

Complaints about the Child Support Agency **Don't call us, we'll call you**

Maureen Kingshott

Analysis of complaints to the Commonwealth Ombudsman about the Child Support Agency highlights the difficulties being faced by the Agency and its clients.

The Child Support Agency (CSA) was born on 1 June 1988 after a prolonged gestation involving lengthy and detailed community consultation. It resulted from an alliance between federal politicians (usually men) whose main aim was to save on the social security budget and women and men who wanted to replace the existing child maintenance system with one offering better outcomes for children and custodial parents (usually women).

The CSA operates Australia-wide and caters for all children, regardless of their parents' marital status. Community reactions to its birth were mixed. Custodial parents who had experienced difficulties in getting maintenance paid in the past were generally enthusiastic about it and held high hopes for its success. Others wondered why it had been born and some would rather it had not been.

Common complaints made about the CSA by its clients to the Commonwealth Ombudsman constitute the basis for this article. Some relate to the teething problems any infant agency might reasonably be expected to experience, while others indicate more difficult congenital disorders which may take longer to cure or contain. Some of these difficulties appear to relate to the CSA's position as the youngest agency in its home department, the Australian Taxation Office (ATO). The extent of new resources required for the proper functioning of the CSA was significantly under-estimated before its establishment. Hence within a relatively short time, its staff had difficulty coping with all the required tasks. Some of the Agency's difficulties also appear to derive from the challenge its establishment caused to traditional attitudes and values held by other parts of the ATO.

This brief description of the child support scheme may be useful to readers unfamiliar with its complexity. The CSA constitutes the major component

of the new child support scheme. The Agency's main task is to collect child support (maintenance payments) for custodial parents who register with it for this purpose. Following registration, the ongoing child support liability becomes a debt due to the Commonwealth rather than the custodial parent (the payee). Once the money is collected the CSA transfers it to a trust account from which the Department of Social Security (DSS) withdraws it for payment to the payee. Child support is collected either directly from the payer or, less frequently, from the payer's employer, in the same way 'pay as you earn' tax is collected for most wage and salary earners.

The new child support scheme was introduced in two stages, by separate pieces of Commonwealth legislation. Where a child's parents separated before 1 October 1989 (and where their youngest child was born before that date) the CSA operates solely as a collection agency, collecting child maintenance ordered by a court or formally agreed between the parents. This part of the new system is known as 'Stage 1'. Where the parents separated after 1 October 1989 (or their youngest child was born after that date), the CSA not only collects the child support owing, but also assesses the non-custodial parent's liability to pay it in the first place, in accordance with a statutory formula. This category of clients and this part of the system are known as 'Stage 2'. This stage constitutes a radical departure from the previous child support system. From a court-based assessment system, activated by application of the custodial parent, child support has moved to an administratively-based assessment system, with court involvement mainly confined to appeals from CSA assessments, usually instituted by non-custodial parents, and enforcement proceedings activated by the CSA, not the custodial parent. Generally speaking, the new system has shifted the burden of initiating court proceedings relating to child support from the custodial parent to the non-custodial parent or the CSA. This shift has come as a profound shock to many non-custodial parents (known as 'liable' parents), particularly as their involvement with the CSA is usually involuntary. Registration with the CSA is a matter for the custodial parent who simply fills out an Agency application form for assessment and/or collection. Opting out of the CSA system is also a matter solely for the custodial parent, although the DSS has to approve this

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action if the custodial parent is receiving an income-tested pension or benefit.

The Australian Institute of Family Studies (AIFS) concluded its evaluation of Stage 1 and published the results in 1991. The Child Support Evaluation Advisory Group (CSEAG) is responsible for monitoring the implementation and evaluation of the child support scheme. The CSEAG recently published its final report on the evaluation of the scheme as a whole. As well as these external evaluations, the ATO and the Department of Finance have monitored the progress of the CSA through internal evaluations. In general terms, each evaluation which has reported to date has been positive.

Despite the CSA's progress, some clients experience continuing difficulties in their day-to-day dealings with the Agency. Some of the more important categories of complaints made by the CSA's clients to the Commonwealth Ombudsman since the Agency began will be discussed in this article. Reference is also made to the Agency's response.¹ It should be stated that the number of CSA clients who have complained to the Ombudsman is small when compared with the total number registered with the Agency and the number of daily transactions it carries out. As more people have registered with the CSA over time, however, the volume of complaints to the Ombudsman has also increased. The following table incorporates statistics quoted in the Commonwealth Ombudsman's Annual Reports from 1988-89 to 1990-91 which demonstrate this trend.

Complaints	Period		
	1988-89	1989-90	1990-91
Written	29	92	221
Oral	18	238	701
Total	47	330	922

Early complaints about the scheme were made by both payees and payers and reflected the confusion and ignorance widespread within the community and the CSA about the new scheme. They covered a range of problems including:

- the operation of the secrecy/privacy provisions in the child support legislation;
- the imposition of late payment penalties and the CSA's rather inflexible approach to remission of those penalties; and
- delays in effecting adjustments to maintenance payments ordered by

the courts (including CPI adjustments).

Many of the early problems remain and are discussed in more detail below.

After Stage 2 was introduced in October 1989 the Ombudsman's 1989-90 Annual Report recorded complaints relating to confusion within the CSA about various aspects of the scheme and consequent misleading advice from CSA staff. Significant problems that year included:

- delays in registering agreements and court orders, recovering arrears, arranging salary deductions for ongoing periodic payment of child support, recording and acknowledging payments received by ATO offices;
- inadequate telephone services which prevented or frustrated enquiries;
- failure to answer correspondence and return telephone calls; and
- failure to take remedial action after proper notification of mistakes by the CSA.

The CSA attributed many of its difficulties at that time to a staff shortage. The Agency advised the Ombudsman that this was being addressed and that training programs were being implemented to improve the level of service to clients.

As noted in the Ombudsman's 1990-91 Annual Report, by early 1990 it was apparent that there were significant administrative problems within the CSA. For that reason, towards the end of 1990, the Ombudsman's office began a thorough examination of all written complaints and a sample of oral complaints received between 1 June 1988 and 31 December 1990. The main aim was to identify and analyse the problems revealed by complaints and to consider what remedial action was appropriate. Another objective was to assist the CSEAG in its task of monitoring and evaluating the child support scheme.

During 1990-91 the CSA was allocated an extra 347 staff positions to help overcome its difficulties. This amazing staffing increase (particularly in times of 'down-sizing' everywhere else in the public sector) gives some indication of the extent to which the CSA was initially under-resourced (perhaps it also indicates the extent of the Government's faith in the CSA's potential to save on social security outlays).

A recent analysis of the 300 written complaints made to the Ombudsman in the year ended 31 December 1991 shows the following major sources of complaint:

- collection and recovery of arrears;
- communication difficulties;
- attitudinal difficulties;
- disputes between payers and payees over non-agency payments (known in the trade as NAPs);
- autowithholding difficulties, including delays and failure by employers to remit payments;
- policy issues, including philosophical objections to the whole scheme or part of it, such as Stage 2 payers who do not like the fact that their only avenue for disputing an assessment is court action, and payees who object to having to claim child support or register with the CSA as a condition of applying for social security benefits;
- Stage 2 assessment difficulties, including objections that the assessment of liability is too high for the payer to pay.

Less frequent types of complaint related to the CSA's interpretation of court orders; the imposition of late payment penalties and unreasonable refusal to remit them; and delays in effecting court-ordered variations to maintenance liabilities. Privacy provisions were also the subject of a few complaints, involving payees not being given information about enforcement action to recover arrears, and payers finding out that the CSA has sent them letters at their employment address not marked private or confidential, so that everyone at their workplace had become aware of details of their involvement with the CSA. Payment difficulties, including payments made to the CSA but not disbursed to the payee, also rated a mention several times.

Rather than try to comment on the whole range of complaints, I have chosen to focus on major continuing categories of complaints which have been of particular interest to me in the past year.

Recovery of arrears

The CSA gives the impression that it has increased the pre-scheme collection rate from 30% to around 70%. In fact, these figures are not quite what they seem — they compare apples with oranges. It is generally accepted that prior to the new scheme only 30% of

children whose parents had separated received maintenance from their non-custodial parents. The AIFS estimates that there are somewhere between 500 000 and 600 000 sole parents in Australia.² It also estimates that only 40% of custodial parents have obtained court orders (or court approved agreements) for child support, thus making them eligible to join Stage 1 of the scheme.³ In September 1991 approximately 55 000 Stage 1 custodial parents and over 47 000 Stage 2 custodial parents (approximately 18.5% of the total sole parent population) had applied for registration with the CSA.⁴ What the CSA is now collecting therefore amounts to about 65% of payments ordered or assessed for about 18.5% of the sole parent population — those registered with the CSA.⁵

For the remaining 35% of payers registered with the CSA, the Agency focuses on action outside the court system to try to extract their child support. The initial enforcement action taken by the CSA has generally been to use the same methods used by the ATO's debt management sections for collecting tax.

The CSA regards automatic withholding — by payers' employers — as the most effective and efficient means available to it for ongoing periodic collection and for recovery of arrears.⁶ The Government's 1991 budget announcement allowing the CSA to obtain information from employment declaration forms completed for income tax purposes should improve the process for identifying payers' employers and should lead to more effective use of autowithholding. At present only about 24% of payers have their child support deducted at source by their employers. The CSA is aiming to increase that level to 48% by 1994.

Interception of payers' income tax refunds is another effective option for recovering arrears. This seems to work fairly well judging by complaints made by payers about it. Payees occasionally complain that the payer has received a tax refund which should have been withheld.

During the past 18 months the CSA has been taking action in the Family Court to recover arrears. Prior to that the CSA followed the ATO debt management strategy of Local Court recovery action. Because of the comparative success it has achieved in the Family Court, the CSA intends to focus on this method for court-based enforcement wherever possible, and has discussed

more streamlined procedures with the court. The CSA has said that prior to its staff enhancement in 1990-91 it was too busy registering new applications to allocate adequate staff for court-based recovery of arrears. This accounts to some extent for the large sums of arrears owed to some complainant payees.

Reluctant payers who do not lodge income tax returns or who are self-employed are the most difficult to recover arrears from. The scheme was based on the pay as you earn income tax system and hence its proponents acknowledged that collecting from recalcitrant self-employed non-custodial parents would be problematic. Payees often have very high expectations of the CSA and are frequently disappointed with its failure to collect child support on their behalf.

Communication with clients

Many complaints made to the Ombudsman relate to the Agency's inability to communicate clearly with its clients. The CSA relies on computerisation to the greatest extent possible for registration, collection and initial enforcement processes. What has been very frustrating to its clients is the unintelligibility of the CSA's standard computer-generated written communications, although some of these have been revised recently, to everyone's relief, and others are undergoing revision. The CSA's use of standard letters is widespread and on occasion they are generated in quite inappropriate circumstances, causing recipients to become completely confused, frustrated or enraged about their dealings with the Agency.

The computerised system seems to make little allowance for human communication, and it appears that the Agency often fails to answer its clients' letters which seek advice, assistance or explanation. This generates complaints to the CSA and the Ombudsman, many of which could have been avoided or resolved much earlier with greater reliance on human interaction and initiative.

Payers frequently complain that the CSA has not replied to their letters, either to specific issues raised or at all. They find this particularly frustrating when their enquiry relates to the status of their account or to late payment penalties imposed for payments they claim were made on time. Instead of receiving a letter in reply or a telephone call from the CSA, they often receive

yet another computer-generated letter, including another late payment penalty and a final notice (basically of the 'pay up now or we'll take you to court tomorrow' variety). To many payer complainants, the CSA and its computer are a juggernaut, rolling on inexorably, totally uninterested in them but with an insatiable appetite for their money. Adjustments to accounts or correction of other minor errors sometimes takes months, while the computer rolls on, spewing out inappropriate or incorrect standard letters or demands.

Equally frustrating to payees, is the total silence they experience after writing to the CSA enclosing information about the possible whereabouts of recalcitrant payers. The CSA does not send acknowledgments in circumstances where the Agency deems that no reply is required (which seems to payee complainants to be 99.9% of the time). So far as the payee in these circumstances is concerned, the CSA is a big black hole, receiving information but resolutely remaining very, very quiet about it. The absence of any communication about what the CSA is doing to collect their child support, where the payer consistently defaults, is extremely frustrating to payees. Until a legislative amendment took effect in December 1990, payees who enquired about the CSA's actions to enforce their child support debts were often told that it was really none of their business what the CSA was doing, as the debt was a debt due to the Commonwealth and its collection was a private matter between the CSA and the payer and could not be disclosed to the payee.

Because of the CSA's early association with the debt management section of the ATO, the Agency's staff were neither expected nor trained to handle telephone calls or personal visits which run the full gamut of family traumas and emotion well known to anyone who has worked in family law or associated areas. In its 1988-89 Annual Report, the CSA stated '... dealing with our clients has been more time consuming and stressful than expectations based on ATO debt collection experience would have suggested...'.⁷ In these circumstances, resorting to 'debt due to the Commonwealth' and 'privacy considerations' may well have become a standard formula, which provided some relief to CSA staff, distressed by the verbal battering they sometimes received from unhappy clients at the other end of the telephone. Despite the

legislative amendment, it is still the case that unless a payee has the tenacity to make contact with the CSA, no word is forthcoming from the Agency about its attempts to get the payer to pay. The CSA considers it is too busy to initiate contact with payees unless specific information is required.

The CSA's inaccessibility by telephone is well known — frequently the number is engaged or no-one answers. Contacting the CSA is therefore a challenging exercise, often involving camping by the phone with a cut lunch, a deck of cards and some hours to spare. The CSA is aware of this problem and has continued to experiment with various telephone systems to find a solution. The problem is particularly acute at the beginning of each month before disbursement by DSS of the monthly payments, when many payees attempt to telephone the CSA to find out how much, if anything, they should expect to receive. As this was totally unexpected by the ATO when the CSA was established, the Agency was significantly understaffed and under-equipped to deal with the enquiries aspect of its workload. To some extent, that problem was addressed by the additional staff positions allocated in 1990-91. Delays in responding to enquiries and correspondence remain as one of the main areas of dissatisfaction and complaint.

Attitudinal problems

Some of the CSA's communication difficulties appear to stem from basic differences in attitudes and values between itself and its clients. The CSA operates within the ATO's general climate of revenue collection, which does not naturally cater for the fact that its clients are operating within a general context of relationship breakdown. Complaints to the Ombudsman indicate that there is a degree of insensitivity and lack of empathy on the part of some CSA officers in their dealings with the Agency's clients.

Payee and payer complainants refer to insensitive, inflexible or indifferent attitudes which confront them in their dealings with the CSA. Complainants often say they feel judged, ignored, fobbed off, ripped off, or wrung out whenever they try to communicate with the Agency. Frequently they are unable to contact the same officer they have spoken to previously, who has promised to look into or rectify whatever the problem was, but has not. The client is required to explain it again to a different officer who looks them up on the com-

puter screen and, if the information required is not there, promises to look into it and get back to her/him about it later. This may happen several times before appropriate action is taken.

The CSA's reliance on its computerised system to generate action or correspondence was mentioned above as a major factor engendering frustration and anger in the Agency's clients. It is very difficult for the CSA's clients to counteract its officers' apparently unquestioning reliance on the information available on the computer screen, by arguing that the information is out of date or otherwise wrong. This can be extremely frustrating and depressing for clients who disagree with the 'screen' information but who have no documentary proof to counteract it.

To what degree the general philosophical context within which the CSA operates influences these attitudes or behaviour, compared with other factors, such as initial inadequate staff resources, is difficult to determine. Regardless of the reason, it appears that some change in attitudes is required if the CSA is to realise its hope of achieving payers' voluntary compliance with their child support liabilities. This would also be consistent with the ATO's current emphasis on client service as a means to achieving voluntary compliance in relation to tax obligations.

Direct payment disputes

Direct payment disputes arise when the payer claims s/he has made child support payments direct to the payee (or to a third party, such as the mortgagee or the family health fund) rather than the CSA, but the payee disagrees, either that the payment was received or that it was for child support. The child support legislation⁸ provides that the CSA can credit such direct payments against the payer's debt to the Agency if it is satisfied that at the time the payments were received, both parties intended them as child support.

The CSA's interpretation of the legislation seems to be such that if the payee does not agree that the payments received direct from the payer were for child support, it does not matter how much objective evidence there is to suggest the opposite. The problem is compounded by the CSA's calculation of the start date of a payer's liability some time prior to any contact from the CSA.⁹ This means that the payer's first communication from the Agency often consists of a notification of registration and

a bill for arrears calculated from the start date of liability, regardless of whether any child support has been paid in the interim. If the payee claims that any payments received were for other things, such as the car registration, mortgage payments, etc. the payer has a very hard time trying to persuade the CSA to credit them as child support.

The CSA agrees that it has difficulty with direct payment disputes. It also finds itself in the situation where many payees who register with the Agency continue to receive their child support direct from the payer. They prefer to receive weekly or fortnightly payments (unavailable through the CSA) but want to stay registered with the Agency as a form of 'insurance' in case the payer defaults. Administering these payments is a time consuming part of the CSA's service to its clients. Legislative amendments were introduced in February 1992 in relation to direct payments to provide more flexibility.¹⁰

Penalty policy

Another early difficulty which seems to be continuing is the CSA's apparent inflexibility in exercising its discretions concerning remission of late payment penalties. The CSA considers penalties important, for the role they can play in ensuring payment on time and for the correct amount. Most people would agree that some form of sanction is required for these purposes. It appears, however, that the CSA uses its power to remit penalties too narrowly.

The CSA does not usually exercise the remission discretion unless a payer specifically complains about a penalty. In my view, remission should follow automatically from the circumstances known to the CSA from its case files, particularly where the payer is confused or ignorant of the child support scheme. Although there are fundamental differences between child support debts and tax liabilities, the CSA seems not to recognise this. The existing Child Support Ruling which deals with the remission of late payment penalties, introduces an unnecessarily restrictive interpretation of the circumstances in which the discretion to remit penalties will be exercised. While the legislation allows remission for 'special circumstances'¹¹ the Ruling states that such circumstances must be 'exceptional'. Basically, if the reason you did not pay was not completely beyond your control, don't bother asking for remission of the penalty.

Conclusion

Despite the CSA's increased staff numbers and good intentions, there has been a rapid increase in the number of complaints to the Commonwealth Ombudsman in the 3½ years of the Agency's operation. Complaints in 1991 echo the initial complaints, particularly as regards delays in the recovery of arrears and in effecting salary deductions for the periodic collection of child support. Attitudinal and communication difficulties still beset the CSA although there have been some recent improvements in the standard letters the Agency sends its clients. What is required is the application of a bit more common sense and flexibility and less rigid bureaucratic reliance by the CSA on its computer.

References

1. To the extent that this article draws on information not already publicly available, the Commonwealth Ombudsman has approved its release. The views expressed in this article are my own and do not purport to be those of the Commonwealth Ombudsman or any other of his staff.
2. Harrison, Margaret, Snider, Gregg, Merlo, Rosangela, and Lucchesi, Viviana, *Paying for the Children: Parent and Employer Experience of Stage One of Australia's Child Support Scheme*, Australian Institute of Family Studies, Monograph 10, 1991, at p.3.
3. Harrison, Margaret, Snider, Gregg, and Merlo, Rosangela, *Who Pays for the Children?*, AIFS, Monograph 9, 1990, at p.68.
4. Child Support Evaluation Advisory Group, *Child Support in Australia: Final Report of the Evaluation of the Child Support Scheme*, Commonwealth of Australia 1992, at p.139.
5. *ibid.* at p.16 states that the CSA's overall collection rate is 65%; for Stage 1 it is 70% and for Stage 2 it is 50% (with some branch office collection rates as high as 76-78% for Stage 1 and 57-60% for Stage 2).
6. I have difficulty with the concept of administrative garnishment of wages for arrears. It makes the bureaucracy the prosecutor, judge and jury in cases where there is a dispute about the existence of arrears and there is no independent external adjudication of that dispute.
7. *Commissioner of Taxation Annual Report 1988-89*, Commonwealth of Australia 1989, at p.75.
8. *Child Support (Registration and Collection) Act 1988*, s.71.
9. Usually in accordance with the relevant provisions of the Child Support (Registration and Collection) Act 1988, s.28.
10. Amendments to the *Child Support (Registration and Collection) Act 1988* were introduced into the House of Representatives on 27 February 1992. The proposed amendments to s.71 will authorise the CSA to take into account direct payments made to third parties, for example, mortgage payments pending sale of the matrimonial home or a property settlement, and payments to the family's health fund. The amendments are expected to come into operation in April 1992.
11. *Child Support (Registration and Collection) Act 1988*, s.68.

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