



Child Support Policy Research Project – Policy Paper 2 **How the Child Support System Works for Stepfamilies**

How the Child Support System works for Stepfamilies

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Introduction

New (unpublished) Australian Bureau of Statistics (ABS) 2008 figures show that stepfamilies comprise a significant portion of the Australian community, at 13.3% of all families with children and 16.7% of all couple families with children. Furthermore, stepfamilies face unique pressures and strains that are reflected by the high family breakdown rate of stepfamilies which is nearly double that of nuclear families (60% compared to 32%)¹. Stepfamilies Australia², a program of **drummond street**, is the national peak body offering specialised support services and resources for stepfamilies and training for professionals. Our research suggests that stepfamilies are beginning to be recognised as a unique and important contemporary family form, however social policy development in Australia does not yet adequately address or support stepfamilies' unique needs³. This justifies the need for analysis of the current child support system as it relates to stepfamilies, in order to ensure the laws, policies and processes are relevant and effective for this significant family type and the variety of circumstances which may relate to this family type. We hope that this paper will contribute to stimulating discussion and consideration of reform of current legislation and procedures within the CSA.

This paper will explore the varying definitions of stepfamilies and the way in which the child support laws in Australia recognise this family type. The key question to have emerged from our research is whether the child support system is able to respond appropriately to the needs of stepfamilies in their variety of forms, particularly in the way it treats the costs of dependent spouses/de facto partners and/or stepchildren. Our research reflects that while the costs of spouses/de facto partners and/or stepchildren may be met, in part, by other means, the reality for stepfamilies is that often a child support parent is significantly contributing to these costs. This is often causing dire financial hardship for the stepfamily. This paper will discuss the real-life experiences, issues and challenges that stepfamilies face in accessing the current child support system based on feedback received from 100 stepfamilies.

Furthermore, the paper will also provide a cross-cultural analysis, focusing on the alternative child support processes being used in New Zealand and Canada. Based on this research, **drummond street** will provide subsequent recommendations and conclusions to the Family and Child Support Policy Branch of the Department of Families, Housing, Community Services and

¹ Australian Bureau of Statistic, 'Family Characteristics and Transitions 2006-07' (2008) *Australian Bureau of Statistics* [4442.0]

² Established in 1981, Stepfamilies Australia initially an auspice of and now a program of **drummond street** services, is a national organisation encompassing a national network of State stepfamily associations. Stepfamilies Australia ensures the specialist needs and issues impacting on this increasing family type within Australia are met.

³ Steve Martin, 'Unacknowledged change: Stepfamilies in Australia' (1998) Paper presented at the 6th Australian Institute of Family Studies Conference, Melbourne, Victoria.

Indigenous Affairs (FaHCSIA) to better incorporate the needs of, and address the issues faced by stepfamilies.

Part 1: Definitions – What is a stepfamily?

Before contemplating how the current child support system applies for stepfamilies, it is important to define what a 'stepfamily' is, and to highlight the various possible structures, relationships and challenges which may exist within this now common family type. There are various terms used to describe stepfamilies. These may include: reconstituted, remarried, re-partnered, merged, blended, instant, cohabitating, patchwork families, reorganised, combined, instant, synergistic etc. At **drummond street** and Stepfamilies Australia, we use the terms step and blended families (following the definitions given by the ABS), however we use 'stepfamily' as an umbrella term and 'blended family' as the term for a particular form of stepfamily.

Definition of family

To explain stepfamilies, we must begin by looking at the family unit and in particular, the nuclear family. 'Family' is defined by the ABS as follows⁴:

Two or more persons, one of whom is at least 15 years of age, who are related by blood, marriage (registered or de facto), adoption, step or fostering, and who are usually resident in the same household.

This definition encompasses but does not specifically define stepfamilies. The nuclear family is generally regarded as two adults with children in their care – most often male and female biological parents of the children in the home. It is possible therefore, for stepfamilies to be considered a type of nuclear family, and they are commonly viewed this way, however stepfamilies have quite different internal relationships and structures that need to be recognised. In many households in Australia the relationships between persons and the composition of those households are more diverse than those generally regarded as being traditional 'nuclear' families⁵. The key difference between nuclear and stepfamilies being that the primary parents have had a longer relationship with their children than with their new partner in their couple relationship. Another key difference is the history of family breakdown and associated grief and loss issues for some family members, and also associated risks such as higher homelessness rates for young people from stepfamilies⁶.

⁴ Australian Bureau of Statistic, 'Family Characteristics and Transitions 2006-07' (2008) *Australian Bureau of Statistics* [4442.0]

⁵ Australian Bureau of Statistic, 'Family, Household and Income Unit Variables' (2005) *Australian Bureau of Statistics* [1286.0]

⁶ **drummond street** services, 'Stepfamilies Australia Prospectus' (2010) **drummond street** services.

Further, stepfamilies (and single parent families) are associated with higher rates of psychological distress⁷. It is important to recognise that stepfamilies are their own unique family form with complex relationships and needs.

While both nuclear (or 'intact') families and stepfamilies may have to deal with the full range of issues impacting on families today (such as relationship difficulties, parenting or child behaviour difficulties, financial, employment or housing difficulties, alcohol or other drug use, family violence or child abuse, disability, illness or death), the skills for stepfamilies to manage and negotiate these issues are newer and more vulnerable. Stepfamilies are often faced with greater challenges than those confronting a 'first' family, with dynamics continually placing families at risk of conflict and stress. This is reflected in the higher separation rates for stepfamilies, with family breakdown rates twice those of first marriages, and 60% of stepfamilies going on to separate⁸. With one in three marriages being a re-marriage and half of stepfamily couples not marrying; and costs to the community of family breakdown being \$3 billion per year, the prevalence and vulnerability of this family form are important considerations for Government policy.

The nature of 'family' in all Western democracies is changing and becoming more diverse. Households in Australia are generally much more diverse than a nuclear family or even the most basic stepfamily arrangement today, with often very complex compositions and relationships between people within the household which is highlighted further below.

Definition of stepfamily

The ABS defines stepfamilies as follows⁹:

...those formed when parents re-partner following separation or death of their partner and there is at least one step child of either member of the couple, but no natural or adopted child of this couple.

The ABS further defines blended families to comprise¹⁰:

...a step child but also a natural or adopted child of both parents.

⁷ Pinsof and Lebow, 'A scientific paradigm for family psychology' (2005)

⁸ Ibid at fn 2.

⁹ Ibid at fn 2.

¹⁰ Ibid at fn 2.

While these definitions are clear and concise, they fail to recognise families where children reside in the household part-time or stepfamilies where the non-resident parent has re-partnered¹¹. Stepfamilies Australia uses a definition of stepfamily which is inclusive, making no distinction about gender, residence or amount of time spent with children¹²:

A stepfamily is a family of two adults in a formal or informal marriage where at least one of the adults has children from a previous relationship. There may be children from the current union. Children may live-in full-time or part-time or may not currently have contact.

Stepfamilies Australia further uses the term 'primary parent' as an alternative to 'biological parent' in order to be inclusive of adoptive parents and parents who have conceived a child using artificial conception procedures or surrogacy arrangements, who may be in a same-sex relationship¹³.

These definitions demonstrate the various and complex structures of stepfamilies in respect to the stepparent's role, financial distribution and living arrangements with children¹⁴. Following are some examples of possible stepfamily structures¹⁵:

- A divorced parent with three children re-partners to someone without children. The children live with this couple and stay with their other biological parent each alternate weekend and for half of school holiday periods. This is a commonly understood, and perhaps the most simple, stepfamily structure.
- A widowed parent with two children marries a divorced parent with one child. The child of the divorced parent spends each school holiday period with the other biological parent who has not re-partnered.
- A household comprising a father and his three children from a previous relationship and the father's new partner (who has no children from previous relationships). The father and his new partner have recently had a child of their own. The mother of the three children from the previous relationship has also re-partnered and she lives in a household including herself, her new partner and one child from that relationship.
- A parent with one child has re-partnered into a same-sex relationship with the new cohabitating partner as stepparent to the child.

¹¹ Qu & Weston, 'Snapshot of couple families with stepparent-child relationships' (2005) *Family Matters* [70], 36-37.

¹² Margaret Howden, 'Stepfamilies: Understanding and Responding Effectively' (2007) *Australian Family Relationships Clearinghouse Briefing 6*.

¹³ For further definitions in relation to same-sex and other queer families, please refer to 'Queer families and the child support system: access and awareness' (2010) *drummond street services*.

¹⁴ Margaret Howden, 'Making molehills out of mountains: A practical guide for stepfamilies' (2004) *Stepfamily Association of Victoria*, Melbourne.

¹⁵ Ibid.

- A 'his', 'hers' and 'ours' family. The father has one biological son and the mother has two biological children who all live in the same household. They have an 'ours' three-year-old daughter. Shared parenting arrangements see children moving in and out for five and four days each week. The whole stepfamily is together on two separate nights each week. One ex-partner has re-partnered and has two young adult stepchildren.

As can be seen, there are various relationships and living arrangements possible within the stepfamily structure. Further, assumptions cannot be made about gender roles and heterosexuality of relationships within stepfamilies. For example, children may be predominately in the care of their biological father and spending time with their mother. A child support *paying* parent may be the father or mother, and likewise for the *receiving* parent. Income levels according to gender also may not be assumed. At times, it is only the mother who has re-partnered or the father, and not both. Further, a parent may have re-partnered into a same-sex relationship. This is the reality of our contemporary Australian family forms and child support policies must reflect these complexities in a sensitive, fair and equitable way.

Other definitions

This paper will also refer to the following terminology:

"Ours" child: a child belonging to the two adults in the stepfamily, which can be born, adopted or come into the family by other means, such as surrogacy.

Child Support Child: the biological or adopted child of the first family, who is the subject of the child support assessment.

Stepparent: a stepparent is defined by the Family Law Act as follows¹⁶:

step-parent, in relation to a child, means a person who:

- (a) is not a parent of the child; and
- (b) is, or has been, married to or a de facto partner (within the meaning of section 60EA) of, a parent of the child; and
- (c) treats, or at any time while married to, or a de facto partner of, the parent treated, the child as a member of the family formed with the parent.

Paying parent: the primary parent who is making child support payments based on a child support assessment. This is calculated with regard to both parents' income, the costs of other relevant dependent children and the percentage of care of the child support child/ren.

¹⁶ Family Law Act 1975 (Cth) s 4.

Receiving Parent: the primary parent who is receiving child support payments based on a child support assessment. This is calculated with regard to both parents' income, the costs of other relevant dependent children and the percentage of care of the child support child/ren.

It is important to note that households of the paying and receiving parent may be single-parent households or where the parent has re-partnered, may be step or blended family households.

As this section demonstrates, the structure and functioning of a stepfamily, which is such a common family form, is complex. While not easy to achieve, child support policy needs to strive to reflect and take into account this complexity which has multiple interests at play. It is important to ensure appropriate, fair and reasonable decisions are made which support families to stay together and endeavour to ensure all families are able to attain sufficient finances to have a reasonable standard of living.

Part 2: The law as it relates to stepfamilies

This section of the paper discusses the ways in which step and blended families are recognised within the current child support system, including relevant laws and processes. In a step or blended family, the child support parent may contribute to the costs of biological children from second/subsequent families, a spouse or de facto partner and/or stepchildren. These contributions are treated differently for the purposes of making a child support assessment and will be discussed in detail below.

Biological Children from second/subsequent families

Consider a family which involves a ‘re-partnering’ whereby one or both of the adults in the couple relationship have one or more children from a prior relationship/s. Those children are the child support children of which the child support assessment is based. Children may then be born to the new couple relationship. These biological children from second/subsequent families, also known as “ours” children, may be taken into account in a child support assessment by deducting an amount for their support from the child support parent’s income. This deduction may be made for both the paying and/or receiving parent’s income where they have a child from a new relationship. For the purposes of the *Child Support (Assessment) Act 1989* (Cth) (‘Assessment Act’), a biological child from a second or subsequent family or “ours” child is referred to as a ‘relevant dependent child’¹⁷, defined in s 5¹⁸:

relevant dependent child, in relation to a parent, means a child or step-child of the parent, but only if:

- (a) the parent has at least shared care of the child or step-child during the relevant care period; and
- (b) either:
 - (i) the child or step-child is under 18; or
 - (ii) if the child or step-child is not under 18—a child support terminating event has not happened under subsection 151D(1) in relation to the child; and
- (c) the child or step-child is not a member of a couple; and
- (d) in the case of a step-child:
 - (i) an order is in force under section 66M of the Family Law Act 1975 in relation to the parent and the step-child; or
 - (ii) the parent has the duty, under section 124 of the Family Court Act 1997 of Western Australia, of maintaining the step-child; and

¹⁷ It is important to note that the definition for ‘relevant dependent child’ is not exclusive to “ours” child/ren and may include children from other prior relationships.

¹⁸ *Child Support (Assessment) Act 1989* (Cth) s 5.

(e) *in the case of a child—the parent is not assessed in respect of the costs of the child (except for the purposes of step 4 of the method statement in section 46).*

Therefore, in respect to blended families, an “ours” child will be considered in the child support assessment where the child is under 18 and not a member of a couple. Furthermore, a child support parent may still receive a reduction in child support payable for an “ours” child where the blended family is no longer intact, providing that the child support parent has at least 35% care of the “ours” child.

The amount deducted for the support of the “ours” child from the child support parent’s income is called the ‘relevant dependent child amount’ and is calculated according to the method in s 46 Assessment Act¹⁹. This is simplified on the Child Support Agency’s (‘CSA’) website²⁰, whereby the CSA:

1. Calculate the parent’s child support income
2. Work out the parent’s care percentage and cost percentage for the relevant dependent child (this will be 100% providing the blended family remains intact, otherwise it must be greater than 35%)
3. Work out the costs of the relevant dependent child, only using the income of one parent. This is based on the same costs of children 2008 tables (produced by the CSA in *The new Child Support Scheme and changes to Family Assistance*) used to determine the costs of child support children, therefore all children are treated equally. However, our research has indicated that many parents share the view that the costs outlined in these tables are not reflective of the true costs associated with raising children. This will be further discussed in Part 3.
4. Multiply the cost of the child by the cost percentage – this is the relevant dependent child amount.
5. Deduct relevant dependent child amount from the parent’s adjusted taxable income to get their child support income.
6. Return to the basic formula.

The 2006-08 reforms did not change the way that “ours” children have been considered in a child support assessment. The costs of supporting “ours” children are fully recognised by the child support system.

¹⁹ *Child Support (Assessment) Act 1989* (Cth) s 46.

²⁰ Child Support Agency, *Parents with Other Dependant Children*, Child Support Agency <<http://www.csa.gov.au/ChildSupportFormula/parentsWithOtherDependantChildren.aspx>> accessed 10 February 2011.

Support for spouses/de facto partners and/or stepchild

In contrast, neither the needs of spouses or de facto partners, or stepchildren, from stepfamilies are considered in an initial child support assessment. Under limited circumstances where a child support parent has a reduced capacity to support a child support child as a result of a legal duty to maintain another person (e.g. a spouse/partner or a stepchild pursuant to a Family Court Order), they may have their assessment reviewed by applying for a change of assessment under Reason 9²¹. However the requirements that have to be met are extremely stringent:

1. There are special circumstances
2. The applicant has a duty to maintain another person; and
3. That duty significantly reduces the applicant's ability to provide financial support for the child support child²².

Spouses/De facto partners

Special Circumstances

In making an application for change of circumstances under Reason 9, the first requirement is that special circumstances exist in the applicant's case. Special circumstances are not defined in the Assessment Act, however the Family Court has held in *Gyselman v Gyselman* that "it is intended to emphasise that the facts of the case must establish something which is special or out of the ordinary"²³. The difficulty is in the discretionary nature of this definition which is applied at an administrative level by a Senior Case Officer of the CSA when determining a change of assessment application. One of our recommendations is that this process be administered by a panel of Senior Case Officers to ensure that there is greater consistency in the decision-making process.

Further examples are provided in *The Guide* but these are limited and it remains unclear what situations would result in the consideration of the costs of maintaining a spouse or de facto partner in a child support assessment. Examples provided include where an "ours" child or a stepchild (where the other biological parent is unable to provide child support) has a disability or special needs which prevent the new spouse/de facto partner from working. Furthermore, *The Guide* states "the fact that a parent's spouse is staying home to care for the children of the marriage does not, of itself, meet the Reason 9 test. Nor is it sufficient that the parent's income does not meet the needs of the household, as a result of the spouse's unemployment (or underemployment)"²⁴. Therefore, most stepfamilies will not be eligible to receive a deduction

²¹ *Child Support (Assessment) Act 1989* (Cth) s 117(2)(a)(i).

²² Child Support Agency, *The Guide 2.6.15: Reason 9 – the duty to maintain any other child or another person* (2010) Child Support Agency, page 1.

²³ *Gyselman v Gyselman* (1992) FLC 92-279.

²⁴ Child Support Agency, *The Guide 2.6.15: Reason 9 – the duty to maintain any other child or another person* (2010) Child Support Agency, page 3.

from their child support payable even though the realities of the situation are that the child support parent is maintaining another person. This often leaves the new family in dire financial hardship according to anecdotal reports by the CSA and responses obtained from our online survey.

Advice provided by CSA Team Leader²⁵, a Senior Case Officer responsible for change of assessment decisions, suggests that the majority of cases do not meet the criteria for Reason 9 as they are unable to establish special circumstances. He indicated that very few applicants apply under Reason 9 for a change of assessment and in even fewer circumstances are these applications successful. Statistics provided by the CSA show that in the 2008/2009 financial year, 1,122 Reason 9 applications were lodged and 316 of these were successful (28%)²⁶. In the 2009/2010 financial year, 924 Reason 9 applications were lodged and 252 of these were successful (27%)²⁷. It is important to note that the statistics that were provided by the CSA were unable to distinguish the number of applications and outcomes which relate to a duty to maintain a *spouse or de facto partner; stepchildren; or, any other person*. A higher level data analysis would require file audits by the CSA as electronic data records at this time collect very limited information. The CSA could consider broadening their data collection to capture this breakdown information.

Anecdotally, the CSA has suggested that the following factors will be considered when determining a Reason 9 application to have the maintenance of a (new) spouse or de facto partner taken into account in a child support assessment:

- Clearly justified reasons for unemployment/underemployment of the spouse/de facto partner e.g. health reasons, disability.
- Any Government benefits received by the spouse/de facto partner
- How were children from previous relationships raised (including children of the child support parent and of the spouse/de facto partner)? E.g. did one parent remain at home to care for the children or were child care options utilised?
- Was the spouse/de facto partner employed prior to the birth of the child?
- Have leave entitlements/baby bonus schemes been exhausted?
- Availability of child care

The CSA suggests that they will attempt to avoid decreases in child support assessments wherever possible as this increases the Family Tax Benefit payment to the other family placing greater burden on Government benefit schemes. This is supported by s 98C(1)(b) Assessment

²⁵ Personal communication with the CSA Melbourne on 2nd March 2011. Any advice provided by the CSA, referred to in this paper, was received on this date.

²⁶ See Appendix 1.

²⁷ Ibid.

Act which states that a decision must be just and equitable and otherwise proper²⁸. Furthermore, one view of the CSA is that a decision to have children in new relationships may be considered a lifestyle choice and therefore this should not have a bearing on a child support assessment. If the system enabled the payment to be reduced with the payee's new circumstances, then this could potentially disadvantage and be considered unfair for the receiving parent who is continuing to provide the care for the child support children. However, the CSA indicated that it is common for there to be significant discrepancy between incomes or living standards of the two family households, which is not taken into account in the decision making process. This was further supported by feedback from survey respondents. For example, the paying parent may be in a lower income household than the receiving parent's household, with a new partner on a high income, and yet this is not taken into account to reduce the child support payment. The income of the receiving parent's new partner is not relevant to the decision making process even though the reality often is that this partner is also substantially supporting the receiving parent and any child support children. Unfortunately at this time, the CSA have said that no matter how much a Senior Case Officer may feel sympathy for the circumstances of a step or blended family, unless special circumstances can be made out, they are not able to change an assessment on this basis.

The following five case examples have been provided by the CSA in relation to applications for reduced child support payments under Reason 9 where there are changed circumstances by reason of having a dependant spouse or de facto partner.

Case Study 1

Mr. A is the applicant in this case and pays child support to Ms Z for the support of their two children. Mr A has remarried and has a new child in his new relationship. He applied under Reason 9 for a change of assessment based on the duty to maintain a dependent spouse. The decision provided by the CSA states "Mr A has supplied evidence showing he has a new child, born 28 July 2010. I am satisfied his wife is unable to work on the basis that she has care of this child, and that this constitutes 'special circumstances'". The decision goes on to say "In considering Mr. A's ability to provide support to the children of the assessment, the parents have reached common ground as to a reasonable rate of child support, being \$300 per fortnight. On the basis of the information above, and given the common ground between parents as to adjusting the assessment, I am satisfied this reason is established". This decision was set for a period of 4 months to allow Mr A time to acquire new employment. Therefore, although this Reason 9 application has been successful, it appears that this has been heavily influenced by the agreement from the receiving parent and the fact that it is temporary in nature. It cannot be assumed that any blended family where a new spouse or de facto partner is caring for a new

²⁸ *Child Support (Assessment) Act 1989* (Cth) s 98C(1)(b).

child, would receive a reduction to the child support payable unless further special circumstances could be made out.

Case Study 2

Mr. B pays child support to Ms Y for their child. Mr. B has remarried and has 2 subsequent biological children. He seeks a change of assessment according to Reason 9 claiming that his wife is unable to work as a result of their ill children and these children require greater financial care. He has provided several documents in support of his claim including medical information. Ms Y agrees that Mr B has extra costs associated with supporting his wife and their children. The Senior Case Officer found Reason 9 to be established. Similar to Case Study 1, this case has agreement from the receiving parent. Furthermore, 'special circumstances' have been made out as a result of the illnesses of the relevant dependent children and his wife's subsequent inability to work.

Case Study 3

Mr. C applied for a change of assessment under Reason 9 on the basis that he is supporting his wife as she stays home to care for their baby. He further states that his wife chooses to stay home to look after the baby as "the costs of child care would be prohibitive". The decision states "I am not convinced that this is representative of the 'special circumstances'. Even if I accept that child care is not a viable option I would also need to be satisfied that his wife cannot adequately support herself... I accept that Mr. C's wife is at home caring for their baby. However, this in itself does not mean that she is 'unable to adequately support herself'. His wife's tax return shows that she continued to receive income in the 2009/2010 year, well after the birth of their child, so presumably she was entitled to some leave payments after the birth. Mr. C confirms that his wife does indeed own an investment property. Her tax return is consistent with considerable equity in the investment property. Under the circumstances I am not satisfied that she is unable to support herself for the period of time that she is staying out of the workforce to care for their child. Reason 9 is not established".

Case Study 4

Mr. D is the applicant and claims his ability to pay child support is reduced as a result of his duty to maintain his wife and her daughter (his stepchild) who are temporary residents in Australia, particularly as a result of their inability to access government benefits for two years after becoming permanent residents. Mr. D claims that his wife is only able to work 2 days per week as a result of caring responsibilities. The decision concludes "Mr. D has not raised any issue with respect to his spouse that could be considered a special circumstance. Taking into account the above factors, I am not satisfied that special circumstances are established in this case. Reason 9 is not established".

Case Study 5

Mr. E is liable to pay child support to Ms X for one child of the relationship who is in greater than primary care of his mother. Mr. E seeks a change of assessment under Reason 9 submitting that the special circumstances of his case are that his new wife cannot work due to an ongoing medical condition and he has provided evidence from a medical practitioner to support this. He also submits that his income precludes his wife from receiving any Centrelink benefits other than the Family Tax Benefit and as a result he incurs all living costs for his wife and her children. The decision states “I consider that there are special circumstances as Mr. E’s wife has a medical condition that affects her capacity to work. I am satisfied that Mr. E has a legal obligation to support his wife, although he does not have a legal duty to maintain her children”. Furthermore, the decision found that Mr. E’s duty to maintain his wife significantly affects his ability to provide child support and so Reason 9 was established. However, the Senior Case Officer went on to find that it was not fair to change the assessment as a result of Mr. E’s high income in comparison to the receiving parent living solely off Government benefits. The decision states “I am required to consider whether any change is otherwise proper. This requirement takes into account the public policy objectives of the legislation, and also the concept that children are best supported primarily by their parents and not by social security benefits”. The decision was found to be just, equitable and otherwise proper according to the Assessment Act.

Duty to maintain another person

Once special circumstances have been established, the applicant must then establish that they have a duty to maintain another person. For our purposes, a person has an established duty to maintain their spouse or de facto partner under s 72 FLA²⁹ and s 90SF FLA³⁰ respectively. *The Guide* supplements this by outlining that a child support parent may have a legal duty to maintain a spouse or de facto partner if that person is unable to adequately support themselves as a result of having the care and control of a child of the relationship who is under 18; or their age, physical or mental incapacity to obtain employment; or any other adequate reason³¹. This again emphasizes the discretion given to the Senior Case Officer when making a decision, however as discussed above, the CSA suggests that in practice, such a decision is rarely granted.³²

Duty significantly reduces the applicant’s ability to provide financial support for the child

²⁹ *Family Law Act 1975* (Cth) s 72: Right of spouse to maintenance.

³⁰ *Family Law Act 1975* (Cth) s 90SF: Matters to be taken into consideration in relation to maintenance.

³¹ Child Support Agency, *The Guide 2.6.15: Reason 9 – the duty to maintain any other child or another person* (2010) Child Support Agency, page 3.

³² Please note that prior to the 2006-08 reforms package, Reason 9 only extended to spouses and not de facto partners. This amendment was made on 1st March 2009 where a person may now have a duty to maintain a de facto partner in the same circumstances.

Finally, the Senior Case Officer will look at all financial incomings and outgoings of the applicant and determine whether the applicant is in fact able to afford child support payments before making any reduction to this amount as a result of a duty to maintain a spouse or de facto partner.

Summary

Although it may appear that by way of a Reason 9 application for change of assessment, a child support parent may receive recognition for a dependent spouse or de facto partner, the requirement of special circumstances and the limited circumstances in which a duty to maintain another person arises means that, in practice, very few applications are successful.

Stepchildren

The legal position within Australia is that while a stepparent may have a moral duty to maintain a stepchild, no legal duty applies³³. Therefore within a child support assessment, stepchildren are not taken into account when calculating the child support parent's income. However our research into stepfamilies suggests that in reality, a family pools resources and often the child support parent is significantly contributing to the costs of any resident stepchildren.

There are two options for child support parents wishing to have the costs of a stepchild recognised within a child support assessment. Firstly, prior to the 2006-08 reforms, the only avenue for recognition of stepchildren in a child support assessment was to apply for a change of assessment under Reason 9 where a legal duty to support the stepchild could be established. This was achieved by an order of the Family Court under s 66M FLA that a stepchild was a relevant dependent child³⁴. This option is still available. Secondly, the 2006-08 reform packages to the child support system saw the introduction of Reason 10 in the change of assessment process which allows recognition of stepchildren where they are considered a 'resident child' as per the definition provided in s 117(10) Assessment Act³⁵. Each of these processes will be discussed in detail in this section.

1. Section 66M FLA applications

The Legal Practitioner's Guide (Pre 2008) produced by the CSA states "Under the Assessment Act a payer who has care of a stepchild is generally not able to have their assessment reduced on that basis unless the court has made an order under section 66M of the *Family Law Act 1975* in relation to the payer and the stepchild. If an order has been made under section 66M, CSA can take the stepchild into account as a relevant dependent child in making a child support

³³ *Vick and Hartcher* (1991) FLC 92-262.

³⁴ *Family Law Act 1975* (Cth) s 66M.

³⁵ *Child Support (Assessment) Act 1989* (Cth) s 117(10).

assessment”³⁶. It is important to note, however, that the primary duty to support a child lies with the primary parents of that child and such an order will only be imposed on a stepparent when a parent cannot meet this duty. This is discussed in the objects and principles of the division in ss 66B and 66C of the FLA. Section 66M FLA outlines when the duty to maintain a stepchild will be extended to a stepparent. The purpose of this section “is to provide for those cases in which a parent cannot meet this duty and it is appropriate, in the circumstances of the case, to impose a secondary duty on a stepparent”³⁷. It is clear that a duty will only be imposed on a stepparent where the primary parent is unable to meet the duty.

66M When step-parents have a duty to maintain

(1) *As stated in section 66D, a step-parent of a child has a duty of maintaining a child if, and only if, there is an order in force under this section.*

(2) *A court having jurisdiction under this Part may, by order, determine that it is proper for a step-parent to have a duty of maintaining a step-child.*

(3) *In making an order under subsection (2), the court must have regard to these (and no other) matters:*

- (a) *the matters referred to in sections 60F, 66B and 66C; and*
- (b) *the length and circumstances of the marriage to, or relationship with, the relevant parent of the child; and*
- (c) *the relationship that has existed between the step-parent and the child;*
and
- (d) *the arrangements that have existed for the maintenance of the child;*
and
- (e) *any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.*

Case law is consistent with the legislation in that the duty of a stepparent to support stepchildren is secondary to that of the child’s primary parent³⁸. Federal Magistrate Jarrett in *Carnell v Carnell* discusses the application of s 66M FLA³⁹. In this case Jarrett J found that the applicant stepfather did not have a duty to maintain his stepchildren under s 66M FLA. The following factors were relied on in making this decision:

- There was no evidence presented to the court regarding the biological father’s capacity to pay child support

³⁶ Child Support Agency, *The Legal Practitioner’s Guide: Precedents for child support agreements and court orders* (November 2006) Child Support Agency, page 34.

³⁷ *Mulvena v Mulvena* (1999) 24 Fam LR 452 per McManus R at 456.

³⁸ Examples include: *Cooper and Cooper* (1989) FLC 92-017; *Dodge and Krapf and Krapf* (1991) FLC 92-214; *Day and Day* (1993) FLC 92-333; *Duncan and Duncan* (1991) FLC 92-218.

³⁹ *Carnell v Carnell* (2006) 36 Fam LR 168.

- There was no evidence regarding a strong relationship between the stepfather and the children
- The stepfather had only been married to the children's mother for one year and there was no evidence provided on the nature and extent of their relationship prior to that date
- No evidence of special circumstances that would cause undue hardship or injustice on the applicant or the children

Furthermore, this case held that an order under s 66M will not be made unless it is accompanied by an application for a child maintenance order under s 66F FLA⁴⁰. The effect of this decision meant that the only way a child support parent can receive recognition for a stepchild in a child support assessment is if the stepfamily is no longer intact and the primary parent is seeking child maintenance from the stepparent. Hence where a stepfamily remains intact, stepchildren are unlikely to be included in a child support assessment as a result of a s 66M order and a Reason 9 application. This would mean the only avenue is via a Reason 10 application discussed below.

Where a stepfamily is estranged, however an order may be granted under s 66M FLA. For example, in *Hill v Hill* the stepfather was found to have a legal duty to maintain his stepdaughter based on "the extent to which the husband had assumed responsibility for the stepchild is demonstrated by the fact that he was an Australian who married the wife in the Philippines and arranged for her (and the stepchild) to live in Australia where they commenced cohabitation"⁴¹. Furthermore, it was found that the biological father would not have had any capacity to maintain the child as he was living in an impoverished state in the Philippines. It is important to note that an order will only be granted when a judge is satisfied that an obligation should be imposed on a stepparent having regard to the factors in s 66M(3) FLA.

2. Reason 10 application

A child support assessment may consider a step child when determining a change of assessment application under Reason 10, pursuant to s 117(10) Assessment Act⁴². If successful, this generally results in an increase to the paying parent's personal support amount and therefore a decrease in the child support payable.

The requirements that have to be met for this section to apply, like Reason 9, are extremely stringent and statistics provided by the CSA show that few applications are successful. In the 2008/2009 financial year, 256 Reason 10 applications were lodged of which 83 were successful

⁴⁰ *Family Law Act 1975* (Cth) s 66F.

⁴¹ *Hill v Hill* (2003) FamCt Unreported WA5L/03.

⁴² *Child Support (Assessment) Act 1989* (Cth) s 117(10).

(32%)⁴³. In the 2009/2010 financial year, 152 applications were lodged and 54 of these were successful (36%)⁴⁴. In comparison to the approximate 1.4 million CSA customers, such low numbers of successful Reason 10 applications show that exceptionally low numbers of stepfamilies apply for and even fewer receive recognition for dependant stepchildren.

For the purposes of this section, a stepchild must be considered a 'resident child'. A resident child is defined by s 117(10) Assessment Act as follows:

- (10) *For the purposes of this section, a child is a **resident child** of a person only if:*
- (a) the child normally lives with the person, but is not a child of the person; and*
 - (b) the person is, or was, for 2 continuous years, a member of a couple; and*
 - (c) the other member of the couple is, or was, a parent of the child; and*
 - (d) the child is aged under 18; and*
 - (e) the child is not a member of a couple; and*
 - (f) one or more of the following applies in respect of each parent of the child:*
 - (i) the parent has died;*
 - (ii) the parent is unable to support the child due to the ill-health of the parent;*
 - (iii) the parent is unable to support the child due to the caring responsibilities of the parent; and*
 - (g) the court is satisfied that the resident child requires financial assistance.*

This definition is further clarified in *The Guide* whereby a stepchild must live with the child support parent for greater than 35% of the time within a twelve month period⁴⁵. This allows for situations where the stepfamily is no longer intact, yet the stepchild still spends time with the stepparent (child support parent). *The Guide* states "A child support parent does not have to have a current partner to apply under this reason. The resident child can be a child of a former partner of the child support parent, if the child remained with the child support parent after they separated or if the partner is deceased and the child remained with the child support parent"⁴⁶.

The requirements for satisfying changes of assessment are discussed below.

Special Circumstances

⁴³ See Appendix 1.

⁴⁴ Ibid.

⁴⁵ Child Support Agency, *The Guide* 2.6.16: Reason 10 – responsibility of the parent to maintain a resident child (2010) Child Support Agency, page 2.

⁴⁶ Ibid.

As discussed above in relation to spouses and de facto partners, the requirement under Reasons 9 and 10 is that 'special circumstances' must exist for a change of assessment to be made. This means that the facts of the case are special or out of the ordinary⁴⁷. Therefore in relation to stepfamilies, it is not sufficient to argue that the child support parent has re-partnered and is maintaining stepchildren without establishing factors out of the norm. For example, in a case study (case study 6) provided by the CSA, Mr. F applied for a change of assessment under Reason 10 stating that he is supporting his stepchild as a result of the biological parent not providing any financial support. However, Mr. F did not provide any evidence regarding why this is the case and hence the Senior Case Officer could not find 'special circumstances' in the case.

Furthermore in case study 3 (discussed above) the change of assessment application also discussed Reason 10. Mr. C applied as a result of supporting stepchildren and stated special circumstances existed because the stepchildren's father was deceased and the mother was unemployed. This application was also unsuccessful as the Senior Case Officer found that the biological mother was able to support the children by way of leave entitlements and income generated through investment property. Hence, a secondary duty to support the children could not be extended to the child support parent.

Of the seven case studies that were provided to **drummond street** by the CSA, not one application under Reason 10 was successful. The CSA indicated they were unable to find a successful case. However, anecdotally, the CSA recalled one case in 2008 where special circumstances were made out as a result of the stepchild's biological father being deceased and biological mother (the child support parent's wife) inability to work due to illness. Therefore, it was found that this amounted to special circumstances and as a result, the child support parent had a duty to maintain the stepchild.

Duty to maintain resident child

A child support parent (stepparent) may have a duty to support a resident stepchild where the elements of s 117(10), discussed above, have been met. This is where the biological or primary parents of the child are unable to support the child. This could be a result of death, ill-health or caring responsibilities. According to the CSA, when a Senior Case Officer is assessing a parent's ability to support their children, all avenues of support will be considered i.e. savings, social security benefits, compensation, assets etc. This makes it difficult for stepfamilies to establish Reason 10 as often the primary parent of the stepchild will have some source of support. *The Guide* also states "if a legal parent is receiving a social security pension or benefit they would be considered able to support the child, even if it is only at the minimum annual rate"⁴⁸. It is not relevant in the decision-making process that a child support parent may be a higher income

⁴⁷ *Gyselman v Gyselman* (1992) FLC 92-279.

⁴⁸ Child Support Agency, *The Guide* 2.6.16: *Reason 10 – responsibility of the parent to maintain a resident child* (2010) Child Support Agency, page 2.

earner than the primary parent and may be supplementing the support of the stepchild, providing some level of support is available from the primary parent.

Duty significantly reduces the applicant's ability to provide financial support for the child

According to the CSA, all factors will be considered by a Senior Case Officer to determine whether the ability to support child support children is, in fact, reduced. As discussed above, this includes consideration to all incoming and outgoing expenses and whether these are deemed to be necessary in nature.

Summary

The Legal Practitioner's Guide states "while applications for section 66M orders are not common, it is anticipated that the use of this new provision will result in even fewer section 66M applications"⁴⁹. Thus although this remains an option where a child support parent requires consideration to be given to the costs of a stepchild in a child support assessment, the requirements of a s 66M order remain too difficult to establish and only exceptional cases would result in a stepchild being considered a 'relevant dependent child' for the purposes of a change of assessment under Reason 9. Therefore it appears more appropriate that the avenue for a stepfamily would be to apply for a change of assessment by way of Reason 10. However, the difficulty for stepfamilies remains as Reason 10 applications have posed an equal challenge in having the costs of a stepchild recognised. As the statistics provided by the CSA reflect, very few families are applying under Reason 10 and even fewer of these applications prove to be successful. It is also interesting to note that the number of applications in the 2009/2010 financial year have decreased from 256 in the 2008/2009 financial year, to 152⁵⁰. It is possible that families are dissuaded from applying under Reason 10 as they have become aware that it is extremely difficult to satisfy essential requirements in a common stepfamily situation. The difficulties and challenges that are resultant for stepfamilies will be discussed in Part 3.

Conclusion to Part 2

Blended families are recognised by the Child Support System in that biological children from second or subsequent relationships – an "ours" child – are automatically considered in the basic formula in determining a child support assessment. However, costs of maintaining dependent spouses or de facto partners and stepchildren will only be included in a child support assessment where rigorous requirements can be met. Yet the realities, from research that we have conducted, suggests that child support parents are often supporting all members of the step or blended family and this results in significant financial hardship for that family. However, as previously mentioned, taking into account costs of spouses/de facto partners and/or

⁴⁹ Child Support Agency, *The Legal Practitioner's Guide: Precedents for child support agreements and court orders* (2008) Child Support Agency, page 53.

⁵⁰ See Appendix 1.

stepchildren in a child support assessment, while desirable for stepfamilies, may place undue burden on the receiving parent to cover any reduced child support payments. Therefore, either way, one family appears to be disadvantaged by including or excluding the costs of spouses/de facto partners and/or stepchildren. We have therefore looked further afield to find alternative processes and systems which take step and blended families into account while ensuring an equitable process which does not unduly disadvantage one family over the other. These findings are discussed in Part 4.

Part 3: Self-reported challenges experienced by Stepfamilies

In January 2011, **drummond street** conducted a survey specifically for stepfamilies regarding their experiences within the child support system, including what worked well, didn't work well and suggestions for improvement. This survey was titled 'Child Support System: Survey for Stepfamilies' and was created electronically using *Survey Monkey*⁵¹. The online survey was open from 3rd January 2011 until 31st January 2011 and was completed by 100 participants. We advertised widely using Stepfamilies Australia and Council of Single Mothers and their Children networks, such as the webpages, facebook pages, online forums, and newsletters and through expressions of interest gained from clients of our organisation. A copy of the survey is attached as Appendix 2. Furthermore, overall analyses of results and collated responses have been included in Appendix 3. There were also a number of concerns identified that were not unique to stepfamilies which have been included in Appendix 3.

This section summarises challenges commonly faced by stepfamilies in relation to their dealings with the CSA, as reported in the surveys, including perceptions of inequities. Several respondents commented that the child support system uses a 'one size fits all' approach and asked for a more flexible system that could take into account unique family circumstances. There is equally the need however, for consistent, non-discretionary, administrative decision-making. We attempt to highlight concrete issues and examples of where the current system or processes may be adapted to better take into account the individual circumstances and needs of stepfamilies, while not disadvantaging other interest groups.

This stepfamily sample comprises families with access to internet resources and good English language skills, with 93% identifying as being from *non*-Culturally and Linguistically Diverse backgrounds. In this way, the sample may not be representative of the entire stepfamily population. Furthermore, most participants are either the biological/primary or stepparent within the *paying* parent family⁵². We are not aware of research available regarding the prevalence of the various stepfamily forms and payment arrangements, and the CSA are unlikely to be able to readily report on this data currently. It is difficult therefore to know how representative the current sample is of the current child support stepfamily population. FaHCSIA and the CSA may consider further consultation with possibly under-represented stepfamily subgroups within this sample (for example, the views of the *receiving* parent's family).

⁵¹ Survey Monkey enables users to create and publish online surveys and subsequently view and analyse results.

www.surveymonkey.com

⁵² Further sample characteristics are outlined in Appendix 3.

This section discusses challenges commonly faced by step and blended families and needs that are not currently addressed by the child support system. The findings of our survey identified three main issues specific to step and blended families:

1. Limited recognition of the costs of stepchildren
2. Disparity in living standards between the paying and receiving parents' households; and
3. Spouse/de facto partner's inability to work after an "ours" child is born.

It will, however, become clear that there is significant overlap between each of these key themes.

Limited recognition of the costs of stepchildren in the current child support system

In Part 2, we discussed the circumstances in which the costs of a stepchild are considered within a child support assessment. There is no automatic reduction from the basic formula for the costs of a stepchild living with either child support parent, and Reason 10 in the change of assessment process requires special circumstances to be established which is a difficult test to satisfy. As a result, the large majority of stepfamilies engaged in the child support system are not having the costs of stepchildren taken into account in their assessments.

The rationale of the CSA is that the primary duty to support a child rests with the primary parent of the child and this duty will only be extended to stepparents where exceptional circumstances exist. For example, as discussed above in Part 2, where one parent is deceased and the other is unable to work due to physical health. However our research suggests the reality is that when a stepchild is living in a household, both the primary parent and the stepparent are contributing to support that child, irrespective of whether child support payments are received from the non-resident primary parent of the stepchild. For example, the primary parent may be assessed to contribute the minimum amount of child support, or may be in arrears with child support payments, hence the stepparent is likely to be covering the shortfall in the costs of the care of the child. While the rationale is reasonable, the failure to recognise this can place undue hardship upon stepfamilies as they attempt to meet the costs of supporting the new/second family.

A total of fifteen comments were received specifically regarding the lack of recognition by the CSA toward the costs of maintaining stepchildren in determining the amount of child support payable. Examples of comments are listed below:

"My Partner is a high income earning has to pay ALOT of childsupport. We get next to nothing for my girls. Yet Child support WON'T see my girls as dependants of my parnter yet FAMILY ASSISTANT do and i do not recieve much from them. My partner is raising my

girls financially yet child support DOES NOT see that...I think this is a MAJOR problem with Child Support and stepfamilies"

"Step children not being acknowledged as relevant dependent children for child support assessments...Treating all children the same in regards to child support children and step children"

"Children of second families treated as second class citizens"

"Lack of full consideration especially when the step children of not CS eligible children and most especially subsequent children of the liable parent when it comes to the change of assessment process. Such children are treated as virtually not existing if their existence reduces the liability (e.g. special needs being refused to be considered)."

"While I have a moral duty of care to my step-son, I do not have a legal duty of care. So, although I am the female and breadwinner and spend a lot of money on him, none of this is recognised as an expense to me"

It is evident that there is a general perception, from many respondents, that the second family is treated unfairly in comparison to the first family. Three comments were received about the need to keep the system fair for both families.

As indicated above, the stepparent may be significantly contributing to the costs of maintaining a stepchild when child support payments are not received from the non-resident parent. While provisions are in place for the CSA to pursue non-payers, the reality is that often payments are not received or are largely in arrears or are insufficient/low as a result of the paying parent minimising their income. There were seventeen comments received specifically regarding the difficulty this issue places on a stepfamily:

"Being financially responsible for a child in the household when the biological parent doesn't pay child support."

"as stated not recognising step children as dependents when child support cannot do their job and collect"

"That we pay child support and my sons father doesn't."

This becomes even more difficult when the resident parent of the stepchild (the child support parent's spouse/de facto partner) is unemployed or underemployed.

While the feedback received from families suggests that a change should be made to the child support system to include the costs of maintaining stepchildren, it is important to recognise that this may benefit one child support family yet disadvantage the other child support family. Consider a situation whereby a father (the paying parent) has re-partnered and is now living with his partner and her two children and no child support payments are being paid by the non-resident parent of the stepchildren. While the father may be contributing (whether in part or substantially) to the costs of supporting the stepchildren in his household, reducing the amount of child support that he pays based on this, would have an effect on his ex-partner – the receiving parent – and her capacity to support the children from the first family. Therefore, changes to child support policies remain a ‘balancing act’ where it is important to consider the effect any changes to the system would have on all groups of the child support population and strive for a system which is most equitable for all families. This is discussed in greater detail in Part 4.

Disparity in living standards between the paying and receiving parents’ households

The CSA have indicated that it is commonly reported to them that there is significant discrepancy between incomes or living standards of the two child support family households i.e. the households of each of the paying and receiving parent. Anecdotally, this is most commonly brought to the CSA’s attention when the receiving parent has re-partnered to a high income earner who becomes the stepparent. Although there is no legal duty for that stepparent to support the child support children, often he/she is significantly supplementing the income of that household and providing a higher standard of living than the paying parent is able to provide in their own household. The income of the stepparent is not taken into account in the decision making process when determining a change of assessment application. Therefore the paying parent in a child support case continues to make the same child support contribution and is often struggling to meet the needs within his/her own household.

This is the reality for some of the survey participants. It is particularly difficult for the paying parent to accept as they are making payments based on their ex-partner’s income only and that person may not be working, requiring higher payment by the paying parent. Nine comments were received relating to the disparity between households.

Here are some examples:

“...The idea of CSA payments based on income is supposed to ensure the children do not move from a 'wealthy' environment to a 'poor' one - however in our case, and I imagine that of many other stepfamilies, it works the other way around! It is only at their mother's house that the children get Foxtel and a beach house and brand name clothes

and expensive holidays! At our house things are much more frugal, which affects everyone in the house, including our biological children.”

“- the income of the other party living in the household (where the children live most) is not included in assessments. In my husband's situation his ex and the children live in a far superior financial household because of the mother's partners income being so large... Blended families are unique fullstop - just by starting a relationship with a person with children means you take on responsibility for children living in the household. The reality is this is often financial support but is not taken into account by CSA.”

“We are forced to pay school fees due to a COA. Even without paying the school fees, we would not be able to pay for our 2 little ones to attend private school due to loss of income due to the GFC. Heck, I can't even afford to pay for them to attend swimming lessons!! The situation is hardly fair and equal towards all of the children involved. My husband declared bankruptcy in December.. yet we still have to pay private school fees!? Having trouble meeting the BASIC needs of the kids here, let alone the LUXURIES of the kids there. Sorry.. but that's just crazy.”

“The mother can fly all round Australia throughout the year with her boyfriend and is currently in Fiji for a week, yet in our step household we can't even find the money to go camping - how is this making sure the standard of living in both household's is same - it is obviously very different.”

There were an additional three comments that there is simply not enough money left for second families and these families are at risk of separation due to the resulting financial pressures. Some believe that they would be better off financially by separating as the new spouse/de facto partner's Centrelink payments may be reinstated and Family Tax Benefit increased. Some couples may claim to be separated while living under the same roof to manage this dilemma, according to the CSA. Several comments also referred to the impact of financial hardship on mental health, risk of relationship breakdown and risk of homelessness. Further, mention was also made of the need for preparation for stepfamily formation (e.g. pre-marriage counselling) and for greater promotion and provision of services to support stepfamilies.

Several comments related to the income of new partners not being included in a total household income for child support assessment purposes, yet being taken into account for Family Tax Benefit (FTB) purposes, with the result that, in the example used above, the payer is paying a higher child support amount because the payee's new partner's income is not being taken into account yet the paying parent's household is receiving reduced family tax benefit payments because the total household income is considered. While it is understood that child support is a payment for children and not an income support payment, there is a request for greater consistency across the two systems. In theory, Government benefits should be assisting

when there is financial hardship and this should be taken into account when considering any policy developments.

Again, changing child support policies may make things more manageable for some groups of families and more difficult for others; there are generally winners and losers. Were new partner's incomes to be included, this would result in dissatisfaction by the new partners because of a belief that it is a primary parent's responsibility to support children. We are unclear of figures relating to how many families in Australia are in which situation, for example, payer parent households having a lower standard of living than receiving parent households, or how many families have total household incomes which are more equal. These figures may assist decision making in regard to changes to this area of policy. There are no easy solutions for this perceived discrepancy, however we highlight some interesting options in Part 4 of this paper.

Spouse/de facto partner's inability to work after an "ours" child is born

In many families, when an "ours" child is born to a blended family, the mother may have a preference to cease work to take care of the infant. Where the mother is a spouse/de facto partner of the child support parent for the purposes of a child support assessment, this means that the child support parent is supporting his/her partner, all "ours" children⁵³ and possibly any stepchildren of the household. As discussed in Part 2, this situation in itself is unlikely to justify a change of assessment, meaning that paying parents in these circumstances will not receive a reduction in child support payments.

The following comments were received on this issue:

"When you have a child within the new family structure and how they calculate child support amounts payable for the children of the previous marriage. No consideration is taken into account when you are a two income household and then have to manage on only the husbands income when another child is born. The one income then needs to support not only the new family (dependent wife and child) but also must still meet the child support payments with little adjustment."

"Not being able to choose to stay at home with our children because my income or lack thereof has no impact on how much he has to pay, therefore I have to work so we can live."

⁵³ Both paying and receiving parents with an 'ours' child in a new relationship will have these children taken into account in a child support assessment, as a relevant dependent child, with an associated increase or decrease in the child support payment.

“More consideration needs to go into the payment structure when a new dependent is born into the stepfamily and the father now needs to support a dependent spouse and child, along with the children from a previous marriage.”

“It will be interesting to see what happens when my partner and I have children, and he is going to be the stay at home Dad because I earn more than him, and it is better off financially for us, and less of a strain on the community”

These examples support the perception that there is a bias towards first families over subsequent step/blended families and also a bias toward receiving parents over paying parents. Consider a receiving parent mother that has re-partnered and has had a child in the new relationship. She may choose to cease work to care for the infant and as a result, her child support income is reduced and the child support amount that the paying parent must make is increased – regardless of whether her new partner’s level of income is sufficient to support her and the children. However, if the paying parent re-partners and has a child in this relationship, his income will not be affected (only that of his spouse/de facto partner’s will be reduced) and so his child support payments remain the same. This seems unfair given that in each of the circumstances described, the child support parent has had a child in a second/subsequent family. In this way, this is not equitable for both families and there is an apparent bias against the paying parent.

The following comments support this:

“the principle of child having same standard of living as prior to separation does not make sense when parents repartner and form stepfamilies and there is an inherent bias against biological fathers and their second families. For instance: various dependents are not properly taken into account for stepfamilies in regard to assessable income as the father may need to support not only himself and his children but also his new partner while she must take time off work to have a child, where as the biological mother of the separated child also does not work while having further children and therefore does not earn any assessable income and does not financially contribute to the child’s care even though her new partner is providing for her. eg biological mother repartners to high income earner but earns nothing herself while having further children so biological father pays child support to pay for everything for child at mother’s and father’s and child therefore typically experiences significantly lower standard of living with biological father than with mother, especially when father has to financially support other dependents.”

“If my partner and I have another child, his payments go down only slightly. If his ex partner has a child (and therefore stops working) my husband’s payments go up by heaps, it’s not an equal balance.”

Conclusion to Part 3

Feedback from 100 stepfamilies has been summarised in this section relating to experiences with the child support system. The key themes that have emerged are important for consideration in any policy development, ensuring there is a balance of interests of the entire child support population. As a result, recommendations have been outlined in Part 5.

Part 4: Cross-Cultural Analysis

Different countries have different processes for addressing the needs of stepfamilies within their child support systems. It is important to note at the outset that there are two main groups of stepfamilies who are affected by the child support system: those families involving a *paying parent*, and those involving a *receiving parent*. Most systems only take into account the needs of the paying parent's dependant partner/children when determining the amount payable. However in Australia, as discussed in part 2, the receiving parent's income is also included in the child support formula to determine the amount payable. In the basic formula, this includes an automatic reduction to the child support income of the receiving parent where he/she has a relevant dependent child (a biological child from a second/subsequent relationship – “ours” child). Furthermore, a receiving parent may apply for a change of assessment under Reason 9 and/or 10 to include the costs of maintaining a spouse/de facto partner and/or stepchildren where special circumstances exist. Again, if successful, this would result in an increase to the receiving parent's personal support amount which in turn decreases their child support income used in the assessment formula and may result in an increase in child support payments. Anecdotally, the CSA have indicated that while a receiving parent has the right to apply for a change of assessment, the majority of applications are received by the paying parent.

A report published by the University of York, analysing fourteen child support systems, examined how those systems dealt with the expenses of the second families when determining a child support assessment⁵⁴. It is important to note that for most countries, this only involves the expenses of the second families of the *paying* parent, as unlike Australia, the costs of the receiving parent's second families are not considered. The Canadian System does, however, include the overall living standards of the receiving parent's household when compared to that of the paying parent's household. This will be discussed in greater detail below.

The following table shows these comparisons.

⁵⁴ Christine Skinner et al, 'Child Support Policy: An international perspective' (2007) *Department for Research & Pensions Research Report No 405*, page 51.

Table 4.2 Accounting for the non-resident parents' resources in determination of formal child maintenance awards

					Expenses second families		
Country	Earnings	Other income	Basic living expenses	Additional personal expenses	Own children	'New' partners	Step children
Agency systems							
Australia	Gross Inc	Yes	Yes	No	Yes	No	Not usually
Denmark	Gross Inc	Yes	No	No	Yes	No	No
New Zealand	Gross Inc	Yes	Yes	No (maybe sick/disabled)	Yes	Yes	Yes
Norway	Gross Inc	Yes	Yes	No (maybe sick/disabled)	Yes	Yes	No
United Kingdom	Net Inc	Yes	No	No	Yes	No	Yes
Court/hybrid systems							
Austria	Net Inc	Yes	Yes	No	Yes	Yes	No
Belgium	Net Inc	Yes	No	No (maybe sick/disabled)	Yes	Yes	Yes
Canada (Ontario)	Net Inc	Yes	Yes	Yes	Yes (protect against hardship)	Yes (protect against hardship)	Yes (protect against hardship)
Finland	Net Inc	No	Yes	Yes	Yes	Yes	Yes
France	Net Inc	Yes	Yes	Yes	Yes	Yes	Yes
Germany	Net Inc	Yes	Yes	Yes	Yes	No	No
Netherlands	Gross or net depends on threshold	Yes	Yes	Yes	Yes	Yes	Yes
Sweden	Net Inc	No	Yes	Yes	Yes	Yes	Yes
United States	Gross Inc	Yes	No	No	No	No	No

The report refers to biological children from second or subsequent relationships ("ours child") as "own children". Like Australia, each of the fourteen countries (except for the USA⁵⁵) considers the costs of children born to blended families in determining a child support assessment. However, there are differences in the recognition of the needs of spouses/de facto partners and stepchildren. Of the fourteen countries, nine recognise the costs of dependant spouses/de facto partners and eight recognise the costs of dependant stepchildren in determining the child

⁵⁵ The USA is unique in giving primacy to children of first families: "First children come first: the amount owed to the first child or children are not adjusted just because there is another resident child": *ibid*, page 52.

support amount. As discussed in part 2, it is only in exceptional circumstances in Australia that a stepfamily will obtain a reduction (if paying parent) or increase (if receiving parent) in child support payable in recognition of the costs of spouses/de facto partners and stepchildren. This raises the question of whether the current child support system is adequately adapting to the needs and challenges faced by contemporary families.

Taking into account the costs of spouses/de facto partners and/or stepchildren has implications on the amount of child support payable which inevitably either advantages or disadvantages different subgroups of the child support population. The Australian child support system may be criticised for disadvantaging stepfamilies as the new family formation is largely excluded from consideration in making a child support assessment. This can be seen to be in the interests of the first family (and the receiving parent) particularly where the receiving parent remains single and/or with low income (which may be socially just) as well as those who have re-partnered and may have a higher income (which may be seen to be unfair to a struggling step or blended family). Other systems assist stepfamilies of the paying parent by reducing the amount payable on the basis of the needs of the new family but this may be to the disadvantage of the receiving parent, and their new family, if any. Our analysis outlines alternative child support systems which operate differently to Australia in relation to stepfamilies and highlights the impacts of their application on various groups of stepfamilies, pointing towards a system which may be seen to be the most equitable across subgroups.

In this section we will look at two differing systems: the New Zealand and Canadian child support schemes. We will explore the differences in processes of these systems in comparison to the current Australian processes to determine if any changes could be made to better incorporate stepfamilies within our system.

New Zealand Child Support System

To determine the amount of child support payable in New Zealand, firstly the paying parent's taxable income is determined and then a living allowance (similar to the personal support amount in Australia) is deducted from this amount, following the table below⁵⁶.

Single person with no dependents	\$14,158.00
Married or with a civil union or de facto partner, with no dependent children	\$19,379.00
Single, married or with a civil union or de	\$27,417.00

⁵⁶ Inland Revenue, *Four Step Calculation of Child Support*, Inland Revenue
<http://www.ird.govt.nz/childsupport/paying-parents/workout-payments/calculation/>

facto partner, with one child living with the paying parent	
Single, married or with a civil union or de facto partner, with two children living with the paying parent	\$30,234.00
Single, married or with a civil union or de facto partner, with three children living with the paying parent	\$33,051.00
Single, married or with a civil union or de facto partner, with four or more children living with the paying parent	\$35,868.00

As the table shows, the costs of living with other family members is considered in a child support assessment by increasing the paying parent's living allowance according to the number of people in the household. Where a paying parent has re-partnered, his or her living allowance will automatically increase as a result of living with that spouse or de facto partner⁵⁷. This is irrespective of the earning capacity of that spouse/de facto partner and no special circumstances need to be established. The definition of 'dependent child' also extends this consideration to the costs of stepchildren. A dependent child is defined by s 30(5) Child Support Act⁵⁸:

*For the purposes of this Part, unless the context otherwise requires, — **dependent child**, in relation to any person, means a child—*

- (a) who is maintained as a member of that person's family; and*
- (b) in respect of whom the person either is the sole or principal provider of ongoing daily care for the child or shares ongoing daily care of the child substantially equally with another person; and*
- (c) [Repealed]*
- (d) who is not financially independent; and*
- (e) who is under 19 years of age; and*
- (f) who is not living with another person in a marriage, civil union or de facto relationship*

⁵⁷ Please note that unlike the Australian child support system, only the paying parent's income is considered in a child support assessment in New Zealand. Hence, the nature of the receiving parent's family/household is not relevant. Whereas, in Australia, either a paying or receiving parent can apply for a change of assessment via reason 9 to have the costs of dependant spouses/de facto partners and/or stepchildren considered.

⁵⁸ *Child Support Act 1991 (NZ) s 30(5).*

This definition is not exclusive to biological or adoptive children of the child support parent and hence the costs of stepchildren living with the paying parent will be considered in a child support assessment by increasing that parent's living allowance. This reflects the reality that when a child is living in a household, regardless of whether that child is a child of the child support parent, the child's costs are being met (whether solely or shared) by the child support parent (stepparent).

In 2003, the United Kingdom enacted similar provisions. The rationale for the inclusion of the costs of stepchildren in a child support assessment was explained in the *Child Support, Pensions and Social Security Bill*: "On balance, we think the new scheme should show a slight preference to children in the first family, because non-resident parents should expect to meet these responsibilities first. On the other hand, it would be unfair to discriminate against stepchildren by only reducing maintenance liability for a parent's own children in a second family. It is not always the case that stepchildren receive maintenance from their own non-resident parents. So, ignoring the needs of stepchildren could, in some cases, lead to genuine hardship"⁵⁹. Furthermore, it was stated that "all children in the second family will have the same protection under our plans for reform. There will be no 'first class' and 'second class' children in the second family – those who count for child maintenance and those who do not"⁶⁰.

While the approach of New Zealand and the UK is therefore more advantageous to stepfamilies involving a paying parent, our concern is that automatically reducing the amount of child support payable because of the needs of paying parent's new family without considering the needs of the receiving parent – and their new familial obligations, if any – will inevitably increase strain upon the receiving parent's family. Thus while one group of stepfamilies (those involving a paying parent) may benefit from the New Zealand and UK approaches, it potentially comes at the expense of another group of stepfamilies (those involving a receiving parent).

A better approach, in our view, is the Canadian child support system which considers the living standards of the families of both the paying and receiving parent in making a determination with regards to the costs of spouses/de facto partners and stepchildren. This model is discussed below.

⁵⁹ Jo Roll, 'Child Support Provisions in the Child Support, Pensions and Social Security Bill: Bill 9 of 1999-2000' (1999) *House of Commons Research Paper 99/110*, page 26.

⁶⁰ Ibid.

Canadian Child Support System

In Canada, a province or territory can adopt its own guidelines or implement the Federal Child Support Guidelines (“Federal Guidelines”)⁶¹. The steps for determining a child support assessment are outlined in the Federal Guidelines Step by Step Guide (“step by step guide”)⁶². In relation to stepfamilies, where the amount of child support set in the child support tables, combined with other circumstances, causes undue hardship upon the paying or receiving parent or a child, the child support amount may be varied⁶³. This is outlined in s 10(1) Federal Guidelines⁶⁴:

S10. (1) *On either spouse's application, a court may award an amount of child support that is different from the amount determined under any of sections 3 to 5, 8 or 9 if the court finds that the spouse making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.*

(2) *Circumstances that may cause a spouse or child to suffer undue hardship include the following:*

- (a) the spouse has responsibility for an unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living;*
- (b) the spouse has unusually high expenses in relation to exercising access to a child;*
- (c) the spouse has a legal duty under a judgment, order or written separation agreement to support any person;*
- (d) the spouse has a legal duty to support a child, other than a child of the marriage, who is*
 - (i) under the age of majority, or*
 - (ii) the age of majority or over but is unable, by reason of illness, disability or other cause, to obtain the necessities of life; and*
- (e) the spouse has a legal duty to support any person who is unable to obtain the necessities of life due to an illness or disability.*

⁶¹ Please note for the purposes of this research paper, we will be referring to the processes within the Federal Guidelines. Provinces that have implemented their own child support guidelines are New Brunswick, Manitoba and Quebec; these guidelines will only apply when both parents live within that province otherwise the Federal Guidelines prevail.

⁶² Department of Justice Canada, ‘The Federal Child Support Guidelines: Step by Step’ (2006) Department of Justice Canada.

⁶³ It is important to note that the Canadian System varies from the Australian system in that it is not an agency system. Therefore a body such as the CSA does not exist in Canada. The Canadian system encourages parents to reach child support agreements on their own, with guidance from the Federal Guidelines Step by Step Guide. However, if an agreement cannot be reached, parents may seek the assistance of a third party such as a lawyer or mediator, or ask a court to make a decision.

⁶⁴ *Federal Child Support Guidelines 1997 (Canada) SOR 97-175, s 10.*

(3) Despite a determination of undue hardship under subsection (1), an application under that subsection must be denied by the court if it is of the opinion that the household of the spouse who claims undue hardship would, after determining the amount of child support under any of sections 3 to 5, 8 or 9, have a higher standard of living than the household of the other spouse.
(4) In comparing standards of living for the purpose of subsection (3), the court may use the comparison of household standards of living test set out in Schedule II.

Therefore, there are two steps for determining if a parent or a child is experiencing undue hardship⁶⁵ as a result of the costs of a spouse/de facto partner or stepchild. Firstly, there must be circumstances that cause undue hardship on either of the child support parents or a child. The step by step guide provides the following examples of circumstances relevant to step and blended families⁶⁶:

- A legal duty to support another person
- A legal duty to support a child, other than a child of the marriage
- A legal duty to support a person who, because of illness, disability or other cause (including education), cannot support himself or herself.

Similarly to Australia, a person has a legal duty to support a spouse/de facto partner and biological children from second or subsequent relationships. Furthermore, in Canada this duty is extended to stepchildren⁶⁷.

The following example is provided in the step by step guide where undue hardship may be accepted⁶⁸:

“Patrick has sole custody of his and Michelle’s three children. Michelle has remarried and has two more children who are both under three. Michelle’s new spouse is only able to work part-time. We know that Michelle would pay Patrick \$1,188 per month for their children. Michelle is claiming “undue hardship”. In making a decision on this issue, Patrick and Michelle must look at Michelle’s current financial situation to see if the child support amount, combined with her new circumstances, create undue hardship. They must then look at which household has the higher standard of living. If Michelle’s household standard of living is lower, she may not be required to pay the full amount of child support”.

The definition of undue hardship is clarified in *McArthur v McArthur*⁶⁹ where the judge was satisfied that the child support parent had a duty to maintain his stepchildren but was not

⁶⁵ Department of Justice Canada, ‘The Federal Child Support Guidelines: Step by Step’ (2006) Department of Justice Canada, Step 8: page 21.

⁶⁶ Ibid.

⁶⁷ *Hanmore v Hanmore* (2000) ABCA 57 (CanLII) at [3]: “The respondent is supporting his new wife and their two children. He is under a legal duty to support those children”.

⁶⁸ Department of Justice Canada, ‘The Federal Child Support Guidelines: Step by Step’ (2006) Department of Justice Canada, Step 8: page 22.

satisfied, under the circumstances, that this duty created undue hardship. The judge said “I accept that the defendant has an obligation under s. 10(2)(c) to support (in part) the three children of his present wife. However, does the discrepancy in income, plus the additional three children, create undue hardship? In my opinion, the difference in the total income, or the defendant's obligation to support the three children of his present wife, do not in and of themselves create undue hardship. Undue hardship is a significantly restrictive provision in s. 10 which may, on the basis of dictionary definitions, be considered as "undue" or "excessive suffering" or "severity"”⁷⁰. Furthermore, in *Hanmore v Hanmore*, it was stated “the hardship must be more than awkward or inconvenient. It must be exceptional, excessive, or disproportionate in the circumstances”⁷¹. A court should therefore refuse to find undue hardship where a parent can reasonably reduce his or her expenses and thereby alleviate hardship⁷².

The second requirement, before a claim of undue hardship can be accepted, is a comparison of living standards between the households of both the paying and receiving parents. The step by step guide provides an administrative way to calculate the standards of living for both households⁷³, which looks at the incomes of all members of each household. This is the only circumstance whereby a stepparent's income may be considered within the child support assessment. Where the living standards of the parent applying for a variation to the original assessment is deemed to be lower than the other family, a court will make an order to reduce or even distinguish child support payments. For example, in *Pelletier v Kakakaway*, an application for child support was dismissed on the grounds that it would cause undue hardship to the respondent and his second family⁷⁴. In making his decision, the Judge relied on the fact that the respondent was supporting a ten person family on approximately \$31,000 per year and in comparison, the applicant was earning approximately \$43,000 while only supporting herself and her two children.

Although the threshold for meeting the elements of undue hardship is extremely high, this provision is available for stepfamilies where the hardship experienced by that family is excessive or exceptional and there is disparity between the living standards of that family and the other child support parent's family. In this sense it can be seen as a more equitable model than the current Australian model, as it has the capacity to balance the needs of all members of the

⁶⁹ *McArthur v McArthur* (1999) CanLII 5598 (BC S.C.).

⁷⁰ *Ibid.*

⁷¹ *Hanmore v Hanmore* (2000) ABCA 57 (CanLII).

⁷² *Messier v Baines* (1997) CanLII 11210 (SK Q.B.).

⁷³ Department of Justice Canada, 'The Federal Child Support Guidelines: Step by Step' (2006) Department of Justice Canada, Worksheet 3: page 54-59 and 69-72.

PDF available at: <http://www.justice.gc.ca/eng/pi/fcy-fea/lib-bib/pub/guide/index.html>

⁷⁴ *Pelletier v Kakakaway* (2001) SKQB 158 (CanLII).

families of both the paying and receiving parents, rather than automatically factoring in some needs at the expense of others. If Australia were to adopt such a regime of comparing the living standards of each family, this would provide overall greater fairness to all family types in our view. Recommendations, as a result of these findings, will be discussed in Part 5.

Part 5: Recommendations

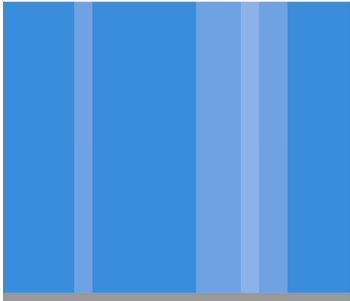
We make the following recommendations on the basis of our research:

1. That FaHCSIA investigates a model similar to the Canadian model which involves a comparison of living standards between the households of the *paying* and *receiving* parents when determining a change of assessment application.
2. That in conjunction with Recommendation 1, FaHCSIA broadens the scope and guidelines of Reason 9 and Reason 10 in the change of assessment process to better account for the realities of step and blended families as discussed in this policy paper.
3. That FaHCSIA reviews the process of decision-making in a change of assessment application, and considers appointing a panel of Senior Case Officer's to make such decisions, following more administrative guidelines. This is to ensure impartial, consistent and accountable decisions are made.
4. That FaHCSIA introduces stepfamily-specific resources, including a factsheet specific to this family type outlining relevant CSA policies and procedures.
5. That FaHCSIA implements training for CSA staff on issues specific to contemporary families in Australia, including specific issues and challenges faced by step and blended families.

Conclusion

Our research has demonstrated that the current child support system is causing hardship on many stepfamilies as they are struggling to meet the costs associated with supporting both the first and second or subsequent families. While our survey responses have been focussed around feedback received predominately from paying parent households which are stepfamilies, it is important for any policy developments to consider all of the child support population and ensure that any changes do not move the disadvantage onto another subgroup within the population. It is not our position that stepfamilies should receive greater reductions where they are the paying parent, or increases where they are the receiving parent, to their child support payments if this falls to the detriment of the other family. As a result, our recommendations to FaHCSIA and the CSA are aimed to ensure that the needs of both families are met as equitably as possible, by providing for greater discretion in assessing the circumstances of each case. It is our view that this will provide the most equitable system for all families involved in the child support system.

Appendix 1



Business Analysis and Costing Response:

Number of Customers applying under COA 9 & 10

Request Date	Reference Number	Title
24/02/2011	BAref1946	Number of Customers applying under COA 9 & 10



Request Details

Revision History

Date	Author	Version	Changes
07/03/2011	Sam Fyfe	1.0	
07/03/2011	Brad Nash	1.0	Approved

Distribution List

Date of issue	Name	Title	Version
07/03/2011	Josick Duhau	Number of Customers applying under COA 9 & 10	1.0

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Issue / Scope

Drummond Street Services have been contracted by FaHCSIA to write a paper on access & impediments for stepfamilies, in particular, the provisions relating to relevant dependant children.

Requested Information

- Number of customers applying under Change of Assessment Reasons 9 & 10 each year (08/09 & 09/10 financial years)
- Number of those customers who are successful/unsuccessful
- Number of customers who proceed to further appeal processes following CoA decisions under Reasons 9 & 10

Analysis

NB: A Change of Assessment is part of the case profile and this analysis has therefore been presented as a case measure.

This report analyses the following:

Change of Assessment:

If a person thinks that they have special circumstances that make their child support assessment unfair, they can apply to CSA for a change to their assessment.

Change of Assessment Reasons:

- Reason 9. The parent's capacity to support the child is significantly affected by:
 - their legal duty to maintain another child or person,
 - their necessary expenses in supporting another child or person they have a legal duty to maintain
 - their high costs of enabling them to spend time with, or communicate with, another child or person they have a legal duty to maintain.
- Reason 10. The parent's responsibility to maintain a resident child significantly reduces their capacity to support the child support child.

Table 1: Number of cases that had a CoA 9 & 10 lodged

	08/09	09/10
Cases*	1,249	1,024
Application Received	1,317	1,057
No. of Reason 9 Lodged	1,122	924
No. of Reason 10 Lodged	256	152
Total No. of CoA 9 & 10 lodged	1,378	1,076
No. Of Reason 9 Successful	316	252
No. Of Reason 10 Successful	83	54
Total Successful	399	306

*Number of distinct cases

Table 2: Number of 9 & 10 CoA with a PT6A within 6 months

	08/09	09/10
Cases with PT6A*	252	202
PT6A Objection lodged	310	237
Cases with PT6A Upheld[#]	102	93
Upheld[#]	117	101

*Number of distinct cases

[#]Allowed and Partially Disallowed

2008/2009 Financial Year

Table 1 above shows that for the 2008/2009 financial year there were 1,317 Reason 9 & 10 Applications received for 1,249 cases. Of these there were a total of 1,378 CoA Reason 9 & 10 lodged (made up of 1,122 Reason 9's and 256 Reason 10's) and 399 of these were successful.

Table 2 shows that within 6 months[±] of the CoA Reason being lodged on those cases, 252 of those cases had 310 Part 6A's lodged on their case. From the 252 cases with a PT6A lodged, there were 102 distinct cases that had the objection upheld (Allowed/Partially Disallowed) with a total of 117 PT6A objections upheld.

2009/2010 Financial Year

Table 1 above shows that for the 2009/2010 financial year there were 1,057 Reason 9 & 10 Applications received for 1,024 cases. Of these there were a total of 1,076 CoA Reason 9 & 10 lodged (made up of 924 Reason 9's and 152 Reason 10's) and 306 of these were successful.

Table 2 shows that within 6 months[±] of the CoA Reason being lodged on those cases, 202 of those cases had 237 Part 6A's lodged on their case. From the 202 cases with a PT6A lodged, there were 93 distinct cases that had the objection upheld (Allowed/Partially Disallowed) with a total of 101 PT6A objections upheld.

Footnotes

* There are a lower number of distinct cases than applications lodged/upheld as a case can have more than one application/objection placed upon it.

[±] The six month was applied to take into consideration extended applications. It must also be noted that the Number of CoA 9 & 10 lodged cannot be directly joined to the PT6A that has been lodged and upheld.

To delve into how many of the applications went to SSAT the SSAT team must be consulted and it must be noted that the information is recorded differently to how the information in this report is derived. This signifies that the figures that would be provided by them cannot be directly correlated to the figures provided in this report.

Appendix 2

Child Support System: Survey for Stepfamilies

[Exit this survey](#)

1. About You

Stepfamilies, while a very common family type within our diverse Australian community, experience unique challenges in negotiating family life and in negotiating the service system and legal processes they must relate to. We are seeking feedback directly from stepfamilies about their experience of using the Child Support System and suggestions as to how it can better meet the needs of stepfamilies. We will be providing a report to the Federal Government specifically on this issue, so your views are very important to us. Thank you in advance for your assistance.

1. Do you identify as having a culturally and/or linguistically diverse background?

No

Yes

Please specify:

2. What is your current family structure/living arrangement?

3. Are you a biological parent or a step-parent?

Biological parent

Step-parent

Other

Please specify:

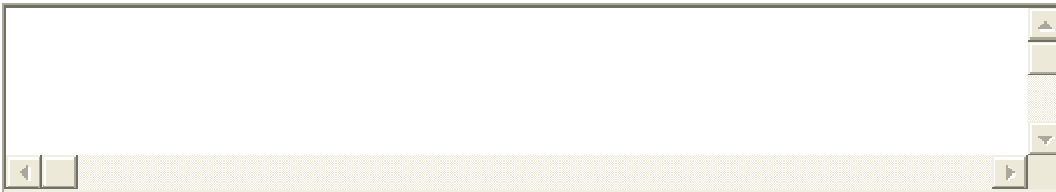
2. Your experience with CSA

1. Please indicate your length of involvement with the Child Support Agency (CSA)?

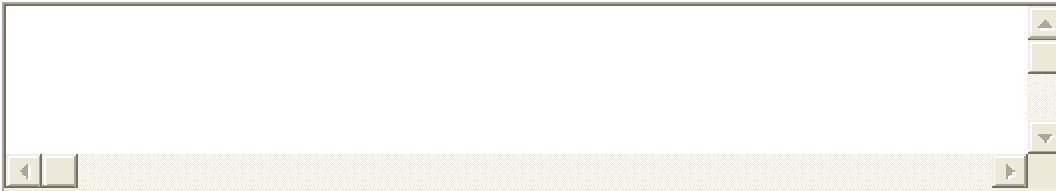
0-3 years

3+ years

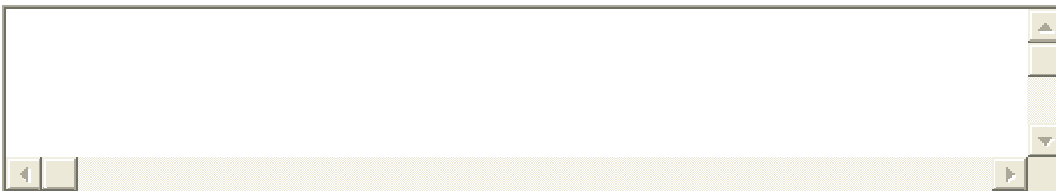
2. What are the unique challenges for stepfamilies in using the Child Support System?

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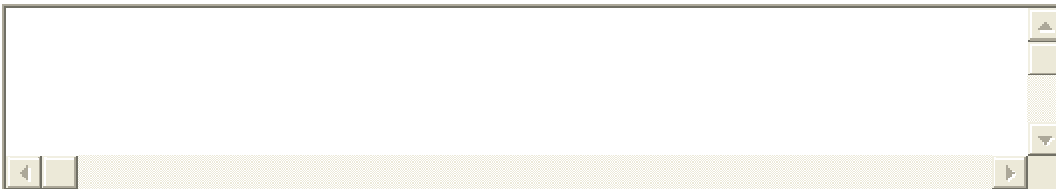
3. What works well for stepfamilies in using the Child Support System?

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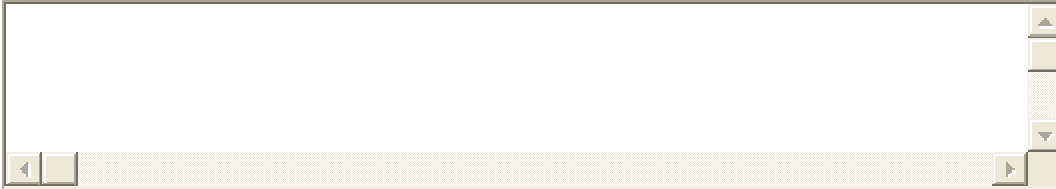
4. What have you found difficult or problematic about using the Child Support System?

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5. What suggestions do you have for improving the CSA's service to stepfamilies?

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6. Are there any Laws or other Service System issues/constraints which make it difficult for you to manage your family life? (For example, Family Dispute Resolution processes or school policies etc.)
If so, what are these and what changes are needed?



3. Contact Details

Thank you for taking the time to fill out this survey. Your responses are important to us and will help us to provide feedback to the Federal Government to bring about change. Please note that all information that you have provided will remain confidential within our organisation.

1. Would you be willing for us to contact you for further information on this issue or other child support issues if needed?

No

Yes

Please provide contact details:

Appendix 3

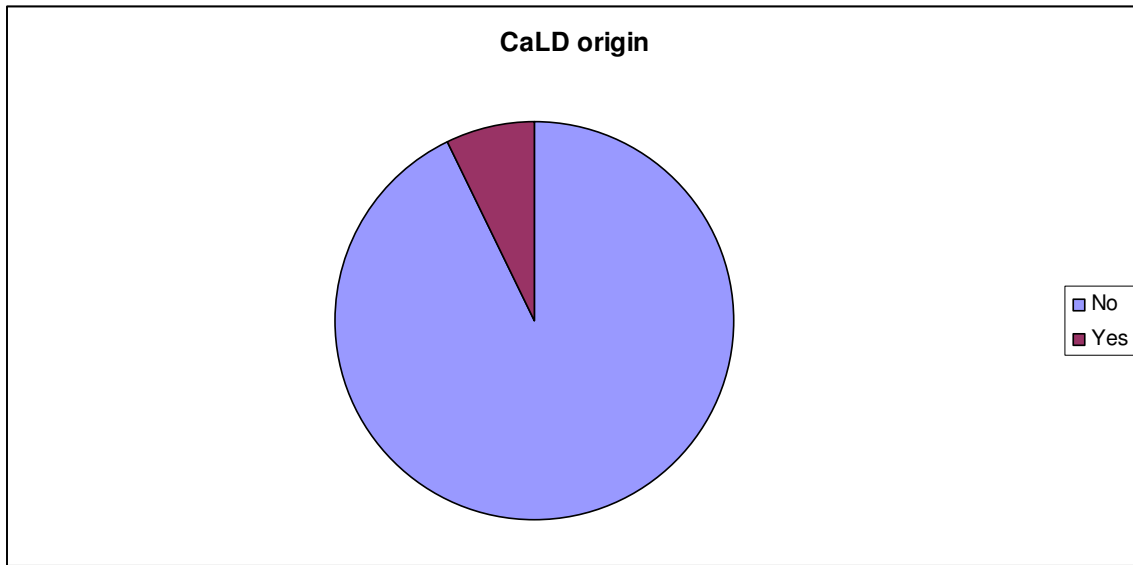
Collated 'Child Support System: Survey for Stepfamilies' Responses

100 participants

Page 1: About You

Question 1

Do you indentify as having a culturally and/or linguistically diverse background?



92.9% (91) answered *No*

7.1% (7) answered *Yes*

2 participants skipped this question

Question 2

Current family structure/living arrangement:

Stepfamily including a couple relationship and child/ren from a previous relationship of one member of the couple – 25% (24)

'His' and 'ours' blended family – 18% (17)

'His' and 'hers' stepfamily (no 'ours' child) – 13% (12)

'His', 'hers' and 'ours' blended family – 8% (8)

Blended family ('ours' family but unknown if 'his' or 'hers') – 8% (8)

Couple relationship and non-resident child/ren – 2% (2)

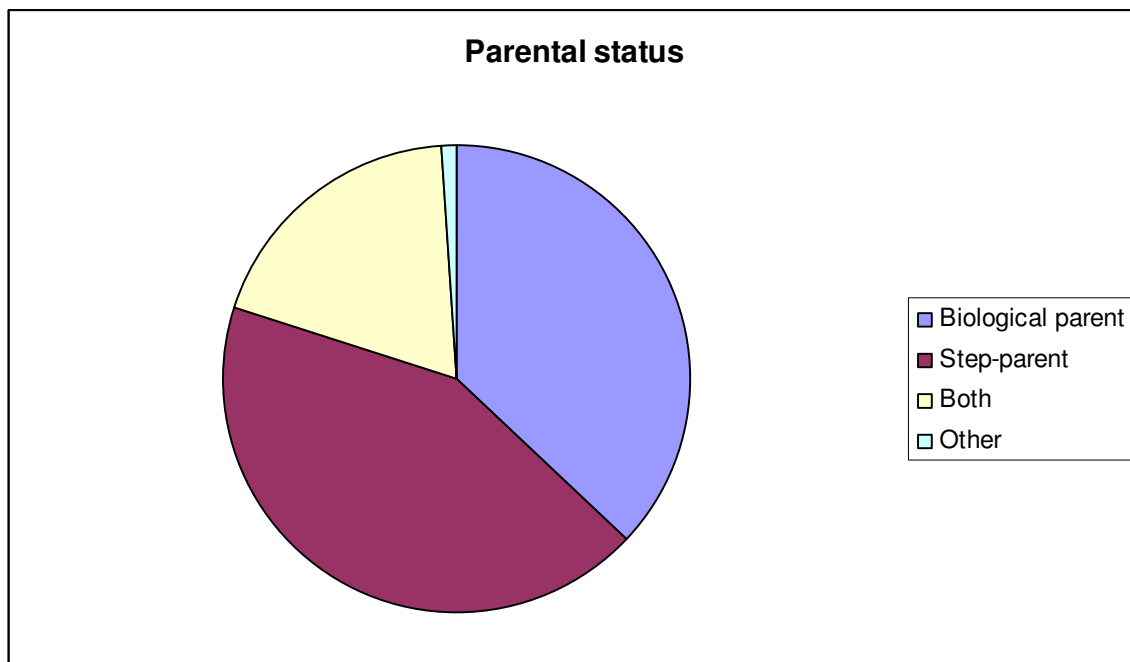
Same-sex couple relationship and child/ren from a previous relationship – 2% (2)

Unknown – 23% (22)

5 participants skipped this question

Question 3

Are you a biological and/or stepparent?



Biological Parent – 37% (37)

Stepparent – 43% (43)

Both – 19% (19)

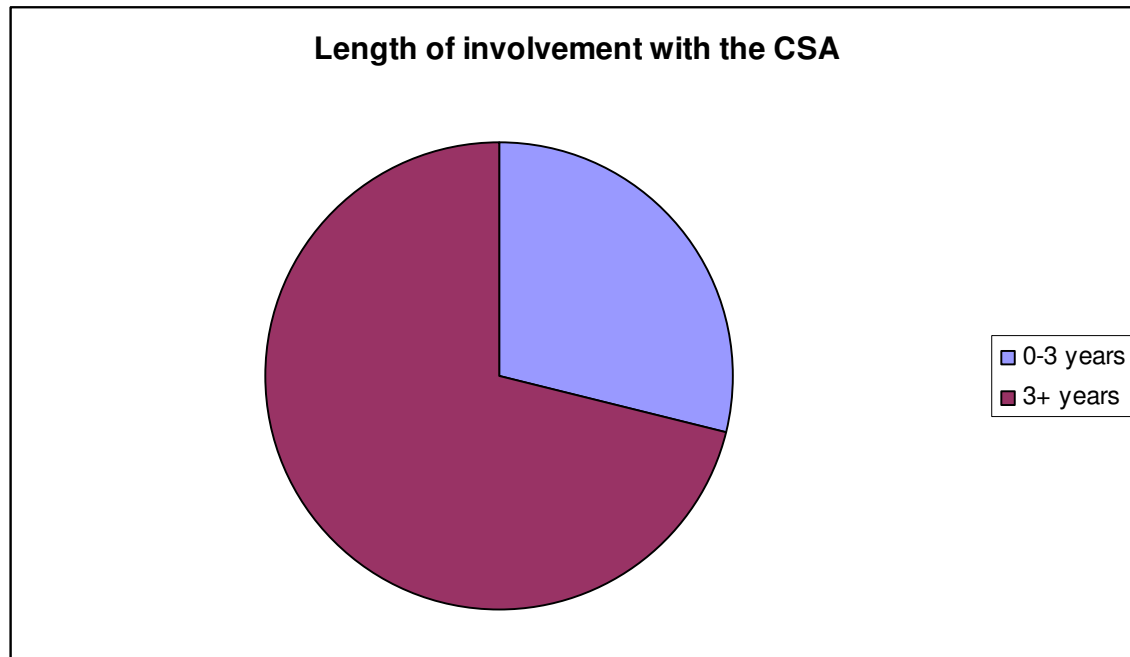
Child – 1% (1)

All participants answered this question

Page 2: Your experience with the CSA

Question 1

Please indicate your length of involvement with the CSA?



0-3 years – 29% (20)

3+ years – 71% (49)

31 participants skipped this question

Question 2

What are the unique challenges for stepfamilies using the child support system?

Dependants of paying parent (partners, biological children from second families and step children) and costs thereof are not given adequate consideration – 19% (12)

Insufficient money to support 2nd family (particularly to the same standard as the first family) – 17% (11)

Limited recognition of stepparents in decision-making and/or CSA processes – 9% (6)

Stepparent's incomes are not taken into consideration – 9% (6)

Inflexible to differing circumstances – one size fits all approach – 8% (5)

No specific support offered to stepfamilies – 6% (4)

Complex formula relating to relevant dependent children – 5% (3)

Lack of awareness of the legislation as it applies to stepfamilies – 5% (3)

Unfairness to paying parent when the receiving parent does not work although there is a 50:50 shared care arrangement – 2% (1)

De-facto partners are not considered as dependants for the paying parent – 2% (1)

Multi-case cap may encourage fraud where a parent pretends to be separated from second family – 2% (1)

The following responses were given however are not unique to stepfamilies:

Feeling of bias toward paying parent (often father) – 11% (7)

Inconsistency of information provided by CSO's – 5% (3)

Costs of children used by CSA are not an adequate reflection of actual costs – 3% (2)

CSA collect can only be requested by receiving parent – 3% (2)

Parents using the cash economy to avoid paying child support – 3% (2)

Inaccurate assessment as a result of a parent's failure to lodge a tax return – 3% (2)

Formula is based on number of nights, rather than number of days – 2% (1)

Evidentiary requirements appear to be much lower for payees – 2% (1)

No recognition of family violence within CSA – 2% (1)

Where a parent does not pay assessed amount, there is a lack of communication to the receiving parent regarding what is owed or what is being done about refusal to pay – 2% (1)

Delay in processes – 2% (1)

Onerous change of assessment procedures – 2% (1)

No accountability by receiving parent for the use of child support payment – 2% (1)

36 participants skipped this question

Question 3

What works well for stepfamilies in using the child support system?

Nothing – 35% (20)

Recent reforms have been helpful – 9% (5)

Fair decisions – 7% (4)

Management of payments – 7% (4)

Reduces family conflict by not having to deal with ex-partner – 5% (3)

Inclusion of relevant dependent children in formula – 5% (3)

Impartiality – 5% (3)

Ability of a stepparent to talk with CSA once partner (biological parent) has consented – 4% (2)

Ability to deal with CSA over the phone – 4% (2)

Ability to minimize taxable income by running own business – 2% (1)

Ability to garnish wages – 2% (1)

Reciprocal arrangements with other countries – 2% (1)

CSA only dealing with biological parents helps to reduce conflict – 2% (1)

Staff are helpful – 2% (1)

Inclusion of both parent's income in formula – 2% (1)

Child-focused – 2% (1)

CSA following up non-payers – 2% (1)
Multi-case provisions – 2% (1)
Alignment with Centrelink – 2% (1)
Resources and publications are helpful – 2% (1)

43 participants skipped this question

Question 4

What have you found difficult or problematic about using the child support system?

Feeling of bias toward the paying parent (generally father) – 23% (14)
Insufficient money left for 2nd families – 15% (9)
No accountability by receiving parents for how child support payments are spent and a feeling that they are not spent on children – 13% (8)
Insufficient enforcement for non-payers – 10% (6)
Non-individual approach – one-size-fits-all – 10% (6)
Extremely difficult to get overpayments reimbursed – 8% (5)
Inefficiency in system – 8% (5)
Incompetent CSO's – 8% (5)
Parent may have the ability to work but are not forced to – 8% (5)
Standard of living in payer's household is considerably less than that of payee's household – 8% (5)
50:50 shared care arrangement, yet still paying child support – 5% (3)
Additional expenses are not given enough weight e.g. school fees, health insurance, extra-curricular activities – 5% (3)
Inconsistency of advice provided by CSO's – 5% (3)
Holiday periods are not accurately accounted for in child support payments – 5% (3)
COA process is complex and onerous – 5% (3)
Costs of children used in formula are not an accurate reflection of actual costs – 3% (2)
CSA does not attempt to foster communication between parties (as family law processes do); increases conflict within families – 3% (2)
Assessments are made based on previous year's tax return even though a parent's salary may be significantly higher at the time of payments – 3% (2)
No publication available regarding what child support payments are supposed to cover – 3% (2)
Inability to deal with one CSO – 2% (1)
Lack of confidentiality between ex-partners where family violence is an issue – 2% (1)
Complex formula regarding relevant dependent children – 2% (1)
No recognition of circumstances falling outside the norm – 2% (1)
Difficult to understand the periods of assessment – 2% (1)
Appeals process is unfair and does not allow for a case to proceed before a court – 2% (1)

Unclear communications regarding how assessments were determined – 2% (1)

Lack of understanding of the system and how it relates to stepfamilies – 2% (1)

39 participants skipped this question

Question 5

What suggestions do you have for improving the CSA's service to stepfamilies?

Greater consideration given to the costs of the payer's dependants (greater deduction from child support payment) – 14% (8)

Assess cases on an individual basis rather than a one size fits all approach – 12% (7)

Reduce the stigma/attitude toward paying parent – 10% (6)

Introduce accountability measures on what the child support payments have been used for – 10% (6)

Use total household income in the formula rather than just biological parent's income – 7% (4)

Recognition of stepchildren as dependants – 7% (4)

Greater advertising and resources available that are stepfamilies specific – 5% (3)

Increase training for CSO's: in particular legal requirements and sensitivity and diversity issues – 5% (3)

Link clients with support programs around family separation – 5% (3)

Greater enforcement over a parent's ability to work – 5% (3)

Increase enforcement for non-payers and parents who do not lodge a tax return – 5% (3)

Remove child support payments where a 50:50 care arrangement exists – 3% (2)

Increase the costs of children values – 3% (2)

Tax deduction on the amount paid as child support – 3% (2)

Consequences for false information provided to CSA – 3 strikes policy – 3% (2)

Abolish the system and use the money to give to parents based on their percentage of care – 3% (2)

Do not include stepparents income in formula – 3% (2)

Where there is a 50:50 care arrangement, give consideration to the costs of duplicated expenses – 2% (1)

The provision for the consideration of dependants in child support assessment to be broadened in scope – 2% (1)

Formula to be based on days or hours, rather than nights – 2% (1)

Consideration given to property settlement and assets – 2% (1)

Allocation to one CSO – 2% (1)

Information sessions ran by the CSA on how the system works – 2% (1)

Introduce a time in which tax returns must be lodged – 2% (1)

Make it easier for paying parent to reclaim overpaid monies – 2% (1)

Send statements to receiving parent tracking what monies are owed and what is being done to follow up on non-payment – 2% (1)

Place the responsibilities of CSA with FAO – 2% (1)

Remove the discretion from the decision making process – 2% (1)

Have panels to make decisions rather than just an individual CSO – 2% (1)

Increase multi-case cap and allowances to greater than 3 cases – 2% (1)

Reduce the maximum child support payment amount – 2% (1)

Change assessment periods to run with financial years – 2% (1)

Consider the costs of legal fees in family law proceedings as a deduction to the child support payment – 2% (1)

Online calculators are not always accurate – 2% (1)

41 participants skipped this question

Question 6

Are there any Laws or other service system constraints/issues which make it difficult for you to manage your family life? (for example, family dispute resolution processes or school policies etc.) If so, what are these and what changes are needed?

Stepparents are alienated from Family Dispute Resolution and court processes despite the effect that these decisions can have on their lives – 8% (4)

De facto relationships are not recognised for a partner to be considered a dependant – 4% (2)

Only limited support services are available for stepfamilies – 4% (2)

Non-primary carer cannot access school information without presenting a court order which gives permission – 2% (1)

No consequences when a parent does not adhere to court orders – 2% (1)

There is a belief that a mediator will make a decision for parties and this causes mediation sessions to fail – 2% (1)

Stepparents have no legal rights over children – 2% (1)

Family Dispute Resolution is not helpful when a party is not willing to negotiate – 2% (1)

Schools only distribute one copy of reports, newsletters etc. including one mothers/father's day present – 2% (1)

When a parent does not adhere to parenting plans, child support payments should cease – 2% (1)

Difficult to get sole parental responsibility even though the other parent spends very little time with children and does not pay child support – 2% (1)

Have to pay the school extra in order to receive duplicates of all notices – 2% (1)

Support services for children are focused around the primary carer – 2% (1)

Greater emphasis on the broken family rather than stepfamily – 2% (1)

Family violence laws assume that men are the perpetrators when this is not always the case – 2% (1)

Parents may change the parenting plans to increase time spent in order to increase child support payments – 2% (1)

Inconsistency between CSA and Centrelink – Under CSA, a stepparent has no legal obligation to support stepchildren, however under Centrelink, stepparents have a moral obligation to support stepchildren – 2% (1)

Can enrol a child in school without both parent's consent and without providing the other parent's details to the school – 2% (1)

Lack of legal information available for stepfamilies – 2% (1)

Difficult for parents to obtain passports – 2% (1)

51 participants skipped this question

Further sample characteristics

The following questions were not specifically asked (due to a limit on the number of questions in *Survey Monkey*) however characteristics have been gathered from qualitative comments, hence the high numbers of 'unknowns'.

Further, the majority of qualitative comments analysed for this section, were provided by 60% of the respondents, with the remainder providing only minimal information. Of those who provided responses, their gender, parenting role and household paying circumstances were generally able to be ascertained from their comments.

Gender of respondent:

Female – 48%

Male – 14%

Unknown – 38%

Respondents comprised the following roles in relation to children in their household in order of frequency:

Biological parent and Stepparent -27%

Stepparent- 22%

Stepparent and ours child- 14%

Biological parent – 12%

Biological parent and ours child- 7%

Biological, stepparent and ours child- 7%

Unknown – 11%

Was the respondent from the *paying* parent household or the *receiving* parent household?

Payer – 41%

Payee – 8%

Unknown – 51%

Respondent's household comprised both payer and payee in 3 cases and possibly many more

While many roles and paying circumstances were not indicated, of those that were indicated, the most common two scenarios were stepparent with partner as payer (19% of total sample), and biological and stepparent with partner as payer (11% of total sample).

Additional noted characteristics:

- Two families reported same-sex couple relationship
- One respondent was a child
- One family reported deceased biological parent

Summary of concerns not specific to stepfamilies

The following table highlights further concerns and issues raised by respondents that are not specific to stepfamilies. Where suggestions were made that would address those concerns, these have been included, with the numbers of respondents indicated in brackets.

Issue	Number of comments	Suggestion for improvement
<p>Perception of system bias toward <i>receiving</i> parent and against <i>paying</i> parent (often father)</p> <p>For example:</p> <ul style="list-style-type: none">• CSA collect can only be requested by receiving parent (2)• Standards of proof required for statements made by the receiving parent <p><i>“Often, but not always, there is an assumption that my partner is a deadbeat Dad. This has never been the case and he</i></p>	21	<p>Assess cases on an individual basis rather than a one size fits all approach (7)</p>

<p><i>is often told to give in to keep his former partner happy."</i></p> <p><i>"CSA are heavily biased against paying parent. CSA treats paying parent with arrogance and contempt"</i></p>		
<p>Inconsistency of information provided by Child Support Officers (CSOs); frustration at having to deal with different representatives each time</p> <p><i>"Incompetent staff; different information from different officers; inconsistent dealings and decisions; no following through by staff; if you need something done, you have to call CSA several times; they take no responsibility and cannot be made accountable; they just cover each other's backside."</i></p> <p><i>"If I have a question, I usually ring 3 times, and often I get different answers each time".</i></p>	15	<p>Allocation to one CSO (1)</p> <p>Increase training for CSOs: in particular legal requirements and sensitivity and diversity issues (3)</p> <p><i>"Listen to people Don't make assumptions Have some consistency of contact - families using CSA are often experiencing major emotional, financial and every other sort of issue, the last thing you want is to have to explain every single thing over and over every time you call because you have someone different".</i></p>
<p>No accountability by receiving parent regarding how the child support payments are spent and feeling that the payments are not spent on children</p> <p><i>"Non accountability to ensure the children actually benefit from the amount being paid. We pay the highest amount possible and have no issue with what we pay. However when we see the kids continuously missing out on even basic underwear, clothing, shoes and food it is soul destroying".</i></p>	8	<p>Introduce accountability measures on what the child support payments have been used for (6)</p> <p><i>"CSA should also institute a system whereby the recipient of CSA payments has to show receipts / demonstrate that the money is being spent on the children - the purpose for which it is intended."</i></p>
<p>Insufficient enforcement for non-payers. For example, when they are known to be working, using the cash economy or living overseas.</p>	6	<p>Increase enforcement for non-payers and parents who do not lodge a tax return (3)</p> <p>Send statements to receiving parent tracking what monies are owed and</p>

		what is being done to follow up on non-payment (1)
Extremely difficult to get overpayments reimbursed	5	Make it easier for paying parent to reclaim overpaid monies (1)
Costs of children used by the CSA are not an adequate reflection of actual costs; principle of a child having the same standard of living as before separation is not realistic		Increase the costs of children values (2) <i>"The amount we get is never enough to cover the costs of raising a child, yet I have to find the money to pay for her shoes regardless of what i go with out."</i>
Inaccurate assessment as a result of a parent's failure to lodge a tax return	2	<i>"If a parent does not lodge a tax return and is required to there should be an automatic assumption that income is x% higher than their estimate as an incentive to lodge."</i>
Lack of proper handling of family violence; lack of confidentiality of information between ex-partners where family violence is an issue	2	
Insensitivity to same sex families: <i>"Have no way of dealing sensitively with same-sex partners, change of assessment is intrusive of the new partner's affairs, and staff are really insensitive when their assumptions that the new relationship is heterosexual are wrong."</i>	1	Increase training for CSOs: in particular legal requirements and sensitivity and diversity issues (3) <i>"Listen to what my family situation is, don't impose your views of what it should be."</i>

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