

Child Support Agency Department of Human Services

RESPONDING TO ALLEGATIONS
OF CUSTOMER FRAUD

November 2008

Report by the Commonwealth and Immigration Ombudsman,
Prof. John McMillan, under the *Ombudsman Act 1976*

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Reports by the Ombudsman

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EXECUTIVE SUMMARY

A growing number of complaints to the Commonwealth Ombudsman have raised concerns about the way in which the Child Support Agency (CSA) responds to allegations that one of its customers has provided false or misleading information. Such allegations are usually made by one parent in a child support case because they believe they have been disadvantaged by the CSA relying upon information provided by the other parent.

The CSA collects significant amounts of personal information from parents and others to assist it in administering the child support scheme. This personal information can relate to a parent's assets and income, their dependant children and the arrangements for care of the children. All of this information can affect the rate of child support payable.

Much of the information that the CSA collects is provided by the person concerned on a voluntary basis. The CSA has statutory powers to require a person to provide information about themselves or another person, in order that the system can be effectively administered. It is an offence for a person to fail to comply with a notice requiring them to provide information to the CSA. It is also an offence for a person to provide the CSA with false or misleading information, whether that information was given voluntarily or compulsorily.

The *Commonwealth Fraud Control Guidelines* define fraud as including 'providing false or misleading information to the Commonwealth, or failing to provide information where there is an obligation to do so'. The Guidelines require the CSA to have in place 'a comprehensive fraud control plan that covers prevention, detection, investigation and reporting strategies'.

The CSA's current fraud control plan was put in place in July 2006. This report concludes that the CSA's fraud control plan does not adequately manage the risks associated with customer fraud. Instead, the plan focuses almost exclusively upon the risks posed by internal staff fraud. A related problem is that the CSA's published guidelines and instructions to support staff who receive customer fraud allegations have become outdated.

Frontline CSA staff receiving customer fraud allegations seemed not to know what to do with them, beyond checking to see whether the child support assessment was correct. It appears that CSA staff do not generally regard investigating and prosecuting customer fraud as an appropriate strategy or efficient use of resources.

In the Ombudsman's view, it is important that the CSA reviews its policies and practices concerning customer fraud allegations. The integrity of the child support scheme hinges on the reliability of the evidence on which child support assessment decisions are made. It is a core function of the CSA to uphold that principle.

The CSA advised the Ombudsman's office in the course of this investigation that it was developing new arrangements for the investigation and prosecution of customer fraud. This is welcome news.

This report looks at three complaints that gave rise to this own motion investigation. The report includes a high level review of the various documents that set out the CSA's current policy for dealing with customer fraud and compares the CSA's policy with the arrangements that apply elsewhere in the Australian Government.

Recommendations

The report contains five recommendations to address shortcomings in the CSA's existing processes. In summary, the report recommends that the CSA:

- review its fraud control plan
- develop new procedures for staff responding to customer fraud allegations, including better recordkeeping
- educate all staff about their role in identifying appropriate cases for referral to the Commonwealth Director of Public Prosecutions for prosecution
- consider further action in relation to one of the complaints discussed in the report
- provide further guidance to staff about authenticating documents and the circumstances in which it is necessary to investigate and verify contradictory evidence.

Agency response

The CSA's General Manager, Mr Matt Miller, responded positively to the draft report and recommendations. Details of the CSA's response are included in Part 5 of this report.

The CSA's compliance strategy for 2008–2010, announced on 23 June 2008, includes an increased emphasis on criminal investigation and prosecution, in response to government and community concerns.

On 1 July 2008 the CSA became an integrated division of the Australian Government Department of Human Services (DHS). Mr Matt Miller is now the General Manager, Child Support, Department of Human Services.

PART 1—INTRODUCTION AND BACKGROUND

1.1 Each year the Commonwealth Ombudsman receives a large number of complaints about the CSA. A growing number of those complaints raise issues about the way the CSA deals with allegations that one of its clients, or a third party, has provided false and/or misleading information to the CSA.

1.2 The CSA collects financial and personal information from clients and third parties to enable it to assess and collect child support. For example, in order to calculate the amount of child support payable by one parent to the other parent under the child support formula, the CSA will need to know:

- both parents' child support income amounts (that is, each parent's taxable and supplementary income for the most recently ended financial year)
- the proportion of time that each parent provides care for each child for whom child support is payable
- whether the parents have any other dependent children.

Those factors will determine whether a parent is liable to pay or is entitled to receive child support and the amount that will be paid.

1.3 When making a child support assessment, the CSA will obtain from the Australian Taxation Office (ATO) details of the parent's income as declared in their last return to the ATO. If the parent has not lodged a taxation return, the CSA may ask the parent for details of their income, or make a provisional assessment based on the parent's most recent tax return. In cases where a parent has elected to have the CSA calculate child support on the basis of their current income, the CSA will require that parent to provide an estimate of that income. If either parent applies for a Change of Assessment (CoA) in special circumstances, they must complete a lengthy form with their personal and financial details. The other parent is invited to provide a written response to the application, with similar information. The CSA can also decide to initiate a CoA, in which case, both parents are invited to provide a written response.

1.4 In order to collect child support, the CSA may seek information about the liable parent's income from employers and other sources, as well as details of their banking and other financial transactions and their property and other assets.

1.5 The CSA will initially seek information from the parent concerned. In most cases, the parent provides the information to the CSA voluntarily, whether that is in person, by telephone or in writing. Information may be supplied to the CSA on a form or in response to a compulsory notice under s 161 of the *Child Support (Assessment) Act 1989* (CSAA) and s 120 of the *Child Support (Registration and Collection) Act 1988* (CSRCA). The CSA can also use those provisions to obtain information from third parties, such as employers and financial institutions.

1.6 It is an offence under the child support legislation for a person to provide CSA with false or misleading information. The CSA routinely notifies parents on its forms and written notices that they may be liable to prosecution if they provide false and/or misleading information. The offence provisions are set out in s 159 and s 159A of the CSAA. There are similar offence provisions, relating to information given under the CSRCA, in s 119 of that

Act. Additional offences also apply under Chapter 7 of the Criminal Code under the *Criminal Code Act 1995* (Cth), for example part 7.7, which deals with forgery and related offences.

CSA policy and procedures for responding to allegations of customer fraud

1.7 The CSA is not responsible for prosecuting offences under the child support legislation. That task rests with the Commonwealth Director of Public Prosecutions (CDPP). However, given the CSA's role in administering the child support scheme, it is likely that the CSA would be the first point of contact for a person making an allegation that someone has made a false or misleading statement to the CSA.

1.8 The CSA sets out its policy and procedures for dealing with offence allegations in chapter 6.8 of *The Guide* (the CSA's on-line policy manual, which is available on the CSA's website) and another document titled *PI – Prosecutions* (an internal procedural instruction). *The Guide* deals only with offences under the child support legislation, whereas the procedural instruction also covers offences under the *Crimes Act 1914* (Cth), and the *Criminal Code*.

1.9 Chapter 6.8.7 of *The Guide* says:

The prosecution action that CSA takes has to reflect the reality that the resources available are finite and cannot be wasted on trifling or unpromising cases. CSA will concentrate on the cases that deserve prosecution.

1.10 *The Guide* does not discuss in detail how the CSA will decide which prosecutions it will pursue, beyond making the following statement.

In deciding whether to pursue prosecution CSA will consider:

- the seriousness of the alleged offence (not just in dollar terms)
- any other means of enforcement available
- the impact of the alleged offence
- whether the alleged offence involves deliberate evasion or obstruction.

1.11 The procedural instruction has a statement under the heading *CSA Policy on Prosecution* in almost identical terms to that in *The Guide* ('resources available for prosecution action are finite and should not be wasted on unpromising or trifling cases'). The instruction further states:

Cases that must be referred for investigation include those that are particularly serious, blatant or involve persistent offenders; those for which there are no other effective means of securing compliance with CSA notices and those which continue to display prevalent non compliance practices after strategies to secure compliance have failed.

1.12 It should be noted that the *CSA Policy on Prosecution* is not limited to those offences relating to false and misleading statements. The documents also apply to offences such as:

- an employer's failure to make deductions for child support (s 46 CSRCA)
- an employer's failure to remit child support deducted from salary and wages (s 47 CSRCA)
- a person's failure to pay to the Registrar money held on account of a child support debtor (s 72A CSRCA)
- a person's failure to comply with a notice to provide information (s 120 CSRCA and s 161 CSAA).

1.13 These other types of offences, which relate to a failure to comply with a CSA notice, are likely to more readily satisfy the CSA's criteria for prosecution. The CSA's procedural instruction says:

The bulk of prosecution activity should be centred on cases where there has been:

- an impact on collection, and
- deliberate evasion and/or obstructive behaviour.

1.14 A failure to comply with a notice under any of ss 46, 47 or 72A of the CSRCA would have a direct impact upon collection. Repeated failure to comply with any notice would constitute deliberate evasion or obstructive behaviour. An allegation that someone has provided false and misleading information may have an impact on collection, and demonstrate deliberate evasion and/or obstructive behaviour. However, the CSA would have to conduct an investigation to establish the correct details before it could decide whether the matter warranted referral for prosecution. It is this investigative step that the CSA's procedural instruction fails to address.

CSA's role in the investigation of customer fraud

1.15 The CSA's procedural instruction states that the CSA has only a preliminary role in the investigation of possible offences:

These guidelines have been developed to assist Child Support Agency (CSA) staff to prioritise cases for referral to the ATO Fraud Prevention and Control Section for investigative action. Referrals to ATO Fraud Prevention and Control may lead to prosecution by the Department [sic] of Public Prosecutions (DPP).

1.16 The CSA no longer has a service agreement with the ATO to conduct investigations. In December 2005, the CSA's Fraud Prevention Team took on responsibility for the work that was previously performed by the ATO in regard to child support matters.¹ Despite this, the CSA has yet to update its procedural instruction to reflect the changed arrangements. This important oversight could be interpreted as indicating that the prosecution of CSA clients for alleged offences under the child support legislation has a low priority in the CSA.

1.17 For the purposes of this investigation, we have assumed that it is appropriate to simply read the CSA's procedural instruction as if all references to the ATO Fraud Prevention and Control Section are references to the CSA's Fraud Prevention Section. If that assumption is correct, it is still the responsibility of CSA frontline staff to identify, screen and refer to the CSA's Fraud Prevention Section those cases that warrant further investigation and prosecution action.

1.18 The investigation of CSA complaints discussed in this report indicates that some CSA frontline staff do not understand the importance of this preliminary assessment role. In some cases, their reaction to a client's allegation that the other parent has provided false and misleading information to the CSA was to suggest administrative means to address any dispute about the accuracy of the information (such as by applying for a CoA or objecting to a CSA decision). Other CSA officers suggested that the person making the allegation take his or her own legal action, or approach the police. In another case, the CSA officer told the person making the allegation that the matter would be looked into, without any intention of taking further action.

1.19 The procedural instruction sets out steps that the CSA officer is to follow before referring a matter to the Fraud Prevention Section. For offences relating to a failure to comply

¹ Department of Human Services, *Annual Report 2005–2006*, page 74.

with a notice under the child support legislation, the steps are quite detailed. They even include a list of questions to ask the person to whom the notice was issued, according to the type of notice that was sent. For allegations about false and misleading statements, the procedural instruction requires an investigation by three separate CSA officers before the case can be referred to Fraud Prevention Section.

- *Step One*—The Coach/Team leader is to carry out a preliminary investigation. If it is determined that further investigation is warranted, a brief of evidence is compiled and forwarded to a Branch Quality Advisor (BQA).
- *Step Two*—The BQA reviews the brief and must then carry out an additional ‘full investigation’ of the allegation. Once this is completed the BQA determines whether there is cause to refer the matter to step three.
- *Step Three*—A CSA Legal Services or CSA Senior Litigation Officer reviews the brief and also investigates the matter. A decision is then made as to whether the case should be escalated to the CSA’s Fraud Prevention Section for investigation and possible referral to the CDP.

1.20 There is no guidance given in the procedural instruction about how each step of the CSA investigation is to be conducted. This duplication of effort would seem to constitute an excessive drain on resources. This is of particular concern, given the need for prompt action in response to allegations. The various customer fraud offences under the child support legislation attract maximum penalties of \$2,000 or six-months gaol. Accordingly, a summons for prosecution of any of these offences must be signed within 12 months of the date the person committed it.² The CSA’s procedural instruction stresses the need for urgent action, but fails to clearly explain the relevant timeframes. Although the procedural instruction mentions the 12-month limitation in relation to some offences, it suggests that a referral to the ATO fraud section within 12 months is acceptable. This fails to recognise that the CDP will also need sufficient time to make a decision before the end of that 12-month period.

1.21 An alternative to prosecution under the child support legislation would be for the CSA to consider whether the particular activity may also constitute a serious offence under the *Criminal Code Act 1995* (Cth), attracting a maximum penalty of imprisonment for more than six months. If so, there is an unlimited period for commencement of proceedings, but the evidence required will differ.³ This possibility is not discussed within the CSA’s procedural instruction.

1.22 The complaints that we have investigated indicate that the allegations the CSA receives are rarely investigated beyond the point of establishing whether the CSA already has evidence in its records to show that the person has made a false or misleading statement. If the evidence was not already available, or presented to the CSA by the person making the allegation, the CSA tended to conclude that further enquiries were not warranted because its investigative resources are finite and should not be wasted on ‘trifling or unpromising cases’.

1.23 The procedural instruction says that when the CSA refers a case to the ATO, the ATO will collect evidence, refer a brief to the CDP if appropriate and keep the CSA informed about its actions. As noted earlier, the CSA has not updated the procedural instruction to say what its internal Fraud Prevention Team will do with a matter referred to it. Accordingly, there seems to be no detailed procedural information available to CSA staff to explain how the CSA’s Fraud Prevention Team will deal with matters that are referred to it for further investigation.

² *Crimes Act 1914* (Cth) s 15B(1)(b).

³ *Crimes Act 1914* (Cth) s 15B(1)(a).

Activities of the CSA's Fraud Prevention Team

1.24 The CSA staff we spoke to about the complaints we investigated were not able to provide details of a single case where a possible offence under the child support legislation had been referred to the CDPP for prosecution since the beginning of 2006. The following information was obtained from the CSA's annual reports to Parliament and by writing to the CDPP.

CSA's annual reports

1.25 The CSA reports to the Minister on its activities each year as part of the DHS. DHS's annual reports reveal the following statistics about the matters the CSA's Fraud Prevention Team have dealt with since the CSA established the team in late 2005:

2005–06

- 77 allegations of serious misconduct or criminal activity by CSA staff
- 13 allegations of external fraud by CSA customers⁴

2006–07

- 118 allegations of serious misconduct or criminal activity by CSA staff
- 15 allegations of external fraud by CSA customers⁵

1.26 The DHS annual reports aggregate the results of those investigations, so it was not possible to isolate the numbers of allegations of CSA customer fraud that were found to be unsubstantiated, or alternatively, referred for criminal proceedings. However, the raw numbers of matters the CSA's Fraud Prevention Team dealt with shows that it is most active in relation to the investigation of internal or staff fraud. It is important to deal with staff fraud, yet the preponderance of staff investigations is surprising, given that the CSA has many more customers (approximately 1.4 million) than it has staff (4,137 as at 30 June 2007).⁶

1.27 Centrelink (another service delivery agency within the DHS portfolio, with 6.5 million customers) carried out 42,000 fraud related investigations in the 2006–07 financial year.⁷ This translates to approximately one investigation for every 155 Centrelink customers. By comparison, CSA's ratio of fraud investigations is one investigation for every 93,333 customers. There are many differences between the two agencies, such as the fact that Centrelink distributes Commonwealth funds, rather than transferring amounts between citizens, making it a more likely target for fraud. Nevertheless, these differences do not seem to be a sufficient basis to explain the scale of the difference in investigation rates.

Numbers of referrals to the CDPP for prosecution

1.28 We asked the CDPP how many referrals/briefs of evidence it had received in 2006 regarding alleged offences by child support clients and related third parties. In 2006 the CSA did not refer any matter of this nature to the CDPP.

- The last matter prosecuted by the CDPP under s 119 of the CSRCA was initiated in February 1998. This matter was referred to the CDPP by Centrelink.
- The last matter prosecuted under s 159 of the CSAA was initiated in February 2000. This matter had been referred to the CDPP from the ATO.

⁴ Department of Human Services, *Annual Report 2005–2006*, page 74.

⁵ Department of Human Services, *Annual Report 2006–2007*, page 67.

⁶ Department of Human Services, *Annual Report 2006–2007*, pages 47 and 71.

⁷ Centrelink, *Annual Report 2006–2007*, pages 11 and 32.

- There was no record of any matters having been referred to the CDPP under s 159A of the CSAA.

1.29 Once again, for the purposes of comparison, albeit a very loose comparison, we note that Centrelink referred 5,261 matters to the CDPP for prosecution in 2006–07.⁸

CSA's planned revised approach to prosecutions

1.30 In October 2007 the CSA advised the Ombudsman's office that it agreed it had failed to apply its prosecutions policy in relation to customer fraud but it had taken steps to address this systemic problem. Specifically, the CSA had received approval from the Minister for Human Services to establish an information-sharing capability between the CSA, the Australian Federal Police (AFP), Centrelink and related agencies. The CSA indicated that a memorandum of understanding would be drafted, and that in the meantime, a small team within the CSA was working on establishing case identification and selection procedures.

1.31 In January 2008 we received a further letter from the CSA, which indicated that its National Compliance section was working on a referral system to the CDPP for prosecutions. However, the CSA also advised that any outcome would be tempered by the 'reality that the resources of the CSA in this capacity are finite'.

1.32 The Ombudsman's office is conscious that public service monies are finite and acknowledges that the CSA's statement to this effect mirrors its prosecution procedural instruction, which states: 'For any prosecution policy to be effective it must reflect the reality that resources available for prosecution action are finite and should not be wasted on unpromising or trifling cases. We should concentrate on the vigorous pursuit of those cases deserving prosecution.'

1.33 Nonetheless, this investigation does not support a finding that public monies were only being applied to those matters that warranted pursuit. If, as appeared from the investigation, the CSA had not referred any matters for prosecution, that suggests one or more of a number of things:

- the administrative and investigative processes within the CSA do not throw up adequate evidence to warrant referral for prosecution
- the CSA was taking a restrictive view about what matters should be referred for prosecution, perhaps unrealistically so
- the CSA had not given sufficient priority to its responsibility to ensure that all its clients comply fully and honestly with lawful requirements.

1.34 CSA management accepts that CSA frontline staff were not following the CSA's published prosecution procedural instruction. Nevertheless, there seemed to be no formalised interim arrangements to ensure collection of information and referral of appropriate cases to the small team the CSA says is working on establishing case identification and selection procedures.

1.35 CSA customers who sought to have the CSA investigate an alleged offence under the child support legislation committed by the other parent in their case appeared to be receiving a rather unenthusiastic response. This may have involved advice to the effect that 'the CSA does not prosecute these matters'.

⁸ Centrelink, *Annual Report 2006–2007*, page 32.

1.36 We acknowledge that there may be an important public policy issue at stake in the CSA's apparent reluctance. If the CSA is too ready to respond to such allegations, a person who is hostile to their former partner could use the CSA to harass them. However, an unwillingness to respond in appropriate cases will tend to undermine public confidence in the CSA's ability to ensure that all customers abide by the requirements of the legislation. Further, it will encourage fraud, with detrimental consequences both for the parents whose child support assessments are adversely affected and, in many cases, for taxpayers in the form of an increased call on social support payments. That is why the Ombudsman believes the CSA needs a robust process for deciding which matters warrant referral for prosecution.

1.37 On 9 April and 9 May 2008, the CSA provided this office with updates about its progress in implementing new arrangements for investigating customer fraud. These new arrangements are discussed at the conclusion of this report.

Commonwealth Fraud Control Guidelines

1.38 In May 2002, the Minister for Justice and Customs released the *Commonwealth Fraud Control Guidelines*. Those Guidelines apply to all agencies covered by the *Financial Management and Accountability Act 1997* (the FMA Act), such as the CSA. The Guidelines 'outline the Government's requirement that Commonwealth agencies put in place a comprehensive fraud control program that covers prevention, detection, investigation and reporting strategies'.⁹ The Chief Executive Officer of each agency is responsible under s 45 of the FMA Act for implementing a fraud control plan for their agency. The plan must comply with the *Commonwealth Fraud Control Guidelines*.¹⁰

1.39 Guideline 2 defines fraud against the Commonwealth as including 'providing false or misleading information to the Commonwealth, or failing to provide information where there is an obligation to do so' and 'making, using or possessing forged or falsified documents'.¹¹ The Guideline is not simply limited to cases where a person fraudulently obtains Commonwealth property. Each agency's fraud control plan must be based on a fraud risk assessment, which reflects the risks across the range of functions performed by the agency.¹²

1.40 Guideline 4 deals with fraud investigation and case referral standards. It states that '[c]riminal prosecutions are vital to deterring future instances of fraud and to educating the public generally about the seriousness of fraud'.¹³ Each agency is responsible for investigating routine or minor instances of fraud and must refer serious or complex matters to the AFP for investigation.¹⁴

1.41 In August 2004, the Australian National Audit Office issued *Fraud Control in Australian Government Agencies—Better Practice Guide*.¹⁵ This document supports the *Commonwealth Fraud Control Guidelines* by providing additional information on how to implement them.

⁹ *Commonwealth Fraud Control Guidelines 2002*, Attorney-General's Department, 1.2 on page 1 http://www.ag.gov.au/www/agd/agd.nsf/Page/Fraud_control.

¹⁰ *Commonwealth Fraud Control Guidelines 2002*, Attorney-General's Department, 3.4 on page 8.

¹¹ *Commonwealth Fraud Control Guidelines 2002*, Attorney-General's Department, 2.2 on page 4.

¹² *Commonwealth Fraud Control Guidelines 2002*, Attorney-General's Department, 3.10 on page 10.

¹³ *Commonwealth Fraud Control Guidelines 2002*, Attorney-General's Department, 4.2 on page 12.

¹⁴ *Commonwealth Fraud Control Guidelines 2002*, Attorney-General's Department, 4.6 on page 13.

¹⁵ Available at <http://www.anao.gov.au/director//director/publications/betterpracguides.cfm>.

CSA's Fraud Control Plan

1.42 The CSA completed a Fraud Control Plan in 2006–07, which will be in place for two years.¹⁶ It would seem that the CSA has not updated chapter 6.8.7 of *The Guide* or its prosecution procedural instruction following the development of that Fraud Control Plan.

1.43 The CSA's Fraud Control Plan contains details of the CSA's fraud risk assessment across its entire operations. The risk assessment does include some aspects of customer or external fraud, but these are not dealt with in a comprehensive fashion. In the main, the plan concentrates upon the risks of internal fraud and especially misuse of a customer's personal information.

1.44 The external fraud risks that the CSA has identified in the plan include 'customers misrepresenting facts to receive reduced liability'¹⁷ and 'customers misrepresenting facts to receive a benefit'.¹⁸ There is also a range of possible scenarios identified in the plan where a person may impersonate a child support customer to receive a benefit.¹⁹ The control and deterrent measures in the plan to address those risks are 'staff training and experience' and 'policies and procedures'. Investigation and prosecution of customer fraud offences is not identified as a control or deterrent measure in the plan. This is surprising given that the plan was actually developed by the CSA Fraud Prevention Section, which the plan states is responsible for investigating customer fraud.²⁰

1.45 The CSA's Fraud Control Plan classifies the consequence of each of the instances of customer fraud identified as 'low'. This is defined within the plan as meaning that the risk, if it eventuated, would either 'threaten the efficiency or effectiveness of some aspect of the program or project, but would be dealt with internally' or have 'minimal impact on CSA's strategic/operational objectives' or have 'low political and/or community sensitivity'. This office considers that the CSA's assessment of the consequences of customer fraud fails to take account of the public interest in ensuring that offences are prosecuted.

Public interest aspects of the CSA's prosecution policy

1.46 The CSA is administering an area of law that is complex, contentious, and involves balancing the often competing interests of parents. The CSA says that in 2006–07 it developed and implemented a new compliance and enforcement program to 'build greater integrity and public confidence in the child support scheme'.²¹ However, this program does not appear to be a holistic approach to customer compliance. It seems to rely upon using administrative measures to correct child support assessments and collect child support debts without considering whether customer fraud has been involved. The CSA reports the following activities under this program:

- enforcing lodgement of tax returns
- intercepting tax refunds to recover child support debts
- complex financial investigations of 'serious avoiders'
- making administrative departure prohibition orders to prevent child support debtors leaving Australia without paying their child support
- court proceedings to collect child support.²²

¹⁶ Department of Human Services, *Annual Report 2006–2007*, page 67.

¹⁷ Child Support Agency, *Fraud Control Plan*, Version 3, November 2006, page 22.

¹⁸ Child Support Agency, *Fraud Control Plan*, Version 3, November 2006, page 26.

¹⁹ Child Support Agency, *Fraud Control Plan*, Version 3, November 2006, pages 31 and 32.

²⁰ Child Support Agency, *Fraud Control Plan*, Version 3, November 2006, page 48.

²¹ Department of Human Services, *Annual Report 2006–2007*, page 51.

²² Department of Human Services, *Annual Report 2006–2007*, page 52.

1.47 What the program appears to lack is an integrated approach to detecting, investigating and referring for prosecution any matters where a customer appears to have made a false or misleading statement to the CSA about his or her income, or any other circumstance that would potentially affect the amount of child support payable. In this office's view, that is a crucial oversight. If the CSA has no effective response to a parent's allegation that the other parent in their case has committed an offence under the child support legislation, this could tend to undermine public confidence in the child support scheme. An effective prosecution policy must appropriately take into account the public interest in prosecution of offences.

1.48 The Office of the CDPD has published a statement called the *Prosecution Policy of the Commonwealth*.²³ The document sets out guidelines for making decisions in the prosecution process and sets out a non-exhaustive list of twenty factors that may arise for consideration in determining whether the public interest requires a prosecution.²⁴ These factors are:

- (a) the seriousness or, conversely, the triviality of the alleged offence or that it is of a 'technical' nature only
- (b) any mitigating or aggravating circumstances
- (c) the youth, age, intelligence, physical health, mental health or special infirmity of the alleged offender, a witness or victim
- (d) the alleged offender's antecedents and background
- (e) the staleness of the alleged offence
- (f) the degree of culpability of the alleged offender in connection with the offence
- (g) the effect on public order and morale
- (h) the obsolescence or obscurity of the law
- (i) whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute
- (j) the availability and efficacy of any alternatives to prosecution
- (k) the prevalence of the alleged offence and the need for deterrence, both personal and general
- (l) whether the consequences of any resulting conviction would be unduly harsh and oppressive
- (m) whether the alleged offence is of considerable public concern
- (n) any entitlement of the Commonwealth or other person or body to criminal compensation, reparation or forfeiture if prosecution action is taken
- (o) the attitude of the victim of the alleged offence to a prosecution
- (p) the likely length and expense of a trial
- (q) whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so
- (r) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court
- (s) whether the alleged offence is triable only on indictment
- (t) the necessity to maintain public confidence in such basic institutions as the Parliament and the courts.

²³ <http://www.cdpp.gov.au/Publications/ProsecutionPolicy/ProsecutionPolicy.pdf>.

²⁴ *Prosecution Policy of the Commonwealth*, 2.10 on pages 9 and 10.

1.49 The CSA's Prosecution Policy does not contain any overt references to the 'public interest'. Certain of the prosecution criteria in chapter 6.8.7 of *The Guide* could encompass elements of the public interest (for example, the seriousness of the alleged offence and the impact of the alleged offence); however, they are not presented in a way which makes it clear how those factors are to be weighed. In any case, there does not seem to be any justification for the CSA to have a prosecution policy that is not consistent with the policy released by the Office of the CDPP and which covers all Australian Government organisations.

PART 2—THE COMPLAINTS

2.1 In the following de-identified case studies, three individuals complained to the Ombudsman about the perceived failure by the CSA to appropriately follow up claims that their former partners had provided false and misleading information to the CSA. In the first two cases, the eligible carers, **Ms A** and **Ms B** respectively, believed their former partners had provided the CSA with false and misleading information about their income and assets. In the third case, the liable parent, **Mr C**, alleged that his former partner had provided the CSA with false information about the content of court proceedings in a response to an objection, and about the residence and care arrangements for the child for whom he paid child support.

2.2 In all three complaints, the CSA did not conduct any meaningful investigation of the allegations and did not refer the matter to its Fraud Prevention Section for further investigation or to the CDPP. The view taken by the Ombudsman's office is that the CSA's actions were reasonable in the first case, but are open to criticism in relation to the second and third complaints.

Complaint 1—Ms A

2.3 Ms A is the parent who receives child support. She complained to this office that the CSA had refused to investigate her allegation that her former partner had provided the CSA with false and/or misleading information regarding his assets/income.

2.4 The complaint arose out of a CoA process, which took place in April 2007. Ms A asked the CSA to increase the amount of child support paid to her by her former partner. In her application, Ms A alleged that her ex-partner held undisclosed and under-disclosed assets. The Senior Case Officer (SCO) dealing with Ms A's CoA application made a decision under s 98E of the CSAA that the matter was too complex to be determined within the relatively informal CoA process, and that the matter should instead be heard before a Court with Family Law jurisdiction.

2.5 In July 2007 Ms A complained to the CSA that it had failed to investigate her claims concerning the provision of false and misleading financial information. Ms A alleged that her former partner had provided this false and misleading financial information to the CSA in his written response to her CoA application. At the time Ms A also sought clarification from the CSA as to its policies on the handling of such allegations.

2.6 The CSA subsequently advised Ms A that the primary focus in such matters was whether or not there was a 'reasonable prospect of conviction being secured'. The CSA then recorded that the complaint by Ms A had not been upheld. The issue of whether the SCO had correctly utilised the discretion to determine whether or not the claims should be investigated was not addressed.

Observations about Ms A's complaint

2.7 This office's investigation concluded that the CSA's decision not to investigate Ms A's allegations concerning the provision of false income/assets information was not unreasonable in all the circumstances. In particular, given the complexity of the matters raised by Ms A in her application and subsequent complaint, it did not seem unreasonable for the SCO to have concluded that it would be more appropriate for Ms A to apply to court for a departure from her assessment. In the course of those proceedings, it was likely that the court would be able to make findings about her former partner's correct financial details. The CSA was not in a position to do this on the basis of the material that it had before it.

Complaint 2—Ms B

2.8 Ms B and her former partner had four children from their relationship. Two children lived with Ms B and the other two resided with her former partner. The CSA had made a child support assessment requiring Ms B to pay child support to her former partner because its records showed that he had a lower income than Ms B. Ms B complained to this office that the CSA had failed to appropriately investigate her allegation that her former partner had provided it with falsified payslips during a CoA process.

2.9 In May 2005 Ms B made a CoA application, seeking a reduction in the amount of child support she was assessed to pay. The SCO responsible for hearing the application issued a s 161 notice to Ms B's former partner's employer requiring that they provide information regarding his income. The employer did not respond to this notice. The SCO made a decision on Ms B's application on the basis of the available evidence, that is, two payslips provided by Ms B's former partner.

2.10 The SCO's subsequent decision reduced Ms B's child support liability, however, Ms B objected to this decision on a number of grounds, including that her former partner's income had not been properly investigated or verified. Ms B also alleged in her letter of objection that the payslips her former partner provided to the CSA were fraudulent.

2.11 On 26 October 2005 a CSA Objections Officer made a decision to reduce Ms B's child support liability to nil. In making this determination, the Objections Officer overtly indicated that he relied upon the payslips provided by Ms B's former partner and did not undertake an investigation into their accuracy or authenticity.

2.12 During 2006 Ms B commenced legal action against her former partner, in the course of which she subpoenaed documents from his employer. The documents produced under the subpoena indicated that the employer paid her former partner significantly more per fortnight than he advised the CSA during the CoA and Objection processes, which was in turn more than was recorded within his payslips.

2.13 Ms B brought this information to the CSA's attention as part of a new CoA process. The SCO handling the matter accepted Ms B's evidence about her former partner's income and determined that, for the period of the assessment, Ms B should not have been paying child support. Instead, she should have been receiving child support from her former partner. As a result, Ms B had overpaid an amount of \$3,574.66 to her former partner in child support, which the CSA would need to recover from him. As at the time of writing, those funds had not been successfully recovered.

2.14 In May 2007, Ms B wrote to the CSA claiming compensation for the overpayment amount caused by the CSA's initial CoA and Objection decisions and the costs of obtaining the consent order through the Court. In September 2007, Ms B received a reply from the CSA rejecting her application for compensation. The CSA refused to compensate Ms B on the basis that 'in accordance with section 98H of the *Child Support (Assessment) Act 1989*, a decision maker may act on the basis of the application and the documents accompanying it and may, but is not required to conduct any inquiry or investigation into the matter'.

2.15 We obtained the full CoA and Objections files from the CSA. We also obtained copies of letters in which the CSA responded to Ms B on behalf of the Minister for Human Services and the Prime Minister. Upon examination of the CoA file it was identified that the payslips submitted by Ms B's former partner are hand-written, bear no company logo or contact details, and have no signature or authorisation of a pay officer. The form on which they were

written appears similar to a generic pay book, which may be purchased over the counter from a newsagent or stationer.

2.16 There is no evidence in documents received by this office that the specific issue of the authenticity of the payslips was acknowledged by the Objections Officer, discussed with Ms B, or referred on elsewhere within the CSA for assessment or investigation. Further, there is nothing to suggest that the Objections Officer considered it appropriate to follow up on the notice to provide information that the SCO originally sent to the employer, but which was ignored. Nor does the CSA appear to have considered prosecution of the employer for failing to respond to the notice, which is in itself an offence under s 161 of the CSAA.

2.17 There is also evidence on the files that on numerous occasions Ms B advised the CSA that she believed the information submitted by her former partner in support of his income was fraudulent and untruthful, not merely inaccurate. This appears to have been glossed over in the CSA's objection decision of 26 October 2005, which merely stated 'Ms B has objected on the basis that she believes his income is higher than that found by SCO'.

2.18 We asked the CSA whether it had considered prosecution action against Ms B's former partner. The CSA's response indicated that there was no evidence that this case had been considered for prosecution action, and advised that Ms B 'has the option to pursue action herself in regards to this matter'.

Observations about Ms B's complaint

2.19 This office does not accept the CSA's view that this was an appropriate case in which to accept on face the documents that had been provided by Ms B's former partner and to decline to undertake any further investigation. The child support legislation provides the CSA with a discretion to undertake further investigation. There must be a genuine exercise of that discretion, which will only occur if proper account is taken of the nature of the information available to the CSA and the importance of the issue in contention.

2.20 Ms B clearly and repeatedly asserted that the pay slips provided by her ex-partner were not genuine. An examination of those pay-slips by this office noted that they were handwritten with no supporting indication and/or evidence as to their authenticity. At least some questions needed to be asked before the CSA decided to accept those payslips as providing genuine and reliable evidence of the former partner's income.

2.21 Exhaustive checking of documents provided to the CSA may not be warranted, or feasible, in every circumstance. Nevertheless, it is crucial to the integrity of the child support system that CSA decisions are reasonable and defensible: this will not occur unless decisions are soundly based on the evidence available to the CSA. CSA decision makers must be alert to the possibility that a document might not be authentic and bear in mind some basic principles of authenticity. For example, in the case of payslips or other documents purportedly originating from an organisation, at a minimum that document should contain details of the organisation's legal name, Australian Business Number, registered address and a contact officer or phone number. Where there is any doubt, it would be prudent for a decision maker to contact the issuing organisation to verify the document before relying upon it as evidence.

2.22 The CSA's suggestion that Ms B take her own legal action against her former partner was not an appropriate way of resolving this dispute about the authenticity of the documents provided to the CSA. Quite apart from the difficulties and expense she would face in bringing a private prosecution, the advice ignored the CSA's responsibility in the matter. Providing

fraudulent documents to a government agency is a serious matter and the CSA's failure to investigate such a complaint is apt to undermine public confidence in the agency.

2.23 Bearing those circumstances in mind, it would be appropriate for the CSA to reconsider its decision to refuse to compensate Ms B for her legal costs associated with making an application to court for a departure from her child support assessment.

2.24 There is the further issue of whether the CSA should have taken action against the employer for failing to respond to the CSA's notice to provide information. As noted above, it is an offence under s 161 of the CSAA to ignore such a notice. The time for commencing a prosecution has now passed,²⁵ and there would in any case be a range of matters to consider before commencing that process. Even so, a failure to respond to a CSA notice is an offence under the Act, which indicates the importance that must be attached to a CSA notice, both by the CSA and the recipient of a notice. It is questionable whether that was a paramount consideration in this case.

Complaint 3—Mr C

2.25 Mr C complained that his former partner had provided false and misleading information on at least two occasions to the CSA. The first instance concerned a statement made by his former partner in responding to his objection to a CSA CoA decision. One ground of Mr C's objection was that the CSA should reduce his child support assessment to take account of his legal fees. Mr C's former partner claimed that the judge dealing with their custody matters had requested Mr C to drop his pursuit of the issue, and that his substantial legal fees could have been avoided had he done this. Mr C denied this and alleged that his former partner's claim was a false and misleading statement.

2.26 The CSA wrote to Mr C, stating explicitly that it would investigate his allegation, but that it would not be able to report its decisions to him 'due to Privacy legislation'. The CSA did not seek any further detail from Mr C about this allegation. The CSA then decided to take no further action on the complaint on the basis that Mr C had not provided the CSA with sufficient information to warrant any further investigation.

2.27 Mr C complained to his Federal Member of Parliament. The CSA provided a report to the Minister of Human Services to the effect that it had considered Mr C's complaint but could not report the outcome to him.

2.28 The second instance in which Mr C's former partner allegedly provided false and misleading information to the CSA concerned a dispute about where their child was living. Mr C's former partner had lodged an objection to his claim that he was providing care for their daughter for a period of time. Mr C provided a response to this objection, refuting her claim and also claimed that a witness statement his former partner had provided in support of her claims was fraudulent and biased. He requested that this be investigated.

2.29 Mr C provided further information to the Minister's office, alleging, amongst other issues, further instances of false and misleading information being provided by his former partner in the context of the objection. He also provided supporting evidence to the CSA of his claims of care for his daughter, and again urged the CSA to investigate the statements of his former partner and witness, with a view to prosecution.

2.30 As it turned out, the CSA did not make a decision on the dispute about the actual care arrangements for the child. Mr C's former partner withdrew her objection because of a

²⁵ As the maximum penalty for the offence is six-months imprisonment, prosecution proceedings must be initiated within 12 months of the date a person was required to respond to a notice.

technicality. The CSA's assessment therefore remained in place, reflecting the care arrangements that Mr C said were correct. The CSA did not take any further action to investigate Mr C's allegations of false and misleading information provided by his former partner.

Observations about Mr C's complaint

2.31 This was not a case in which there was sufficient probative evidence to warrant referral of the matter to the CDPP for prosecution. There was nevertheless a diligence issue in the way that CSA dealt with Mr C's complaint. Because there was a privacy constraint on what he could be told about the CSA investigation of his former partner, it was important that the CSA kept an accurate record of its administrative response to his complaint. A decision to take no further action on his allegation that false and misleading information was provided to the CSA should be properly made and recorded.

2.32 In responding to Mr C's complaint, the CSA seemed to focus more upon ensuring that it did not disclose confidential information to him, than upon deciding what action would be appropriate. The rapidity with which the CSA officer made and recorded a decision to take no further action tends to suggest that Mr C's complaint was not received with an open mind. The CSA's record of the decision does not discuss the allegations in any detail, nor identify when the offences are alleged to have occurred; nor was there any recorded analysis of whether the matters that Mr C complained about could actually constitute an offence.

2.33 The CSA could have dealt more effectively with Mr C's allegations about the court proceedings by explaining to him why the CSA considered there was no case for his former partner to answer, or alternatively inviting him to provide additional evidence that might show that an offence was likely to have been committed. This could have been done on the basis of what he already knew and would not have involved any disclosure of personal information about his former partner.

2.34 The CSA failed to take any action in relation to Mr C's allegation relating to the care of his child. There is no record to indicate that the CSA conducted a preliminary assessment of that allegation with a view to deciding whether it was appropriate to conduct further investigations or refer the matter for prosecution. It is possible that the poor recordkeeping in this case may have led the CSA to become confused about whether it had in fact considered each of the particular allegations made by Mr C about his former partner.

PART 3—CONCLUSIONS

3.1 The investigation of the three complaints discussed in this report highlighted some areas of concern about the way the CSA deals with allegations that a person has committed an offence under the child support legislation.

3.2 Firstly, there are problems relating to the CSA's published statements about customer fraud prosecutions, both in chapter 6.8.7 of *The Guide* (a public document) and in its Prosecutions procedural instruction (an internal document). Neither document makes any reference to the *Commonwealth Fraud Control Guidelines*; nor do they contain appropriate criteria for the CSA to use when deciding whether to investigate a matter or refer it to the CDPP for prosecution. The procedural instruction fails to clearly explain the limited period available for assessment and referral of offences under the child support legislation to the CDPP for prosecution and it does not discuss the possible alternative offences under the *Criminal Code Act 1914*. The Ombudsman's view is that the CSA's criteria should specifically refer to the public interest and be closely modelled upon the *Commonwealth Fraud Control Guidelines* and CDPP's *Prosecution Policy of the Commonwealth*. The CSA's procedures and policy for dealing with customer fraud should be an integral part of its overall Fraud Control Plan.

3.3 Secondly, the CSA does not seem to have a robust culture of identifying, investigating and prosecuting fraud. The CSA's focus seems to be limited to collecting debt and correcting assessments through administrative means.

3.4 This orientation may in part stem from the CSA's reluctance to become involved, or be used as a weapon, in ongoing disputes between separated parents. That is understandable, but it cannot be overlooked that the Parliament made it an offence for a person to provide the CSA with false or misleading information. The integrity of child support assessments depends upon the accuracy and reliability of the information that underpins CSA decisions. One of the functions of the CSA is to identify, assess and refer possible offences to the CDPP for prosecution. The CSA's out-of-date procedural instruction and the cumbersome investigation and referral arrangements detailed within it have apparently resulted in the CSA's Fraud Prevention Team receiving few referrals of customer fraud allegations. As a result, the CSA has either no, or extremely low levels of referral to the CDPP.

3.5 CSA staff who do identify possible offences or who are told about them by a customer appear not to receive support to deal with them. The CSA does not have detailed instructions on how to receive, document, or preliminarily assess allegations for possible referral. The Ombudsman's view is that the CSA should review its processes in the light of the *Fraud Control in Australian Government Agencies—Better Practice Guide*, which contains detailed information about those aspects of fraud control. The CSA's existing procedural instruction relies upon junior officers who receive allegations or identify matters in the course of their work to refer those matters upwards. Although the CSA has recently established a small team to deal with customer fraud, there appears to be no central register of allegations, or matters identified by CSA staff and no senior officer oversight or monitoring of the referral process.

3.6 In order to preserve public confidence in the child support scheme, it is vital that people who complain to the CSA about possible offences can be confident that the CSA will take appropriate investigation action. This includes providing meaningful feedback to a person who makes an allegation on the action taken by the CSA.

3.7 The predominant focus of the CSA's Fraud Control Plan is upon internal, or staff fraud. This focus should be broadened to include identifying, investigating and prosecuting serious customer fraud. The CSA has acknowledged that it currently lacks an effective process for investigation and referral of matters for prosecution; however, it has assured the Ombudsman's office that it is developing one.

3.8 We understand that in April 2008 the CSA's executive considered a paper prepared by the CSA's National Compliance team that included options for assessing suspected false and misleading information offences for referral to the CDPP. It is pleasing to note that the small investigation team the CSA had set up in the interim has received and dealt with 42 allegations of customer and external fraud since the beginning of this office's investigation.

3.9 The CSA has advised this office that it now intends to review all of its data collection arrangements to ensure that it provides appropriate notice to its customers that it is a serious offence to give false and misleading information to the CSA. This is a vital first step in overhauling the CSA's arrangements for responding to customer fraud allegations. The recommendations set out in Part 4 of this report are made to augment the steps now being taken within the CSA.

PART 4—RECOMMENDATIONS

4.1 The Ombudsman made five recommendations to address shortcomings in the CSA's existing processes.

RECOMMENDATION 1

That the CSA reviews its current fraud control plan to ensure that it has appropriate measures in place to identify, investigate and prosecute external customer fraud, as well as internal staff fraud. The review should include a full risk assessment which recognises the importance of controlling and deterring customer fraud and takes account of the *Commonwealth Fraud Control Guidelines 2002* and *Fraud Control in Australian Government Agencies—Better Practice Guide*.

RECOMMENDATION 2

That the CSA develops detailed procedures for staff responding to customer claims that the other parent has provided false or misleading information. The procedures should provide clear direction on the investigation of complaints, recordkeeping, the referral of matters to the CSA's Fraud Prevention Team for investigation, and the referral of matters for prosecution action (including possible offences and the time limits for commencing a prosecution). The procedures should refer to and be consistent with the *Commonwealth Fraud Control Guidelines* and the CDPP's *Prosecution Policy of the Commonwealth*.

RECOMMENDATION 3

That the CSA reviews the adequacy of its training for staff about their role in ensuring the integrity of the child support scheme by identifying, investigating and referring appropriate matters for prosecution.

RECOMMENDATION 4

That the CSA refers to its Fraud Prevention Team the matter discussed in this report as the complaint from Ms B for further investigation and consideration according to the CDPP's *Prosecution Policy of the Commonwealth*, and reconsiders Ms B's claim for compensation for legal costs associated with making an application to court for a departure from her child support assessment.

RECOMMENDATION 5

That the CSA provides further guidance to Senior Case Officers regarding the exercise of their discretionary power under s 98H(1)(b) of the *Child Support (Assessment) Act 1989*. The guidance should deal with the need for a SCO in appropriate circumstances to verify the authenticity of documents purporting to record the income of a party, to consider further investigation where there is contradictory evidence as to the income of a party, and to obtain information from other sources to verify a customer's evidence of income.

PART 5—CSA’S RESPONSE TO RECOMMENDATIONS

5.1 On 19 June 2008, the Ombudsman invited the General Manager of the CSA and the Secretary of the DHS to comment on a draft version of this report. The CSA’s General Manager provided a written response on 8 August 2008.

5.2 The CSA’s response stated that it is ‘committed to addressing the present procedural and training shortcomings in relation to investigating and prosecuting incidents of serious customer fraud’. The CSA said that it considers the application of the criminal law in the child support context to be considerably more complex than is the case with a benefit agency (such as Centrelink). The CSA says that it ‘needs to ensure that activity in this area is undertaken so as to maximise both short and long term compliance’.

5.3 The CSA stated that it is not in a position to investigate all claims of criminal activity, but that it is committed to introducing more robust protocols to prioritise allegations of criminal behaviour that result in more serious outcomes. In particular, the CSA agrees on the need ‘to ensure that all cases that highlight a significant risk of a potential offence are examined and vetted and, where appropriate, investigated and referred to the CDPP’.

5.4 The CSA’s response advised this office that the development of criminal investigation and prosecution procedures was part of its compliance strategy for 2008–2010, announced by Senator the Hon Joe Ludwig, Minister for Human Services, on 23 June 2008. The CSA also advised us that from 1 July 2008 its new Serious Investigation Team would be responsible for investigation of more serious matters, including external fraud, for the dual purposes of administering the child support scheme and possible prosecution for criminal offences.

5.5 In summary, the CSA accepted all of the recommendations, with the exception of one aspect of recommendation 4. This office will continue its investigation of the individual complaint to which recommendation 4 was addressed. Set out below is the CSA’s responses to each of the recommendations, in full, unless otherwise noted.

RECOMMENDATION 1

That the CSA reviews its current fraud control plan to ensure that it has appropriate measures in place to identify, investigate and prosecute external customer fraud, as well as internal staff fraud. The review should include a full risk assessment which recognises the importance of controlling and deterring customer fraud and takes account of the *Commonwealth Fraud Control Guidelines 2002* and *Fraud Control in Australian Government Agencies—Better Practice Guide*.

CSA’s response

CSA agrees that the existing Fraud Control Plan pays insufficient attention to the treatment of external fraud. As part of our regular review of the plan the current plan is being redrafted and will include greater detail of the treatment of external fraud, including the identification of areas which the agency will be focusing on over the next few years.

RECOMMENDATION 2

That the CSA develops detailed procedures for staff responding to customer claims that the other parent has provided false or misleading information. The procedures should provide clear direction on the investigation of complaints, record keeping, the referral of matters to the CSA’s Fraud Prevention Team for investigation, and the referral of matters for prosecution action (including possible offences and the time limits for commencing a prosecution). The procedures should refer to and be consistent with the *Commonwealth Fraud Control Guidelines* and the CDPP’s *Prosecution Policy of the Commonwealth*.

CSA response

CSA agrees that more work needs to be undertaken with regard to the transparency of referral process, staff training and record keeping.

During 2008–09 CSA will seek to ensure that we develop appropriate documentation in the form of Procedural Instructions to assist and guide our staff to respond to claims made by our customers or identified by internal staff. Staff involved in the acceptance and assessment of referrals for investigation and referral to CDPP will be trained in the aspects of the program and the requirements of the legislation as well as identifying the evidence that supports a case for prosecution.

RECOMMENDATION 3

That the CSA reviews the adequacy of its training for staff about their role in ensuring the integrity of the child support scheme by identifying, investigating and referring appropriate matters for prosecution.

CSA response

CSA agrees that greater levels of training are required for appropriate staff in relation to the identification of potential breaches of legislation. However, CSA is of the view that it is neither practical nor necessary to train all staff in these matters. CSA agrees that additional training must be provided for Senior Case officers (SCOs) and for staff engaged in enforcement activities. Training will focus on the identification of possible breaches and how to investigate and address these. CSA has agreed to develop such training during 2008–09.

RECOMMENDATION 4

That the CSA refers to its Fraud Prevention Team the matter discussed in this report as the complaint from Ms B for further investigation and consideration according to the CDPP's *Prosecution Policy of the Commonwealth*, and reconsiders Ms B's claim for compensation for legal costs associated with making an application to court for a departure from her child support assessment.

5.6 The CSA advised the Ombudsman that it 'believes that the recommendation not to afford Ms B compensation for her legal costs is a sound decision'. The Ombudsman's office is pursuing this issue as a separate investigation, principally to clarify the explanation given by the CSA for its refusal to compensate Ms B for her legal costs. At most, the Ombudsman can make a further recommendation at the conclusion of that investigation.

5.7 In response to the remaining aspects of recommendation 4, the CSA stated:

CSA agrees to revisit this matter with a view to assessing if there is sufficient evidence of criminal activity and if there is to refer the matter to the CDPP. However, given the passage of time it is possible that sufficient evidence cannot be identified to support such a referral.

RECOMMENDATION 5

That the CSA provides further guidance to Senior Case Officers regarding the exercise of their discretionary power under s 98H(1)(b) of the *Child Support (Assessment) Act 1989*. The guidance should deal with the need for an SCO in appropriate circumstances to verify the authenticity of documents purporting to record the income of a party, to consider further investigation where there is contradictory evidence as to the income of a party, and to obtain information from other sources to verify a customer's evidence of income.

CSA response

The Registrar has discretionary powers in relation to section 98H(1)(b) of the *Child Support Assessment Act*. This enables the CSA to look at the information presented and where it is warranted the SCO will seek additional information [to] undertake further enquiries. The CoA process is an administrative process which relies on the parties to support their claims.

However, CSA would not expect nor invite staff to make decisions based on information that can be construed to be questionable in nature. For this reason, CSA agrees that providing more detailed information in the SCO procedures on this matter could assist in increasing the viability of the information that is provided and used to assist in decision making processes.

ABBREVIATIONS AND ACRONYMS

AFP	Australian Federal Police
ATO	Australian Taxation Office
BQA	Branch Quality Advisor
CDPP	Commonwealth Director of Public Prosecutions
CoA	Change of Assessment
CSA	Child Support Agency
CSAA	<i>Child Support (Assessment) Act 1989</i>
CSRCA	<i>Child Support (Registration and Collection) Act 1988</i>
DHS	Department of Human Services
FMA Act	<i>Financial Management and Accountability Act 1997</i>
SCO	Senior Case Officer