



## 'Private' child support arrangements in Australia: A brief primer

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*This is the first article in a three-part series examining 'private' child support arrangements in Australia. This brief primer sets out the basic 'nuts and bolts' of administrative assessments and the provisions for formal child support agreements that can be accepted by the Child Support Registrar. It also sets out the options for parents to make 'informal' agreements that do not conform with the official child support register. This piece acts as useful technical background to the two accompanying empirical articles by the authors in this issue.*

### Introduction

Formal child support obligations in Australia are now almost entirely governed by the *Child Support (Assessment) Act 1989* (the 'Assessment Act'). The *Assessment Act* commenced on 1 October 1989, creating a system of administrative assessments of child support to replace the previous system of court orders and court registered agreements for child maintenance under the *Family Law Act 1975* (Cth).

While most formal child support obligations are worked out using a legislated formula, allowing parents to continue to make their own child support arrangements was a significant feature in the early thinking of the original Child Support Scheme. The importance of choice and privacy is reflected in the objects of the *Assessment Act*, which states at s 4(3):

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

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

Parliament's concern about privacy is also reflected in s 3(2) of the *Child Support (Registration and Collection) Act 1988* (Cth) which states: 'It is the intention of the Parliament that this Act shall be construed and administered, to the greatest extent consistent with the attainment of its objects, to limit interferences with the privacy of persons'.

'Privacy' and 'private arrangements' in the Child Support Scheme are accommodated in three main ways: (a) some parents may entirely avoid the scheme, and not have a child support assessment at all; (b) parents who are entitled to have a child support assessment can make a formal child support

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agreement to replace or modify what would otherwise be payable under the legislative formula; and (c) parents with a child support assessment, or a child support agreement, can choose to either transfer their periodic child support privately or the payee can register their case for collection.

In this article we focus on private child support arrangements in Australia, which include, but is not limited to, child support agreements recognised under pt 6 of the *Assessment Act*. Curiously, child support agreements are one of the most common child support matters that parents seek legal advice about, but remarkably few child support agreements are formally registered (or ‘accepted’).

As noted by the Joint Select Committee in 1994:

At the commencement of the Scheme ... [child support agreements registered with the CSA were] thought to be a major proposal presenting the opportunity for many separating couples simply to take an agreement to the Agency and register it. Except in the case of pensioners, there would be no need for any third party to participate in setting this agreement, relieving the parents of legal expenses and delays in process ... [However, it was] suspected that the knowledge in the community of child support agreements was generally low and concluded that a greater effort was needed to publicise their availability.<sup>1</sup>

The most recent publicly available data indicate that only 4% of cases in the active CSA caseload had a child support agreement in June 2009.<sup>2</sup> But before getting into the detail of child support agreements and other private child support arrangements, a brief overview of the Australian Child Support Scheme may be helpful.

### The Child Support Scheme

The Child Support Scheme seeks to ensure that children continue to be supported financially by both parents if their parents separate or never live together. It currently affects about 1.3 million separated parents and 1.1 million children across Australia.<sup>3</sup> The Scheme is enshrined in Commonwealth legislation, and was originally administered by part of the Australian Taxation Office then known as the Child Support Agency (‘CSA’).<sup>4</sup> That administrative function now rests with Services Australia, an executive agency that also administers Centrelink and Medicare. In this article, although the term ‘CSA’ is no longer officially used, we have chosen to use it as a

1 Joint Select Committee on Certain Family Law Issues, Parliament of Australia, *Child Support Scheme: An Examination of the Operation and Effectiveness of the Scheme* (Report, November 1994) 236.

2 Child Support Agency (‘CSA’), *Facts and Figures 08–09* (Report, 2009) 17, Table 2.6.

3 Department of Social Services (‘DSS’) and the Department of Human Services (‘DHS’), Submission No 99 to House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *From Conflict to Cooperation: Inquiry into the Child Support Program* (July 2014) <[www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/Child\\_Support\\_Program/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Child_Support_Program/Submissions)>.

4 As noted by the Australian Law Reform Commission (‘ALRC’), when talking with child support clients and the general public, DHS used the terminology ‘the Child Support Agency’ to refer to the Child Support Program. We also use the language of the CSA for brevity. See ALRC, *Family Violence and Commonwealth Laws: Improving Legal Frameworks* (Report No 117, November 2011) 288.

convenient way to refer to the Child Support Program in Services Australia to avoid confusion with the subject matter *child support* and to distinguish it from the *Centrelink* program.<sup>5</sup>

Either parent can apply online to the CSA for an administrative assessment. The vast majority of applications are made by the parent with primary care of the children. When the CSA accepts an application, it calculates the amount of child support to be transferred according to a legislated formula, based on research into the costs of children, which apportions those costs according to each parent's income. The formula uses information about each parent's income for the last financial year;<sup>6</sup> the number and ages of their children; and the time that each child spends with each parent, expressed as a percentage, usually worked out on the pattern of overnight stays. Some of the children's costs are taken to be met by a parent having the child stay overnight at least one night per week (14%), thus reducing the amount of child support that would otherwise be paid. A parent whose child stays overnight at least five nights a fortnight may also be entitled to a share of Family Tax Benefit ('FTB') for that child, subject to a means test. The child support to be paid under the formula can vary as the parties' circumstances change. The legislation provides 'triggers' when the CSA must amend or issue new administrative assessments, such as when parents lodge a later income tax return, or when they notify the CSA about changes to a child's care arrangements, or the birth of a relevant dependent child. Each time the CSA makes or amends an administrative assessment, it issues a notice of assessment, showing the amount of periodic child support to be transferred between the parents.

Child support payable under an administrative assessment is legally enforceable either by the payee or the CSA. The collection method is chosen by the payee when they apply and may change throughout the life of the case. However, the CSA encourages separated parents to manage the transfer of child support between themselves through private collection ('Private Collect cases').<sup>7</sup> If parents cannot organise child support payments directly between themselves, the payee can ask the CSA to collect payments on their behalf ('Agency Collect cases'). In December 2019, there was a 50/50 split in collection type (50% Private Collect; 50% Agency Collect).<sup>8</sup> Payees in Private

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5 Child support policy and administration has a complex history. The CSA was formed in 1988 as part of the Australian Taxation Office to administer the Child Support Scheme. A decade later, it was moved into the Department of Family and Community Services (now the Department of Social Security ('DSS')) before becoming part of the DHS in 2004. The DSS continues to hold policy responsibility for the Child Support Scheme. However, the DHS no longer exists. In February 2020, Services Australia was established as a new executive agency, responsible for administering the Medicare, Centrelink and Child Support Programs. In short, DSS is responsible for child support policy, while Services Australia is responsible for child support service delivery. That said, the policy-administration distinction is not always clear cut.

6 The CSA has access to each parent's income information from the Australian Taxation Office. The child support legislation provides that the CSA may use a default income figure for parents who have not lodged an Australian income tax return for the most recently ended financial year.

7 Services Australia, *2018–19 Annual Report* (Report, 2019) 111 <[www.servicesaustralia.gov.au/sites/default/files/annual-report-191019-v2.pdf](http://www.servicesaustralia.gov.au/sites/default/files/annual-report-191019-v2.pdf)>.

8 See 'Child Support Program: December Quarter 2019' file at DSS, 'Child Support Program

Collect cases are assumed to be collecting the correct amount of child support from the payer and their FTB is adjusted accordingly. However, parents are not required to demonstrate that child support is actually transferred according to the administrative assessment. If the payments fall behind, the payee can ask the CSA to start collecting at any time, including up to 3 months of arrears (or nine in exceptional circumstances), but they are not required to do so.

### Child support agreements and private arrangements

Around 15% of all separated families are estimated to conduct their own child support arrangements without involving the CSA (ie, self-administration).<sup>9</sup> This is an important estimate because no official estimates of informal child support arrangements have been published to date. Those parents can use the calculator on the CSA website to work out the child support that would be payable according to the formula,<sup>10</sup> but that does not result in a formal administrative assessment and they are free to decide a lower or higher amount using any method they wish. These entirely private arrangements are not legally enforceable, and do not prevent a parent applying for an administrative assessment in the future.

In the overwhelming majority (96%) of active CSA cases, the paying parent's child support is determined by administrative assessment.<sup>11</sup> The child support legislation also contains formal requirements for certain written child support agreements that can be 'accepted' by the Child Support Registrar. Once accepted, the child support payable under the agreement is legally enforceable. Any periodic child support payable under the agreement can be collected by the CSA, and the payee can enforce both periodic and non-periodic child support in a court. Since 1 July 2008, these 'enforceable' agreements may be either a *binding* child support agreement or a *limited* child support agreement, both of which parents can use to agree to modify the usual administrative formula for assessing their child support.<sup>12</sup> *Binding* child

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Information', *Data.gov.au* (Web Page) 1, figure 'Percentage of Child Support Cases by Collection Method, December Quarter 2015 to December Quarter 2019' <<https://data.gov.au/dataset/ds-dga-6379b974-e547-4303-a361-6edebbb52550/details?q=child%20support%20program>>.

9 Belinda Fehlberg et al, *Australian Family Law: The Contemporary Context* (Oxford University Press, 2<sup>nd</sup> ed, 2014) 419, n 43.

10 See DHS, 'Child Support Estimator' (Web Page) <<https://processing.csa.gov.au/estimator/About.aspx>>.

11 DSS and DHS (n 3) 21.

12 'Binding' and 'limited' child support agreements, were introduced via legislative amendment in response to the report of the Ministerial Taskforce on Child Support, *In the Best Interests of Children: Reforming the Child Support Scheme* (Report, May 2005) 215, ch 13, Recommendation 17. Prior to 1 July 2008, parents could make a written 'child support agreement' without any legal advice and apply for that agreement to be accepted by CSA. If the payee was receiving more than the minimum rate of Family Tax Benefit ('FTB'), Centrelink approval was required before the CSA could accept the child support agreement. Centrelink would routinely refuse to approve child support agreements that provided for the payee to receive less than the current assessed rate of child support: at 208–9).

support agreements can be for:

any amount, regardless of what parents may be entitled to under an administrative assessment. Each party to a binding agreement must have received independent legal advice regarding the agreement before signing it. Binding agreements offer a degree of certainty for parents as they cannot be varied unless the parents reach consensus, obtain legal advice, and register the terms as a new binding agreement.<sup>13</sup>

Binding child support agreements may also be terminated by a court if 'exceptional circumstances' have arisen since the agreement was made that mean a parent or the child will suffer hardship if the agreement is not set aside.<sup>14</sup>

By contrast, *limited* child support agreements do not require parents to have obtained legal advice prior to entering into an agreement. However, a limited child support agreement is not enforceable until accepted by the CSA, which must first make an administrative assessment, and the amount payable 'under the agreement must be for at least the annual rate of child support that would otherwise be payable under an administrative assessment'.<sup>15</sup>

Once the CSA accepts a binding or limited child support agreement, the amount of child support legally required to be transferred between the parents is worked out according to the agreement, rather than the administrative formula. That situation continues until the child support agreement is terminated.

Limited agreements can be more readily terminated than binding child support agreements. Parents can make another child support agreement (limited or binding) to end the agreement at any time. A court can set a limited child support agreement aside if there has been a 'significant change' in the circumstances of either parent or the relevant child so that it would be unjust not to set aside the agreement. However, such court applications are rare, presumably because of the expense and the availability of other 'administrative' options. After 3 years, either parent can terminate a limited child support agreement by making a written election to the CSA. Finally, either parent can elect to terminate a limited child support agreement within the first 3 years if the notional assessment (described below) made in relation to the child support agreement differs by more than 15% from the previous notional assessment in circumstances not contemplated by the agreement.<sup>16</sup> Making a binding or limited child support agreement with the other parent, and having that agreement accepted by the CSA, will also satisfy the maintenance action test ('MAT') (see below).

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13 DSS and DHS (n 3) 23.

14 See *Child Support Guide*: DSS, '4.3.2 Applications & Orders about Decisions under the CSA Act' (Web Page, 11 May 2020) <<https://guides.dss.gov.au/child-support-guide/4/3/2#s136>>.

15 DSS and DHS (n 3) 23.

16 See *Child Support Guide*: DSS, '2.7.5 Changing or Terminating a Child Support Agreement' (Web Page, 10 August 2020) <<https://guides.dss.gov.au/child-support-guide/2/7/5#Terminating>>.

## The link between child support and Family Tax Benefit

A fundamental tenet of the Scheme is that separated parents are primarily responsible for financially supporting their child rather than the Australian taxpayer. This is achieved through the rules about payment of FTB, a government payment administered by Centrelink.<sup>17</sup>

FTB comes in two parts: FTB Part A is an amount paid per child, subject to a household income test; FTB Part B is a set amount paid to single parents and also to eligible couples in which the primary earner earns up to \$100,000 a year, subject to an income test applied to the income of their lower earning partner.<sup>18</sup> We will not discuss FTB Part B in this article, as it is not affected by child support. However, there is a critical link between child support and FTB Part A, which has two components: a 'base rate' (currently \$59.78 per child per fortnight) and the 'maximum rate' (\$186.20 per fortnight for each child aged 0–12 and \$242.20 per fortnight for each child aged 13–15, and students aged 16–19).

FTB Part A is an important financial supplement in low to middle income households with children, particularly those reliant on other social security payments. The maximum amount of FTB Part A is payable to households where the carer parent (and/or their partner) receives an income support payment<sup>19</sup> or those with annual family incomes below \$54,677 (excluding child support). Families with incomes between \$54,677 and \$98,988 (excluding child support) can receive some FTB Part A at more than the base rate.<sup>20</sup>

In December 2019, the median annual income of payees with child support cases was \$27,049,<sup>21</sup> which indicates most payee households are reliant to some degree on FTB Parts A and B. Those payees must pass a 'maintenance action test' to have access to the higher rate of FTB Part A for each child, and under the 'maintenance income test', their assessable child support can reduce the FTB Part A they will receive.

### Maintenance action test

Parents with care of children who do not live with that child's other parent are required to take 'reasonable maintenance action' in order to qualify for a

17 For more information about FTB see the Services Australia website: Services Australia, 'Family Tax Benefit' (Web Page, 31 August 2020) <[www.servicesaustralia.gov.au/individuals/services/centrelink/family-tax-benefit](http://www.servicesaustralia.gov.au/individuals/services/centrelink/family-tax-benefit)>.

18 The eligibility criteria and means test for FTB Part B can be found on the Services Australia website.

19 Income support payments are paid by Centrelink and include the parenting payment and jobseeker payment, and certain Department of Veteran's Affairs payments. A full list can be found on the Services Australia website: Services Australia, 'Income Support Payment Description' (20 March 2020) <[www.servicesaustralia.gov.au/individuals/topics/income-support-payment-description/34696](http://www.servicesaustralia.gov.au/individuals/topics/income-support-payment-description/34696)>.

20 FTB Part A is reduced by 20 cents for each dollar of non-child support income over \$54,677, until it reaches the base rate.

21 See 'Child Support Program: December Quarter 2019' file at DSS, 'Child Support Program Information' (n 8) 1, figure 'Median Adjusted Taxable Income by Payers and Payees, December Quarter 2019'.

higher rate of FTB Part A for each child.<sup>22</sup> This is called the maintenance action test ('MAT'). The most common way for a parent to pass the MAT for a child is to apply to the CSA for an administrative assessment payable by that child's other parent. Making a binding or limited child support agreement with the other parent, and having that agreement accepted by the CSA, will also satisfy the MAT.

In some cases, a Centrelink social worker may grant a parent an 'exemption' from the usual requirement to have a child support assessment in order to receive the higher rate of FTB Part A for a child. Exemptions are typically available when seeking child support under an assessment would place the parent or child at risk of harm, and in most cases, the parent forgoes child support entirely.<sup>23</sup> Partial exemptions are also available if the payee can safely collect some child support, but where seeking the full rate of child support poses an unacceptable risk.<sup>24</sup>

In December 2019, FTB recipients not living with the other parent of their child were recorded as having 'passed' the MAT for 74% of all children eligible for FTB Part A. In other words, those parents had an active CSA case for that child, with either an administrative assessment, or a registered binding or limited child support agreement. Exemptions were granted in respect of a further 13% of FTB Part A eligible children of separated parents. However, 12% of FTB recipients not living with the other parent of their child were recorded as having failed the MAT for a child and were therefore ineligible for the higher rate of FTB Part A.<sup>25</sup>

### **Maintenance income test**

Once a parent has passed the MAT, if they are eligible for the higher rate of FTB Part A under the ordinary income test, this is paid subject to the maintenance income test ('MIT'). The parent's FTB Part A is reduced by 50c for each dollar of assessable child support above the 'maintenance income free area' (currently \$1,686.30<sup>26</sup> measured over a financial year), until their FTB Part A reaches the base rate.

Payees with an 'exemption' from the MAT for a child do not have an active

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22 See *Family Assistance Guide* (Version 1.220, 11 May 2020): DSS, '3.1.5.30 Taking Reasonable Maintenance Action' (Web Page) <<https://guides.dss.gov.au/family-assistance-guide/3/1/5/30>>.

23 See *Family Assistance Guide* (Version 1.220, 11 May 2020): DSS, '3.1.5.70 Exemptions from the Maintenance Action Test' (Web Page) <<https://guides.dss.gov.au/family-assistance-guide/3/1/5/70>>.

24 Partial exemptions are rare. As noted by DSS:

A partial exemption may be granted in cases where an individual is collecting child support privately and has a fear of violence, or there is risk of harmful or disruptive effects, or there are cultural considerations to take into account, or there are other exceptional circumstances that make it unreasonable for them to pursue the collection of their full entitlement or to transfer collection method to Child Support. Individuals in this situation will be referred to a social worker for assessment who may grant the partial exemption.

See *ibid*.

25 See 'Child Support Program: December Quarter 2019' file at DSS, 'Child Support Program Information' (n 8) 2, figure 'FTB Part A Children by Maintenance Action Test (MAT) Category, December Quarter 2019'.

26 The maintenance income free area is doubled for 'blended' couple households receiving FTB Part A if both adults receive child support from their former partners.

child support case. Centrelink applies the MIT by assuming they receive no child support for that child and will therefore not reduce the higher rate of FTB Part A.<sup>27</sup> All other parents who pass the MAT will have an active CSA case. Centrelink applies the MIT to the higher rate of FTB Part A, using information that the CSA provides about their child support case. The ‘assessible’ child support for the MIT is worked out over a financial year, but it may be more or less than the child support that the payee actually receives, depending upon whether the child support is worked out under the administrative formula or a binding or limited child support agreement; and whether the case is Private Collect, or Agency Collect.

If the CSA has made an administrative assessment, and the case is Agency Collect, the MIT is applied to the payee’s FTB Part A using the actual amount of child support received over the full financial year. However, in Private Collect cases, Centrelink applies the MIT by ‘deeming’ that the payee received all the child support payable under the administrative assessment. Centrelink does not check what was actually paid and the payee may have received more or less than the assessed rate of child support. Private Collect payees unable to collect all their child support cannot get extra FTB Part A to make up for the shortfall, but have a strong incentive to apply for Agency Collect. The CSA can take over collection and if that is not successful, FTB Part A will be worked out on the actual child support the CSA is able to collect.

The MIT applies differently when the CSA has accepted a binding or limited child support agreement. FTB Part A for those cases is worked out using a ‘notional child support assessment’ which reflects the child support that would be payable if not for the agreement — regardless of the collection method, and the actual amount of child support transferred.<sup>28</sup> This is another policy lever intended to give parents the freedom to make child support agreements, while protecting the taxpayer from increased FTB outlays if those agreements provide less child support than the administrative assessment.<sup>29</sup>

### The ‘black box’ of informal child support arrangements

Overall, the importance of having a child support assessment or a child support agreement and collecting the full amount is greatest in low-income households where FTB is likely to be a significant part of the household income.

The CSA has oversight of the administrative assessments that it makes and any formal binding and limited agreements that it accepts. The CSA also maintains a register of the child support amounts that it transfers between parents. However, there is still considerable scope for ‘informal’ child support arrangements which depart from what the official records suggest: first,

27 However, if a partial exemption is granted, the MIT is applied on the basis of child support actually collected by the payee.

28 ‘Notional assessments’ were introduced from 1 July 2008, at the same time as ‘limited’ and ‘binding’ child support agreements replaced written ‘child support agreements’.

29 See *Child Support Guide*: DSS, ‘2.7.4 Effect of a Child Support Agreement Once Accepted by the Registrar (Other Than Lump Sum Payment Provisions)’ (Web Page, 20 September 2019) <<https://guides.dss.gov.au/child-support-guide/2/7/4#Notional>>.



because it is not compulsory for parents to apply to the CSA for an administrative assessment; second, because once an administrative assessment is made, if the payee chooses Private Collect, neither the CSA nor Centrelink monitor the child support actually transferred.

There is a notable lack of empirical data on the prevalence of informal child support arrangements and the nature of, and dynamics surrounding them. However, independent academic social research offers some insights into the 'black box' of informal child support arrangements. For instance, unpublished pre-reform data from the Child Support Reform Study<sup>30</sup> indicate that around 8% of separated parents (ie, 1 in 12) reported having a private agreement that was not registered with the CSA.

Private transfers and self-administered arrangements put the onus of collection back onto payees (typically mothers) and leave more scope for bargaining. There is also the risk that some payees agree to such arrangements due to coercion or fear, and are not only at risk of underpayment of child support, but may also receive less FTB because of the operation of the MAT and or the MIT.<sup>31</sup> This is why the Ministerial Taskforce on Child Support raised a number of concerns about informal agreements, especially among Private Collect cases:

There are certain restrictions that stand in the way of parents entering into negotiated settlements about child support that depart from the formula. These restrictions arise from the interrelationship between the Child Support Scheme and Family Tax Benefit (FTB) [ie, maintaining the balance between parent and taxpayer contributions]. A further problem with the current arrangements about child support agreements is the lack of even the most basic safeguards to ensure that agreements that have long-term financial consequences for the parents and children are freely and fairly made.<sup>32</sup>

And as the Australian Law Reform Commission ('ALRC') noted:

In *Family Violence and Commonwealth Laws*, Discussion Paper 76 (2011) (Discussion Paper), the ALRC examined child support agreements and self-administration of child support in some detail. In summary, the ALRC is of the view that legislative safeguards applicable to child support agreements appear adequate to protect family violence victims against financial exploitation. However, self-administration of child support is likely to be unsuitable in many cases where family violence is present. Family violence victims may collect less child support than they are entitled to, or no child support at all, due to fear, pressure or coercion. Private arrangements may also provide a platform for continuing control or abuse.<sup>33</sup>

There are myriad possible ways that parents could structure their child support affairs within the 'black box' of informal child support arrangements. The

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30 The Child Support Reform Study was conducted by the Australian National University. It is a large study incorporating longitudinal and sequential data collections designed to evaluate the impacts of the 2006–08 Australian child support reforms. Data were drawn from the Child Support Agency administrative active caseload. The pre-reform baseline national random sample yielded 5,046 separated parents (2,809 mothers, 2,237 fathers). The computer-assisted telephone interviews focussed on various aspects of child support arrangements, including agreements, negotiations and strategic bargaining.

31 ALRC (n 4) 288.

32 Ministerial Taskforce on Child Support (n 12) 207.

33 ALRC (n 4) 289.

10 examples below are drawn from the professional experience of two of the authors (Aleema and Vnuk) of this article. They provide a convenient way to illustrate the operation of the MAT and MIT rules:

- (1) An administrative assessment and private transfer of an amount that is more or less than that amount.

*This payee would pass the MAT. Private Collect case — if eligible for FTB Part A under the ordinary income test, the MIT would be applied on the basis of the child support payable under the administrative assessment. If the child support actually paid is less than the administrative assessment, the payee and child may be missing out on both child support and FTB. No FTB consequence if they are receiving more child support than the assessment.*

- (2) An administrative assessment, which the CSA is collecting, but the payer directly pays extra to the payee, or to a third party for the children's expenses.

*This payee would pass the MAT. Agency Collect case — if eligible for FTB Part A under the ordinary income test, the MIT would be applied on the basis of the child support actually collected by the CSA. No FTB consequence if the payer is paying extra.*

- (3) An administrative assessment, which the CSA is collecting, but the payee returns some of the money to the payer.

*This payee would pass the MAT. Agency Collect case — if eligible for FTB Part A under the ordinary income test, the MIT would be applied on the basis of the child support actually collected by the CSA. No extra FTB is payable if the payee gives money back to the payer, so the payee and child may be missing out on both child support and FTB.*

- (4) No administrative assessment, and private transfers of an amount arrived at through discussion, or some form of negotiation (including 'take this or you get nothing').

*This payee would fail the MAT. If eligible for FTB Part A under the ordinary income test, they will only receive the base rate. Depending on the actual amount of child support paid, the payee and child may be missing out on both child support and FTB.*

- (5) No administrative assessment, with a Centrelink exemption, but intermittent payments from the payer at (usually) his/her discretion.

*This payee would pass the MAT. If eligible for FTB Part A under the ordinary income test, the payee is paid on the basis that they are receiving no child support, but must report any child support actually received, so their FTB Part A can be adjusted under the MIT. The payee*

*and child may be missing out on child support, but not FTB Part A.*

- (6) A written agreement that is not a formal child support agreement that parents are following instead of the administrative assessment and making private transfers.

*This payee would pass the MAT because the CSA has made an administrative assessment. Private Collect case — if eligible for FTB Part A under the ordinary income test, the MIT would be applied on the basis of the child support payable under the administrative assessment. No FTB consequence if the payer is paying more than the administrative assessment, but if less is paid, the payee and child may be missing out on both FTB Part A and child support.*

- (7) A binding child support agreement that parents could register with CSA, but have not and are making private transfers as per the agreement, instead of the administrative assessment.

*This payee would pass the MAT because the CSA has made an administrative assessment. There is no obligation for parents to apply to CSA to have their agreement accepted, but it is not enforceable until that happens. Private Collect case — if eligible for FTB Part A under the ordinary income test, the MIT would be applied on the basis of the child support payable under the administrative assessment. Not having the agreement accepted by the CSA is likely to have neutral FTB consequences for the payee and child, given that the MIT would be applied to a 'notional child support assessment', rather than the child support payable according to the agreement, or what is actually paid.*

- (8) A limited child support agreement that parents could register with CSA, but have not and are making private transfers as per the agreement, instead of the administrative assessment.

*This payee would pass the MAT because the CSA has made an administrative assessment. There is no obligation for parents to apply to CSA to have their agreement accepted, but it is not enforceable until that happens. As this is a limited child support agreement, the CSA could only accept it if it provided an amount of child support that is at least as much as the administrative assessment. Private Collect case — if eligible for FTB Part A under the ordinary income test, the MIT would be applied on the basis of the child support payable under the administrative assessment. Not having the agreement accepted by the CSA is likely to have neutral FTB consequences for the payee and child, given that the MIT would be applied to a 'notional child support assessment', rather than the child support payable according to the agreement, or what is actually paid.*

- (9) A binding or limited child support agreement that parents could register

with CSA, but have not and are making private transfers as per the agreement, with no administrative assessment.

*This payee would fail the MAT. If eligible for FTB Part A under the ordinary income test, they will only receive the base rate. The payee and child may be missing out on some FTB Part A, if any would be payable after application of the MIT to the 'notional child support assessment' that the CSA would make if it accepted the agreement.*

- (10) A binding or limited child support agreement that parents have registered with CSA and are making private transfers at a rate that is more or less than the agreement.

*This payee would pass the MAT because the CSA has accepted the agreement. If eligible for FTB Part A under the ordinary income test, the MIT would be applied on the basis of the 'notional child support assessment', rather than the child support payable according to the agreement, or what is actually paid.*

As these examples show:

- the higher rate of FTB Part A cannot be paid to a payee who does not have a child support case (unless they qualify for an exemption)
- a payee with a child support case who voluntarily receives less child support than they are entitled will not get extra FTB Part A because a Private Collect payee's FTB is worked out as if they received all the child support they are entitled to, and FTB Part A for payees with binding or limited child support agreements is worked out according to the notional child support assessment, regardless of the child support actually paid
- if a payee receives more than their child support assessment (or notional child support assessment), this has no effect upon any FTB Part A entitlement they may have.

## Conclusion

The close but complex links between FTB Part A and child support place significant financial pressure on a payee in a low-income household to have a child support assessment and collect the full amount. Those parents cannot make a limited child support agreement to receive less child support than the assessment, and if they make a binding child support agreement to receive less, their FTB Part A is worked out as if they were receiving child support according to the administrative formula. These factors may explain, in part, why formal child support agreements are still relatively infrequent, but a common reason for parents to seek legal advice.

There is nevertheless significant scope for parents to negotiate — compromise or indeed acquiesce — about child support without ever making a formal child support agreement. Low-income parents who receive FTB Part A may make compromises or 'agreements' that have adverse financial consequence beyond the amount of child support they receive. In the

following two articles, we explore what motivates parents to enter into child support arrangements that are seemingly contrary to their own financial interests.