints officers can have the first opportunity to consider and resolve it.

Our arrangements to encourage people to try to resolve their complaint with the DHS Feedback and Complaints service reflect our confidence that there is a reasonable prospect that the person can obtain an appropriate remedy through that mechanism. We consider that DHS' arrangements for receiving and handling Child Support complaints to be of a high standard. The Child Support complaints service has been operating for many years; it is well-publicised and readily accessible; and there is an acceptance within the Child Support program that complaints matter and that they can provide useful intelligence about where things go wrong.

In 2012-13, we investigated 19.3% of the Child Support complaints that we finalised. This is quite high when compared to our aggregated complaints data for 2012-13. We investigated 17.6% of the complaints we finalised about all of the agencies in our jurisdiction in 2012-13. We believe the relatively high proportion of Child Support complaints that require investigation can be attributed to the complex nature of the scheme and the context in which it operates. The two party nature of a child support case and the background of parental separation against which it is administered means that there is a greater capacity for things to occur that will lead to dissatisfaction and complaint on the part of one or both parties.

## **The issues that people complain about**

The issues that people identify in their complaints to our office about Child Support have remained fairly consistent for a number of years. Annexure two summarises the main issues identified in the Child Support complaints that we finalised about in 2012-13. These are extracted from our complaints database, according to the categories that we have established for Child Support complaints.

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<sup>3</sup> The top five agencies complained about in 2012-13 were, in descending order: Centrelink (5,093 complaints); Australia Post (3,652 complaints); Australian Taxation Office (1,795); Child Support (1,736) and the former Department of Immigration and Citizenship (1,547 complaints).

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

The most common category of complaint arises from Child Support's collection activities. Payers complain that Child Support is inflexible about taking into account lack of ability to repay debts when they have financial difficulties. Payees complain that Child Support does not actively collect their ongoing child support payments or take sufficient action to recover the payer's child support debt. We investigate many of these payee complaints because in the absence of regular payments, the payee has little access to information about Child Support's collection actions. Child Support's obligations under privacy and secrecy provisions limit what it is prepared to disclose to the payee about the steps it has taken to try to collect the debt. We have recently informed Child Support of some concerns that we have developed over time, through reviewing its responses to our investigation of payee's complaints about its failure to collect child support for them.

Apart from collection complaints, both payers and payees complain about the child support assessment made in their case. A small number of people complain about the administrative formula itself. More commonly, they complain that the income figure that Child Support is using for the other parent does not accurately reflect that parent's capacity to pay. In most of these cases, we are satisfied that Child Support's actions are reasonable and consistent with the law, either on the basis of our general knowledge about the Child Support scheme, or after an investigation. Often, we decide not to investigate these complaints, because the person has access to a variety of administrative options to challenge the income used for the other parent (an objection, or a change of assessment application, or by application to the Social Security Appeals Tribunal).

Payers and payees both complain about unclear letters and notices; problems with the Child Support's online system (and in particular the online letter function which has had significant delays in notifying when a letter is available to be read). They also complain about system problems such as failures in the data transfer between the ATO or Centrelink and Child Support.

Both payees and payers complain that they have suffered a financial loss or hardship due to administrative deficiencies, such as delay or problems with data transfer between the ATO and Child Support or inaccuracies with CSAonline. For payers this could mean overpayment of child support and for payees this could mean they did not receive expected payments which has caused financial hardship.

We also receive complaints from payees about the impact their child support has upon their Family Tax Benefit (FTB) payments from Centrelink. In our view, some of these complaints indicate some tensions between the FTB system and the Child Support scheme. Some of those tensions, in our view, are based on flawed assumptions about the extent to which a payee will understand the system; know about their former partner's circumstances, or be able to control their former partner's actions.

In this submission we have included discussion of a number of problems that appear to have a systemic basis, along with illustrative case examples. We highlight them here as areas for potential improvement, rather than as evidence of a large scale failure in administration. All of these issues have already been brought to Child Support's attention in the context of our investigation of individual complaints, or in the course of broader systemic discussions.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

## RESPONSE TO TERMS OF REFERENCE

The information that the Ombudsman's office gleans through receiving and investigating complaints about Child Support enables us to comment on two of the five topics listed in the terms of reference for this Inquiry:

- the methods used by Child Support to collect payments in arrears and manage overpayments
- the alignment of the child support and family assistance frameworks.<sup>4</sup>

We hope that the information in our submission will assist the Committee in its consideration of one of its three areas of particular interest, which is "assessing the methodology for calculating payments and the adequacy of current compliance and enforcement powers for the management of child support payments".

### Overview

In the introduction above, we discuss the issues in the complaints that we receive about Child Support. Many of those complaints we do not investigate, not least because we have confidence that there is a reasonable prospect that the person can obtain an appropriate remedy by lodging an objection, or by raising their concerns with a Child Support complaints officer, by calling DHS Feedback and Complaints. We consider that DHS' arrangements for receiving and handling Child Support complaints to be of a high standard. The Child Support complaints service has been operating for many years; it is well-publicised and readily accessible; and there is an acceptance within the Child Support program that complaints matter and that they can provide useful intelligence about where things go wrong.

Of those complaints we investigate, many can be resolved fairly simply, often accompanied by a better explanation or an apology from Child Support. In a small number of complaints we find that although there has been a mistake or error on Child Support's part, it is not now possible to remedy it, or the remedy will only partly address the problem. In yet others, the complaint reveals a systemic problem in Child Support's administration, or anomalies or weaknesses in the way that Child Support, or the scheme, interacts with other programs or another part of government. It is these problems that we have chosen to highlight in this submission.

Based on the complaints we receive and our investigations, we have identified a number of areas where we believe Child Support could improve its processes and procedures, resulting in improved outcomes for both parents and government. We have also identified some anomalies in the interaction of the child support and the family payment system administered by the Centrelink program in the Department of Human Services. We have grouped these issues thematically below.

### Working out a child support assessment

The Child Support scheme was established to ensure that children received the proper level of financial support from their parents according to their respective capacity to contribute. The amount of child support to be transferred from the payer to the payee is based on this financial information, as well as information about the proportion of time (usually the number of nights per year) the child/ren spend in each parent's care. It is important, then, that Child Support bases its assessment on accurate information about each parent's circumstances.

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<sup>4</sup> We are unable to comment on the remaining three topics in the Inquiry's terms of reference, i.e.:

- whether the child support system is flexible enough to accommodate the changing circumstances of families;
- linkages between Family Court decisions and Child Support's policies and processes; and
- how the scheme could provide better outcomes for high conflict families.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

### ***Reliance on income information from the ATO***

The starting point for a child support assessment is the parent's 'adjusted taxable income' for the 'last relevant year of income' (the financial year that ended immediately before the start of a child support period). Child Support therefore relies heavily upon the assessment of a parent's taxable income, as decided by the ATO and communicated to Child Support via data transfer.

This generally works well, but we discuss below some situations where Child Support's reliance on accurate data transfer from the ATO can result in difficulties for Child Support customers.

### ***Non lodgement of income tax returns***

In most cases, the ATO will have issued an income tax assessment before the start of the child support period, and Child Support will be able to obtain details of that assessment from the ATO.<sup>5</sup> However, if the ATO has not assessed the parent's taxable income (usually because the parent has not yet lodged his or her income tax return) Child Support will use a 'default' or 'provisional' income figure for that parent in the child support assessment. This could be an income advised by the parent, an approximated income based on the parent's previous ATO assessments; or, if there are no recent previous tax assessments, an amount set by legislation based on the average male weekly earnings.

We receive many complaints, typically from payees, who believe that the other parent's default income figure that Child Support has used to work out their child support assessment is too low. Although the complainant can lodge an objection to the income used, or apply for a change of assessment, they usually do not have evidence of the payer's current actual income. Some complainants have told us that Child Support has dissuaded them from lodging an objection, or applying for a change of assessment because they won't be successful without this evidence. While we have not concluded that Child Support actually refuses to accept an objection or a change of assessment application in these circumstances, we nevertheless remain concerned that the people who complain to us felt that Child Support discouraged their application as a waste of time. As a result, the complainant feels they have no alternative but to wait until the payer eventually lodges his or her income tax return.

Many payees are surprised to learn that Child Support has no power to force a customer to lodge his or her income tax return. This is a legal obligation under the income tax legislation and enforcing that obligation is a matter for the ATO. However, Child Support has an arrangement with the ATO to refer details of child support customers who have failed to lodge tax returns for "lodgement enforcement". It is then up to the ATO to take whatever action it considers necessary to ensure that the person complies with their obligation to lodge a tax return. While we accept that Child Support has no power to enforce lodgement, we are concerned that Child Support does not appear to maintain an interest in the action that the ATO takes in response to these referred cases. Child Support simply waits to receive advice from the ATO about the person's taxable income, once the ATO makes an assessment. This can be a source of considerable frustration for the parent who is relying on the ATO's assessment of their former partner's income as a means to ensure that their child support assessment is accurate, as the following two case studies demonstrates.

#### **Investigation case study one**

Ms N complained that her child support assessment was too low, because the payer, Mr O had not lodged his tax returns in six years. Mr O was running a business in partnership with his new spouse and in the absence of up to date income tax assessments, Child Support had based its assessment on a default income for Mr O. Ms N was also dissatisfied that Child Support had failed to collect anything from Mr O for more than a year, and that even though she consider her assessment was too low, Mr O still owed arrears exceeding \$2,000.

<sup>5</sup> Section 16C of the *Child Support (Registration & Collection) Act 1988*, and Section 150D of the *Child Support (Assessment) Act 1989*, allows Child Support to request information from the ATO.



Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

Ms N also complained to our office about the ATO's failure to require Mr O to lodge his tax returns, despite her frequent complaints to it. We investigated Ms N's complaint and found that Child Support had referred Mr O's details to the ATO and requested that the ATO undertake lodgement enforcement action. The ATO had obtained court orders requiring Mr O to lodge his returns, but in accordance with its usual arrangements, it did not keep Child Support informed about this action. Even though Ms N regularly called the ATO for an update, the ATO could not inform her of the action it was taking, as privacy and secrecy provisions limit what the ATO may disclose to her about Mr O's taxation details.

We finalised our investigation in April 2014, more than one year after Ms N's complaint. Although we were able to assure Ms N that we were satisfied that the ATO had taken appropriate action to require Mr O to lodge his tax returns, he had still not done so. As a result, Ms N's child support is still being worked out on the basis of default incomes for Mr O.

(See case study nine on page 16 for a discussion of Child Support's action to enforce Mr O's arrears.)

#### Investigation case study two

Ms P complained to the Ombudsman several times over a number of years about her child support case. Ms P believed that her child support assessments were too low, because they were not based on accurate income information for her former husband, Mr Q. She said the ATO had failed to take action on her repeated complaints that Mr Q, a wage and salary earner, had not lodged his tax returns for many years. She said she had given the ATO all the information she had about Mr Q's circumstances.

We investigated Ms P's complaints and found that the ATO had written to Mr Q in 2006 and 2010 to demand that he lodge his returns. He had failed to do so. In 2013, the ATO wrote to Mr Q to warn him that it intended to make its own assessment of his taxable income, based on the information that it already possessed about his income, as reported by his employer and other sources. Several months later, after Mr Q failed to respond to the ATO's letter, the ATO issued assessments of Mr Q's taxable income for the past 10 years. This assessment information was transferred to Child Support which used it to amend Mr Q's child support assessments.

Although Ms P was pleased that Child Support eventually increased her assessment, this only occurred after many years of complaining about her predicament. Child Support did not take an active role in establishing Mr Q's correct incomes. By the time Ms P's child support assessment was corrected, her children were all adults. Child Support is still endeavouring to collect from Mr Q the money that he had underpaid over many years.

### ***Child Support's power to obtain income information other than from the ATO***

Ms P and Ms N both attempted to address their inaccurate child support assessments via the ATO. However, we note that, even without data from the ATO, Child Support has various administrative mechanisms at its disposal to obtain income information about parents. Section 161 of the *Child Support (Assessment) Act 1989* allows a delegated Child Support officer to serve a notice upon a parent, or a third party, requiring them to give information, provide documents, or to attend and answer questions, where that is reasonably necessary to administer the child support legislation. However, we have noticed some inconsistencies in the way Child Support uses its information gathering powers, and a general reluctance to use it to require a parent to provide information about his or her own financial circumstances. We discuss this further below in relation to Child Support's collection of child support.

### **Collecting (or transferring) child support**

Once Child Support has made an assessment of the amount that a parent is obliged to transfer to the carer of the child, the payee can choose to collect the amount directly from the payer (private collection) or ask Child Support to collect on their behalf (Child Support collection).

The child support legislation presumes that Child Support collection is the default position unless the payee chooses to collect payments privately. When Child Support makes a new child support assessment (including an assessment made in accordance with a child support agreement) it must

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

register the liability for collection (section 24A(1)) unless the payee elected for Child Support not to collect that liability for them when they applied.<sup>6</sup>

However, DHS says that it 'encourages separated parents to manage their child support responsibilities independently through private collect arrangements' because 'research shows that this method gives the most flexibility to parents who can cooperate on parental decisions'. In 2012-13, Child Support's target was for 52% of cases to be on private collect arrangements. The actual percentage of private collect cases in 2012-13 was 54%.<sup>7</sup>

We have seen a range of problems associated with a payee's election to collect their child support payments privately. Although the payee is entitled to change his or her mind and apply for Child Support to collect payments from the payer, this 'safety net' does not always ensure that the payee does not miss out on child support payments and can lead to disadvantage in respect of Family Tax benefits paid by Centrelink. We include some examples as case studies later in this submission.

## Child Support collection

If the payee has chosen to have Child Support collect payments from the payer, the payer's liability to pay is entered into the Child Support register, transforming the payer's financial obligation to the payee into a debt to the Commonwealth. However, the Commonwealth does not guarantee those payments. The payee is entitled to receive only the amounts that Child Support collects from the payer. If Child Support does not collect payments from the payer, the payee will not receive anything.

One of the principal objects of the Child Support scheme is 'that periodic amounts payable by parents towards the maintenance of their children are paid on a regular and timely basis'. The default option in the legislation is for Child Support to collect from the payer's salary and wages, if that is practicable.<sup>8</sup> This will not be practicable if the payer is not a wage and salary earner, or if the payer does not receive regular payments from their employer (for example if the payer works intermittently on a casual basis). However, there are other ways that Child Support can collect payments, which we discuss below.

There is also an exception for payers who elect not to have their payments deducted from their wage and salary: if Child Support is satisfied that they will make their payments on time, it must accept their election to make their own payments to Child Support. If those payments are not made on time, then Child Support may start (or resume) deductions.

### Starting salary deductions

Payees sometimes complain to us that Child Support is unwilling to start or resume deductions when the payer delays or misses a payment. The following case study is an example where we found that Child Support failed to promptly implement salary deductions when the payer did not make payments on time and in full.

#### Investigation case study three

Ms K is the mother of two young children and has a family violence order against Mr L, her former partner. She originally chose to collect payments from Mr L privately. She then applied to Centrelink for an exemption from having to collect child support because of family violence and ended her child support assessment.

<sup>6</sup> <http://guides.dss.gov.au/child-support-guide/5/1/3#newassessments>

<sup>7</sup> Department of Human Services Annual Report 2012-13, table 1h, available online at: <http://www.humanservices.gov.au/corporate/publications-and-resources/annual-report/resources/1213/chapter-02/performance-key-indicators> accessed 14 June 2014.

<sup>8</sup> Section 43, *Child Support (Registration and Collection Act 1988*.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

Several months later, Ms K reapplied for a child support assessment, and asked Child Support to collect payments from Mr L for her. .

When Child Support advised Mr L that it had accepted Ms K's application, Mr L requested that his payments not be deducted from his wages. Child Support agreed to Mr L's request, despite Mr L already being behind with his other child support case with an earlier partner.

Over the next three months, Mr L made irregular payments to Child Support which did not cover his liability. Ms K contacted Child Support repeatedly to request that it start collecting from Mr L's salary and wages. She provided the name and address of his employer and a pay slip. Each time Ms K called, Child Support told her that it was monitoring her case and that it would consider salary deductions if Mr L did not pay off his arrears in a reasonable period.

Mr L's arrears grew to over \$5,000 in less than four months from the time that Child Support accepted Ms K's application. Child Support telephoned Mr L about his payment defaults, but failed to commence deductions from Mr L's wages and salary. This may have been attributable to a clerical error. Although Ms K had told Child Support where Mr L worked, Child Support had written to a different organisation with a similar name and had been told (correctly) that Mr L was not employed there.

Four months after Ms K applied for collection, Mr L made a lump sum payment to Child Support that reduced, but did not clear, his arrears. Several days later, Child Support intercepted Mr L's tax refund and applied it in part satisfaction of his child support debt. Five months after Ms K applied for collection, Child Support called Mr L to discuss his arrears and he agreed to make a payment to cover them in full.

Shortly after Mr L brought his child support account up to date, Ms K made a complaint to Child Support about its failure to commence salary deductions. She said that she could not budget because of her irregular payments and that she believed Mr L was deliberately 'playing the system'. She again requested that Child Support commence salary deductions because of 'irregular payments and family violence'. Child Support's complaints officer told Ms K that she did not need to have contact with Mr L about her payments because Child Support was responsible for collection. The complaints officer also told her that Child Support was monitoring Mr L's payments but that it did not intend to initiate salary deductions at this stage. The Child Support complaints officer decided not to uphold Ms K's complaint because Mr L was now up to date with his payments.

Ms L made a complaint to the Ombudsman's office. Two days after we notified Child Support that we had decided to investigate Ms K's complaint, Child Support contacted Mr L and advised him that it had reviewed his payment history and that it was not satisfied that he was likely to make timely payments. Child Support wrote to Mr L's employer the next day to arrange deductions.

We note that the number of Child Support collect cases with wage and salary deductions appears to be falling: 63,924 active paying parents had employer withholding payments set up at 30 June 2013, compared with 65,910 at 30 June 2012.<sup>9</sup>

In the following case study, Child Support delayed starting salary deductions because of a clerical error.

**Investigation case study four**

The payee, Ms B, complained to the Ombudsman's office in October 2013 that her case had been in arrears for six years and she was owed over \$12,000 in child support from the payer. She said she had told Child Support where the payer worked but had still received no money and Child Support couldn't explain why it was unable to collect anything for her.

When we investigated Ms B's complaint, Child Support told us that in March 2013 the employer Ms B had identified had confirmed that Mr C was working for them casually. In April 2013, Mr C's case was assigned to Child Support's Intensive Collection area. However, the Child Support officer misread the file and believed the employer information to be out of date, because Mr C had previously worked for the

<sup>9</sup> Department of Human Services Annual Report 2012-13, table 64 available online at <http://www.humanservices.gov.au/corporate/publications-and-resources/annual-report/resources/1213/chapter-07/managing-child-support-customer-compliance> accessed on 14 June 2014.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

same employer. The officer made several unsuccessful attempts to contact Mr C and no further collection action was taken. Child Support reviewed the case again in May 2013 and October 2013, but failed to notice that it had information on its records that it could use to collect some payments for Ms R. That oversight persisted despite the fact that for 18 months Ms B had repeatedly advised Child Support where Mr C was working.

In November 2013, as a direct result of our investigation, Child Support wrote to Mr C's employer to require them to commence deductions of 25 cents in the dollar in satisfaction of Mr C's child support debt. Child Support also wrote to Ms B to apologise for its failure to act on her information and acknowledged that it had missed opportunities to collect child support for her.

### **Monitoring deductions**

We assume that the majority of salary deduction arrangements work well. However, we do receive some complaints where salary deductions do not result in regular payments. This can be for quite legitimate reasons, for example, if the payer is paid less than the protected earnings amount in a particular pay period. But sometimes there is a default or delay on the employer's part, or an error or delay by Child Support.

We consider it is important that Child Support carefully manage and monitor that the payments it expects to receive arrive, and if not, investigate why. It is an offence for an employer to fail to comply with a notice requiring them to make deductions for Child Support.<sup>10</sup> Furthermore, delayed payments can cause problems for both payees and payers, particularly where either party has not been given sufficient information from Child Support to understand what has happened. The cases below highlight these problems.

#### **Investigation case study five**

Ms H complained to us that her child support payments had been irregular and unreliable since the beginning of 2013. She had complained several times to Child Support, but the problem persisted and she did not understand why. She had talked to her former partner about this, but he told her that his child support payments were coming out of his pay.

When we investigated Ms H's complaint, Child Support told us that it had started salary deductions for Mr I several years ago. It said it received nothing from his employer in July 2013, and that it had followed this up with his employer. Based on the employer's advice about a change in Mr I's work arrangements, Child Support decided to stop salary deductions (which are at a set dollar amount), because they would no longer be effective. Instead, Child Support issued a new notice to the employer, requiring the employer to pay to Child Support a set percentage of Mr I's future payments.

Child Support received no payments from Mr I's employer between July and November 2013. It initially told us that this was because of changes in Mr I's payment structure and source; reduction in Mr I's salary; and the employer's request that Child Support create separate accounts for different geographic zones in the employer's workplace. When Ms I lodged a complaint with Child Support about the lack of payments, the complaints decided not to uphold Ms H's complaint and suggested she approach Mr I about the 'missed payments'.

Further investigation by this office revealed that a number of other factors had contributed to the lack of child support payments to Ms H. A failure in Child Support's computer system meant that the notices Child Support believed it had sent to the employer in July and August 2013 had not in fact been sent. When the notices were reissued, the employer was unable to implement deductions at a set percentage of each payment to Mr I, because of a deficiency in its payroll system. Several payments were missed before Child Support contacted the employer to follow up the notice. As a result of that follow up, the employer investigated and identified the cause of the problem and implemented a fix.

Child Support advised us that Mr I's employer started making deductions again in late November 2013.

<sup>10</sup> Section 46 *Child Support (Registration and Collection) Act 1988*; see also s 72A(2) which makes it an offence for a person to fail to comply with a 'garnishee' notice issued under s 7A of that Act.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

In the following case, Child Support had received money from the payer's employer, but delayed paying it to the payee.

#### Investigation case study six

Ms M complained to us on 23 August 2013, when the child support payment she was expecting on 8 August 2013 had not been deposited in her account. Ms M telephoned Child Support many times and was given different explanations for why the money had not been deposited, including that there was a data transfer problem between the ATO and Child Support; that her account had been 'frozen', and data 'corrupted'. Child Support could give Ms M no timeframe for resolution and said she could ring the Ombudsman to complain. Ms M said that one of the Child Support Officers she spoke to told her she shouldn't be bothered that her child support payments were disrupted as she was also receiving Centrelink payments. Ms M received her payment on 26 August 2013, but she wanted to know why it was delayed.

When we investigated Ms M's complaint, Child Support told us that Ms M's payments were normally 'auto-reconciled' and sent to her as soon as they were received from the payer's employer. However, her August payment was not auto-reconciled because the employer sent in less money than Child Support expected. Child Support delayed paying her anything while it attempted to contact the employer to find out the reason for the shortfall. This is Child Support's usual procedure, because if it finds out that the employer has actually deducted the right amount, but not remitted all of it, Child Support can 'top up' the money it received so the payee receives the correct amount.<sup>11</sup> However, Ms M's case was given low priority, because the employer in question was only making deductions for one employee, and Child Support prioritises the larger employers on the basis that this advantages the greater number of people.

On 23 August 2013, Child Support contacted the employer and found out that the payroll officer was on leave until the following week. At this point, Child Support decided to pay Ms M the money that it was holding, as it was satisfied that it could only be for her.

By choosing to delay disbursement until it had made enquiries of the employer, Child Support caused Ms M some inconvenience, if not hardship. At the conclusion of our investigation, we suggested to Child Support that it would have been preferable to promptly pay Ms M what it had already received, in accordance with her usual payment cycle and then follow up with the employer to find out if Ms M was entitled to a 'top up' payment.

In response to our suggestion that Child Support may have caused Ms M hardship, Child Support acknowledged Ms M made many calls to the department, but said this appeared to be the result of a lack of clear communication about the delay rather than any hardship she was experiencing. Child Support told us that it had apologised to Ms M for the delay, but that it considered the follow up with the employer and subsequent disbursement to Ms M was appropriate given that the account did not auto-reconcile.

Child Support said it would consider our suggestion about promptly paying the payee any amount received while it investigates the reasons for a shortfall in the context of the project to replace its IT system in 2016.

## Garnishee notices

In case studies four and five above, Child Support decided that salary deductions would not be effective for the payer and proceeded to issue a garnishee notice to the payer's employer under s 72A of the *Child Support (Registration and Collection) Act 1988*. A s 72A notice can be issued to any third party who holds, or will hold money on account of a person with a child support debt. Child Support is generally quite willing to issue s 72A notices to banks, or to employers, or to people who are obliged to make payments to a payer who is a contractor. However, we have investigated complaints that highlight weaknesses in Child Support's monitoring compliance with a s 72A notice. The following case study was included in our 2010-11 Annual Report.<sup>12</sup>

<sup>11</sup> 'Top up' arrangements are authorised by s 77 of the *Child Support (Registration and Collection) Act 1988*.

<sup>12</sup> See case study headed 'My boss stole my money' on page 57, also available online at <http://www.ombudsman.gov.au/pages/publications-and-media/reports/annual/ar2010-11/chapter-5.html#child-support-agency>

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

**Investigation case study seven**

Mr J complained to us that Child Support was chasing him to pay around \$8,000 in child support arrears. He said he had paid off this debt years ago, through deductions from his contract payments. Mr J said the Child Support should get the money from Mr J's former employer, who had gone into liquidation.

We investigated Mr J's complaint and found that Child Support instructed Mr J's employer to deduct 30% from every payment they made to Mr J, and send that money to it. The employer made the deductions, but failed to transfer all the money to Child Support. When Child Support's efforts to encourage the employer to comply did not succeed, it failed to refer the employer's case for prosecution. Even more worryingly, it decided to leave the arrangement in place, so more deductions were made from Mr J's payments. When Child Support learned that the employer had gone into liquidation, it told Mr J that this was now a matter between Mr J and his former employer.

During our investigation, Child Support accepted that it had failed to take decisive and appropriate action in Mr J's case and that this had caused Mr J to lose a substantial sum of money. It offered Mr J compensation equivalent to the sum that his employer had retained. Child Support proposed to Mr J that it would apply that compensation to his child support debt, and that this money would then be transferred to his former partner for the support of their children.

Child Support told us that it was planning a range of procedural and computer system improvements, plus staff training, to address the systemic problems exposed by Mr J's complaint. Since then, we have investigated several complaints about Child Support's response to the liquidation of an employer or other person obliged to comply with a garnishee notice. Those investigations suggest that Child Support has improved its procedures in relation to this fairly unusual situation. But we remain concerned about Child Support's general arrangements to monitor compliance with garnishee notices, as the following case studies demonstrate.

**Investigation case study eight**

Ms F complained that the payer, Mr G, has not paid regular child support for over four years. She said her payments ranged from \$0 per month to \$1600, but were usually in the \$0-\$600 range, and she was owed more than \$20,000 in arrears. Ms F said Child Support did not seem to put any effort into securing consistent payments even though it knew where Mr G worked and he had been with the same employer for some time. She said that she often went for months without receiving a payment and, in fact, in 2012 she went for nine months without child support payments.

Although Ms F had complained, Child Support Complaints advised her that there was nothing it could do. She had also been told things like 'Maybe he can't afford it this month', and 'Maybe you will get more next month'. Ms F said that when she asked Child Support what was preventing collection, it would not disclose any further information due to 'privacy'.

When we investigated Ms F's complaint we found that Child Support had tried to collect payments from Mr G via salary deductions in 2010, but decided that this was not an efficient collection method. Salary deductions are at a set dollar rate, but Mr G's pattern of work mean that his payments fluctuated significantly. There were many months where his pay fell below the protected earning amount, and the employer could not deduct any Child Support. Nor could the employer carry the shortfall over to the following months, and Mr G did not respond to monthly notices requiring him to pay the arrears direct to Child Support.

In 2012, Child Support notified Mr G's employer to end salary deductions and instead issued a garnishee notice requiring the employer to deduct a set percentage from each payment made to Mr G. Child Support told us there had been significant problems with the garnishee arrangement from the outset. The employer had failed to comply with the notice at all in some months; deducted less money than was required in others, sent the payments in later than required under the notice, and used incorrect reference numbers to identify the payments which meant Child Support could not identify which child support case the money was for (the employer was obliged to make deductions for a number of employees).

In response to our investigation Child Support told us that it had spoken to the employer to establish why the deductions were not being made as required and emphasised the employer's legal obligation to

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

comply with the garnishee notice. The employer had investigated the problems and undertaken to comply in future.

Child Support told us that it expected to recover Mr G's arrears in the next five months. Child Support acknowledged that it 'should have made more persistent contact attempts with the employer to ensure they were fully aware and complying with their obligation to remit child support payments on [Mr G's] behalf.'

## Tax refund intercepts

If a payer is in arrears, and becomes entitled to a tax refund, Child Support can obtain the refund from the ATO and apply it to the payer's child support debt. The money is then transferred to the payee. This 'tax refund intercept payment' (TRIP) process is highly automated and relies on the fact that Child Support includes the payer's and payee's tax file numbers in its records, and the ATO includes a child support indicator on the records of taxpayers with a child support case. In 2012-13, Child Support obtained 109,164 tax refunds, collecting \$116.4 million.

We regularly receive complaints from payers who believe that it was unfair for Child Support to take their tax refund. We rarely investigate these complaints because Child Support's statements include a warning that it will intercept a tax refund if the payer's account is in arrears, even if the payer has entered into a payment arrangement. However, in some cases, the payer has contacted Child Support before lodging their tax return to explain that taking their tax refund will cause them financial hardship. In such cases, Child Support should ask the person to complete an assets and liabilities form, so that it can consider applying only part of the refund to their child support debt (or decide not to take any of the refund). Sometimes this system fails, and the refund is taken and disbursed to the payee before Child Support considers the payer's situation. While we do investigate complaints of this type, once the amount is paid to the payee, it is usually too late for any remedial action to be taken, apart from an apology. Child Support cannot recover the money from the payee, who was entitled to receive it. It is unlikely that the payer could successfully claim compensation from Child Support for the error, as the tax refund has been applied in reduction of their child support debt, so there is unlikely to be a direct financial loss to be compensated.

We rarely receive complaints from payees about a failure in the automated TRIP process. One exception mentioned in our 2011-12 Annual Report occurred while the ATO was implementing its new computer system. Human error in one particular case led the ATO to release a refund to the taxpayer (i.e. the payer) instead of sending it to Child Support. Child Support had not been able to collect the money from the payer since then. In recognition of its error, the ATO offered the payee compensation for the missed tax refund, on condition that she would refund the same amount if and when Child Support eventually collected it from the payer.<sup>13</sup> We believe this was an appropriate outcome. However, we have been unable to persuade Child Support to adopt the ATO's approach in other cases where Child Support's defective administration has caused it to miss a collection opportunity. We discuss this further on page 20.

Another unusual complaint relating to the TRIP process was a payee who complained to us that she was being required to repay the money that Child Support had assured her it had collected from the payer. It turned out that the money had come from a tax refund which the ATO issued after assessing a fraudulent tax return lodged using the payer's tax file number.<sup>14</sup>

## Enforcing collection in difficult cases

Each year we receive complaints from payees who are dissatisfied that Child Support has been unable to collect payments from their former partner who is self-employed. We recognise that in such cases, if the payer is unwilling to comply voluntarily with their obligations, it can be difficult for

<sup>13</sup> Commonwealth Ombudsman Annual Report 2011-12, at p 62, available online at [http://www.ombudsman.gov.au/pages/publications-and-media/reports/annual/ar2011-12/download/pdf/ombudsman\\_anrep\\_2011\\_2012.pdf](http://www.ombudsman.gov.au/pages/publications-and-media/reports/annual/ar2011-12/download/pdf/ombudsman_anrep_2011_2012.pdf).

<sup>14</sup> See case study fourteen about Ms T, on page 23



Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

Child Support to enforce them. Nevertheless, we consider that it is vital that Child Support is seen as effective, but fair in its efforts to assess and collect child support payments. In our view, the integrity of the scheme will be undermined by community perceptions that people can readily avoid their responsibilities.

In May 2014, we advised Child Support that we were concerned by a trend emerging from our complaint investigations, whereby it appeared that the payer was able to deliberately and persistently evade Child Support's efforts to collect through fairly simple measures. The following case study is an example.

#### **Investigation case study nine**

This case study follows on from case study one on page 8, and concerns Child Support's efforts to collect payments from Mr O for Ms N. In case study one, we described the measures that Child Support and the ATO had taken to ascertain the income of Mr O, who has not lodged his tax returns for many years.

Ms N believed that her child support assessment was too low. However she was also unhappy that she was not receiving payments from Mr O in accordance with that child support assessment. When Ms N contacted us, she had not received any child support payments for more than a year and was owed approximately \$2800. Although Mr O was working, Child Support told her it could not collect any payments from that source.

When we investigated Ms N's complaint, Child Support told us that Mr O had a history of refusing to make payments, and defaulting on agreed payment arrangements. Mr O had advised Child Support that he did not intend making any payments because he had issues with how Ms N spends the money.

Child Support was aware that Mr O was working as a sub-contractor under an ABN linked to a partnership, and his only bank account appeared to be held in joint names with his partner. Child Support said this meant it could not use a garnishee notice to collect money from that account because it was not possible to identify any portion as belonging solely to Mr O.

Child Support said that although the debt was still owed, it was not proactively taking recovery action against Mr O. Child Support stated that it had no means of administratively enforcing collection of Mr O's debt. Child Support told us that it did not consider legal action was a viable option at this time, although it would continue to review the case each 12 months, and in the light of any new information that Ms N provided. Child Support referred to its obligations under the *Financial Management and Accountability Act 1997* with regard to expenditure of public funds to recover debts payable to the Commonwealth.

The next case study is another example of a payer who has been able to avoid Child Support's efforts to collect his payments by moving between employers.

#### **Investigation case study ten**

Ms A complained that Child Support was not taking sufficient action to collect from her former partner, Mr B. Ms A was in receipt of income support payments and told us she was experiencing financial hardship.

Mr B had not lodged his tax returns for many years. Ms A had successfully challenged the default incomes that Child Support was using to work out how much child support Mr B should pay. But Mr B was not making voluntary payments and Child Support had not been able to find a third party from whom it could collect payments. In March 2014, Mr B's total child support debt was \$75,000.

Mr B had been self-employed and also worked in an industry where he could readily move between employers. Over many years, Ms A kept Child Support informed about the places where Mr B worked and Child Support would try to confirm her information with those employers. Each time, Child Support would be told that Mr B had resigned or had finished his contract.

As Mr B did not lodge his tax returns, there were no refunds available to intercept. Child Support had been unable to locate any money held in bank accounts in Mr B's name. Child Support had been unable to identify Mr B as the owner of any real estate. In the absence of any evidence to show that Mr B had assets that could be used to pay his debt, Child support had decided that his case was not suitable for



Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

court action. Child Support told us that it continued to look for ways to collect payments from Mr B, but none had been successful so far.

DHS' 2012-13 Annual Report includes the following information about the cases where Child Support has taken court action to enforce a debt and the amounts collected.<sup>15</sup>

	2010-11	2011-12	2012-13
<b>Litigation – number of actions</b>	179	290	162
<b>Litigation - amount collected (million)</b>	6.9	7.4	4.1

Case studies nine and ten above are just two of many where Child Support has told us that it does not consider it is appropriate to take legal action to collect a debt owed by a payer who has persistently defaulted on his or her payments. We accept that Child Support is not resourced to a level that would permit it to take legal action in every case where the payer is unwilling to pay. We also acknowledge that this means that Child Support must carefully prioritise which cases it will take to court.

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

### ***Obtaining information about the payer's financial situation***

It is normal practice for Child Support to conduct a range of searches to obtain information about the assets and finances of payers who are in arrears with their child support payments. Child Support routinely sends notices under s 120 of the *Child Support (Registration and Collection) Act 1988* to third parties, such as banks and other financial institutions, or people identified as possible employers of a payer, to obtain information that it can use to collect payments.

It is also open to Child Support to use those information gathering powers to require a payer with arrears to attend and answer questions about their income and means of support, and produce relevant documents. In several recent investigations, we have asked Child Support whether it has considered using this power to obtain information directly from the payer. In each case, Child Support told us it had not.

We recognise that the exercise of these powers may not be appropriate in every case, however, we are concerned that Child Support has decided that it is never appropriate to do so. For example, in our investigation of Ms A's complaint (case study 10 above) Child Support told us that:

*While the department can utilise s120 to require a person to attend and provide information in person, a decision to utilise this power must be weighed up with the likely collection outcome. Whether Mr [B] would respond any more favourably than he has in response to other contact attempts would need to be considered. A person should only be required to attend when doing so will produce a necessary outcome that a written response would not, therefore this power of the Act is seldom used. In this case, it is unlikely Mr [B] would present in person to provide any information to assist with collection given his lack of response to previous written communication and attempts to communicate verbally.*

While we acknowledge that a person's unwillingness to communicate voluntarily is a relevant factor, we note that there are no obvious consequences for ignoring Child Support's letters and phone calls. However, there are penalties provided in the child support legislation for not complying with a s120 notice. We have asked Child Support to further consider this option, particularly in cases where it is clear that the payer has an income from which he or she could pay their debt.

<sup>15</sup> (<http://www.humanservices.gov.au/corporate/publications-and-resources/annual-report/resources/1213/chapter-07/managing-child-support-customer-compliance>)

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

### ***Failure to act on advice received and keep payee informed***

As can be seen from the case studies in this submission, Child Support relies heavily on 'tip offs' from payees about the likely collection sources for a defaulting payer. Most people who complain to us about Child Support's failure to collect a debt mention their frustration that Child Support did not explain fully to them or keep them informed about what it was doing. This lack of transparency can be inefficient and sometimes causes people to doubt what Child Support does tell them. Usually, we find that Child Support has taken appropriate action to follow up on the payee's information, but this has not led to it collecting any money. In some cases, we find that there has been delay or a mistake which led to Child Support missing a collection opportunity (for example, see case studies four and five above). Those errors were unlikely to have been identified if not for our investigation.

Child Support frequently tells payees that it cannot tell them about the collection actions it has taken because this would be a breach of the payer's privacy. Often the amount that the payee is told will depend on who they speak to. We have noticed significant inconsistencies in the level of detail that Child Support will disclose. What is consistent, however, is that Child Support rarely proactively reports to the payee about its collection actions and will only provide a report if the payee requests it.

Section 113(2) of the *Child Support (Registration and Collection) Act 1988* provides that Child Support "may take such steps as [it] considers appropriate to keep the payee ... informed" of action taken to recover their debt. While this does not mean that Child Support should tell the payee everything, we nevertheless consider that many complaints (and misunderstandings) could be avoided if Child Support were to keep payees regularly and accurately informed about the collection activity that it has undertaken, including unsuccessful actions.

### ***Compensation for missed collection opportunities***

The Scheme for Compensation for Detriment caused by Defective Administration (CDDA) allows government agencies to compensate persons who have experienced financial loss as a result of an agency's defective action (or inaction). We have received complaints from payees who have debts owed to them by payers where Child Support has missed collection opportunities. Child Support has generally refused to pay compensation in such cases because it argues that the money may be collected at some time in the future.

Although these complaints are quite rare, we continue to raise with Child Support our concerns about its approach to compensation. On page 16, we discuss a case where the ATO paid compensation to a child support payee who missed out on receiving the money that should have been taken from the payer's tax refund, because of an ATO error. The ATO's offer was made on the proviso that the payee would refund the money to the ATO if and when Child Support collected it for her. We consider that the ATO's offer was an appropriate response, as it returned the payee to the financial position she would have been in, if not for the ATO's error.

By contrast, Child Support has refused to offer a lump sum payment as compensation for a missed collection opportunity arising from its own defective administration. Child Support has taken the view that when it misses a collection opportunity, the payee has suffered a delay, rather than a loss. If the payee claims compensation, Child Support will consider paying compensation for the diminished value of the payments when it eventually collects them, but this cannot be calculated until that collection occurs. We do not consider this is an adequate response to a claim where Child Support acknowledges that a payee has lost the immediate financial benefit of a sum that he or she could have been paid if not for Child Support's defective administration. In our view, requiring the payee to wait until Child Support can eventually collect the money from the payer unreasonably

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

delays the remedy. Furthermore, if Child Support fails to collect the money, the remedy will never eventuate.<sup>16</sup>

## General administrative problems affecting payers and payees

Most of the issues we have discussed to this point arise from complaints made by payees. There are also a range of administrative problems that can affect payers and payee equally.

### ***Complex rules that make it difficult to correct errors***

The following two case studies are highly technical, but not unusual. In both cases, a mistake was made that meant the child support assessment was based on the wrong income for the parent. These two complaints were made by payers, but the same issue could affect a payee. Although Child Support acknowledged the error, it said it could not easily fix it.

#### **Investigation case study eleven**

Mr D's accountant made an error when completing Mr D's income tax return for 2010-11. As a result, the ATO assessed that Mr D's taxable income for 2010-11 was \$292,000 instead of \$92,000. The ATO notified Child Support of this assessment and Child Support amended Mr D's child support assessment accordingly, increasing it dramatically.

Mr D notified the ATO of the error and the ATO amended his taxable income to \$92,000.

Mr D asked Child Support to correct his child assessment. Child Support told him that it was obliged to continue using the information in the ATO's first assessment, and that his only option was to apply for a 'Change of Assessment in special circumstances'. Mr D did not want to do this, because he believed Child Support should have been able to correct his assessment once it was aware that the ATO's first assessment was wrong.

Mr D complained to this office in late February 2014. We established that s 56(2) of the *Child Support (Assessment) Act 1989* prevented Child Support taking account of the ATO's amended assessment except in certain prescribed circumstances. However, as a result of our investigation Child Support sought policy advice from the Department of Social Services (DSS) about any options for amending Mr D's assessment. As of late May 2014, DSS had not provided this advice.

Mr D has the option of applying for a change of assessment; however this is a complex, intrusive and time consuming process to rectify a simple error.

#### **Investigation case study twelve**

Mr A, a payer, lodged his 2012-13 income tax return in July 2013, which was before the due date on 31 October 2013.

In November 2013, Child Support sent Mr A an assessment notice which said that it was using a default income for him based on his 2011-12 income because Mr A had not lodged his 2012-13 return. Mr A contacted Child Support to advise that this was incorrect and to ask that it amend his assessment because his taxable income for 2012-13 was lower than his 2011-12 income. Child Support agreed to do so, but said it could only reduce his assessment from 1 December 2013. Mr A complained to our office, because he believed his child support assessment should have been reduced from an earlier date, as he had lodged his tax return on time.

We investigated Mr A's complaint and found that when ATO issued a notice of assessment to Mr A, the information about his taxable income had not successfully transferred to the Child Support computer system. As a result, Child Support's usual automated process to make a new assessment had not been triggered in August 2013. However, even though Child Support acknowledged that Mr A's new child support assessment should have started in August 2013, it had only started in December 2013.

<sup>16</sup> See also the Commonwealth Ombudsman Annual Report 2012-13, at pages 53-54, available online at [http://www.ombudsman.gov.au/pages/publications-and-media/reports/annual/ar2012-13/pdf/ombudsman\\_annual\\_report\\_2012\\_2013.pdf](http://www.ombudsman.gov.au/pages/publications-and-media/reports/annual/ar2012-13/pdf/ombudsman_annual_report_2012_2013.pdf).

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

Furthermore, s 34A(2) of the *Child Support (Assessment) Act 1989* would not permit Child Support to backdate the period.

Child Support told Mr A that the only remedy available to him was to apply for a 'Change of Assessment in special circumstances' – a lengthy procedure involving submissions from both parents – or to apply for compensation under the Compensation for Detriment caused by Defective Administration (CDDA) scheme. When Mr A lodged his compensation claim, Child Support refused it because it concluded that the ATO was responsible for the failure to transmit Mr A's income information in July 2013, and that it was not Child Support's fault. We are still investigating Mr A's complaint.

### ***Poor quality letters and notices sent to customers***

Child Support is a phone first service. We support this approach as calls are generally answered quickly, especially compared to Centrelink calls. Since child support issues can be very complex it allows for customers to easily ask questions if they don't understand information that is being provided. It also allows Child Support staff to provide appropriate referrals where customers are distressed or need extra assistance beyond what Child Support can provide. Calls are also recorded, which assists in the investigation of complaints, both internally and by our office.

We are concerned, though, that there appears to be reluctance by Child Support to provide written information to customers who request confirmation of a discussion or advice given verbally by staff. This can lead to further confusion and complaints, including to the Ombudsman.

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

We continue to raise the need to improve the quality of letters with Child Support and with DHS in general.

### ***Problems with CSAonline and online services generally***

We are aware of a general trend in Australia and globally to encourage customers of government and private services to use online services and this is the case with all programs of DHS including Child Support.

In 2013, we received a number of complaints from Child Support customers saying they were not receiving timely notice that there was a letter waiting in their CSAOnline account to be read. As Child Support does not post a copy of its letters to customers who have chosen to receive their letters online, this was a significant problem.

Child Support customers must now create a DHS myGov account to access their Child Support account. We have recently received several complaints about customers not being able to access historical Child Support letters via myGov. Child Support has acknowledged that there is currently a data migration issue that has resulted in letters from CSAOnline taking significantly longer to move across to myGov than anticipated, and advised that it is actively working on a resolution. In the interim, customers can contact Child Support by telephone and request a copy of those letters.

Other issues of complaints regarding online services include customers having difficulty setting up their myGov accounts; and general difficulties accessing online services including problems sending some documents.

## **Overpayments of child support**

### ***Payee overpayments***

Overpayments of child support occur when a payee has been paid child support to which they are not entitled, usually because Child Support has made a retrospective variation to a child support

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

assessment, or where a court makes an order or declaration with retrospective effect. The payer is entitled to take court action against the payee to recover child support overpaid under a child support assessment. If those payments were made through Child Support, Child Support may also be entitled to recover the overpayment from the payee.

In our 2012-13 Annual Report we mentioned a change in the policy about which debts Child Support would recover from payees. That policy change arose from our investigation of several complaints about Child Support recovering overpayments from payees in circumstances where the payee had received the money in good faith and the overpayment arose through actions of the payer.<sup>17</sup>

Under that revised policy, Child Support no longer recovers overpayments arising from:

1. a payer's failure to lodge pre 2008 tax returns within the time limits set by the Australian Tax Office; and
2. a payer's failure to advise DHS about their change of address where that change of address causes the child support assessment to end (i.e. because the payer resides in a non-reciprocating jurisdiction).

However, Child Support continues to recover overpayments from payees that arise in a variety of other situations. Where the payer has an ongoing child support liability, the usual method of recovery is to offset the overpayment against each month's liability as and when it falls due. It is also possible for the payee to negotiate with Child Support to have a regular amount withheld from their future payments. Sometimes, Child Support will refund the overpayment to the payer in advance of recovering it from the payee. However, we have not seen many cases where this option is used.

We have received several complaints from payers who are dissatisfied with Child Support's efforts to recover overpayments from a payee who has no continuing child support entitlement. In many ways, these complaints resemble the complaints that payees make about Child Support failing to collect payments for them.

#### **Investigation case study thirteen**

Mr E was obliged to pay child support to his former partner, Ms F, for their child, who subsequently came to live with him. Although Mr E told Child Support promptly of the change in care, Ms F disputed it and Child Support decided not to end the assessment.

Mr E objected to Child Support's decision. While his objection was being considered, Child Support intercepted Mr E's tax refund and paid it to Ms F. Once Child Support allowed Mr E's objection, it amended the assessment so that Mr E was now the payee and advised Ms F that she was obliged to repay the money it had paid her from Mr E's tax refund. Ms F did not repay the money.

Mr E asked Child Support to pay the refund back to him. Child Support refused because although it has discretion to appropriate from consolidated revenue to repay overpayments, it said it would only do so if the overpayment was caused by Child Support's error. In this case, Child Support considered that the overpayment had occurred through the normal operation of the scheme.

Child Support negotiated a payment arrangement with Ms F, however, she had a low income and was only able to make small repayments. Under this arrangement it would take over one year before Child Support recovered the overpayment. This ignored Mr R's financial situation and the fact that he was now the payee needing support for the child.

We are aware that although Child Support has a range of legal powers available to it to collect overpayments from payees, such as by withholding money from Centrelink payments, it lacks the

<sup>17</sup> Commonwealth Ombudsman's Annual Report 2012-13, at pages 52 and 53, available online at [http://www.ombudsman.gov.au/pages/publications-and-media/reports/annual/ar2012-13/pdf/ombudsman\\_annual\\_report\\_2012\\_2013.pdf](http://www.ombudsman.gov.au/pages/publications-and-media/reports/annual/ar2012-13/pdf/ombudsman_annual_report_2012_2013.pdf).

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

administrative and technical support to do this. Child Support has advised us that this deficiency will be remedied when it replaces its computer system, currently scheduled for 2015.

We also have some concerns that when Child Support recovers an overpayment from the payee, it will recover the full amount of the overpayment, without regard to the circumstances in which the overpayment occurred. This can be contrasted to the legislation governing the payer's right to recover an overpayment from the payee direct, by application to a court under s 143 of the *Child Support (Assessment) Act 1989*. The court would consider whether it is 'just and equitable' for the payee to return the overpaid amount to the payer. We note the disparity between Child Support's approach of collecting from the payee regardless of the fairness of doing so, and the court's approach of considering whether it is 'just and equitable' to order recovery.

### ***Overpayments that were not made by the payer***

We explained earlier that most payee overpayments occur when there is a retrospective change to the assessment, such as in Mr E's case above. However, it is also possible for the payee to be overpaid child support when they are paid money that child support has collected from the wrong person, or to be more accurate, which was not sourced from the payer. In such a case, the payer owes a debt to the Commonwealth, although the overpayment will not be repayable to the payer. We have an example of such a case below.

#### **Investigation case study fourteen**

Ms T complained that she had been asked to repay \$6,000, which had been raised as an overpayment of child support. Ms T had received \$6,000 from Child Support. Ms T queried this as she knew the payer, Mr U, was not working. Child Support assured Ms T the payment was for her and that it had collected the money from Mr U's tax refund. As Ms T knew that Mr U owed more than \$6,000, she accepted Child Support's advice and used the money for household and education expenses.

The ATO subsequently advised Child Support that a fraudulent income tax return had been lodged using Mr U's tax file number and the \$6,000 refund was not in fact due to Mr U. Child Support refunded \$6,000 to the ATO and sought to recover the money from Ms T.

Although Ms T was still entitled to receive \$6,000 from the payer, Child Support was presently unable to collect it for her. Nor was Child Support prepared to wait to recover the money from the amounts that it will eventually collect from Mr U. Instead, Child Support insisted that Ms T enter into a payment arrangement to repay the \$6,000 that it paid her by mistake.

### ***Recovering money after court declares the payer is not the child's parent***

Child Support is not ordinarily able to recover any child support that arises from a court declaring that the payer is not a parent of the child concerned. The (former) payer may seek an order to recover directly from the payee in these circumstances. If the court makes an order of this type, Child Support can register the debt for collection as a Parentage Overpayment Order. However, we are aware that although Child Support has the legislative power to recover a debt arising from a Parentage Overpayment order, it lacks effective processes to do so.

#### **Investigation case study fifteen**

Mr Y a former payer, complained that, despite getting an order from the court saying:

- (1) that he was not the father of a child and
  - (2) that the former payee should repay him the money he had paid for this child
- Child Support had been unable to collect that overpayment for him.

When we investigated Mr Y's complaint, we found that the former payee had entered into a voluntary repayment arrangement with Child Support but had failed to make regular payments. Child Support told us that the former payee was in receipt of Centrelink benefits, but said that its computer system did not support collection from this source.

Child Support told us that this limitation would be addressed in the future when it replaced its computer system, currently scheduled for 2015. In this case the only option currently available to Child Support was to maintain contact with the former payee to encourage voluntary payments.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

## **The interaction of Child Support and Family Tax Benefit**

There are three main areas in which the complaints we receive and investigate reveal problems in the interaction of child support and Family Tax Benefit (FTB).

1. The administration of decisions about which parent has the actual care of a child.
2. The application of the maintenance income test for FTB, especially for private collect payees.
3. The application of the maintenance action test for FTB.

### ***Decisions about which parent has the actual care of a child***

From 1 July 2010, both Child Support and Centrelink can make decisions about the care arrangements of the children of mutual clients and share the data with the other program. To be clear, neither Centrelink nor Child Support is able to decide which parent is best placed to care for a child; nor are they monitoring either parent's compliance with any court orders that may have been made about where a child should reside, or what time, if any, the child should spend with the other parent. The role of Centrelink and/or Child Support in a dispute between the parents about the care of a child is to work out what the care arrangements actually are, based on the information provided by the parents and/or third parties, and by enquiries, if warranted.

We receive many complaints from people dissatisfied that Child Support (or Centrelink) has worked out the 'care' percentage' on the actual care arrangements, rather than by referring to court orders. However, this is done in line with the relevant child support and family assistance legislation. We also consider that the legislation is operating in the way that Parliament intended. We do not therefore investigate complaints of this type.

We have received a number of complaints about delays in making care decisions, and about problems with data sharing between Child Support and Centrelink. The volume of those complaints has reduced since around 2012, and we were pleased to learn that DHS has implemented integrated care teams that are now making these decisions and directly recording them on the Child Support and Centrelink computer systems, to reduce the errors that were previously caused by data transfer problems.

We receive some complaints about Child Support and Centrelink choosing a different date to give effect to a care change. We understand that there are some differences in the rules about the date of effect of a change of care for FTB and Child Support, according to the date upon which DHS is notified and which DHS program receives the notice. Centrelink can take account of care changes and back pay FTB but child support can only be changed retrospectively for one month prior to the date of notification to DHS of the care change. Many customers have difficulty understanding this. Hopefully having an integrated team administering the decisions for all of DHS will assist with timely recording of care changes and customers only having to notify DHS once.

### ***The maintenance income test for FTB, especially for private collect payees***

FTB is an income tested payment that can be made to a person who is caring for a child at least 35% of the time. Child support is not taken into account under the ordinary income test for FTB, but is assessed under a separate maintenance income test.

Under the MIT, there is a *maintenance income free area* of:

- \$1478.35 pa for single people, or a couple in which only one person receives maintenance
- \$2,956.50 for a couple if both people receive maintenance.

The maintenance free area is increased by \$492.75 for each additional child.

Any child support that the person (or couple) receives over the maintenance free area will reduce their FTB Part A by 50c in the dollar. The reduction will only apply in respect of FTB Part A paid at more than the base rate.



Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

For payees on Child Support collect, their FTB entitlement under the MIT is worked on the actual amount that Child Support has collected and paid to them during the financial year.

Since 1 July 2012, child support payees on private collect are deemed to have collected the full amount of child support that the payer was assessed to pay in the financial year. This effectively means that private collect payees who do not collect or are unable to collect their child support are likely to receive less FTB than they would if Child Support had collected the same amount for them.

As discussed previously, Child Support encourages new registering customers to choose private collect. If the payer pays in full and on time, this is not a problem. However, we are not confident that Child Support clearly explains to all payees when it is encouraging them to choose private collect how this will affect their FTB payments.

If a payer does not pay regularly, payees can ask Child Support to start collecting for them. Under s 28 of the *Child Support (Registration and Collection) Act 1988*, Child Support can only collect arrears of three months (or nine months under 'exceptional circumstances') by reference to the days for which the amounts were payable, not from when they are assessed or due. Again, we are not confident that Child Support explains to private collect payees at the time they make their choice of collection method, about the limitations on collecting arrears if they later decide to switch to Child Support collect.

If Child Support retrospectively increases an assessment (for example, if it discovers that the payer's income used in the assessment was too low) it is able to collect the arrears for payees on Child Support collect. Centrelink will take into account that extra child support when the payee eventually receives it. However, a private collect payee in the same situation could miss out on child support payments and also be disadvantaged in their FTB payments.

A private collect payee is deemed to have collected their full child support entitlement. When Child Support amends their assessment, it sends the new assessment information to Centrelink. Centrelink immediately recalculates the payee's FTB under the maintenance income test on the basis of the 'deemed' assumption that the payee received the full amount of child support payable under the revised assessment. If the new child support assessment is higher than the one it replaced, Centrelink will raise a debt against the payee. Centrelink will start collecting the FTB debt immediately. Not only has the payee not collected the amount of child support owed to them in the past (because they didn't know they were entitled to it) but they must now repay the FTB they received, which was based on the amount they were told they were expected to collect from the payer at the time.

If the payee asks Child Support to start collecting, they can only ask Child Support to collect arrears payable in respect of the days in the period three months before their application. Child Support does not recognise a retrospective child support increase as an 'exceptional circumstance' for the purposes of collection, but considers it to be due to the ordinary operation of the Act.<sup>18</sup>

This combination of factors can lead to unfair and anomalous outcomes for payees as shown by the two case studies below.

#### **Investigation case study sixteen**

Ms W was a private collect payee. She received regular payments of child support from the payer, Mr X, for the amount that Child Support said Mr X was required to pay her.

Ms W contacted our office to complain that, due to a retrospective increase in her child support assessment for 2012-13, she accrued a debt of \$819.44 for overpayment of FTB. The increase resulted from Child Support reconciling Mr X's estimated income when he lodged his tax return at the end of the financial year. Although Ms W was deemed through the maintenance income test (MIT) to have received

<sup>18</sup> <http://guides.dss.gov.au/child-support-guide/5/1/4>



Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

an additional \$1,600 from Mr X, he had refused to pay her anything more. Ms X asked Child Support to start collecting for her, but it would not collect any arrears because they were for a period more than three months before her application.

Ms W asked Centrelink to review the FTB debt, but the Authorised Review Officer affirmed the decision on the basis that Ms W was deemed to have received the extra child support from Mr X even though he had refused to pay it. Ms W was required to start repaying the FTB debt immediately. Ms W lodged an application in the SSAT for review of Centrelink's decision to affirm the FTB debt, but later withdrew it due to the strain of pursuing it whilst raising two children and working.

Ms W's solicitor wrote a letter of demand to Mr X for the child support he owed her. Mr X eventually agreed to pay Ms W an amount equivalent to the Centrelink debt but refused to pay the full child support arrears.

**Investigation case study seventeen**

Ms K is the payee in a private collect arrangement. Her previous child support assessments were based on estimates of income for the payer but when more accurate details became available, the assessment was increased retrospectively. As she had been receiving FTB at a rate based on the lower assessments, the updated assessments caused a retrospective reconciliation of her FTB entitlement and resulted in an overpayment of \$7,000.

Ms K was now expected to start collecting the child support arrears from Mr L who, in the meantime, had declared bankruptcy and lodged an estimate of \$0 income. Our investigation revealed that Ms C had not even been able to collect the lower amount of child support she believed she was entitled to at the time and now, due to the payer's bankruptcy, would be extremely unlikely to be able to collect any retrospective entitlement. However, she was still expected to start repaying the FTB debt immediately notwithstanding that the payer's \$0 estimate meant her child support payments would immediately decrease.

Ms K asked Centrelink to review the FTB debt, but the Authorised Review Officer affirmed the decision because Ms K was deemed to have received the full amount of child support from Mr L, even though he had not paid it and was unlikely to ever do so. The ARO also decided that there were no special circumstances to waive recovery of the debt.

Ms K has decided to apply for a 'Change of Assessment in special circumstances', in the hope that Child Support will reduce her child support assessment again in recognition that Mr L will not pay her the money that she is owed. If her child support assessment reduces, Centrelink is likely to reassess her FTB again and hopefully cancel her debt. Otherwise, Ms K will apply to the SSAT for a review of the ARO's decision to affirm her FTB debt.

It does not seem fair for Centrelink to treat a payee as having collected money they were not aware they were entitled to receive from someone they are unlikely to be able to collect it from. This contrasts with the position prior to 1 July 2012, when private collect payees were assessed on the amount of child support they had actually collected and would be asked to pay back overpayments of FTB when (and if) they were able to collect their arrears of child support, as in the case study below.

**Investigation case study eighteen**

Ms Z received an overpayment of FTB due to a retrospective increase in her child support assessment when new details of the payer's income became available. Centrelink's Authorised Review Officer was satisfied that Ms Z had not received the extra child support from the payer and was unlikely to do so. The ARO overturned the decision to raise the debt because it related to a retrospective assessment prior to 1 July 2012 and the deeming rules did not apply.

***The maintenance action test for FTB***

Anyone wishing to receive more than the base rate of FTB for a child must satisfy the maintenance action test (MAT) unless they are living as a member of a couple with that child's other parent. The

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

legal requirements of the MAT are set out in the Family Assistance legislation.<sup>19</sup> In summary, the legal test has three parts:

1. the person (or their partner if it is their partner's child) must be entitled to claim or apply for maintenance for the child, and
2. Centrelink considers it is reasonable for the person, or their partner to take action to obtain maintenance, and
3. The person or their partner does not take action that Centrelink considers reasonable to obtain maintenance.

The maintenance action that that Centrelink considers reasonable is, in line with DSS policy, to apply for a child support assessment and either ask Child Support to collect it, or to collect the amounts privately. As noted earlier, if the payee chooses private collect they are deemed to collect their full entitlement to child support, whether they do or not.

The consequence of a person not taking reasonable action to obtain maintenance is that their FTB will be reduced to the base rate. This can be a significant reduction and is a powerful incentive to encourage parents to apply for a child support assessment and to collect it.

MAT 'exemptions' are available in certain circumstances, for example where the applicant has a fear of violence from the child's other parent<sup>20</sup> or where the paternity of the child is unknown (as in the case study below). In the absence of an exemption, and unless the person is in a period of grace (which runs for thirteen weeks period from the date the person first became entitled to apply for a child support assessment) they will automatically fail the MAT and receive only the base rate of FTB.

#### **Investigation case study nineteen**

Ms G complained that she had become aware she had not received the correct rate of FTB for the past two years.

When DNA testing revealed the payer was not the biological father of her child Ms G provided the results and a copy of the birth certificate to Centrelink. She believed she had done all that was required to end her child support assessment. However, after receiving no contact from Child Support for two years, she received a letter seeking income details for herself and the former payer. When she contacted Child Support it confirmed that her child support case was still active and registered for private collection (although she had received no money from the payer).

As she has been on private collect, Centrelink had based her FTB entitlement on the child support assessment she was assumed to have been collecting from the payer. However, as Ms G had understood the case had been ended she had not collected any money from the person who she previously believed was her child's father. It was not until two years later that she realised her FTB had been reduced and she was eventually able to seek an exemption from taking maintenance action, as the child's father was unknown.

In the main, we consider that the automated MAT arrangements work well, however, we do receive complaints from people who are unaware of the requirement to take maintenance action, or do not realise that their FTB was reduced because they had not taken that action.

We are satisfied that Centrelink's processes usually give people sufficient notice of what they are expected to do to meet the MAT, and the consequences of not doing so. In most cases, if a person is taken to have failed the MAT, they can easily make a child support application against the child's other parent in order to receive the higher rate of FTB again. However, this is not the case once the child has turned eighteen as we discuss below.

<sup>19</sup> *A New Tax System (Family Assistance) Act 1999*, see clause 10 of Schedule 1, Part 2, Divisions 5.

<sup>20</sup> For example, see case study 3, Ms K, on page 10.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

### ***The MAT for a child who has turned 18***

Child support assessments ordinarily end when the child turns 18. If the child will still be in secondary education after their 18<sup>th</sup> birthday, the payee can apply for the assessment to be extended to the last day of the secondary school year in which the child turns 18. The payee must apply for the extension before the child turns 18. If not, the child support assessment will end and the payee cannot later apply for an extension unless 'exceptional circumstances' prevented them from applying before the child turned 18.

FTB can continue to be paid for a secondary school child until he or she turns 20. In order to receive more than the base rate of FTB for that child, the FTB recipient is obliged to meet the MAT. If the child support assessment for the child ends on the child's 18<sup>th</sup> birthday, because the payee did not apply for an extension, they will fail the MAT and their FTB will reduce to the base rate.

We have received a series of complaints over the last few years from payees whose FTB reduced to the base rate when their child turned 18. The payee did not realise they were expected to apply to extend their child support assessment, or did not understand the consequences of failing to do, and usually received very little or no child support before their child turned 18 and their FTB payments are a significant part of their income. When we explore the circumstances surrounding their failure to apply for an extension, they say that they did not remember receiving Centrelink's letter that informed them of the need to apply for the extension, or they did not understand what it meant, or that they had called Centrelink and told them their child would still be in secondary education after they turned 18 and believed this was enough for their FTB to continue to be paid at the same rate.

By the time Centrelink reduces the payee's FTB, the child has already turned 18 and it is usually too late for the payee to apply to child support to have their assessment extended. Although Child Support can consider a late application (i.e. after the child's 18th birthday) in 'exceptional circumstances' Child Support is rarely satisfied that the payee's failure to understand the consequences of not applying for an extension was an exceptional circumstance that prevented them making an application before the child turned 18.

We received other complaints where payees were not given adequate advice to make an informed decision as shown below.

#### **Investigation case study twenty**

Ms C said that two days before her son turned 18 years old in June 2013, she rang Child Support to ask about extending child support while he was still attending school. Child Support told her what she needed to do to extend the assessment. Ms C says she asked Child Support what difference it would make to extend the assessment. She says the Child Support officer told her extending the assessment would not change the amount of child support she was entitled to receive from her former partner. The payer is on Centrelink payments and Ms C was already entitled to \$13 for her younger son and, so an application to extend child support would not lead to her receiving any more child support overall. Based on this advice, Ms C said she decided not to bother applying to extend her child support assessment as she needed to get documents from school to do so. The Child Support officer failed to mention that not extending the assessment might affect her FTB payments.

Ms C later discovered that her FTB had dropped by \$180 per fortnight. She rang Centrelink and was told there was no point in asking for a review of Centrelink's decision to reduce her FTB because it was a Child Support matter and she would have to sort it out with them.

Ms C rang Child Support and was told she had to make a written application to have her assessment extended and explain why she had not applied before her son turned 18. The payer supported her application and wrote a letter to DHS explaining that Ms B had care of their son, he was continuing to attend school and nothing had changed. Child support acknowledged that Ms C had been given misleading advice but decided that Ms B did not have 'exceptional circumstances' that prevented her from applying to extend her assessment before her son turned 18 and refused to accept her application.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

Ms C asked Centrelink to review the reduction to her FTB, but the ARO affirmed the decision saying that without a child support assessment she was only entitled to the base rate of FTB.

However, as a result of our investigation, Child Support reconsidered Ms C's situation and decided to extend the assessment after all. Centrelink automatically increased Ms C's FTB again.

In another recent case, described below, the payee did not manage to persuade Child Support that there were exceptional circumstances that prevented her from applying for an extension before her child turned 18. Although she applied to the SSAT for a review of the ARO's decision to affirm the reduction to her FTB, she decided to withdraw her appeal because of the time and effort involved.

**Investigation case study twenty-one**

Ms D's FTB part A was reduced to the base rate upon her daughter's 18th birthday because she failed to obtain an extension of her child support assessment and was considered not to have taken reasonable maintenance action.

Ms D says she did not receive the first letter from Child Support inviting her to apply to extend her child support assessment if her daughter would be attending school after she turned 18. However Ms D received a subsequent letter from Centrelink advising her that her FTB payments may be reduced if she didn't apply to extend her child support assessment.

Ms D told us that she contacted Centrelink and updated details about her daughter's schooling and was advised that there would be no changes to her FTB payments. The Centrelink officer she spoke to did not mention the need to separately contact Child Support and Ms D thought she had done all she needed to do to ensure that she would continue to receive the correct rate of FTB.

Centrelink wrote to Ms D to advise that her FTB payments would reduce from approximately \$480 per fortnight to approximately \$280. After talking to Centrelink to find out why, Ms D lodged an application for extension of child support, and asked for a review of her FTB. Both applications were unsuccessful. Ms D applied to the SSAT for a review of the ARO's decision to affirm the reduction of her FTB.

Three months after her daughter's 18<sup>th</sup> birthday, Centrelink wrote to Ms D to advise her that it was going to increase her FTB again from 1 January 2014, because it no longer expected her to take maintenance action. Ms D's child support assessment would have ended by 1 January 2014 if she had managed to have it extended.

Ms D decided to withdraw her SSAT appeal. She told us that the experience of dealing with DHS, lodging the review and objection and making a complaint to the Ombudsman had been exhausting for her and she didn't think she could continue with her appeal, even though she had missed out on three months of the higher rate of FTB.

We have raised the complaints above with DHS and DSS to illustrate the problems associated with the MAT for children over 18. We have indicated our view that it is unreasonable to treat someone as continuing to fail the MAT if they have done all they can to try to remedy their failure to apply before the child turned 18. We consider the result especially harsh in the situation where the payee would receive little or no extra child support had they obtained an extension, but has lost several hundred dollars of FTB.

## Conclusion

We acknowledge that the number of people who complain to our office about Child Support is a very small proportion of Child Support's customers. When people do make a complaint to us about Child Support, it is our practice to encourage them to try to resolve it with the DHS Feedback and Complaints service first. This is because we consider that DHS' arrangements for handling Child Support complaints to be of a high standard and we are confident that there is a reasonable prospect that the person can obtain an appropriate remedy through that mechanism.

The complaint case studies we have included in this submission are drawn from those complaints which we decided to investigate because the complainant was unable to resolve their problem through direct contact with Child Support. However, we only investigated 19.3% of the complaints that we finalised in 2012-13.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

Our purpose in making this submission is highlight areas for potential improvement, rather than to suggest that there is any large scale failure in administration. The case studies and issues discussed in this submission illustrate those aspects of the child support and family assistance arrangements that we consider could be improved, resulting in better outcomes for both parents and government. All of these issues have already been brought to Child Support's attention in the context of our investigation of individual complaints, or in the course of broader systemic discussions.

We trust that this submission will assist the committee in its deliberations.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

## Annexure one: Ombudsman's complaint management workflow

### ***How we receive Child Support complaints***

The Ombudsman's office receives most complaints about Child Support by telephone, but also receives some by post, email and fax as well as a very small number in person.

We have a team of Public Contact Officers (PCOs) that handles all incoming complaints. Our PCOs talk to the people who telephone us to make a complaint or attend our offices to make a complaint in person. They enter the complainant's personal information and a written summary of the complaint into our "Resolve" case management system. Assuming the complaint issue falls within the Ombudsman's jurisdiction, the PCO will then consider the circumstances of the complaint to decide if it is a matter that should be referred to investigation staff for assessment, or whether to exercise discretion, under s 6 of the *Ombudsman Act 1976*, not to investigate the matter.

The reasons why a PCO might decide not to investigate a complaint about Child Support include:

- the complainant has not yet made a complaint to DHS Feedback and Complaints and is expected to do so before approaching our office (s 6(1A))
- the complainant has been aware of the complaint issue for more than 12 months (s 6(1)(a))
- the complainant has an internal right of review to Child Support on the issue of complaint (s 6(4))
- the complainant has a right of review to a Court or Tribunal on the issue of complaint, or has already exercised a right of review to a Court or Tribunal (s 6(2), s 6(3))
- an investigation is not warranted, for example, because the complaint is about the usual and correct application of legislation (s6(1)(b)(iii))
- another oversight body is more appropriately placed to consider the complainant's issue (s 6(4D) – s 6(21)).

If the PCO decides to exercise discretion not to investigate, they will advise the complainant of that decision during their initial telephone conversation or in writing, as appropriate.

### ***Further assessment and investigation***

Where a complaint is referred to an investigation team, a senior staff member assesses the complaint to determine which investigation officer is best suited to manage the complaint.

When the complaint is allocated to an investigation officer, they will conduct an initial assessment of the complaint to decide whether it should be investigated. This assessment may include:

- researching legislation, policy and procedure
- contacting the complainant to obtain additional information and/or documents
- seeking advice from supervisors or other staff
- considering whether the warm transfer arrangements should be used to facilitate resolution of the complainant's concerns.

### ***Warm transfer arrangements***

The Ombudsman's office has arrangements with a number of agencies, including DHS, whereby complaints may be referred directly to the agency for contact with the complainant. For Child Support complaints, these arrangements are generally used where:

- the complainant is vulnerable and requires prompt action by the agency
- the complainant has not yet contacted DHS Feedback and Complaints, but the officer considers it would not be reasonable (usually for reasons of vulnerability) to expect them to make a complaint to DHS before contacting our office
- the complainant has contacted DHS Feedback and Complaints but has not been satisfied with the outcome and the officer considers that the matter is capable of resolution, for example by better explanation.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

Warm transfer of a complaint regarding Child Support involves contacting the complainant to seek their agreement and notifying DHS via email of:

- our decision to transfer the complaint
- the background to the complaint
- our expectations with respect to DHS's contact with the complainant.

In some instances staff will decide that investigation of a Child Support complaint is not appropriate at the outset, often because investigation would not provide the complainant with their desired remedy or, sometimes, with any remedy at all. Complaints about the operation of the legislation, or about Child Support taking reasonable actions that appear to be consistent with the legislation would usually not be investigated.

Where a decision not to investigate is made, the investigation officer will communicate this to the complainant by telephone and/or in writing. In many instances, the investigation officer will be able to direct the complainant to other avenues via which they might resolve their concerns, including:

- making an objection or lodging an appeal
- lodging an application for a change of assessment, or making an estimate of income
- providing Child Support with new or better information about their circumstances
- contacting a Minister or Member of Parliament
- seeking advice from a community legal organisation.

When an investigation officer decides to commence an investigation, they will notify DHS by email and advise of any information or documents sought in respect of the complaint. In most cases the investigation officer will request a response within a period not exceeding 28 days. Actual response times vary from case to case.

Some investigations require only one contact with the agency before the matter can be finalised, while others necessitate several contacts with the agency and/or the complainant before the matter is concluded.

### ***Finalisation - complainant***

The investigation will usually be finalised when the investigation officer has gathered enough information to allow them to form a view about the complaint. Most commonly the investigation officer will finalise a matter on the basis that:

- an appropriate remedy has been or will be provided
- the matter is more appropriately deal with via another mechanism such as:
  - internal review or Court/Tribunal appeal
  - other avenue of complaint
  - further action with the agency.
- further investigation is not warranted because:
  - the issues in the complaint were unsubstantiated and no further action is expected of the agency
  - some or all of the issues were substantiated but no remedy is available for the complainant.

The investigation officer will communicate their decision to the complainant, by telephone, and/or in writing. If the complainant does not agree with the investigation officer's decision, the officer may reconsider that decision taking into account the complainant's reasons. The reconsideration may result in further investigation or in advice to the complainant that their complaint remains closed.

### ***Review***

If the complainant remains dissatisfied, they may request that the investigation officer's decision be reviewed<sup>21</sup>. Requests for review are assessed by the Review Manager. The Review Manager may decide not to grant a review if the complainant has not provided reasonable grounds for seeking a

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<sup>21</sup> Complainants may also seek a review of a Public Contact Officer's decision to exercise discretion under s 6 to not investigate a matter

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

review. The Review Manager may also decide not to grant a review if the person did not request it within a reasonable period of time after the Investigation officer notified them of their decision to stop investigating, or not to investigate their complaint.

If a review is granted, the review request is allocated to a senior officer who was not involved in the original decision. Outcomes of a review may include a better explanation of the reasons for our decision not to investigate, or further investigation, usually by a different investigation officer.

A review is offered only once in each complaint.

### ***Finalisation – agency***

Ombudsman staff are required to provide advice to Child Support of the finalisation of each investigation undertaken. In most instances these advices are provided by email and state simply that the office has decided to finalise a particular investigation.

However, where an investigation identifies flaws in Child Support's handling of a particular case or where its responses highlight a systemic problem, staff may decide to provide formal comments to DHS under s 12(4) of the Ombudsman Act.<sup>22</sup> These comments generally provide background to the complaint; details of our investigation including the problems identified; and suggestions for, or questions about addressing the problem.

Child Support is generally given 28 days to respond to these formal comments, although implementation of the actions required to address the problem may take longer.

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<sup>22</sup> Comments under s 12(4) must be signed by staff at Executive Level 2 or above.



Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

## Annexure two: analysis of closed Child Support complaints, 2012-13

**Table 1: Child Support complaints<sup>23</sup> closed during 2012-13**

Response	Number	Percentage
Complaints investigated:	338 complaints	19.3% of total
Complaints not investigated	1415 complaints	80.7% of total
Child Support complaints closed in 2012-13	1753 complaints in total	

**Table 2: Issues in closed complaints**

NB a complaint can have more than one recorded issue

Issue	Total	%	Payee	%	Payer	%	Other <sup>24</sup>	%
Collection/Enforcement	584	27.0	228	10.6	356	16.5	-	-
Assessment	385	17.8	94	4.4	291	13.5	-	-
Customer service	167	7.8	53	2.5	114	5.3	-	-
Change of Assessment	150	6.9	35	1.5	115	5.3	-	-
Objection	61	2.8	18	0.8	43	2.0	-	-
Other	46	2.1	-	-	-	-	46	2.1
Cross-agency issue	34	1.6	18	0.8	16	0.7	-	-
CDDA <sup>25</sup>	24	1.1	8	0.3	16	0.7	-	-
Court order	13	0.6	2	0.1	11	0.5	-	-
SSAT decision	12	0.6	1	0.1	11	0.5	-	-
Agreement – binding	10	0.5	-	-	10	0.4	-	-
Agreement – limited	9	0.4	-	-	9	0.4	-	-
Agreement	2	0.1	1	0.1	1	0.1	-	-
Not recorded <sup>26</sup>	663	30.7	149	6.9	514	23.8	-	-
<b>TOTAL</b>	<b>2160</b>	<b>100.0</b>	<b>607</b>	<b>28.1</b>	<b>1507</b>	<b>69.8</b>	<b>46</b>	<b>2.1</b>

**Table 3: Complainant's state of residence**

	Total	Percentage
Queensland	436	24.9
New South Wales	381	21.7
Victoria	316	18.0
Western Australia	189	10.8
No address provided	148	8.4
South Australia	137	7.8
Australian Capital Territory	64	3.7
Tasmania	47	2.7
Northern Territory	20	1.1
Overseas	15	0.9
<b>TOTAL</b>	<b>1753</b>	<b>100.0</b>

<sup>23</sup> Refers to the number of complaints closed during 2012-13. Each complaint may contain more than one issue – analysis of these issues is provided in Tables 2 and 3.

<sup>24</sup> Includes employment, Freedom of Information and out of jurisdiction matters.

<sup>25</sup> Scheme for Compensation for Detriment arising from Defective Administration.

<sup>26</sup> Complaints closed at Category 1 are recorded with only the customer's role (or issue if unrelated to customer role), meaning that the substantive issue is recorded as 'not determined'.

## Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

**Table 4: Outcome of issues closed during 2012-13**

Response	Outcome					
		No. of issues	%			
<b>Not investigated</b>	Investigation declined <sup>27</sup>	411	27.1	Approach lapsed	59	3.9
				Considered by Court/Tribunal	20	1.3
				Considered by Minister	2	0.1
				Insufficient interest	6	0.4
				Not warranted	308	20.4
				Over 12 months old	8	0.5
				Written request not received	8	0.5
	Approach withdrawn	25	1.6			
	Advised to pursue with agency	942	62.2			
	Advised to pursue elsewhere	138	9.1	Advice body	11	0.7
				Court/Tribunal	84	5.6
				MP/Minister	26	1.7
				Other oversight body	13	0.9
				Transfer to OAIC	2	0.1
				Transfer to agency	2	0.1
<b>Sub-total</b>		<b>1516</b>	<b>70.2</b>			
<b>Investigated</b>	No further investigation	291	45.2	Approach lapsed	1	0.15
				Considered by Court/Tribunal	1	0.15
				Insufficient interest	2	0.3
				Not warranted	287	44.6
	Advised to pursue with agency	24	3.7			
	Advised to pursue elsewhere	15	2.3	Court/Tribunal	8	1.2
				OOJ Agency	1	0.2
				Other oversight body	6	0.9
	Appropriate remedy provided	252	39.1			
	Administrative deficiency <sup>28</sup>	62	9.6			
<b>Sub-total</b>		<b>644</b>	<b>29.8</b>			
<b>Total</b>		<b>2160</b>	<b>100.0</b>			

<sup>27</sup> Including issues recorded as out of jurisdiction

<sup>28</sup> From 1 July 2013, the Ombudsman's office no longer records 'administrative deficiency' as an outcome of an investigation.

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

### **Annexure three: Relevant published submissions and reports**

*Commonwealth Ombudsman's Annual Reports, 1988-89 to 2012-13.*

Each year, the Ombudsman's annual report includes a chapter that discusses the trends in complaints about the agencies which generate the highest volume of complaints.

Annual Reports for all years since 2003-04 are available on the Ombudsman's website at <http://www.ombudsman.gov.au/pages/publications-and-media/reports/annual/index.php>

2011: *Commonwealth Ombudsman's Response to Australian Law Reform Commission Issues Paper 39 – Family Violence and Commonwealth Laws: Social Security*, available on the Ombudsman's website at

[http://www.ombudsman.gov.au/files/Response to Australian Law Reform Commission Issues Paper 39-Family Violence and Commonwealth Laws Social Security.pdf](http://www.ombudsman.gov.au/files/Response_to_Australian_Law_Reform_Commission_Issues_Paper_39-Family_Violence_and_Commonwealth_Laws_Social_Security.pdf)

2011: *Commonwealth Ombudsman's Response to Australian Law Reform Commission Issues Paper 38 – Family Violence and Commonwealth Laws: Child Support and Family Assistance*, available on the Ombudsman's website at

[http://www.ombudsman.gov.au/files/Response to Australian Law Reform Commission Issues Paper 38-Family Violence and Commonwealth Laws Child Support and Family Assistance.pdf](http://www.ombudsman.gov.au/files/Response_to_Australian_Law_Reform_Commission_Issues_Paper_38-Family_Violence_and_Commonwealth_Laws_Child_Support_and_Family_Assistance.pdf)

2010: *Department of Human Services, Child Support Agency: Unreasonable Customer Conduct and 'Write Only' policy, Report 14/2010*, available on the Ombudsman's website at

[http://www.ombudsman.gov.au/files/dhs\\_csa\\_unreasonable\\_customer\\_conduct\\_and\\_write\\_only\\_policy\\_14\\_2010.pdf](http://www.ombudsman.gov.au/files/dhs_csa_unreasonable_customer_conduct_and_write_only_policy_14_2010.pdf)

2010: *Child Support Agency, Department of Human Services: Investigation of a parent's 'capacity to pay', Report 11/2010*, available on the Ombudsman's website at

[http://www.ombudsman.gov.au/files/CSA-HumanServices Capacity-to-pay final abridged.pdf](http://www.ombudsman.gov.au/files/CSA-HumanServices_Capacity-to-pay_final_abridged.pdf)

2009: *Commonwealth Ombudsman's Submission to the Delivering Quality Outcomes Review: Child Support Program*, available on the Ombudsman's website at

[http://www.ombudsman.gov.au/files/Delivering Quality Outcomes Review-Child Support Program.pdf](http://www.ombudsman.gov.au/files/Delivering_Quality_Outcomes_Review-Child_Support_Program.pdf)

2009: *Australian Federal Police and the Child Support Agency, Department of Human Services: Caught between two agencies: the case of Mrs X - Report 14/2009*, available on the Ombudsman's website at

[http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/report\\_2009\\_14/\\$FILE/reports\\_caught\\_between\\_two\\_agencies.pdf](http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/report_2009_14/$FILE/reports_caught_between_two_agencies.pdf)

2009: *Putting things right: compensating for defective administration—Administration of decision-making under the scheme for compensation for detriment caused by defective administration - Report 11/2009*, available on the Ombudsman's website at:

[http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/report\\_2009\\_11/\\$FILE/online-CDDA.pdf](http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/report_2009_11/$FILE/online-CDDA.pdf)

2009: *Child Support Agency: Administration of Departure Prohibition Order powers - Report 08/2009*, available on the Ombudsman's website at:

[http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/report\\_2009\\_08/\\$FILE/onlineCSA DepartureProhibOrders\\_20090603.pdf](http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/report_2009_08/$FILE/onlineCSA_DepartureProhibOrders_20090603.pdf)

Commonwealth Ombudsman's submission to the Parliamentary Inquiry into the Child Support Program

2008: *Child Support Agency, Department of Human Services: Responding to allegations of customer fraud - Report 12/2008*, available on the Ombudsman's website at [http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/reports\\_2008\\_12/\\$FILE/CSA\\_DHS\\_customer+fraud+report\\_20081027\\_online.pdf](http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/reports_2008_12/$FILE/CSA_DHS_customer+fraud+report_20081027_online.pdf)

2004: *Child Support Agency Change of Assessment Decisions – Report 01/2004*, available on the Ombudsman's website at [http://www.ombudsman.gov.au/files/investigation\\_2004\\_01.pdf](http://www.ombudsman.gov.au/files/investigation_2004_01.pdf)

1998: *Child Support Overpayments—a case of give and take? - Report 1998/03*, available on the Ombudsman's website at [http://www.ombudsman.gov.au/files/investigation\\_1998\\_03.pdf](http://www.ombudsman.gov.au/files/investigation_1998_03.pdf)